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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

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

SIGNATURE	DATE: 24/022025
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CASE NO: 2021/0031

In the matter between:-

SA TAXI DEVELOPMENT FINANCE (PTY) LIMITED

Applicant

and

JOHNSON, TREVOR COLLIN

Respondent

JUDGMENT

ALLEN AJ

INTRODUCTION

[1] This is an opposed interlocutory application for the interim attachment of a vehicle pending the outcome of a trial for the return of a vehicle and costs.

[2] The applicant issued a summons against the respondent which action is defended by respondent. Applicant continued with an application for summary judgment which was dismissed on 28 July 2023 for, amongst other, applicant not filing a supplementary affidavit after respondent's amendments to his plea. Applicant hereafter continued with this application.

[3] In the answering affidavit, paragraph 72, respondent undertook to file heads of argument which was not filed at the time of hearing this application. The parties also did not file a joint practice note as is required in Practice Directive 1 of 2024.

[4] Applicant filed a "proposed joint practice note" in which the common cause facts are stated as well as the issues. Respondent did not file a separate practice note or take issue with the proposed joint practice note.

[5] On the date of hearing there was no appearance for respondent. No withdrawal as attorneys of record was filed. I was advised by applicant's counsel that she made contact with the correspondent attorneys who advised they have no instructions to appear in this matter. Counsel contacted Mr. Naude from the instructing attorney's offices in Potchefstroom and she was advised he is out of town. Respondent himself was also not present.

[6] The application was heard in respondent's absence. Applicant moved for an amendment of the vehicle's description to correct typographical errors. The amendment was granted.

BACKGROUND

[7] On 25 May 2016 the parties concluded a written lease agreement in terms whereof the applicant sold to the respondent a 2016 Toyota Quantum Sesfikile 16 Seater-Petrol to be used as a taxi. The applicant remains the owner of the vehicle until paid in full. The vehicle was delivered to the respondent after conclusion and the respondent remains in possession thereof.

[8] In the answering affidavit respondent questions applicant's calculations of the outstanding balance and simply denied the amounts alleged by applicant in the particulars of claim. No evidence was proffered, albeit that this application is for the return of the vehicle only.

[9] Respondent also take issue whether he "was present" in Midrand when the agreement was concluded. It is the respondent's case that he was not present in Midrand when the agreement was concluded whilst the wording of paragraph 5 of the particulars of claim did not expressly mention that respondent was present.

[10] Respondent also take issue with the court's jurisdiction and applicant's *locus standi*.

DISCUSSION

[11] It is common cause that the respondent chose the vehicle from the dealer and entered into an agreement with applicant and that applicant retains the rights of ownership of the vehicle until the finance is paid in full.

[12] Applicant's case is that respondent has not paid up the full finance amount, is in arrears and the respondent did not submit any proof to the contrary. It is further applicant's case that due to non-payment, applicant cancelled the agreement which is undisputed.

[13] Respondent's case is that interim relief cannot be granted since the court does not have jurisdiction to hear this matter, the applicant has no *locus standi* to bring this application and the balance of convenience favours respondent.

[14] It is undisputed that respondent is not paying for the vehicle he is using on a daily basis as a taxi and thereby generating income. Respondent's case is that the applicant is "the author of its own problems". Respondent did not submit any proof that the vehicle is not in arrears but, instead, relies on jurisdiction and *locus standi* to prevent the return of the vehicle *pendente lite*.

[15] Annexure “FA2” to applicant’s founding affidavit refers to respondent’s last payment in the amount of R13 500.00 on 27 July 2021. On 16 August 2023 the respondent’s total amount outstanding was R457 284.21. Respondent in the answering affidavit did not answer thereto. The last payment date and outstanding balance remain undisputed.

[16] To succeed, the requirements for the grant of an interim interdict has to be established by applicant: The right which it seeks to enforce is clear or, if not clear, is prima facie, though open to some doubt. If the right is only prima facie established there is a well-grounded apprehension of irreparable harm if the interim relief is not granted. The balance of convenience favours the granting of interim relief and that the applicant has no other satisfactory remedy.

[17] In the matter of **SA Taxi Securitisation (Pty) Ltd v Chesane** (26382/2009) [2010] ZAGPJHC 30; 2010 (6) SA 557 (GSJ) (1 April 2010) Boruchowitz,J stated the following: “[13] *It is settled law (at least in this Division) that it is a prerequisite for the grant of an interim attachment order that any agreement under which the respondent has the right to possess the vehicles first be cancelled. See Steyns Foundry (Pty) Ltd v Peacock¹; First Consolidated Leasing and Finance Corporation Ltd v N M Plant Hire (Pty) Ltd². In the present matter the applicant has purported to cancel the agreements of lease and is accordingly not precluded from claiming interim recovery of the vehicles*”.

[18] Cancellation is not disputed by respondent. The respondent only challenges the court's jurisdiction, applicant's ownership and balance of convenience.

[19] Even should the respondent be successful at the trial in demonstrating that applicant did not have *locus standi* to litigate, notwithstanding the fact that applicant paid for the vehicle, then and in that event the probabilities are that the court hearing the matter will not allow the respondent to retain possession of the vehicle, operate it for profit as a taxi and not make any payment therefore to the applicant.

¹ 1965 (4) SA 549 (T)

² 1988 (4) SA 924 (W)

Jurisdiction

[20] Respondent's "presence" in Midrand is self-created. It was stated in the particulars of claim that applicant was represented by a duly authorized representative and the respondent represented himself. It is evident that respondent signed the quotation in Nigel whereafter the applicant signed the quotation in Midrand which became the lease agreement after acceptance.

[21] Respondent's address in Nigel and applicant's address in Midrand are both addresses within the jurisdiction of this court. The respondent's reliance on lack of jurisdiction must fail.

Prima facie right

[22] It is undisputed that respondent selected the vehicle from a dealership and applicant paid for the vehicle to gain ownership and respondent possession. Respondent did not profer evidence to the contrary. Respondent did not disclose who the true owner should be, alternatively did not take any steps to join an alleged true owner of the vehicle.

[23] It is undisputed that the parties contracted, had the intention to contract on certain terms and conditions, the respondent took possession of the vehicle and continued to make payments to applicant for a number of years towards the outstanding balance. The respondent's reliance on the applicant's lack of ownership and therefore *locus standi* must fail.

[24] In my view applicant has established a clear right to cancellation and restoration of the vehicle pending the outcome of the action.

Irreparable Harm

[25] The interim attachment of goods pending the outcome of vindicatory or quasi-vindicatory proceedings is well established. See ***SA Taxi Securitisation (Pty) Ltd v Yuong*** (10249/2008, 9559/2008, 8115/2008) [2008] ZAWCHC 292 (14 November

2008) as well as **SA Taxi Finance Solutions (Pty) Ltd v Kubheka and Another** (45332/2012) [2013] ZAGPPHC 439 (5 December 2013). In these cases the credit provider was asking for the return and storage of the taxi pending the outcome of the main action. The situation is essentially the same as in this case.

[26] The function and purpose of an interim interdict is to protect the leased goods against deterioration and damage and to keep them in safekeeping until the case between the parties has been finalized. Its purpose is not to enforce remedies or obligations under the credit agreement and the remedy does not form part of the debt enforcement process envisaged in the NCA. This was also discussed in the **SA Taxi Securitisation**³ matter.

Balance of Convenience

[27] Respondent relies on the fact that the taxi is his source of daily income and lifeline and the depriving of the taxi will put him and his family's life in jeopardy.

[28] The applicant's claim is a vindicatory one wherein the element of irreparable harm is presumed. It is self-evident that the vehicle is depreciating by daily use and the respondent's continued utilization of the vehicle as a taxi over an extended period will have the result that, should the applicant be successful in its action, the vehicle that it recovers may be virtually worthless.

[29] It is untenable that the respondent be entitled to utilize the vehicle as a taxi on a daily basis without effecting any payments under the agreement. The last payment was made approximately 44 months ago. The applicant seeks to have the vehicle stored in a place of safety to the extent that there will not be a meaningful reduction in value pending the outcome of the action and possible return of the vehicle to the respondent. The applicant bears the costs of the storage.

[30] It is a well settled principle that the stronger the case which the applicant makes out, the least balance of convenience in favour of the applicant there needs to

³ (10249/2008, 9559/2008, 8115/2008) [2008] ZAWCHC 292 (14 November 2008)

be for interim relief to be granted. See ***Olympic Passenger Service (Pty) Ltd v Ramlagan*** 1957 (2) SA 382 (D). As the applicant has established a strong right to cancellation and restoration of the vehicle in the pending action, less weight ought to be placed on the question of balance of convenience. In my view the balance of convenience favours the applicant for the reasons stated instead of allowing the respondent to keep using it *pendente lite*.

Absence of any other satisfactory remedy

[31] Respondent in the answering affidavit merely alleged that applicant's allegations "are rejected with contempt". Applicant has no other satisfactory remedy than the interim relief it seeks. Applicant's prospects of ultimate success are stronger.

[32] In the circumstances the applicant has established the requirements for the grant of the interim interdict sought.

ORDER

[33] In the result the following order is made:

[33.1] Pending the final outcome of the action instituted by the applicant against the respondent:

[33.1.1] The respondent is directed to deliver into the possession of the Sheriff a 2016 Toyota Quantum Sesfikile 16 Seater-Petrol with engine number 2[...] and chassis number A[]; and who shall deliver the vehicle to the applicant who shall, in turn, at its own expense transport the vehicle to a garaged premises situated at 1[...] – 1[...]th Road, R[], M[] and retain the vehicle at such garaged premises under security pending the outcome of the action.

[33.2] The applicant shall not use the vehicle or permit that it be used pending the outcome of the action.

[33.3] In the event of the respondent failing to comply with the contents of paragraph 1 above within 5 days of the service of this order on the respondent's attorneys, the Sheriff is authorized and directed to take the vehicle into his possession from wherever he may find it and return the vehicle to the applicant as aforesaid.

[33.4] The respondent is ordered to pay the costs of this application.

ALLEN AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This judgment was prepared by Acting Judge Allen. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 24 February 2025.

HEARD ON: 20 February 2025

DECIDED ON: 24 February 2025

For the Plaintiff: Adv R Stevenson
Instructed by Marie-Lou Bester Inc

For the Defendant: No Appearance