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**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
LIMPOPO DIVISION, POLOKWANE**

**CASE NUMBER: 1150/2024**

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 3 FEBRUARY 2025

SIGNATURE:

In the matter between:

**CATERPILLAR FINANCIAL SERVICES  
SOUTH AFRICA (PTY) LTD**

Registration number: 2017/486709/07

APPLICANT

-and-

**MNTK PROJECTS PROPRIETARY LIMITED**

Registration number: 2019/091643/07

RESPONDENT

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**JUDGMENT**

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**BRESLER AJ:**

Introduction:

[1] The Applicant applies *inter alia* for the following relief:

1.1 Rectification of the first schedule to the instalment sale agreement concluded between the Applicant and the Respondent on the 9<sup>th</sup> of December 2019 under contract number IS/SA-000855 by deleting the serial number “D[...]” where it appears and by substituting same with serial number “D[...]2”.

1.2 Delivery of the following items to the Sheriff of the High Court within 24 (twenty-four) hours from service of the order:

1.2.1 A Caterpillar Skid Steer Loader 226 with serial number D[...]2;

1.2.2 A Caterpillar Articulated Truck 730 with serial number 3[...]2; and

1.2.3 A Caterpillar Articulated Truck 730 with serial number 3[...]2;  
and

1.2.4 A Caterpillar Articulated Truck 730 with serial number 3[...]3.

(the ‘Units’)

1.3 In the event of the Respondent failing to compile with the above, that the Sheriff of the High Court is authorised and ordered to take possession of the Units from wherever he / she may find it, and the Sheriff is authorised to retain possession of the Units until delivered to the Applicant or its duly authorised representative.

1.4 That the Respondent be ordered to pay the costs on attorney and client scale.

[2] The Applicant's relief is premised on master instalment sale agreement (the 'Instalment Sale Agreement' concluded during Desember 2019, and various written schedules thereto during December 2019, April 2021, September 2021 and June 2022 (the 'Schedules').

[3] In terms of the Instalment Sale Agreement, the Applicant lent and advanced the amounts as indicated in the Schedules to enable the Respondent to purchase the Units.

[4] On the 29<sup>th</sup> of August 2023, the Applicant's Attorneys addressed a termination notice to the Respondent.

[5] The Applicant submits that it is the owner of the Units, ownership was reserved in terms of the Instalment Sale Agreement, and, because of the Respondent's breach and the subsequent valid termination of the Instalment Sale Agreement, the Applicant is entitled to the return of the Units.

[6] It is apposite to note that the Instalment Sale Agreement pertinently provides that the Applicant will retain ownership until all the payments in terms of the Instalment Sale Agreement and the Schedules has been made in full.

[7] The application is opposed by the Respondent.

[8] The Respondent raised the following issues in opposition of the relief prayed for by the Applicant:

8.1 The Commissioner of Oaths has a vested interest in the proceedings and as such, the Founding affidavit has not been properly commissioned.

8.2 There is a dispute of fact. As such, the matter cannot be determined on the papers before court.

8.3 The legal action has been instituted prematurely as the date of service of the proceedings predates the agreed payment date. Once legal action was instituted, the Respondent was no longer obliged to perform in terms of the payment agreement.

8.4 The Applicant failed to account for a payment to the value of R300,000.00.

8.5 The 'Skid' was paid in full, and the Respondent is thus entitled to the ownership thereof.

8.6 The relief prayed for amounts to unjustified enrichment as the Applicant will be able to repossess the Units whilst the Respondent has paid a considerable amount towards the outstanding balance, which amount will be forfeited *in toto*.

8.7 The process adopted by the Applicant is objectionable to the extent that multiple claims should have been instituted as opposed to one consolidated claim.

[9] During argument, counsel for the Respondent predominantly focused on the discussions between the parties after the agreement was cancelled. It was conceded that the agreement was cancelled but that the negotiations between the parties after cancellation is relevant to the determination of the issues before court. There is a factual dispute as to what transpired during these negotiations and the matter can therefore not be determined on the papers before court. It was also submitted that the cancellation of the agreement was unfair and unreasonable having regard to the substantial amounts that has already been paid by the Respondent.

**Issues that require determination:**

[10] This Court is called upon to determine if the Applicant has met the jurisdictional requirements for vindictory relief. The Court must further determine if the negotiations between the parties, subsequent to the cancellation of the

agreement, had the result that the agreement was revived and, as such, rendering the current legal action premature.

### **The Applicable Legal Principles:**

[11] The law pertaining to the *rei vindicatio* is well-known. In *Chetty v Naidoo*<sup>1</sup> it was held:

*‘The owner, in instituting a rei vindicatio, need, therefore, do no more than allege and prove that he is the owner and that the defendant is holding the res - the onus being on the defendant to allege and establish any right to continue to hold against the owner.’*

[12] The maxim, *ubi rem meam invenio, ibi vindico* captures the gist of the *rei vindicatio*: ‘where my property is found, there I vindicate it’.

[13] To succeed vindictory relief, the Applicant must show, on a balance of probabilities that:

13.1 He holds ownership;<sup>2</sup> and

13.2 That the Respondent was in possession of the property when the action was instituted.<sup>3</sup>

[14] Should the Respondent rely on a right of possession (by virtue of a lease, for example), the Respondent must allege and prove the right.<sup>4</sup> If the Applicant concedes this right at any stage of the proceedings, the onus is on the Applicant to prove a valid termination of the right. This includes the onus to prove the term of the agreement that gives the right to terminate.<sup>5</sup>

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<sup>1</sup> 1974 (3) SA 13 (A) at 20 C – D

<sup>2</sup> See ***Goudini Chrome (Pty) Ltd v MCC Contracts (Pty) Ltd*** 1993 (1) SA 77 (A) at 82 and ***Concor Construction (Cape) (Pty) Ltd v Santambank Ltd*** 1993 (3) SA 930 (A)

<sup>3</sup> See ***Graham v Ridley*** 1931 TPD 476 and ***Chetty v Naidoo*** 1974 (3) SA 13 (A)

<sup>4</sup> See ***Woerman NO v Masondo*** 2002 (1) SA 811 (SCA)

<sup>5</sup> See ***Matador Buildings (Pty) Ltd v Harman*** 1971 (2) SA 21 (C), ***Chetty v Naidoo*** *supra* and ***Schnehaage v Bezuidenhout*** 1977 (1) SA 362 (O)

[15] Save for the ownership of the Skid, it is common cause between the parties that the Applicant is the owner of the remaining Units. It is furthermore common cause that the Respondent is in possession of these Units and was in arrears with its obligations in terms of the Instalment Sale Agreement.

[16] As to the Respondent's right to possess the Units, the cancellation of the agreement is not in dispute. The Respondent claims to retain possession of the remaining units purportedly on the premise that the return thereof will be unfair towards the Respondent. The Respondent also claims that the negotiations after the cancellation of the agreement, resulted in the agreement to be revived or re- instated, thus rendering these proceedings premature.

[17] This Court is of the view that the further payments allegedly made by the Respondent is irrelevant having regard to the nature of the relief being prayed for. This is, after all, vindicatory relief. To succeed, the Applicant only need to show that it is the owner of the Units (which is undisputed save for the skid) and that the Respondent is in possession thereof. Unlawfulness is assumed once ownership is established.<sup>6</sup>

[18] The Applicant do not claim monetary judgment at this stage. Nor does the Applicant claim damages as an alternative to the return of the Units which will require an accurate calculation of the outstanding balance. The quantum is thus rendered irrelevant in as far as the breach of the agreement, and the subsequent cancellation is not in dispute.

[19] Generally, cancellation of a contract results in the termination of the obligations created thereby, and obligations arising from the contract is extinguished.<sup>7</sup> The Respondent is therefore not entitled to claim performance in terms of the contract once same has been cancelled. This does not presuppose that the Respondent is not obliged to pay any outstanding balance due and payable to

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<sup>6</sup> See **Caterpillar Financial Services South Africa (Pty) Ltd v Azania Money Growth (Pty) Ltd** 2023 JDR 3742 (GJ) at paragraph 17

<sup>7</sup> See **Naka Diamond Mining (Pty) Limited v Johannes Frederick Klopper NO and others** [2022] ZASCA 94 at paragraph 23

the Applicant as these amounts became due and payable prior to cancellation and by virtue of the acceleration clause contained in the Instalment Sale Agreement.

[20] It renders moot the question if the subsequent negotiations revived the agreement or if the legal proceedings are premature. Having regard to the contents and gist of the exchanges between the parties, it is evident that the Applicant did not have the intention to revive the contract between the parties or to novate the terms thereof. It follows that the potential factual dispute, alleged by the Respondent, need also not be determined in lieu of the nature of the proceedings before Court. This dispute is not relevant to the issues at hand or to the determination of the vindictory relief. The Applicant never gave permission to the Respondent to retain the Units after the contract was cancelled and is therefore entitled to have the Units returned to it.

[21] In as far as the Respondent argued that the enforcement of the Instalment Sale Agreement is unfair, counsel for the Applicant correctly referred in his Heads of Argument to the case of **South African Forestry Co Ltd v York Timbers Ltd**<sup>8</sup> where the Supreme Court of Appeal aptly stated:

*'[A]lthough abstract values such as good faith, reasonableness and fairness are fundamental to our law of contract, they do not constitute independent substantive rules that courts can employ to intervene in contractual relationships. These abstract values perform creative, informative and controlling functions through established rules of the law of contract. They cannot be acted upon by courts directly. Acceptance of the notion that judges can refuse to enforce a contractual provision merely because it offends their personal sense of fairness and equity will give rise to legal and commercial uncertainty. After all, it has been said that fairness and justice, like beauty, often lie in the eye of the beholder.'*

[22] This sentiment has since been repeatedly stated in our Courts and remains the current approach to allegations of this nature.

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<sup>8</sup> 2005 (3) SA 323 (SCA) at 27

**The Skid:**

[23] As stated herein before, the Respondent alleges that it has paid the Skid in full and is therefore entitled to retain possession and to require the Applicant to transfer ownership thereof to it.

[24] What the Respondent fails to appreciate is the fact that payment was made after cancellation of the agreement. As set out herein before, the Respondent is not entitled to claim performance of the Applicant's obligations in terms of the contract once same was cancelled.

[25] It must moreover be borne in mind that the said Skid forms part of the Schedules to the Instalment Sale Agreement concluded between the parties. Clause 3 of the Instalment Sale Agreement states the following:

*'Notwithstanding the existence of a security interest, you acknowledge that we own and hold title to a Unit unless and until title is transferred to you upon completion of your obligations to us. A Unit is and will remain our property regardless of its use or manner of attachment to immovable property and we reserve the right, title and interest in and to the Units until all the amounts owing to us have been irrevocably paid in full. Upon completion of all payments pursuant to a Schedule, we will transfer title and ownership of the relevant Unit to you via a bill of sale.'*

[26] The remainder the clause is not relevant for purposes of these proceedings. Suffice to state that the clause makes specific provision that the transfer of ownership necessitates a further action from the parties, being the conclusion of a bill of sale. In the absence thereof, ownership does not transfer. More specifically, ownership did not transfer automatically upon payment of the amounts due in terms of the Schedule.



[27] In the interpretation of this clause, this Court is fortified by the judgment in ***Natal Joint Municipal Pension Fund v Endumeni Municipality***<sup>9</sup> that expounds on the approach generally to be adopted when interpreting a contract as thus:

*"Interpretation is the process of attributing meaning to words used in a document be it legislation, some statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusiness like results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or business like for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The "inevitable point of departure is the language of the provision itself", read in context and having regard to the purpose of the provision and the background in the preparation and production of the document".*

(own underlining)

[28] The trite wording of the Instalment Sale Agreement simply does not lead itself to an interpretation that that parties intended ownership to transfer immediately upon final payment being made in terms of the Schedule and the Respondent's argument that it obtained ownership can thus not succeed.

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<sup>9</sup> 2012 (4) SA 593 (SCA) 12 paragraph 18

[29] The Applicant retained ownership until ownership is transferred by means of a bill of sale and is therefore entitled to the return of the skid.

**Rectification of the agreement:**

[30] The proposed rectification of the Schedule does not appear to be in dispute between the parties. It is evident on the papers before court that the parties are *ad idem* that the correct serial number of the Unit is D[...]2, and rectification must thus be granted accordingly.

**Costs:**

[31] There is no reason why the cost order should not follow the outcome of the proceedings. In this case, the Respondent has consented to attorney and client scale costs in the event of legal proceedings being necessitated. Costs is therefore awarded in favour of the Applicant accordingly.

**Order:**

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

**32.1 The Applicant is granted leave to deliver its supplementary affidavit dated the 23<sup>rd</sup> of September 2024.**

**32.2 The first schedule to the Instalment Sale Agreement concluded between the Applicant and the Respondent on 9 December 2019 under contract number IS/SA-000855, is rectified by the deletion of the serial number “D[...]” where it appears in the second row, in the third column of the table at the foot of page 1 of the schedule (Annexure ‘FA 3’ to the Founding Affidavit), and by the replacement thereof with “D[...]2”.**

**32.3 The Respondent is ordered to deliver to the Sheriff of the High Court within 48 (forty-eight) hours of service of this Order on the Respondent at its registered address:**

**32.3.1 A Caterpillar Skid Steer Loader 226 with serial number D[...]2;**

**32.3.2 A Caterpillar Articulated Truck 730 with serial number 3[...];  
and**

**32.3.3A Caterpillar Articulated Truck 730 with serial number 3[...];  
and**

**32.3.4A Caterpillar Articulated Truck 730 with serial number 3[...].**

**(the 'Units')**

**32.3 In the event that the Respondent fails to comply with prayer 33.3 above, the Sheriff of the High Court is authorised and ordered to retake possession of the Units from wherever he / she may find it, and the Sheriff is authorised to retain possession of the units until delivered to the Applicant or its duly authorised representative.**

**32.4 The Respondent is ordered to pay the costs of the application on an attorney and client scale.**

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**M BRESLER AJ  
ACTING JUDGE OF THE HIGH COURT,  
LIMPOPO DIVISION, POLOKWANE**

**APPEARANCES:**

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