


REPUBLIC OF SOUTH AFRICA



GAUTENG LOCAL DIVISION
JOHANNESBURG

CASE NUMBER: 24520/2018

DELETE WHICHEVER IS APPLICABLE	
(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED
28/03/2019	
DATE	SIGNATURE

In the matter between:

FIRSTRAND BANK LTD T/A NISSAN FINANCE

Plaintiff/Applicant

and

MULTIPOINT LOGISTICS CC
NTLANTLA GEORGE GULE

First Defendant/Respondent
Second Defendant/Respondent

JUDGEMENT

NGALWANA AJ

[1] The plaintiff seeks summary judgment against the defendants in respect of a debit balance on a car instalment sale agreement and a suretyship agreement. It seeks repossession of the car together with costs of suit.

[2] The defendants resist summary judgment on the grounds that (1) the deponent to the summary judgment application lacks *locus standi*; (2) the summons was not preceded by a notice in terms of section 129 of the National Credit Act, 34 of 2005 (*“the NCA”*); (3) the suretyship agreement is invalid because, being married in community of property, the second defendant did not have the consent of his spouse to bind himself as surety and co-principal debtor to the first defendant, which consent must be witnessed by two other persons.

[3] In argument, Counsel for the defendants challenged the integrity of the instalment sale agreement, invoking section 14 of the Electronic Communications and Transactions Act, 25 of 2002 (*“ECTA”*).

[4] The plaintiff says the NCA does not apply to this agreement because (1) the first defendant is a juristic person who has an annual turnover in excess of R1 million; (2) the second defendant is a credit guarantee as envisaged in section 4(2)(c) of the NCA and so the NCA does not apply in respect of him

either; (3) the agreement is in any event a large agreement within the contemplation of the NCA.

[4] Neither the technical defences advanced by the defendants in the pleadings, nor the argument advanced by their Counsel in respect of ECTA suffice to forestall summary judgment in my view. The standard is whether the defendants have a *bona fide* defence that, if proved, would constitute a good defence to the action. None of these technical defences meet that standard. I am satisfied that annexure “B” to the particulars of claim complies with the requirements of section 14 of ECTA.

[5] In the circumstances, I am persuaded that summary judgment is warranted.

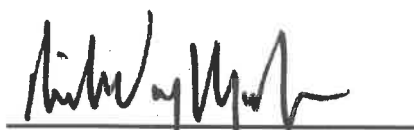
[6] As regards costs, I am not persuaded that a punitive costs order on an attorney and client scale is warranted.

Order

1. Summary Judgment is granted.
2. The defendants are directed, jointly and severally, forthwith to deliver the following property to the plaintiff:

2017 NISSAN NP200 1.5 DCI A/C SAFETY PACK P / U S / C
CHASSIS NUMBER: ADNUSN365U0124764
ENGINE NUMBER: K9KM890D011967

3. The defendants are, jointly and severally, to pay the plaintiff's costs on a party and party scale, the one paying the other to be absolved.



V Ngalwana
Acting Judge of the High Court

Appearances

For the plaintiff:	BM Lukhele
Instructed by:	Rossouws Lesie Inc
For the defendants:	G Segal
Instructed by:	Gary Segal Attorneys
Date of hearing:	26 March 2019
Date of judgment:	28 March 2019