CIV/APN 291 of 2010

IN THE HIGH COURT OF LESOTHO

(Commercial Division)

In the matter between:

STANDARD LESOTHO BANK LIMITED PLAINTIFF

And

MOTHO PULA INVESTMENT HOLDINGS (PTY) LTD DEFENDANT

Hearing date: 8th June.

JUDGMENT
Delivered by the Honourable Mr. Acting Justice J.D. Lyons
On the 14th June, 2010

By notice of application filed 17 May 2010, the applicant bank seeks a repossession order of a Nissan Navarra, being the subject of a hire purchase agreement between the applicant and the respondent dated 26 July 2000.

The applicant has filed an affidavit by Mr. Snelgar.

The respondent has filed an affidavit in answer by Mr. Seala.

The responded admits that it has defaulted in its payments. In its defence the respondent argues that there was an agreement between the applicant and the respondent that the applicant would pay the annual insurance on the Nissan Navarra. The respondent argues that this is relevant because the said motor vehicle was involved in an accident that resulted in engine damage. The vehicle was put in for repair but the insurance company refused to pay the insurance on

the basis of a material nondisclosure. The respondent said that, whilst the vehicle was originally used for private purposes (and insured for such), it came to be subsequently used for commercial purposes. This change was not noted on the insurance policy. The insurance company claims this was a material nondisclosure.

The respondent says that it notified the applicant of this change of use and it was the applicant bank's obligation to inform the insurance company and to thereafter effect all the consequential changes in the insurance contract.

The respondent argues that had it been able to get its insurance paid it would have fixed the vehicle and put it to productive use. It then would have been able to pay the hire purchase premiums. In short, it is saying this is all the applicant's fault.

By the use of considerable sophistry the respondent attempted to twist the evidence to support its contention. It failed miserably to the point where finally the respondent gave its counsel instructions that were perilously close to misleading the court.

There is not a scintilla of evidence that suggests that the applicant was under an obligation to notify the respondent's insurance company that the vehicle was now being used for commercial purposes. It may have been that the applicant had the obligation to insure foist on it due to the respondent's nonpayment and pursuant to clause 6.3 of the contract but rather tellingly, I was given no information on this. However the obligation to negotiate with and notify the insurance company of any changes in policy always rested with the respondent as the insured. Counsel for the respondent's submission that there was some correspondence confirming what his client instructed was the agreement, was entirely misconceived. There is nothing in the applicant's letter to respondent of 5 February 2010 that remotely suggests that --. In fact the letter itself suggests the

opposite. I note that the President of the Law Society was in court when this took place. He will no doubt give counsel from the respondent some guidance. Counsel must remain aware that at all times they are officers of the court whose primary responsibility is to the court. Wherever possible counsel should check the accuracy and veracity of their instructions or risk misleading the court and creating an unfortunate impression. The purpose of the court process is to search for the truth, not to distort it. Counsel must have no part in the latter.

I order in the terms of prayer 2 the application that the deputy sheriff be directed to attach and take into his possession the Nissan Navarra motor vehicle being the subject of a hire purchase contract. The applicant is entitled to its costs on an attorney-client basis as provided for in the contract.

J.D. LYONS

JUDGE (AGT)

For applicant : Mr. Mpaka.

For respondent : Mr. Metsing.