

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 49858/2021

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

Date: 6 December 2022 E van der
Schvff

In the matter between:

VELOCITY FINANCE (RF) LIMITED

APPLICANT / PLAINTIFF

and

WASTE PARTNER INVESTMENT (PTY) LTD

RESPONDENT/ DEFENDANT

JUDGMENT

Van der Schyff J

Introduction

[1] In this application for summary judgment, the applicant seeks (i) the cancellation of a credit agreement entered into between the applicant's predecessor "Volkswagen Financial Services (SA) (Pty) Ltd" (VW), and the respondent; (ii) the return of the

motor vehicle in question; and (iii) leave to return to court on the same papers, duly amplified, to obtain a judgment on damages once the motor vehicle has been returned, and valued. The parties are referred to as cited in the main action.

- [2] It is trite that an application for summary judgment must be refused if the defendant discloses facts which, accepting the truth thereof, will constitute a defence. The defendant must, however, fully present the facts on which the defence is based.¹ Although the defendant's opposing affidavit is not to be assessed with the precision of a plea, a defendant must disclose the grounds upon which it disputes the plaintiff's claim.² A simple denial in an opposing affidavit is insufficient to avoid summary judgment.

The defendant's opposing affidavit

- [3] The defendant submits that the application for summary judgment was brought out of time. If it is considered that the plea was filed on 26 January 2022, and the application for summary judgment was served on 15 February 2022, it goes without saying that the application for summary judgment was not filed out of time.
- [4] The second point *in limine* raised by the defendant is that the deponent to the founding affidavit was not authorised to depose to the affidavit, and that he does not have the requisite personal knowledge to positively swear to the cause of action. The defendant points out that the deponent states that he works for Wesbank Limited, without explaining the relationship between the applicant and Wesbank. Mr. Khan, does, however, state that Wesbank administers collections on behalf of, amongst others, the plaintiff. He also explains that he has access to and control over all the accounts and other documents relating to this legal action, and that the content of the affidavit falls within his personal knowledge. He also explained the process relating to the electronic signing of a document.

¹ Uniform Rule 32(3)(b).

² *Chairperson, Independent Electoral Commission v Die Krans Ontspanningsoord (Edms) Bpk* 1997 (1) SA 244 (T) 249F–G.

- [5] The defendant takes issue with the fact that the agreement attached to the summons is unsigned, in that it does not reflect the parties' signatures. It is stated by the plaintiff, however, that the document was signed using an electronic signature in terms of section 13(3) of the Electronic Communications and Transactions Act 23 of 2002. The defendant does not deny in its opposing affidavit that the online system was utilised.
- [6] The deponent to the opposing affidavit claims that all the payments made by the defendant were not taken into account when the amount claimed was calculated.
- [7] The defendant blows hot and cold. While it denies that the agreement attached to the plaintiff's particulars of claim is the contract concluded between the parties, the defendant contends that it made payments regarding the purchase of the motor vehicle that was not considered. The defendant failed to plead the terms of the contract, that is, in its opinion the correct credit agreement, or to attach the credit agreement it concluded with the plaintiff. The defendant likewise fails to indicate the amounts it alleged it paid to the plaintiff and to provide proof of payment;
- [8] The defendant denies having received the notice of cancellation. Proof of the notices being dispatched by registered mail, and the track-and-trace reports are however attached to the plaintiff's particulars of claim.
- [9] The defendant's plea, which constitutes a bare denial, is not amplified at all by the opposing affidavit filed. The defendant failed to raise a *bona fide* defence.

ORDER

In the result, the following order is granted:

1. The cancellation of the agreement entered into between the defendant and Volkswagen Financial Services (SA) (Pty) Ltd on 10 July 2018 and ceded by the said Volkswagen Financial Services (SA) (Pty) Ltd to the plaintiff, is cancelled;
2. The defendant is ordered to return to the plaintiff the vehicle, being a **2018 VOLKSWAGEN TIGUAN ALLSPACE 2.0 TDI COMFORTLINE 4MOT DSG** with engine number **DBG013891** and chassis number **WVGZZZ5NZJM116011**;
3. The plaintiff is granted leave to approach the court on the same papers, duly amplified, to obtain judgment for the damages claimed once the vehicle has been returned and valued or sold;
4. The defendant is to pay the costs of the application.

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

For the applicant:	Adv. N. Nemukula
Instructed by:	Glover Kannieappan Inc.
For the respondent:	Adv. L. Msiza
Instructed by:	WW Mukantsi Attorneys
Date of the hearing:	8 November 2022
Date of judgment:	6 December 2022