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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE

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

Date: **29th APRIL 2016** Signature: _____

CASE NO: 2014/38776

In the matter between:

THE SOUTH AFRICAN BANK OF ATEHNS

Applicant

And

DUBE, SIPHO PATRICK (ID NO: 57.....)

Respondent

JUDGMENT

ADAMS AJ:

- [1]. The applicant seeks an order against the respondent for confirmation that a Credit Agreement concluded between the parties was cancelled and for the return of a 2012 Land Rover 5.0 S/C with, Vin number: SA..... And Engine number: 1.....S (*the motor vehicle*). The cause of action relied upon by the first applicant is clearly the *rei vindicatio*.
- [2]. The applicant is the owner of the vehicle in respect of which the parties concluded a written Credit Agreement on the 29th June 2012 (*the agreement*). In terms of this agreement the respondent was given possession of the vehicle at a purchase price of R1,520,000.01, with credit given for the deposit paid of R900,000.00, resulting in a net capital advance of R620,000.01, to which interest charges and service fees were added in the sum of R123,314.86. in terms of the agreement, the unpaid balance was payable in 48 instalments of R15,485.73 per month.
- [3]. The agreement provided that should the respondent default in the punctual payment, the applicant was entitled to cancel the agreement after having made a demand in terms of the National Credit Act.

- [4]. As at the 31st August 2014 the respondent was in arrears in the sum of R62,323.04, and on the 15th September 2014 the applicant addressed to the respondent a written demand in terms of section 128 of the National Credit Act. The respondent failed to respond to the demand within the statutory period of 10 business days. On the 7th October 2014, the applicant cancelled the instalment sale agreement with the respondent.

THE RESPONDENT'S VERSION

- [5]. The respondent opposes the relief sought by the applicant.
- [6]. Respondent denies that a credit agreement in respect of the vehicle was concluded between the parties. He alleges that the paper trail was a fabrication and a scam perpetrated by the CEO of the applicant and its staff aimed at assisting him (the respondent) to obtain a loan of R620,000.01. He was at all times the owner of the vehicle, which, according to the respondent was never the subject of an instalment sale agreement or any other credit agreement. He does not however give any indication as to how he acquired the ownership of the vehicle.
- [7]. The version of the respondent is far – fetched and borders on the ridiculous. It presupposes a conspiracy of epic proportions involving senior executives of the applicant and staff members of the Dealership which sold the vehicle to the applicant.

- [8]. For these reasons, I am of the view that the version of the respondent is far – fetched and stands to be rejected on the papers.

THE LAW

- [9]. In *Plascon – Evans v Van Riebeeck Paints*, 1984 (3) 623 (AD), the principles relative to the assessment of factual issues in motion proceedings are set out as follows at pg 634:

'It seems to me, however, that this formulation of the general rule, and particularly the second sentence thereof, requires some clarification and, perhaps, qualification. It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact (see in this regard Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd, 1949 (3) SA 1155 (T) at 1163 - 5; Da Mata v Otto NO, 1972 (3) SA 858 (A) at 882D - H). If in such a case the respondent has not

availed himself of his right to apply for the deponents concerned to be called for cross-examination under Rule 6 (5) (g) of the Uniform Rules of Court (cf Petersen v Cuthbert & Co Ltd, 1945 AD 420 at 428; Room Hire case supra at 1164) and the Court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks (see eg Rikhoto v East Rand Administration Board and Another, 1983 (4) SA 278 (W) at 283E - H). Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers (see the remarks of BOTHA AJA in the Associated South African Bakeries case, supra at 924A).

[10]. Applying these principles to the present case, I am of the view that the respondent's version is far – fetched and clearly untenable and should be rejected on the papers.

[11]. I am therefore of the view that the first applicant has made out a case for the relief sought in this application.

ORDER:

Accordingly, I make the following order:-

1. It is hereby confirmed that the credit agreement concluded between the parties on the 29th June 2012 was cancelled.
2. The respondent shall return and deliver to the applicant the 2012 Land Rover 5.0 S/C with, Vin number: S..... and Engine number: 1..... (*The motor vehicle*).
3. In the event of the respondent refusing and / or failing to return to the - applicant the motor vehicle, the sheriff of this court, or his lawfully appointed deputy, is hereby authorised and directed to attach and remove the said vehicle and to return and deliver same to the applicant.
4. The respondent shall pay the applicant's costs of this application on the scale as between attorney and client, including the cost of Senior Counsel.

L ADAMS
Acting Judge of the High Court
Gauteng Local Division, Johannesburg

HEARD ON: 26th April 2016
JUDGMENT DATE: 29th April 2016
FOR THE APPLICANTS: Mr. John Peters SC
INSTRUCTED BY: K G Tserkezis Incorporated
FOR THE RESPONDENT: Adv Boonzaaier
INSTRUCTED BY: Zwiegers Attorneys