



CONSTITUTIONAL COURT OF SOUTH AFRICA

Maria Judite Pestana Felix v FirstRand Bank t/a Wesbank; Jose Antonio Pestana Felix v FirstRand Bank t/a Wesbank

**CCT 89/15 and CCT 06/16
Date of hearing: 4 August 2016**

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 4 August 2016 at 10h00, the Constitutional Court will hear an application for leave to appeal concerning the rights and obligations of credit consumers, after a consumer has elected to refer a matter to alternative dispute resolution following a valid notice in terms of section 129(1) of the National Credit Act (Act).

Mr and Mrs Felix entered into separate written instalment sale agreements with Wesbank (Bank) for the finance of two vehicles. The agreements provided that the Bank would remain the owner of the vehicles until they were fully paid off. Mr and Mrs Felix fell into arrears with their monthly instalments. The Bank sent each of them a notice in terms of section 129 of the Act. Upon receipt of the notice, Mr and Mrs Felix elected to refer the matter to an alternative dispute resolution agent in terms of section 129(1)(a) of the Act. None of the parties took any action to pursue alternative dispute resolution. As a result, the Bank instituted separate proceedings in the High Court against Mr and Mrs Felix for the repossession of their respective vehicles and the recovery of the outstanding balance owing on the each vehicle.

The High Court of South Africa, Gauteng Division, Pretoria (High Court) granted summary judgments in favour of the Bank and ordered Mr and Mrs Felix to return the vehicles to the Bank. Mr Felix applied for rescission of the summary judgment in the High Court. He raised three defences: (i) he disputed the fact that the Bank had a valid and binding agreement with him because a Bank's representative did not sign the terms and conditions; (ii) he elected to refer the matter for alternative dispute resolution; and (iii) the Bank's claim was illiquid and therefore the summary judgment ought not to have been granted. The Court assessed his case based on whether he had a reasonable

explanation for his default with an absence of wilfulness and whether he had a bona fide defence to the Bank's claim of the vehicle. The Court found that Mr Felix had not provided a sufficiently full explanation for his default and therefore, it was not in a position to assess the absence of wilfulness. The Court also found that Mr Felix did not raise a bona fide defence.

As a preliminary issue in this Court, Mr and Mrs Felix have asked for a postponement of the matter due to financial constraints. The Bank opposes a postponement as it continues to suffer prejudice as a result of Mr and Mrs Felix retaining possession of the vehicles.

Notwithstanding, the balance of Mr and Mrs Felix's submissions in this Court are that their right to human dignity has been violated by the Supreme Court of Appeal's refusal to grant leave to appeal. They contend that they may lose their employment as the possession of a vehicle is a prerequisite for their respective jobs. This may lead to an inability to pay their rent and bond respectively which may infringe on their right to access to adequate housing in terms of section 26 of the Constitution. They contend that the Bank knew that it was their intention to refer the matter to alternative dispute resolution and submit that they were unaware that they were required to facilitate the dispute resolution process. They argue that the Bank was required to follow up on their election to refer the matter to alternative debt resolution. They contend that the High Court did not consider the balance of convenience in the matter, given that they had paid off more than half of the purchase price of each vehicle.

The Bank submits that Mr Felix's application for leave to appeal does not set out the grounds upon which the case is based. It further submits that the grounds raised by Mr Felix do not relate to the rescission judgment. Furthermore, the Bank argues that Mrs Felix fails to raise any real constitutional issues as no actual infringement of constitutional rights are alleged. The Bank submits that upholding its contractual rights, as it seeks to do, cannot be said to be unconstitutional. It submits further that absent any provision in the agreement governing the relationship between the parties, the Act does not impose an obligation on the credit provider to carry out the consumer's election to have the dispute referred to alternative dispute resolution. The Bank also contends that Mr and Mrs Felix's attempt to raise new evidence as "supplementary information" in their respective affidavits. It submits that no application was made for the admission of new evidence and objects to the introduction of this "new" evidence.