



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Absa Bank Limited v André Keet (817/2013) [2015] ZASCA 81 (28 May 2015)

The Supreme Court of Appeal (SCA) today delivered a judgment upholding an appeal against the judgment of the North Gauteng High Court, Pretoria upholding a special plea of prescription.

The issue before the SCA was whether a claim for repossession of a vehicle is a ‘debt’ as envisaged by the Prescription Act that becomes prescribed after three years. The issue arose in the following circumstances:

Eastvaal Motors Limited (‘Eastvaal Motors’) sold a tractor vehicle (‘vehicle’) to the respondent, André Keet in terms of a written instalment sale agreement (‘the agreement’) concluded by the parties on 26 September 2003. Eastvaal Motors’ right, title and interest in and to the agreement was ceded to the appellant, Absa Bank Limited, on 26 September 2003. Thereafter the respondent took delivery of the vehicle.

It was an express term of the agreement that ownership of the vehicle would not pass to the respondent until all amounts owing under the agreement had been paid in full. The purchase price would be paid by way of a specified number of instalments commencing on 1 November 2003 and ending on 1 November 2007. If the respondent failed to comply with any provisions of the agreement, or failed to make any payment in terms thereof, the appellant would be entitled to the return and possession of the vehicle. In that event the appellant would also be entitled to demand payment of any arrear instalments.

On 18 November 2011 the appellant instituted action against the respondent in the North Gauteng High Court. It alleged that the respondent was in breach of the agreement in that he had defaulted in paying the instalments due and that it had cancelled the agreement. The summons was served on the respondent on 14 December 2011. In

that action the appellant sought confirmation of its cancellation of the agreement and the repossession of the vehicle.

The respondent defended the action, and apart from pleading over on the merits of the appellant's claims, delivered a special plea in which he alleged that the appellant's claim for payment of arrears had become prescribed under the Prescription Act. In his special plea the respondent alleged that the agreement on which the appellant sued would have come to an end on 1 November 2007, which is the date on which he contended the amount alleged to be outstanding became due and payable. The respondent contended that in terms of s 11 of the Prescription Act, 'any claim for arrears' against the respondent pursuant to the agreement prescribed on 31 October 2010. For that reason, he contended that it was not open to the appellant to cancel the agreement and recover possession of the vehicle. The appellant did not replicate to the respondent's special plea. The special plea was set down separately. The high court upheld the special plea. It held that a claim for a delivery of a tractor is a 'debt' as envisaged in the Prescription Act which prescribes after three years. It accordingly ruled that the appellant's claim for repossession of a tractor had prescribed.

The appellant appealed to the SCA and challenged the correctness of the high court's finding that its claim for the delivery of its tractor being a 'debt' had prescribed. The SCA upheld the appeal. It held that the appellant's claim for repossession of a tractor being a claim based on ownership of property, is not a 'debt' and as such, does not become prescribed after three years.