

IN THE HIGH COURT OF SWAZILAND

(HELD AT MBABANE)

CASES NO'S.: 4163/05; 4164/05; 4166/05; 4167/05; 4168/07; 4181/05;
4265/05 ; 4266/05 ; 4267/05 ; 4269/05; 4270/05; 4271/05; 4273/05; 4274/05;
4276/05 ; 4277/05 ; 4281/05; 4282/05 ; 4284/05 ; 4287/05; 4288/05; 4289/05;
4290/05; 4291/05; 4292/05 ; 4293/05 ; 4294/05 ; 4303/05; 4305/05; 4312/05;
4314/05; 4333/05; 4432/05.

In the various matter between

**RELY ANT RETAIL (FIT) LTD.
(TRADING AS SAVELLS FURNISHERS/FAIRDEAL
FURNISHERS)**

Plaintiff

and

34 DEFENDANTS IN THE CASES REFERRED TO ABOVE

JUDGMENT DELIVERED ON: 22nd JUNE 2006

CORAM: P.Z. EBERSOHN J.

PLAINTIFF'S ATTORNEY:MR. SIBANDZE of CURRIE & SIBANDZE

JUDGMENT

EBERSOHN J:

[1] The plaintiff operates shops in Swaziland under the name and style of Savells Furnishers and Fairdeal Furnishers where it sells furniture and other goods apparently in terms of the provisions of the Hire Purchase Act, No. 11 of 1969 ("**the Act**"). Section 23 of the Act reads as follows:

"23. No decree of civil imprisonment or garnishee order for the purpose of enforcing payment by the buyer of any amount payable under an agreement or as a result of the termination or rescission thereof or as damages for any breach thereof, shall be made by any court."

[2] It is alleged in the summonses in the 34 matters that "**oral agreements**" were entered into by the plaintiff as seller and the various defendants as purchaser in each event.

[3] It is so that in the event that there were in fact oral agreements concluded and not hire purchase agreements which fall under the provisions of the Act, section 23 would not apply.

[4] This Court has a duty to make enquiries and to ensure that correct instructions were given by the plaintiff to its attorneys with regard to the causa in each case. If judgment is granted where the matter in fact falls under the Hire Purchase Act and it is not picked up, such a defendant can be seriously prejudiced. The plaintiff, on the other hand, is entitled to the full force of the debt recovery provisions in the event of it being found that the sales do not fall under the provision of the Hire Purchase Act.

[5] The fact that the Court directs this query must not be regarded as any slur on

the integrity of the plaintiff's attorneys.

[6] I accordingly make the following order in each of the 34 cases:

1. **The plaintiff is ordered to within a month state under oath in each of the 34 cases:**
 - a) **what was sold and the selling price of each item;**
 - b) **that the goods were sold in terms of an oral agreement and not in terms of a written agreement;**
 - c) **that the provisions of the Hire Purchase Act, No. 11 of 1969, do not apply at all to the sale;**
 - d) **how the amount claimed is made up by way of a specified account and if it is a balance, how the balance is made up specifying interest, and the rate applied, and all other amounts debited, on the account;**
 - e) **that none of the goods sold has been repossessed by the plaintiff and if it has been repossessed, full details of the circumstances thereof must be stated indicating what credit was passed in the favour of the defendant with regard thereto.**
2. **Default judgment in any of the 34 cases may not be granted before the requisite affidavit which is satisfactory in all respects, has been filed and considered by the Court.**

EBERSOHN J.