IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case number: 1147/2015

In the matter between:

MOEKETSI MATSHABE Applicant

and

PASEKA FRANCIS SOBI First Respondent

FREE STTE TRANSPORT OPERATING LICENSING BOARD Second Respondent

FICKSBURG TAXI ASSOCIATION Third Respondent

HEARD ON: 17 SEPTEMBER 2015

JUDGMENT BY: RAMPAI, J

DELIVERED ON: 5 NOVEMBER 2015

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[1] The matter came to court by ways of motion proceedings. The appellant applies for an order whereby the first respondent is directed to have his taxi road permit or taxi operating license transferred to the appellant. The 1st respondent opposes the application. No specific relief is sought against the 2nd

respondent and 3rd respondent. Both of them do not oppose the application.

[2] About 14 years ago, on 30 October 2005 to be precise, the applicant and the 1st respondent entered into an agreement at Ficksburg - vide “anx a”. At the time the 1st respondent owned a motor vehicle, a Datsun Skyline, with registration number [.....]. The 1st respondent was a taxi service provider. He used the sedan for that purpose immediately before the sale agreement. He sold, *ex facie* “anx a”, the sedan and license to the appellant for R10 000. The agreement was drafted by Attorney GJ Botha, one of the directors of a law enterprise of Ficksburg. The appellant personally signed the sale agreement. So did the first respondent.

[3] Notwithstanding the full payment of the purchase price, the parties did nothing to have the sedan officially transferred to the appellant and registered in his name. Instead the appellant immediately (from 1 November 2001) started using the sedan as a taxi although he was not the holder of a valid operating licence issued to him by the 2nd respondent. He used, for his own and exclusive benefit, the taxi operating licence number 0002469 issued to the 1st respondent by the 2nd respondent. The operating licence was renewed from time to time by the 1st respondent who, from time to time, handed it to the appellant for use. From time to time during a period of approximately 13 years, the appellant bought a new car, registered it in, the name of the 1st respondent and replaced the old taxi – (anx b).

[4] On 10 October 2013 the 2nd respondent renewed the taxi operating licence. The licence was still in the name of the 1st respondent. The 1st respondent then delivered it to the appellant. The taxi operating licence was valid from 15 October 2013, to 28 January 2014 – (anx c). The authorized route of the taxi was specified in "anx d". The carrying capacity of the sedan taxi authorized to use the licence in question was 4 passengers plus a driver. The number thereof was LFSLB13227-2.

[5] Since 1 March 2014 the appellant never received a renewed operating licence from the 1st respondent. The parties made fruitless attempts to resolve the dispute concerning the transfer of the taxi operating licence from the 1st respondent to the appellant. The purpose of the current application is to obtain an order whereby the 1st respondent is compelled to transfer the taxi operating licence to the appellant in accordance with the terms and conditions of the sale agreement.

This completes my summary of the undisputed facts together with facts which, though disputed, could not be seriously denied.

[6] In his founding affidavit the appellant alleged that he purchased the 1st respondent's taxi together with its taxi operating licence; that he paid the all-inclusive purchase price to acquire outright ownership of the taxi together with its taxi operating licence; that the 1st respondent, duly delivered the taxi to him; that despite demand, the 1st respondent refused to deliver the operating licence to him as agreed; that the 1st respondent's refusal to

apply to the 2nd respondent to have transferred to him constituted breach of the sale agreement.

[7] In his answering affidavit the 1st respondent alleged that he sold and delivered the sedan only to the appellant; that the taxi operating licence was never part of the deal; that the purchase price paid exclusively concerned the sedan only; that such price had nothing to do with the sale of the taxi operating licence; that he duly complied with the sale agreement in that he delivered the sedan to the appellant; that the appellant was not entitled to the delivery of the licence to the appellant; that he did not breach the terms of the true sale agreement; that the purported sale agreement, as evidenced by "anx a", was not a correct and true reflection of what he and the appellant had actually agreed upon and that he did not realize, at the time he signed the purported sale agreement, that it did not accord with his intention since he could not read and write.

[8] In his replying affidavit the appellant replied that the 1st respondent agreed to sell to him the taxi operating licence as well as the motor vehicle. He indicated that he had a motor vehicle which he used for private purposes and that he did not need a second motor vehicle for that purpose. He said he approached the 1st respondent because he was interested in his car seeing that it was not just an ordinary car but a car licensed to operate as a taxi. He wanted to venture into business enterprise as a taxi service provider. He repeated that the taxi operating licence was one of the two objects of the sale agreement.

[9] He denied the 1st respondent's allegations that the true agreement concerned the car only; that it had nothing to do with its licence; and that the written contract did not correctly and truly reflect their common intention. He specifically denied the 1st respondent's allegation that he was unable to read and that the appellant had colluded with the attorney to take an unfair advantage of his illiteracy. He pointed out that the attorney drafted the agreement on the instructions jointly given to him by the 1st respondent and the appellant.

[10] The issue in the matter is whether the 1st respondent is bound by the agreement he signed at Ficksburg on 30 October 2001.

[11] On behalf of the appellant Mr. Benade submits that the 1st respondent is bound by the agreement. Because he signed the agreement, the caveat subscriptor principle operates against him. Because, for years he conducted himself in a manner that was consistent with the agreement, the principle of quasi-mutual assent operates against him - clause 22 of the sale agreement.

[12] On behalf of the 1st respondent Mr. Raux submits that the 1st respondent is not bound by the agreement because, although he signed the agreement he cannot read. On account of his inability to read, he was unaware that the taxi operating licence also formed part and parcel of the goods sold and that he was required to transfer it as well to the appellant. The submission is that seeing that he never intended and never agreed to the sale of the taxi operating licence he cannot be held to be bound by the

pursued agreement. It was also argued on behalf of the 1st respondent that the appellant's offer to pay an additional R30 000 to 1st respondent fortified the 1st respondent's contention that the taxi operating licence was never intended to be an object of the sale agreement (vide "anx f").

[13] Excluding attachments, "anx a" is a five page document divided into nine clauses. At the heart of the dispute is clause 2. It reads:

> "**KOOPSAAK**
>
> Die Verkoper verkoop aan die Koper die volgende:
>
> 2.1 **DATSUN SKYLINE MOTORVOERTUIG**
>
> **REGISTRASIENR: CGC 433 FS**
>
> **ENGIN NO: L20S172195C**
>
> 2.2 **OPERATEURSLISENSIE NOMMER: 0002469 TEN AANSIEN VAN DATSUN MOTORVOERTUIG MET**
>
> **REGISTRATSIE NR: CGC 433 FS**"

[14] It was the appellants case, on the one hand, that the taxi operating licence was also an object of the sale agreement just as the taxi to which it related. It was the 1st respondent's defence, on the other hand, that the purported sale agreement misrepresented the true sale agreement according to which he sold and delivered his car only to the appellant. Although he signed the purported sale agreement on which the appellant relied, he contended that he was unable to ascertain that the

written contract correctly mirrored the true and common intention of the contracting parties as regards the object of the sale transaction because, as he says, he cannot read.

[15] The written agreement, which is now in the centre of the dispute, is a five page document. It is a type written document. It is common cause that the 1st respondent signed it. His signature appears on every page. Apart from "anx a" the signature of the 1st respondent also appears on the last page of the answering affidavit. It is difficult *ex facie* these two documents, to readily believe the contention that he cannot read.

[16] The sale agreement was drafted by a certain Mr. GJ Botha, the 1st respondent's erstwhile attorney. Now, if that is accepted as the true state of affairs, then there seemed to be no real motive why an attorney would, on purpose, disregard the instructions of his client and draft an agreement so highly detrimental to the interests of his own client. The 1st respondent made no attempt to suggest, let alone to say, what sinister motive could have actuated his attorney to prejudice him in that manner. It appeared unlikely that an attorney would, for no apparent reason act so unethically towards his client.

[17] There was no dispute as regards the authenticity of the seller's signature on the sale agreement. The appellant averred that it was the 1st respondent's signature. Mr. Botha corroborated him. The 1st respondent acknowledged the signature as his. On the strength of the undisputed signature, the appellant alleged:

> "10.3.1 It is further denied that the First Respondent is unable to read. That can already be seen from his signature on Annexure "A". As can be seen therefrom it is the typical signature of a person that can read and write as he clearly wrote the letters "PF Sobi" on all the pages. If he couldn't read or write he wouldn't have been able to so clearly write a signature several times the same way. If you can write, you can also read."

[18] It may well be difficult to believe that a person who, like the 1st respondent, can sign like a university professor cannot read. The appellant asserted;

> "If you can write you can also read"

The assertion was flawed. There was no proof that the respondent could or can write. The mere fact that he could neatly write his name or sign a document did not, in itself, compel the conclusion or justify the drawing of the inference that he could read. I have met many people out there who can write their names and sign documents yet they cannot read. I am not persuaded, therefore, that the inference which the appellant sought to draw from the proven ability of the 1st respondent to sign a document or to write his name excludes the drawing of any other inference to the contrary.

[19] In his confirmatory affidavit Mr. Botha aligned himself with the appellant's contention that the 1st respondent was literate. He put it as follows:

> "3.5 I further confirm that First Respondent can read and write. I know him now by this time for more than ten years. He can read and write."

The attorney's assertion was unhelpful. It was a bold statement. It was not at all particularised. His previous knowledge of 1st respondent for that considerable period did not, without more, validate his unsubstantiated assertion that:

> "He can read and write"

The attorney hardly explained or mentioned one example of what he once saw the 1st respondent reading or writing. To a certain extent, the critique I levelled against the appellant applies *mutatis mutandis* to his attorney as well.

[20] In **Burger v Central South African Railways** 1903 TS 571 at 578 Innes CJ said the following about a person's signature on a contractual document:

> "It is a sound principle of law that a man, when he signs a contract, is taken to be bound by the ordinary meaning and effect of the words which appear over his signature"

[21] Now the question is what appears over the 1st respondent's signature? The answer is to be found in clause 2.2 "anx a". There, the taxi operating licence of the taxi described in clause 2.1 was expressly included. According to clause 2 the goods sold consisted of two articles as fully described an itemised in the two sub-clauses. The legal effect of his signature is that clause 2 stands and binds him.

[22] The authors, Chistie and Bradfield: The Law of Contract in South Africa 6th edition p181 comment as follows about the general principle, known in our law as the caveat subscriptor principle:

> "It is a matter of common knowledge that a person who signs contractual document thereby signifies his assent to the contents of the document, and if these subsequently turn out not to be to his liking he has no one to blame but himself."

[23] In **Blue Chip Consultants (Pty) Ltd v Shamrock** 2002 (3) SA 231 (WLD) of 239 E-F Spilg AJ had this to say about a person who signs a contractual document without reading it, for whatever reason:

> "Secondly, I do not understand our case law to hold that a person will escape the consequences of his signature if it can be shown that he had not read the document in question. That would be a startling proposition. One is expected to read what one signs."

I am in respectful agreement with all the authorities I have quoted above.

[24] One is expected to read before one signs. I know of no other safer and wiser way of familiarising oneself with contractual obligations whose binding legal force and effect can only be activated and unleashed through an act of signing a contractual document. One who signs a contractual document without or before reading it does so at his own peril. One who is able to read is expected to read before signing. One who is unable to read is not expected to

sign unaided before the content of a contractual document is reliably explained.

[25] I have earlier found that the sale agreement was drafted by the 1st respondent's erstwhile attorney who confirmed the appellant's averment that he correctly drafted the sale agreement in accordance with the instructions he obtained from the 1strespondent. There was no inherent conflict between the 1st respondent and the attorney. Instead the appellant and not the 1st respondent was an unrepresented party at the time the attorney was instructed.

In those circumstance any suggestion that the interests of the 1st respondent were unduly subordinated to those of the appellant to the 1st respondent's prejudice and detriment was unpersuasive. The relationship between the appellant and the attorney was obviously stronger than that between the appellant and the attorney.

[26] According to the attorney, he did not only draw up the contract, but he also explained its contents to the parties before they signed it. If that is truly the case, then the 1st respondent's inability to read was of no moment. He must have known what the contract in general and clause 2 in particular was all about. It would therefore, appear that the 1st respondent tried to distance himself from the events that were prevailing immediately before the contract was signed. I am inclined to believe that the 1 respondent's endeavour to remove himself from these events cannot be reconciled with what actually happened. His failure to

disclose that Mr. Botha was his attorney tarnished the veracity of his version.

[27] I shall assume, without deciding the point, in favour of the 1st respondent that he was unable to read at the time material to the signing of the sale agreement. It was his stance that because he could not read his inability was exploited to his prejudice and detriment. In **Bhikhagee v Southern Aviation (Pty) Ltd** 1949 (4) SA 105E a business man who could not read and write English was held bound by the conditions on the flight ticket he had signed. The court held at 110 per Gardener JP that by his signature he elected to take the risk and that he was bound.

[28] The caveat subscriptor principle dictates that a person who signs a written agreement without reading it first does so at his own risk. Consequently he is bound by the terms and conditions of such an agreement as if he has actually read it and thus knew what it contained. **Afrox Healthcare v Strydom** 2002 (6) SA 21 (SCA) at 41G. At par 34 Brand JA said:

> "[34] In hierdie omstandighede sou die feit dat die respondent die dokument geteken het sonder om dit te lees as 'n reël nie tot gevolg hê dat hy nie aan die bepalings wat daarin vervat is gebonde is nie. Reeds bykans 'n eeu gelede het Innes HR immers, in **Burger v Central South African Railways** 1903 TS 571 op 578, beslis dat 'n persoon wat 'n skriftelike ooreenkoms teken sonder om dit te lees, dit op eie risiko doen en gevolglik gebonde is aan die bepalings wat daarin vervat is asof hy daarvan bewus was en uitdruklik daartoe ingestem het. (Sien byvoorbeeld ook **George v Fairmead (Pty) Ltd** 1958 (2) SA 465 (A)."

[29] If a person so conducts himself in a way that would make a reasonable person believe that he was assenting to the terms proposed by another, he would be equally bound as if he had intended to agree to such terms.
Christie & Bradfield, *supra*, p11 and p26.

[30] In **Pillay v Shaik** 2009 (4) SA 74 (SCA) Farlam JA said the following about the doctrine of quasi-mutual assent:

At 84 E-H (53)

> "This raises the question as to whether the doctrine of quasi-mutual assent can be applied in circumstances where acceptance does not take place in accordance with a prescribed mode but the conduct of the offeree is such as to induce a reasonable belief on the part of the offeror that the offer has been duly accepted according to the prescribed mode. Viewed in the light of basic principle, the question must surely be answered in the affirmative because the considerations underlying the application of the reliance theory apply as strongly in a case such as the present as they do in cases where no mode of acceptance is prescribed and the misrepresentation by the offeree relates solely to the fact that there is consensus."

At 86 B-C (59)

> "Although the acceptance by the developers of the Pillay and Motlanthe offers did not comply with the prescribed mode of acceptance they conducted themselves in such a manner as to induce the reasonable belief on the part of Mr Pillay and Dr Motlanthe that the developers were accepting the offers according to the prescribed mode. It follows in my view that Balton J correctly

held, on the basis of the doctrine of quasi-mutual assent, that the developers were bound by the agreements in respect of units 402 and 502."

[31] Over the years the 1st respondent regularly renewed the taxi operating licence. Over the years the 1st respondent willingly and on his own free accord handed the renewed taxi operating licence to the appellant. This then is the 1st respondent's version. It tallies with the version of the appellant. The version of the 1st respondent is more significant for what he does not say than he says. He says the appellant used his taxi operating licence for a considerable period, approximately 13 years, to generate income. However, he does not say what financial benefit he derived from the appellant for his profitable use of his of his taxi operating licence. As the lawful holder of the taxi operating licence which, as he says, he did not alienate together with his vehicle, one would have expected of him to say what advantage there was in the deal for him. He did not say.

[32] I cannot accept that the 1st respondent has been that generous to the appellant for no apparent reason. It must be borne in mind that the 1st respondent was in serious financial distress which was why he had to sell his taxi in the first place. It is difficult to understand why a man in such a desperate financial predicament would charitably hand over his valuable taxi operating licence to another to use free of charge, not for a year or two – but for 13 long years.

[33] The 1st respondent did not say how much there was in the deal for him because there was nothing more in it for him. There was nothing for him during all those many years because he had alienated the taxi operating licence together with his taxi. For that

transaction he was duly rewarded. For years the 1st respondent did not behave like someone who still had any interest, let alone full ownership right in respect of the taxi operating licence. On the contrary, his conduct tacitly strengthened the appellant's case that the 1st respondent alienated both the taxi and its operating licence. His conduct implicitly weakened his case that the operating licence formed no part of the sale agreement. Consequently the doctrine of quasi-mutual consent operates against him.

[34] The 1st respondent conducted himself in such a manner as to induce the reasonable belief on the part of the appellant that he accepted the terms of the transaction according to the sale agreement especially those relative to the goods sold as specified in clause 2 "anx a".

[35] It follows, therefore, that the 1st respondent was, on the basis of the doctrine of quasi-mutual consent, bond by the agreement in respect of the taxi operating licence as well.

[36] Accordingly I make the following order

36.1 The 1st respondent is directed to give written consent in terms of sec 51(4) Free State Transport, Act 2005 to the appellant in order to facilitate the transfer of the taxi operating licence number LFS LB13 227 which is valid for the period 2013 to 2019;

36.2 The 1st respondent is directed to complete and sign the prescribed transfer form, any other official or necessary documents which may be required for such transfer and to generally take such lawful or necessary steps as may be required by the 2nd respondent, 3rd respondent or the appellant or his authorized agent for the purpose executing such transfer;

36.3 Should the 1st respondent, neglect or refuse to comply with paragraph 1 and 2 hereof within 14 days after a written request by the appellant, 2nd respondent or 3rd respondent to do so has been served on him, then in that event, the sheriff for the district of Ficksburg is hereby directed and authorized to perform all the acts and to take all the necessary steps as set out in paragraph 1 and 2 on behalf of the 1strespondent in order to give effect to this order;

36.4 The 1st respondent is directed to pay the costs of this application.

M.H. RAMPAI, J

On behalf of appellant: Attorney H.J Benade
Instructed by:
Symington & De Kok
Bloemfontein

On behalf of respondent: Adv. L.A. Roux
Instructed by:

Fixane Attorneys
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&

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