THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case no: 1229/2018

Reportable

In the matter between:

FIRSTRAND BANK LIMTED T/A WESBANK **APPELLANT**

and

NICOLAAS JOHANNES DAVEL **RESPONDENT**

and

UNIVERSITY OF THE FREE STATE LAW CLINIC ***AMICUS CURIAE***

Neutral Citation: *FirstRand Bank Limited t/a Wesbank v Davel* (1229/2018) [2019] ZASCA 168 (29 November 2019).

Coram: Navsa, Swain, Zondi and Mokgohloa JJA and Gorven AJA

Heard: 8 November 2019

Delivered: 29 November 2019

Summary: National Credit Act 34 of 2005 – s131 – repossession of goods – attachment of motor vehicle – estimated value – sale as soon as practicable for best price reasonably obtainable – credit provider required to give notice to debtor of gross amount realised on sale – right of debtor to dispute amount of proceeds of sale – debtors extensive rights.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Legodi JP sitting as court of first instance):

1 The appeal is upheld to the extent reflected in the substitution order set out hereafter, and no order is made as to costs.

2 The order of the court below is set aside and substituted as follows:

'20.1 Default judgment is granted as follows regarding the two Standard Bank matters:

20.1.1 Cancellation of the agreement in each case is hereby confirmed.

20.1.2 The return of the following vehicles to the credit provider, Standard Bank, is ordered:

(a) Ford Kuga 1.6 Ecoboost Trend bearing engine number DU86764 and chassis number WF0AXXWPMADU86764;

(b) 2010 Audi A4 1.8T AMBITION (B8) bearing engine number CDH086852 and chassis number WAUZZZ8K2AA141331.

20.1.3 Costs of R200,00 and Sheriff's fees in the amount of R444,04 as prayed for by Standard Bank against Mr Renier Venter in paragraph 5 of the relief sought.

20.1.4 Costs of R200,00 and Sheriff's fees in the amount of R426,27 as prayed for in paragraph 5 of the relief sought against Mr Sipho David Maoshene (the credit consumer) by Standard Bank.

20.2 Summary judgment is granted in favour of FirstRand Bank Limited against Nicolaas Johannes Davel as follows:

20.2.1 Cancellation of the agreement is hereby confirmed.

20.2.2 The return of the following vehicle to the credit provider, FirstRand Bank, is ordered:

2010 Volkswagen Polo 1.6 Comfortline SE, engine number CLS056389 and chassis number VWZZZ60ZBT044929.

20.2.3 The damages component of the plaintiff's claim is postponed *sine die*.

20.2.4 The defendant is ordered to pay the plaintiff's costs of suit.

20.3 Upon the return of each of the vehicles described in paragraph 20.1.2(a), 20.1.2(b) and 20.2.2 to each respective plaintiff:

20.3.1 The plaintiff shall, within 10 business days from the date of receiving return of the vehicle, give the defendant written notice:

(a) setting out the estimated value of the returned vehicle;

(b) informing the defendant that it intends to sell the returned vehicle as soon as practicable for the best price reasonably obtainable; and

(c) informing the defendant that the price obtained for the returned vehicle upon its sale may be higher or lower than the estimated value.

20.3.2 The plaintiff shall sell the returned vehicle as soon as practicable for the best price reasonably obtainable.

20.3.3 After selling the returned vehicle, the plaintiff shall:

(a) credit or debit the defendant with a payment or charge equivalent to the proceeds of the sale less any expenses reasonably incurred by the plaintiff in connection with the sale of the goods; and

(b) give the defendant a written notice stating the following:

(i) the settlement value of the agreement immediately before the sale;

(ii) the gross amount realised on the sale;

(iii) the net proceeds of the sale after deducting the plaintiff's permitted default charges, if applicable, and reasonable costs allowed under paragraph (a); and

(iv) the amount credited or debited to the defendant's account.

20.3.4 The notice referred to in paragraph 20.3.3(b) above shall state that:

(a) If the defendant disputes the amount of the proceeds of the sale or any other charges or expenses incurred, he or she may engage directly with the credit provider in relation thereto.

(b) If the engagement referred to in (a) does not yield, from the defendant's perspective, the desired result, he or she may, refer the dispute to the Tribunal or submit a complaint in terms of s 136 of the National Credit Act 34 of 2005 to the National Credit Regulator.

20.3.5 If an amount falls to be credited to the defendant's account which exceeds the settlement value immediately before the sale of the returned vehicle, the plaintiff must

remit such excess amount to the defendant together with the notice referred to in paragraph 20.3.3(b) above.

20.3.6 If an amount is credited to the defendant's account which is less than the settlement value before the sale, or an amount is debited to the defendant's account, the plaintiff may demand payment from the defendant of the remaining settlement value in the notice referred to in paragraph 20.3.3(b) above.

20.3.7 If the defendant fails to pay the amount demanded in terms of paragraph 20.3.6 above within 10 business days of receiving such demand, the plaintiff may commence proceedings against the defendant for any outstanding damages.

20.3.8 The defendant shall pay interest at the rate applicable to the credit agreement, on any outstanding amount demanded by the plaintiff in terms of paragraph 20.3.7 above, from the date of the demand until the date of payment of the outstanding amount.

20.3.9 In the notice referred to in para 20.3.4, the consumer must also be notified, if applicable, that if there is a dispute in relation to any of the matters set out in 20.3.5-20.3.8, the mechanisms referred to in 20.3.4(a)–(b) are at his or her or its disposal.

20.4 The respective plaintiff shall aver and prove in its action for any outstanding damages, that it has complied with the requirements set out in paragraph 20.3 above.'

JUDGMENT

Navsa JA (Swain, Zondi and Mokgohloa JJA and Gorven AJA concurring):

[1] This is an appeal, with the leave of this court, principally against part of an order by the court below. The court below, after confirming the cancellation of an instalment sale agreement, and ordering the return of a motor vehicle purchased in terms thereof, made the following additional order, which is at the centre of the present appeal:

'20.4 That upon return of the vehicles described in paragraphs 20.1.1, 20.1.2 and 20.3.1, the applicants (credit providers) shall, within 10 business days from date of receiving the vehicles respectively, give the consumer written notice setting out the estimated value of the vehicles aforesaid and informing the consumers respectively that the vehicles in relation to each one of them will not be sold at a price less than such an estimated value unless so sanctioned by the court to sell the vehicles at a lesser price after a notice shall have been given to the consumer concerned.'

The detailed background is set out hereafter.

[2] On 27 June 2011, the appellant, FirstRand Bank Limited t/a Wesbank (Wesbank), concluded a written instalment sale agreement with the respondent, Mr Nicolaas Johannes Davel, in terms of which he purchased a 2010 Volkswagen Polo 1.6 Comfortline SE for an amount of R195 863,45. In terms of the agreement, Mr Davel was required to pay 59 consecutive monthly instalments of R3 592,79 and a final balloon payment of R68 976 to be made on 25 July 2016. Typically, the agreement provided for payment by Mr Davel of interest at a fixed rate of 11,5 per cent per annum. The agreement contained the usual reservation of ownership clause in terms of which ownership is reserved by the seller until the full purchase price had been paid. Mr Davel fell behind on the payment of his instalments and, as at 26 May 2017, he was in arrears in an amount of R75 415,92.

[3] A notice in terms of s 129(1)*(a)* of the National Credit Act 34 of 2005 (the Act) was sent by Wesbank to Mr Davel,[1] drawing his attention to the options available to him in terms of the Act, but also stating that, in the event of him not choosing any of them, legal action would be instituted against him claiming, inter alia, cancellation of the agreement and return of the vehicle. Mr Davel did not respond to the notice, prompting Wesbank to issue summons claiming the relief it had threatened. This was followed by an application for summary judgment by Wesbank, in terms of which it claimed, inter alia, the cancellation of the agreement, the return of the motor vehicle and that the entire damages component of its claim be postponed *sine die*. It also sought forfeiture of all monies paid by Mr Davel.

[4] Wesbank's application for summary judgment, together with two other applications by Standard Bank for default judgment, on similar grounds and claiming similar relief, came before the Gauteng Division of the High Court, Pretoria (Legodi JP). All three were unopposed. The court below had no difficulty in accepting that the two banks, in the face of default by the respective purchasers, were entitled to cancel the instalment sale agreements and obtain the return of the motor vehicles. Legodi JP, however, expressed certain concerns about the price at which the vehicles would later be resold by the banks. It should be borne in mind that, contractually and in terms of the Act, sellers, in terms of instalment sale agreements, are in the normal course entitled, upon default by purchasers, to claim from the latter the amount that they would have received had the purchasers fulfilled their contractual obligations. In respect of the provisions of the Act the prescribed procedures must, of course, be complied with. The proceeds of the sale of the motor vehicles concerned must ultimately be brought into account in determining how

[1] Section 129(1)*(a)* of the National Credit Act 34 of 2005 (the Act) provides as follows:
'(1) If the consumer is in default under a credit agreement, the credit provider—
(a) may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date'.
In terms of s 130(1)(*a*) of the Act, a credit provider can only proceed to court upon default by a consumer once ten business days have lapsed after a notice has been sent to the latter in terms of s 129(1)*(a)*.

much is still owing or, depending on the amount recovered, the surplus amount that accrues to the purchaser.[2]

[5] The concerns of the court below were expressed in paras 9-11 of its judgment as follows:

'There is a tendency to recover these vehicles and then sell them at a ridiculous price. Some measure of control is needed in order not to allow the system to be abused to the prejudice of credit consumers. I am greatly indebted to Advocate H.F Brauckmann who represented the three applicants, the credit providers. His oral submissions and written heads of argument filed at the request of the court have been valuable.

The issue as I see it, is not much about whether or not the credit providers are owners of the vehicles in question and whether or not cancellation of the agreement and return of the vehicles make it less important insofar as it relates to the interest of the credit consumers to an extent that this court has no role to play post cancellation and return of the vehicles and before the court is approached on what is referred to as "damages claim".

I was made to understand that upon return of the motor vehicles to the respective credit providers, they will be valued and thereafter sold. It is the price at which these vehicles will be sold that concerns me. Mr Brauckmann on behalf of the applicants indicated that the values of the vehicles will be determined by an independent valuator who will then provide a valuation certificate. He however could not give an assurance that the vehicles would not be sold at an amount less than as per the evaluation certificate without the sanctioning of the court.'

[6] After a consideration of the provisions of ss 127 and 131 of the Act, it went on to say the following:

'Any sign of possible abuse ought to be cautioned and rooted out at the same time, not to unfairly prejudice the credit providers. If the court is entitled to make an order returning the vehicle to the credit provider upon cancellation of the credit agreement as per the relief sought on these three vehicles, it should also be entitled to take proactive steps in protecting the consumer by ensuring that the vehicles are not sold at a far less price than the vehicle's value unless good cause is shown to the court why a lesser price should be sanctioned. It cannot be right to allow the horse

[2] In this regard, see the definition of 'settlement value' in s 1 of the Act; and the provisions of ss 127 and 131 on the surrender and repossession of goods, respectively.

to bolt, that is, to sell the vehicles under credit agreements at a lesser price than the value and thereafter approach the court in the form of damages claim.

In the course of oral submission, it was contended that the proposed order by the court can be problematic. That is, the order directing the applicants in the present proceedings not to sell the vehicles at a less price than the value thereof. I understood the contention to have been that the credit providers would be forced to approach courts at a huge costs time and again. I do not share the view as the concern will just surely perpetuate the sales of returned vehicles at less price than the value thereof to the great prejudice of credit consumer who will find themselves being burdened with a huge debt occasioned by money not for value for the vehicles so returned. Any credit provider who seeks to sell the returned vehicle at a lesser price, must in my view, get the sanctioning of the court.

Concern about a credit providers being forced to approach the court in an open court instead of asking the Registrar in applications of this nature to grant judgment can be resolved by ensuring that averment is made in the application that the returned vehicle will not be sold at a price less than its value unless sanctioned by the court. In any event in all the present three applications the credit providers are obliged to return to court at some stage or the other for damages claim. The point I am making is that the credit provider does not have to be approaching the court several times provided there is caveat to the price at which the returned vehicle as indicated in the preceding paragraphs.

Look at it this way: A credit consumer who is provided with a valuation certificate in which the estimated value is set out as so contemplated in section 127(2)(b) of the Act, may decide not to pursue the matter because he or she is satisfied with the value thereof and would be looking forward for a significant reduction of his or her indebtedness to the credit provider. Therefore to sell the goods at a less price without reverting to the consumer and without the sanctioning of the court makes the provisions of subsection (2)(b) moot or academic.'[3]

[7] Thereafter, Legodi JP confirmed the cancellation of each of the three instalment sale agreements and ordered the return of the vehicles, followed by the order in para 20.4, set out in para 1 above. In addition, the following three orders were made:

'20.5 Costs of R200.00 and sheriff's fees in the amount of R444.04 as prayed for by Standard Bank against Mr Renier Venter in paragraph 5 of the relief sought.

[3] Paras 15-18.

20.6 Costs of R200.00 and sheriff's fees in the amount of R426.27 as prayed for in para 5 of the relief sought against Mr Sipho David Maoshene (the credit consumer) to Standard Bank.
20.7 The defendant/respondent, Nicolaas Johannes Davel to pay the costs of the application to First Rand Bank Ltd.'

[8] An application for leave to appeal by Wesbank was dismissed with costs by the court below. An application for leave to appeal to this court was successful, hence the present appeal directed, primarily, against the order in para 20.4. In relation to its two cases, Standard Bank did not appeal. Mr Davel, as he did in relation to the proceedings in the court below, did not participate in the appeal at all.

[9] Because of the importance of the matter for both credit providers and consumers, this court was concerned in the absence of Mr Davel that there was no legal representation in respect of the interests of consumers. The Registrar attempted numerous times, in exchanges with Mr Davel, to acquire the services of a legal representative to assist him in the appeal. All her attempts proved unsuccessful. Finally, the University of the Free State, through its Law Clinic, applied to be admitted as *amicus curiae*, citing its interest in matters affecting the rights of consumers. It has, no doubt, developed experience in that field by advising and representing consumers who seek legal assistance.

[10] Initially, Wesbank was disinclined to agree to the admission of the University's Law Clinic as *amicus curiae*, but after exchanges with this court, it was accepted that the Law Clinic could be of real assistance in arriving at a conclusion with a resultant order that will provide guidance to credit providers and consumers and have practical effect. The Law Clinic was admitted as *amicus curiae*.

[11] At the outset, it is necessary to record that the concerns of the court below were legitimate but that para 20.4 of the order was made without a proper appreciation of the architecture of the Act and was not in accordance with its provisions. The order required

re-crafting to protect the rights of both credit providers and consumers. On this, Wesbank and the *amicus* agreed.

[12] I turn to a consideration of the relevant provisions of the Act. It is necessary to have regard, first, to the purpose of the Act and, second, to all of the material parts of its extensive and rather convoluted provisions. The relevant part of the long title of the Act states that the Act was promulgated, inter alia, 'to promote a fair and non-discriminatory market place . . . [and] to provide for the general regulation of consumer credit and improve standards of consumer information'. Section 3 spells out the Act's purpose:

'The purposes of this Act are to promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry, and to protect consumers, by—

. . .

(d) promoting equity in the credit market by balancing the respective rights and responsibilities of credit providers and consumers;

. . .

(f) improving consumer credit information and reporting and regulation of credit bureaux;

(g) addressing and preventing over-indebtedness of consumers, and providing mechanisms for resolving over-indebtedness based on the principle of satisfaction by the consumer of all responsible financial obligations;

(h) providing for a consistent and accessible system of consensual resolution of disputes arising from credit agreements; and

(i) providing for a consistent and harmonised system of debt restructuring, enforcement and judgment, which places priority on the eventual satisfaction of all responsible consumer obligations under credit agreements.'

The Act has as one of its main purposes the protection of the interests of consumers.

[13] Section 122(2)(*a*) of the Act entitles a *consumer* to terminate an instalment sale agreement by *surrendering* the goods that are the subject of the agreement in accordance with s 127. Section 123 of the Act deals with the termination of a credit agreement by a credit provider. Section 123(2) states that, if a consumer is in default, the credit provider

may terminate the agreement by taking the steps set out in Part C of Chapter 6, which includes the steps to be taken in terms of ss 129, 130 and 131.

[14] Section 127, under the heading 'Surrender of goods', enables a *consumer* under an instalment sale agreement to give written notice to a credit provider to terminate the agreement. The material parts of s 127 read as follows:

'(1) A consumer under an instalment agreement, secured loan or lease—

(a) may give written notice to the credit provider to terminate the agreement; and

(b) if—

(i) the goods are in the credit provider's possession, require the credit provider to sell the goods; or

(ii) otherwise, return the goods that are the subject of that agreement to the credit provider's place of business during ordinary business hours within five business days after the date of the notice or within such other period or at such other time or place as may be agreed with the credit provider.

(2) Within 10 business days after the later of—

(a) receiving a notice in terms of subsection (1)*(b)*(i); or

(b) receiving goods tendered in terms of subsection (1)*(b)*(ii), a credit provider must give the consumer written notice setting out the estimated value of the goods and any other prescribed information.

(3) Within 10 business days after receiving a notice under subsection (2), the consumer may unconditionally withdraw the notice to terminate the agreement in terms of subsection (1)*(a)*, and resume possession of any goods that are in the credit provider's possession, unless the consumer is in default under the credit agreement.

(4) If the consumer—

(a) responds to a notice as contemplated in subsection (3), the credit provider must return the goods to the consumer unless the consumer is in default under the credit agreement; or

(b) does not respond to a notice as contemplated in subsection (3), the credit provider must sell the goods as soon as practicable for the best price reasonably obtainable.

(5) After selling any goods in terms of this section, a credit provider must—

(a) credit or debit the consumer with a payment or charge equivalent to the proceeds of the sale less any expenses reasonably incurred by the credit provider in connection with the sale of the goods; and

(b) give the consumer a written notice stating the following—

(i) The settlement value of the agreement immediately before the sale;
(ii) the gross amount realised on the sale;
(iii) the net proceeds of the sale after deducting the credit provider's permitted default charges, if applicable, and reasonable costs allowed under paragraph *(a)*; and
(iv) the amount credited or debited to the consumer's account.
. . .
(7) If an amount is credited to the consumer's account and it is less than the settlement value immediately before the sale, or an amount is debited to the consumer's account, the credit provider may demand payment from the consumer of the remaining settlement value, when issuing the notice required by subsection (5)*(b)*.'

Section 127, as the heading indicates, is intended to apply when a consumer 'surrenders' the goods purchased.

[15] Section 128 of the Act reads as follows:

'(1) A consumer who has unsuccessfully attempted to resolve a disputed sale of goods in terms of section 127 directly with the credit provider, or through alternative dispute resolution under Part A of Chapter 7, may apply to the Tribunal to review the sale.
(2) If the Tribunal considering an application in terms of this section is not satisfied that the credit provider sold the goods as soon as reasonably practicable, or for the best price reasonably obtainable, the Tribunal may order the credit provider to credit and pay the consumer an additional amount exceeding the net proceeds of sale.
(3) A decision by the Tribunal in terms of this section is subject to appeal to, or review by, the High Court to the extent permitted by section 148.'

This section puts further measures at the disposal of a consumer.

[16] Section 129 sets out the procedures to be followed by a credit provider before debt enforcement can be resorted to, where the consumer is in default. Section 129(1) provides:

'(1) If the consumer is in default under a credit agreement, the credit provider—
(a) may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the

agreement or develop and agree on a plan to bring the payments under the agreement up to date; and

(b) subject to section 130(2), may not commence any legal proceedings to enforce the agreement before—

(i) first providing notice to the consumer, as contemplated in paragraph *(a)*, or in section 86(10), as the case may be; and

(ii) meeting any further requirements set out in section 130.'

[17] Section 130(1), under the heading 'Debt procedures in a Court', reads as follows:

'(1) Subject to subsection (2), a credit provider may approach the court for an order to enforce a credit agreement only if, at that time, the consumer is in default and has been in default under that credit agreement for at least 20 business days and—

(a) at least 10 business days have elapsed since the credit provider delivered a notice to the consumer as contemplated in section 86(10), or section 129(1), as the case may be;

(b) in the case of a notice contemplated in section 129(1), the consumer has—

(i) not responded to that notice; or

(ii) responded to the notice by rejecting the credit provider's proposals; and

(c) in the case of an instalment agreement, secured loan, or lease, the consumer has not surrendered the relevant property to the credit provider as contemplated in section 127.'

[18] Section 130(3) reads as follows:

'(3) Despite any provision of law or contract to the contrary, in any proceedings commenced in a court in respect of a credit agreement to which this Act applies, the court may determine the matter only if the court is satisfied that—

(a) in the case of proceedings to which sections 127, 129 or 131 apply, the procedures required by those sections have been complied with;

(b) there is no matter arising under that credit agreement, and pending before the Tribunal, that could result in an order affecting the issues to be determined by the court; and

(c) that the credit provider has not approached the court—

(i) during the time that the matter was before a debt counsellor, alternative dispute resolution agent, consumer court or the ombud with jurisdiction; or

(ii) despite the consumer having—

(aa) surrendered property to the credit provider, and before that property has been sold;

(bb) agreed to a proposal made in terms of section 129(1)*(a)* and acted in good faith in fulfilment of that agreement;
(cc) complied with an agreed plan as contemplated in section 129(1)*(a)*; or
(dd) brought the payments under the credit agreement up to date, as contemplated in section 129(1)*(a)*.'

[19] It is clear from these provisions that the legislature was intent on ensuring that sufficient protections are provided to ensure that, upon termination of a credit agreement, a consumer is protected. The Act provides mechanisms for a consumer to challenge the estimated values and the price realised upon a sale of goods after either a surrender of the goods by a consumer or the repossession of the goods after action has been taken by the credit provider. As can be seen from the provisions set out above, the Act also provides for enforcement of the rights of credit providers. Its purpose is directed to ensuring, as far as is practically possible, an equality of arms.

[20] Significantly, s 131, under the heading 'Repossession of goods', provides as follows:

'If a court makes an attachment order with respect to property that is the subject of a credit agreement, section 127(2) to (9) and section 128, *read with the changes required by the context*, apply with respect to any goods attached in terms of that order.' (My emphasis.)

This section makes the aforesaid provisions applicable to the situation where the credit provider took the initiative to repossess the goods sold in terms of a credit agreement. It can only do so after fulfilling the prescribed steps set out in ss 127 and 129. It is distinct from the situation where a consumer initiates the termination of the agreement and the return of the goods purchased.

[21] The decision in *Edwards v FirstRand Bank Ltd t/a Wesbank* [2016] ZASCA 144; 2017 (1) SA 316 (SCA) appears to have turned on whether or not the bank gave the requisite notice.[4] In *Edwards*, this court stated that the Act is far from a legislative model of elegance.[5] That, of course, is true. *Edwards*, however, is not authority for the

[4] *Edwards v FirstRand Bank Ltd t/a Wesbank* [2016] ZASCA 144; 2017 (1) SA 316 (SCA) para 17.
[5] Para 1.

proposition that the processes prescribed in ss 127(2)-(9) are not applicable when goods are repossessed at the instance of a credit provider. Section 131, in stark terms, states that they are.

[22] The court below, in formulating para 20.4 of its order, did not fully appreciate the architecture of the Act. More particularly, it did not have sufficient regard to the provisions of s 128, which allows for a contestation in relation to a disputed sale of goods. That contestation can take place by direct engagement with the credit provider, after referral of the dispute to the Tribunal, or after the submission of a complaint in terms of s 136 with the National Credit Regulator.

[23] It was agreed between Wesbank and the *amicus* that the order that appears hereafter, in substitution of para 20.4 of the order by the court below, gives practical effect to the applicable provisions of the Act.

[24] Following on what is set out above, the following order is made:

1 The appeal is upheld to the extent reflected in the substitution order set out hereafter, and no order is made as to costs.

2 The order of the court below is set aside and substituted as follows:

‘20.1 Default judgment is granted as follows regarding the two Standard Bank matters:

20.1.1 Cancellation of the agreement in each case is hereby confirmed.

20.1.2 The return of the following vehicles to the credit provider, Standard Bank, is ordered:

(a) Ford Kuga 1.6 Ecoboost Trend bearing engine number DU86764 and chassis number WF0AXXWPMADU86764;

(b) 2010 Audi A4 1.8T AMBITION (B8) bearing engine number CDH086852 and chassis number WAUZZZ8K2AA141331.

20.1.3 Costs of R200,00 and Sheriff’s fees in the amount of R444,04 as prayed for by Standard Bank against Mr Renier Venter in paragraph 5 of the relief sought.

20.1.4 Costs of R200,00 and Sheriff's fees in the amount of R426,27 as prayed for in paragraph 5 of the relief sought against Mr Sipho David Maoshene (the credit consumer) by Standard Bank.

20.2 Summary judgment is granted in favour of FirstRand Bank Limited against Nicolaas Johannes Davel as follows:

20.2.1 Cancellation of the agreement is hereby confirmed.

20.2.2 The return of the following vehicle to the credit provider, FirstRand Bank, is ordered:

2010 Volkswagen Polo 1.6 Comfortline SE, engine number CLS056389 and chassis number VWZZZ60ZBT044929.

20.2.3 The damages component of the plaintiff's claim is postponed *sine die*.

20.2.4 The defendant is ordered to pay the plaintiff's costs of suit.

20.3 Upon the return of each of the vehicles described in paragraph 20.1.2(a), 20.1.2(b) and 20.2.2 to each respective plaintiff:

20.3.1 The plaintiff shall, within 10 business days from the date of receiving return of the vehicle, give the defendant written notice:

(a) setting out the estimated value of the returned vehicle;

(b) informing the defendant that it intends to sell the returned vehicle as soon as practicable for the best price reasonably obtainable; and

(c) informing the defendant that the price obtained for the returned vehicle upon its sale may be higher or lower than the estimated value.

20.3.2 The plaintiff shall sell the returned vehicle as soon as practicable for the best price reasonably obtainable.

20.3.3 After selling the returned vehicle, the plaintiff shall:

(a) credit or debit the defendant with a payment or charge equivalent to the proceeds of the sale less any expenses reasonably incurred by the plaintiff in connection with the sale of the goods; and

(b) give the defendant a written notice stating the following:

(i) the settlement value of the agreement immediately before the sale;

(ii) the gross amount realised on the sale;

(iii) the net proceeds of the sale after deducting the plaintiff's permitted default charges, if applicable, and reasonable costs allowed under paragraph (a); and

(iv) the amount credited or debited to the defendant's account.

20.3.4 The notice referred to in paragraph 20.3.3(b) above shall state that:

(a) If the defendant disputes the amount of the proceeds of the sale or any other charges or expenses incurred, he or she may engage directly with the credit provider in relation thereto.

(b) If the engagement referred to in (a) does not yield, from the defendant's perspective, the desired result, he or she may, refer the dispute to the Tribunal or submit a complaint in terms of s 136 of the National Credit Act 34 of 2005 to the National Credit Regulator.

20.3.5 If an amount falls to be credited to the defendant's account which exceeds the settlement value immediately before the sale of the returned vehicle, the plaintiff must remit such excess amount to the defendant together with the notice referred to in paragraph 20.3.3(b) above.

20.3.6 If an amount is credited to the defendant's account which is less than the settlement value before the sale, or an amount is debited to the defendant's account, the plaintiff may demand payment from the defendant of the remaining settlement value in the notice referred to in paragraph 20.3.3(b) above.

20.3.7 If the defendant fails to pay the amount demanded in terms of paragraph 20.3.6 above within 10 business days of receiving such demand, the plaintiff may commence proceedings against the defendant for any outstanding damages.

20.3.8 The defendant shall pay interest at the rate applicable to the credit agreement, on any outstanding amount demanded by the plaintiff in terms of paragraph 20.3.7 above, from the date of the demand until the date of payment of the outstanding amount.

20.3.9 In the notice referred to in para 20.3.4, the consumer must also be notified, if applicable, that if there is a dispute in relation to any of the matters set out in 20.3.5-20.3.8, the mechanisms referred to in 20.3.4(a)–(b) are at his or her or its disposal.

20.4 The respective plaintiff shall aver and prove in its action for any outstanding damages, that it has complied with the requirements set out in paragraph 20.3 above.'

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MS NAVSA

JUDGE OF APPEAL

APPEARANCES:

FOR APPELLANT:	R Hutton SC (with him C van Castricum) Instructed by: Fabricius & Engelbrecht, Pretoria MDP Attorneys, Bloemfontein
FOR RESPONDENTS:	No appearance.
FOR THE AMICUS:	C Hendriks Instructed by: University of the Free State Law Clinic, Bloemfontein