



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Case No: 858/2019

In the matter between:

WENTZEL LOMBARD

Defendant / Applicant

And

WILLIAM BIGGS

Plaintiff / Respondent

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

BESHE J:

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[1] In a judgment that was delivered on 12 May 2022, I found in favour of the respondent. The applicant was ordered to pay to the respondent a sum of R726 485.82 together with interest thereon. The applicant is now seeking leave to appeal against the said judgment.

[2] The parties will be referred to as they were during the trial.

[3] In my judgment I found *inter alia*, that even though according to defendant's pleaded case, Cape Mohair and Wool is the entity that bought the goats in question and that he did not conclude an agreement with the plaintiff, that defendant did conclude the agreement in question with the plaintiff. I also made a finding that the agreement concerned was, even though the payment was deferred to a later date, did not constitute an incidental credit agreement

as provided for in the *National Credit Act*.¹ The upshot of this finding was that the plaintiff was not obliged to comply with *Sections 86 (10), 129 and or 130* of the said act.

[4] The application for leave to appeal is premised mainly on the ground that the plaintiff having been bound by his pleadings, or in another words his case having had to be determined on his pleadings, I misdirected myself in not taking into account that the document marked Annexure B is proof that the agreement in question was an incidental credit agreement. And that plaintiff's pleaded case is grounded Annexure B the authenticity of which was confirmed by the plaintiff in a *Rule 37* minute. I had taken the liberty to reproduce Annexure B in my judgment, I do not intend reproducing the whole document again.

[5] For the assertion that the agreement concerned was incidental credit agreement, reliance is placed on the part of the document which reads as follows:

"Rente op onbetaalde bedrae, na die ooreengekomde datum van betaling sal gehef word en dan teen 'n koers deur Verkoper verkie, rente maandelikse saamgestel. Geen rente sal voor op die uitstaande bedrag gehef word nie."

[6] In his evidence, plaintiff stated that at no stage did he discuss the question of interest with defendant. In my understanding, that he will be required to pay interest should payment not be made on the agreed date. In the absence of any evidence to gainsay plaintiff's evidence in this regard, I was satisfied on a balance of probabilities that there was never a discussion about interest should payment not be forthcoming on the agreed date being the 15 May 2018. And that the discussion or suggestion came months later when defendant failed to make good on his promise to pay on dates subsequent to 15 May 2018. Only in November was this discussion had. This

¹ Act number 32 of 2005.

in my view is also borne out by the spaces that were left uncompleted in the clause in question relating to the payment of interest (Annexure B *supra*).

[7] I remain unpersuaded that there are reasonable prospects of another court finding that the agreement in question was an incidental credit agreement.

[8] Accordingly, the application for leave to appeal is dismissed with costs.

N G BESHE
JUDGE OF THE HIGH COURT

APPEARANCES

For the Defendant/Applicant : Adv: S. H. Cole SC
Instructed by : NOLTE SMIT ATTORNEY
115A High Street
GRAHAMSTOWN
Ref: Mr. Frans Smit / Michelle
Tel.: 046 – 622 7209

For the Plaintiff/Respondent : Adv: D. H. De la Harpe SC
Instructed by : NETTELTONS ATTORNEYS
118A High Street
GRAHAMSTOWN
Ref: Mr. Hart / Liza
Tel.: 046 – 622 7149

Date Heard : 25 January 2023
Date Reserved : 25 January 2023
Date Delivered : 31 January 2023