

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

Not reportable

Case no: 4048/2024

In the matter between:

ADRIAAN FRANCOIS MEIRING

Applicant

and

RC AUTO

1st Respondent

(Registration Number: K201[...])

ANDRE LOURENS BREYTENBACH

2nd Respondent

(Identity Number: 5[...])

SUSANNA CATHARINA BREYTENBACH

3rd Respondent

(Identity Number: 6[...])

CALANDRA TRADING 533

4th Respondent

(Registration Number: B20[...])

AIS TRADERS

5th Respondent

(Registration Number: K202[...])

Coram: Nemavhidi, AJ

Heard: 24 October 2024

Delivered: 07 February 2025

This judgment was handed down in court and electronically by circulation to the parties' representatives by email and released to SAFLII on 07 February 2025. The date for hand-down is deemed to be 07 February 2025.

Summary: Defect of a *res vendita* which impairs the utility or the effectiveness of the purpose for which it has been sold or for which it is commonly used. Remedies available to the purchaser.

ORDER

1. The relief sought in the notice of motion is granted with costs scale A of rule 67.
2. The applicant is entitled to cancel the oral contract of sale and claim restitution based upon the misrepresentation, alternatively on the failure of First Respondent to disclose the existence of the defects and the fact that the motor vehicle was involved in a motor vehicle collision.

JUDGMENT

Nemavhidi AJ

[1] On 2 November 2023, the United States Department of Labor compensated the applicant for injuries and permanent disability sustained because of the abovementioned incident. In order to facilitate his movements, he required an automatic vehicle so that he did not have to shift gears manually.

[2] On 3 November 2023 he and his father visited various second-hand car dealerships in Bloemfontein to identify and purchase a suitable vehicle for himself. They visited the first respondent's showroom (RC Auto) where a salesperson called them and informed them that First Respondent had a 3.2 Double Cab Ford Ranger Wildtrack which he could purchase for the amount of R360 000. He purchased the vehicle and paid in cash.

[3] Ms Charlene Wiese joined them as they were discussing the motor vehicle and actively marketed it. She stated that the motor vehicle had a full-service record and that it was accident-free. She, however, informed them that the tyre sensor as well as the pre-collision sensor had a problem and that RC Auto would repair same at his own expense.

[6] The applicant took the vehicle for a test drive with Mr Barry Lourens, a salesman of the RC Auto. On their return, he informed Ms Wiese that he will

purchase the vehicle. She then informed him that he would take the vehicle just before the weekend commenced. On the same day he concluded an oral agreement with Ms Wiese, who represented RC Auto. Ms Bothma prepared a tax invoice and instructed him to transfer the purchase price into a bank account, which he did.

[7] On the 16th of November 2023, the motor vehicle was registered in Applicant's name. Soon thereafter he realized that the motor vehicle had various problems and defects which consisted of the following errors:

- i. The right rear passenger door could not easily open and close to such an extent that he could not use it;
- ii. The motor vehicle would swerve to the right side of the road;
- iii. The motor vehicle would pull to the left whenever the brakes are used;
- iv. The sensors were defective.

[8] On the 6th of November 2023, he returned the motor vehicle to the First Respondent for the repair of the sensors. On the 8th of November 2023, he was informed that the repair costs were R12 000,00 and that the sensors had been properly fixed. He was not asked to pay for the repair costs. Two days later the sensors stopped functioning and on 13 November 2023, he returned the vehicle to the First Respondent for the sensors to be repaired.

[9] On 20 November 2023, he took the vehicle to a Ford dealership (Human Auto) for a quotation for the repair of sensors and the 60,000 kilometres major service. On 21 November 2023, he was given a report done by Human Auto to the effect that:

- i. The service history of the vehicle was not up to date.
- ii. The motor vehicle was involved in a serious motor vehicle collision.
- iii. The sensors were still defective.

Human Auto quoted an amount of R8 737, 08 for the repair of the Cam sensors and R31 088,41 for the repairing the pre-collision control. He did not authorize Human Auto to repair those sensors as first respondent had promised to fix them. He phoned Ms. Wiese and informed her about the motor vehicle having been involved in a collision and she denied that the vehicle had been involved in a collision and emphasized that it was accident-free.

[10] On 26 November 2023 he drove the vehicle to the Western Cape and upon arrival, all four tyres had to be replaced due to wear and tear caused by defective shock mountings which also had to be replaced. The rear shock mounting was bent because of the hard bumps after the motor vehicle collided with something. Naturally, he had to perform a wheel alignment test, to ensure the correct functionality of the vehicle. Human Auto's report was to the effect that the tyres were still in an acceptable condition and that he could still use them, however, it just took a trip from Bloemfontein to Vredenburg for the tyres to wear off. Due to this damage, he phoned Ms. Wiese, who maintained that the motor vehicle had never previously been involved in an accident.

[11] The applicant engaged his brother to scan the registration disk of the vehicle to obtain its historical information. He discovered that the vehicle had been involved in an accident at some point. Second Respondent purchased it from an entity called Gobid (Pty) Ltd which sells accident-damaged vehicles and salvaged cars. When confronted with this information, Ms. Wiese changed her stance and conceded that the vehicle was involved in a collision. He took the vehicle to DECRA and requested that they conduct a technical inspection which resulted in a report to the effect that the vehicle had been involved in a collision and had many defects which were not disclosed to him.

The Respondents' Version

[12] The Applicant inspected various vehicles on the first respondent's floor, and he was particularly interested in a Ford Ranger Double Cab bakkie. He noticed a vehicle parked outside the front of the First Respondent's premises. It was not on the First Respondent's floor for sale and Ms. Wiese was called to assist, who informed Applicant that the vehicle was not part of the First Respondent's dealer's

stock. That vehicle did not have any 'for sale' signage displayed on the windscreen of the vehicle.

[13] Ms. Wiese informed Applicant that she was of intention to purchase that vehicle from the second respondent who was the owner thereof. Ms. Wiese informed the applicant of the sensor defects on the vehicle, that it was a respray and that this was a result of the vehicle being involved in a collision. She informed Applicant that the vehicle was repaired and successfully underwent the necessary roadworthy tests.

[14] Upon advice by Ms Wiese, he took the vehicle for a test drive and made a subsequent offer to purchase. Ms. Wiese phoned Second Respondent in the presence of the Applicant who accepted the offer on condition that Applicant would be responsible for the transfer of the vehicle and the costs occasioned thereby.

[15] Ms Wiese, First Respondent's administrative assistant assisted Applicant with the necessary invoicing. The invoice presented to the Applicant clearly showed that the seller was A L Breytenbach (Second Respondent). The Applicant made payment of the purchase price, took delivery of the vehicle as well as the necessary documents to transfer the vehicle into his name. He signed an acknowledgement confirming that he inspected the vehicle and found it in good condition and that all defects had been pointed out. The registration certificate presented to the applicant recorded the second respondent as being the registered owner of the vehicle.

The applicable law

[16] The so-called *Plascon-Evans* rule¹ makes it clear that an applicant who is seeking final relief on motion must, in the event of a conflict, accept the version set up by his opponent when that version is not of such a nature as to raise real, genuine or a bona fide dispute of , or if the version is so far-fetched or untenable that the court is justified on rejecting the same on papers alone. A real, genuine

¹ *Plascon-Evans (TVL) Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51; [1984] 2 All SA 366 (A).

and bona fide dispute of fact can only exist where the court is satisfied that the party, who purports to raise a dispute, has in a serious and unambiguous manner addressed the fact to be disputed. The respondent commits himself to the contents, he will only in exceptional circumstances be permitted to disavow the same.

[17] In *Soffiantini v Mould*² the court added that the court must take a '*robust, common-sense approach to a dispute*' otherwise the '*effective functioning of the Court can be circumvented by the most simple and blatant stratagem while the court should not hesitate to decide an issue because it may be difficult to do so*'. If a common-sense robust approach is applied, then it becomes evident that the respondents have not raised a valid bona fide dispute of fact while their version is so farfetched and untenable for the following reasons:

- i. Ms Wiese would have advised the applicant to contact the second respondent upon being confronted with the problems and defects present in the vehicle. This never happened in the WhatsApp messages and voice notes.
- ii. The allegation that the first respondent was not the owner only surfaced much later justifying an inference that the version amounts to an afterthought.
- iii. The first respondent accepted liability to repair the sensors at a cost of R12 000,00, the second respondent was the owner of the vehicle he would have carried the repair cost.
- iv. Applicant researched the history of the vehicle and discovered that it was damaged and purchased from Gobid, which sells salvaged and accident-damaged vehicles. Dekra's report also contradicted the denials by the respondents to the effect that the vehicle was not accident-free at the time of the sale.
- v. The vehicle was parked on the pavement in front of the first respondent's showroom and the employee had the keys thereof. He was able to open the vehicle for the applicant and enabled applicant to take the vehicle for a test drive. The inescapable conclusion is that the first

² *Soffiantini v Mould* 1956 (4) SA 150 ED at 154G-H.

respondent was in possession of the motor vehicle. Possession of moveable property raises a rebuttable presumption of ownership which was never rebutted in *casu*.³

[18] Registration of a motor vehicle in a person's name is not sufficient to establish ownership of that motor vehicle. There is no requirement that a change of ownership must be registered for transfer to take place while the possession of the registration papers is prima face proof of ownership.

[19] It is possible that Second Respondent purchased the motor vehicle, registered it in his name and sold same to First Respondent who, in turn sold it to the Applicant before changing the registration details. Nothing in law prevents a person from selling property belonging to a third party. If it is accepted that Second Respondent was the owner of the vehicle, nothing in law prevented First Respondent from selling the motor vehicle. Since Applicant was not aware that First Respondent was not the owner of the vehicle, he is entitled to proceed against First Respondent and reclaim payment from him.

[20] There was no contact between the Applicant and Second Respondent as all communication was limited to the First Respondent's employees. First Respondent must have represented the Second Respondent who, according to the Applicant's evidence, must have been an undisclosed principal, where the principal is not disclosed, the intermediary and the third person create a *vincula iuris* between them through the contract concluded in their names.⁴ The agent who acts for an undisclosed principal may be sued instead of the principal.⁵

[21] It is trite that a party induced to conclude a contract may rely on the misrepresentation to void a contract by cancelling the same and claiming restitution. Applicant must prove a representation made by the Respondents or their agent which was material, which was false and intended to induce the claimant to enter the contract.

³ See in this regard *Sheriff Bloemfontein West v Carospan (Pty) Ltd t/a Nashua Bloemfontein and Another* [2024] ZAFSHC 2 paras 21 to 30.

⁴ *Cullinan v Noordkaaplandse Aartappelkernmoerkwekers Kooperasie Bpk* 1972 (1) SA 761 A.

⁵ *Botha v Giyose t/a Paragon Fisheries* [2007] ZASCA 73 para 8

[22] The purchaser may also reclaim the purchase price in terms of *the actio redhibitoria* if the following elements are proved:

The *res vendita* contained a defect which substantially impaired the object's utility for which it is commonly used. The defect existed at the time of the sale.

- i. The defect was latent, in other words not visible or discoverable upon inspection.
- ii. The purchaser would not have purchased the object had he known thereof.
- iv. The purchaser is willing and able to effect restitution.

[23] The First Respondent made a representation that Respondents sold a motor vehicle to him which contained various defects, and which was previously involved in a collision.

[24] The Applicant appended a quotation dated 20 November 2023, issued by Human Ford, containing a recording of repair work to be performed on the vehicle and a comprehensive report prepared by DECRA, dated 8 January 2024, containing a recording of the various defects and problems present in the vehicle. DECRA and Human Auto are two independent expert witnesses whose observation and opinions were never rebutted by Respondents with the aid of contradictory expert reports and or opinions.

[25] The applicant is not an expert who could examine, discover and identify defects listed by experts in the field. His real opportunity to inspect the vehicle was during an extended drive to the Western Cape. It must be noted that the applicant was desirous to purchase an accident and defect-free motor vehicle but the first respondent sold something completely different from that. In *Holmdene Brickworks (Pty) Ltd v Roberts Construction Co. Ltd*⁶ it was held that:

⁶ *Holmdene Brickworks (Pty) Ltd v Roberts Construction Co* 1977 (3) SA 670 (A).

‘Broadly speaking in this context a defect may be described as an abnormal quality or attribute which destroys or substantially impairs the utility or effectiveness of the res vendita, for the purpose for which it was sold or for which it is commonly used . . . Such a defect is latent when it is one which is not visible or discoverable upon an inspection of the res vendita.’⁷

[26] Respondents allege that the *res vendita* was purchased on a voetstoots basis, however, the acknowledgement of delivery does not contain such a recording. It is also trite that a purchaser could avoid the consequences of a voetstoots sale if the seller knew of the latent defect and did not disclose it and in fact deliberately concealed it with the intention to defraud the purchaser.

[27] It has been established that the motor vehicle contained serious latent defects and was in a motor vehicle collision. There can be no bona fide dispute as far as these issues are concerned.

Order

[28] In the result, the following order is made:

1. The relief sought in the notice of motion is granted with costs scale A of Rule 67.
2. The applicant is entitled to cancel the oral contract of sale and claim restitution based upon the misrepresentation, alternatively on the failure of First Respondent to disclose the existence of the defects and the fact that the motor vehicle was involved in a motor vehicle collision.

Nemavhidi AJ

Appearances:

For Applicant:

Adv JC Coetzer

Instructed by:

Honey Attorneys

Bloemfontein

⁷ Ibid at 683H-684A.

For Respondents.:
Instructed by:

Adv GC Steenkamp
Bezuidenhout Inc
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