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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: **2025/068257**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES

24 August 2026

DATE

SIGNATURE

In the matter between:

COLEMAN TRADERS (PTY) LTD

First Excipient/Defendant

JOHANNES CORNELIUS COLEMAN

Second Excipient/Defendant

and

NEDBANK LIMITED

Respondent/Plaintiff

JUDGMENT

Introduction

[1] In these proceedings the first and second excipients (defendants) except to the respondent's (plaintiff's) particulars of claim on the basis that those particulars do not disclose a cause of action. In this judgment I will refer to the excipients as the first and second defendants and the respondent as the plaintiff.

Plaintiff's particulars of claim

- [2] According to the particulars of claim, on 11 August 2023 the plaintiff and the first defendant concluded a written instalment sale agreement for the purchase of a 2023 Ford Ranger Double Cab Pick-up. The purchase price was R892,521.74 together with certain additional charges. The first defendant agreed to repay a total repayable amount of R1,396,238.59 with a first instalment of R29,190.01 on 30 September 2023 and thereafter 46 monthly instalments of R29,086.14 and a balloon payment of R29,086.14 due on 30 August 2027.
- [3] The second defendant signed a suretyship on 11 August 2023 binding himself as surety and co-principal debtor for the obligations of the first defendant, with liability capped at the principal debt of R1,064,869.58 plus interest and costs. He renounced the benefits of division, excussion and cession of action.
- [4] The plaintiff -
- a. alleges that the vehicle was delivered to the first defendant and the plaintiff fulfilled all of its obligations under the agreement;
 - b. the first defendant failed to pay the required monthly instalments and, according to the plaintiff's certificate of balance, the outstanding amount was R1,039,730.84 as at 22 March 2025. Interest accrues at 12.49% per annum from 22 March 2025 to payment;
 - c. pleads compliance with the National Credit Act and states that a section 129/130 notice was sent on 8 April 2025; the first defendant was informed of their default and of the available debt review and dispute-resolution options;
 - d. states notices were sent to the first defendant both by registered post and by registered electronic email through the South African Post Office system. Proofs of transmission and delivery were attached to the particulars.

- [5] In these particulars the plaintiff seeks cancellation of the instalment sale agreement and return of the Ford Ranger vehicle. The plaintiff also seeks an order permitting enforcement of any remaining indebtedness after the vehicle is sold (to be determined later) together with retention of all monies already paid by the first defendant.
- [6] The claim is framed primarily as a repossession claim rather than a money judgment for the full indebtedness. The plaintiff seeks return of the vehicle first, with any claim for a residual shortfall after sale to be dealt with subsequently.
- [7] The defendants contend that the particulars of claim do not disclose a complete cause of action and should therefore be set aside. The exception raised three principal grounds of complaint only two of which were pursued by the defendants¹.

First exception: the plaintiff did not validly cancel the instalment sale agreement.

- [8] The defendants argue that under clauses 9.1 and 9.2 of the instalment sale agreement, the plaintiff was required to give written notice of default and allow the first defendant 10 business days to respond or remedy the breach before exercising remedies such as cancellation. The defendants state that the contractual notices relied upon by the plaintiff were sent by email to j[...]; and m[...].
- [9] These email addresses were not the first defendant's chosen domicilium address under the agreement. The chosen address was 3[...] M[...] Street, W[...], Pretoria.
- [10] Because the notice was allegedly not delivered in accordance with the agreement, the plaintiff failed to comply with the contractual preconditions for cancellation. The defendants contend therefore that no valid default notice was given, no valid cancellation occurred, and consequently the particulars of claim do not disclose a cause of action for repossession or enforcement.
- [11] At the heart of this exception is clause 13 of the instalment sale agreement –

¹ The second defendant stated in his heads of argument that he does not persist with the third exception (CaseLines 007-45)

13 DOMICILE ADDRESS

You have chosen the address set out in Cost of Credit Part I as the place where any notice or other correspondence must be sent to you. You agree that registered mail will be used for delivery of legal notices to you. Our chosen address specified in Cost of Credit Part I is the place where any notice or other correspondence must be sent to us. If your address changes, you must immediately advise us thereof in writing by hand delivery. Any notice delivered by hand will be deemed to have been received on the day it is delivered. Any notice sent by email will be deemed to have been delivered on the date of transmission.

- [12] It is not clear from the copy of the agreement attached to the particulars of claim, whether this clause refers to “Cost of Credit Part I” (alphabetic letter ‘I’) or “Cost of Credit Part 1” (numeric ‘1’). Part I (alphabetic letter ‘I’) of the Cost of Credit document refers to “Repayment arrangements”² and does not refer to any addresses. The agreement contains no section labelled Part 1 (numeric ‘1’). It is therefore not clear from the agreement which ‘chosen address’ is being referred to in this clause 13.
- [13] But the agreement does contain references to the first defendant’s address. Part A of the ‘Cost of Credit’ annexure refers to the first defendant’s physical address as 3[...] M[...] Street, W[...], Pretoria³, and, in the ‘Application for Instalment Finance’⁴, under the heading ‘Address and Contact information’, the address and contact information for the first defendant includes this physical address as well as the email address ‘J[...]’.
- [14] Clause 13 specifically envisages notices being sent by email. On the face of it, it does appear that an email sent to the address given in paragraph [13] above would constitute compliance with clause 13, as clause 13 of the agreement explicitly permits email delivery.
- [15] The general principles applicable to exceptions are well settled⁵. One of those principles is that an excipient who alleges that a summons does not disclose a cause of action must establish that, upon any construction of the particulars of

² CaseLines 003-23

³ CaseLines 003-22

⁴ CaseLines 003-28

⁵ Merb (Pty) Ltd v Matthews 2021 JDR 2889 (GJ)

claim, no cause of action is disclosed. In my opinion and for the reasons given above, the first defendant has failed in this regard.

[16] The second defendant's first exception must therefore fail and is dismissed with costs.

Second exception: no valid demand was made on the surety

[17] The second defendant relies on clauses in the suretyship requiring legal notices and demands to be delivered to the surety at the address specified in the suretyship.

[18] The second defendant nominated 3[...] M[...] Street, W[...], Pretoria as his *domicilium* address.

[19] The plaintiff's demand was allegedly sent only to the same email addresses referred to above rather than to the nominated *domicilium*.

[20] An effective demand is a contractual trigger event required before any liability on the surety arises.

[21] Accordingly, the defendants contend that because no valid demand was made upon the surety in accordance with the suretyship, the debt claimed from the second defendant never became due and payable.

[22] The plaintiff's answer to the second exception is that even if a prior demand was required, service of summons constitutes a valid demand in law.

[23] Clause 1 of the suretyship agreement provides –

I, the undersigned ... JOHANNES CORNELIUS COLEMAN of ... 3[...] M[...] STREET, W[...], PRETORIA, 0[...]. bind myself, jointly and severally, as surety and co-principal debtor in solidum ... for the repayment on demand of all amounts that the principal debtor may now or at any time hereafter owe Nedbank ...

(underlining added)

[24] Clause 24 of the suretyship agreement provides –

24 Nedbank must give legal notice to me at the address set out in clause 1 above or at the address most recently provided by me to Nedbank in writing, provided that I deliver to Nedbank a written notice of the new address by hand or by registered mail. Unless otherwise provided by legislation, a notice or order or other document that must be served on me will have been properly served when it has been either delivered to me or sent by registered mail to my last known address.

(underlining added)

[25] The second defendant submits in his heads of argument –

... the Plaintiff has failed to establish a complete cause of action against the Second Defendant. The suretyship requires a valid demand, delivered at the chosen domicilium, before any liability arises. No such demand was properly served, and the Plaintiff instead relies on emails sent to non-nominated addresses.

[26] It has been the law for more than 100 years that summons may constitute demand⁶. It is apparent from the fact of the second defendant's defence in these proceedings, that the second defendant has received the summons and thus the demand; the summons must thus have been delivered to the second respondent as required by clause 24 of the suretyship. Furthermore, it appears from the return of service⁷, that the sheriff did serve the summons at the second defendant's chosen address by affixing it to the principal gate, the sheriff noting that the second defendant had left the given address in November 2024.

[27] The second defendant's exception based on this ground must therefore fail and is dismissed with costs.

Costs

[28] The plaintiff requested an order that the first and second defendants jointly and severally pay the costs of the application as between attorney and client. The plaintiff claims that it is clear from the history of the matter that the defendants are merely delaying the finalisation of the matter with ill-conceived exceptions in

⁶ See *West Rand Estates Ltd Applicant v New Zealand Insurance Co Ltd Respondent* 1926 AD 173

⁷ CaseLines 005-2

order to avoid pleading to the claim, and in the circumstances the current exception constitutes an abuse of process aimed at delaying the claim of the plaintiff.

[29] The plaintiff did not amplify this allegation any further and, while the exception has certainly delayed the finalisation of the claim, I am unable to attribute any other ulterior motive to the defendants. As I have found, it is not obvious from clause 13 of the agreement to which address is being referred in that clause and the defendants were entitled to raise this issue now.

Order

The following order is made -

- A. the exception of the first and second defendants dated 2 October 2025 is dismissed;
- B. the first and second defendants, jointly and severally, are to pay the costs of this application as between party and party on Scale A.

A MITCHELL
Acting Judge of the High Court,
Johannesburg

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. Matter heard on 12 August 2026. The date for hand-down is deemed to be 24 August 2026.

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