Internal Publication: Standard Bank of South Africa Ltd v Dlamini (2877/2011) [2012] ZAKZDHC 64; 2013 (1) SA 219 (KZD) (23 October 2012)

Brief facts/summary:

Mbuyiseni Dlamini, an illiterate isiZulu speaker, purchased a motor vehicle from a second hand car dealership and by extension, Standard Bank, as the Dealership acted as a facilitating agent for Standard Bank. Just four days later, Dlamini returned the vehicle due to it being seriously defective and demanded a refund of his deposit. However, instead of refunding him his deposit, the Bank instituted Summons against Dlamini, contending that because Dlamini had not elected to cancel the agreement in the prescribed manner, as stipulated in clause 10.6 of the credit agreement, Dlaminis election to cancel had in fact amounted to a voluntary surrender and as such, the Bank was entitled to sell the vehicle and claim any shortfall owed by Dlamini in terms of the agreement.

The main question before the Court was whether Dlamini understood the material terms of the credit agreement and whether Standard Bank had taken reasonable steps to ensure that he understood such terms.

Held:

A consumer is entitled to be informed of the terms of a contract in his own language where practicable (as stipulated in section 63 of the Act) and to receive the contract in plain and understandable language (section 64 of the Act). Therefore, purposefully interpreted the Bank bears the onus of proving that it took reasonable steps in informing the consumer of the material terms of the contract. Further, the agreement had failed to record Dlaminis entitlement to a refund in terms of s 121(3)(a) of the Act. Furthermore, a credit agreement is unlawful if it purports to waive any common law rights that apply to the credit agreement.

Therefore, with the vision of substantive equality in mind, the Court did not find the Banks actions to be reasonable nor in line with the provisions of the Act. Consequently the Court held that Dlamini had rescinded the agreement with the bank, the agreement was thus set aside and a cost order was awarded against Standard Bank.

Importance/value:

The Court upheld the spirit and purport of the National Credit Act in declaring that the Bank cannot merely pick and choose which parts of section 121 of the NCA it shall include in an agreement and which ones it shall exclude. This type of behaviour skewed the agreement in favour of the Bank and was not considered acceptable in line with the Act. Further, the Court placed an onus on the Bank to take reasonable steps in ensuring that the individual debtor in a credit agreement understands the material terms of such agreement. Lord Denning, in the case of *George Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd* (1983), a case cited in this Judgment, phrased the situation quite aptly : faced with this abuse of power, by the stronger against the weak, by the use of the small print of the conditions, the judges did what they could to put a curb on it.

Signed off by: Mark Blanckenberg