

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 41815/13**

**In the matter between:**

**THE STANDARD BANK OF SOUTH AFRICA LIMITED**

Applicant

and

**WOODMEAD AUTO CC**

Respondent

**JUDGMENT**

Tuchten J:

1 The applicant has brought a *rei vindicatio* on motion for the return of a Maserati Granturismo motor vehicle presently in the possession of the respondent. The issues are whether the applicant has established that it is the owner of the vehicle and whether, if the applicant is the owner, the respondent has adduced facts to justify the defence that the applicant is estopped from asserting its ownership against the respondent.

2 On the ownership issue, the applicant has established that it financed the purchase of the vehicle by one Annandale. To create security for the instalment sale the applicant concluded with Annandale, the applicant bought the vehicle from Milstock Cars, paid cash for it and had it delivered to Annandale on behalf of the applicant. In terms of the instalment sale agreement with Annandale, ownership of the vehicle remained vested in the applicant until Annandale had fulfilled all his obligations under the instalment sale agreement, which included paying the applicant what was owing under that agreement.

3 Counsel for the respondent pointed to certain documents in the papers which showed that Milstock had made out its invoice in relation to the vehicle to Standard Bank Vehicle & Asset Finance (as opposed to the Standard Bank of South Africa Limited) and that the vehicle had been registered pursuant to the National Road Traffic Act, 93 of 1996, (“the Act”) in the name of Standard Bank Vehicle & Asset Finance.

4 On the strength of these documents, counsel submitted that the applicant had demonstrated that the vehicle had been bought by Standard Bank Vehicle & Asset Finance and not the applicant. The difficulty with the proposition is that although the respondent denied the applicant’s ownership, it at no stage in its papers suggested that Standard Bank Vehicle & Asset Finance was a juristic person separate from the applicant. In fact the applicant made allegations which indicated that Standard Bank Vehicle & Asset Finance was the applicant; in other words that Standard Bank Vehicle & Asset Finance was not a juristic person but a mere trading name of the applicant. These allegations were either admitted or not placed in issue by the respondent.

5 It is accordingly in my view not open to the respondent on these papers to suggest that Standard

Bank Vehicle & Asset Finance is a juristic person separate from the applicant. It would be grossly prejudicial to the applicant allow this issue to be raised at this juncture. Counsel did not suggest that the respondent was in possession of evidence which would support counsel's contention. Nor did counsel ask for a postponement to search for evidence in this regard.

6 It is further not the respondent's case that Milstock could not pass ownership of the vehicle. The submission at this level was restricted to the contention that ownership passed to Standard Bank Vehicle & Asset Finance rather than the applicant.

7 I therefore find that the applicant has established on these papers that it is the owner of the vehicle.

8 It seems that Annandale, whose version was not before me, onsold the vehicle to one Harrison, who then sold it to the respondent.

9 I turn to the estoppel defence. In *OK Bazaars (1929) Ltd v Universal Stores Ltd* 1973 2 SA 281 C at 287H-288B, the following was held:

As in the present instance, cases of estoppel by negligence often involve the fraudulent conduct of a third party and the complaint against the person sought to be estopped is that his negligence permitted or facilitated the fraud. In this situation our Courts have rejected, as being too broadly stated, the so-called "facilitation theory", viz that wherever one of two innocent parties must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it .... It has, on the contrary, been held that such cases must be adjudged by the ordinary general principles relating to estoppel by negligence; and, of course, the fraudulent intervention of a third party is an important factor in determining whether the conduct of the person sought to be estopped proximately caused the other's mistaken belief and resultant loss; and whether this result was reasonably foreseeable ....

10 In *Stellenbosch Farmers' Winery Ltd v Vlachos t/a the Liquor Den* 2001 3 SA 597 SCA para 4 it was held, in a case in which the plaintiff put up the defence of estoppel, that the:

... onus rested on the plaintiff to establish... a misrepresentation by the defendant and reliance thereon by the plaintiff, which reliance was 'the cause of his acting to his detriment'.... Such proof would, in my opinion, include proof that the reliance was not actuated by some external influence or factor other than the defendant's misrepresentation.

11 The basis of the respondent's defence of estoppel is that the applicant allowed Annandale to register the vehicle in his name as "owner", thus so runs the contention, bringing members of the public, including the respondent, under the impression that Annandale was the owner of the vehicle as that term is used within the context of the law of property, and thus lulling the respondent into the belief that Annandale as the owner of the vehicle had been entitled to deal with it as he chose.

12 There are a number of difficulties with this proposition. Firstly, the term owner is defined in s 1 of the Act to mean, in relation to a vehicle,

(a) the person who has the right to the use and enjoyment of a vehicle in terms of the common law or a contractual agreement with the title holder of such vehicle;

(b) any person referred to in paragraph (a), for any period during which such person has failed to return that vehicle to the title holder in accordance with the contractual agreement

referred to in paragraph (a); or

(c) a motor dealer who is in possession of a vehicle for the purpose of sale,

and who is licensed as such or obliged to be licensed in accordance with the regulations made under section 4, and 'owned' or any like word has a corresponding meaning.

13 I shall assume that the applicant caused Annandale to be registered for purposes of the Act as owner of the vehicle. In doing so, it acted as it was obliged to do under the Act. Annandale was the owner of the vehicle for purposes of the Act. But the applicant was not reflecting Annandale as the common law owner of the vehicle; it reflected Annandale as the owner of the vehicle as that term is used in the Act.

14 In addition, the applicant registered itself as the title holder in respect of the vehicle. Title holder is also defined in s 1 of the Act. The term means, in relation to a vehicle:

(a) the person who has to give permission for the alienation of that vehicle in terms of a contractual agreement with the owner of such vehicle; or

(b) the person who has the right to alienate that vehicle in terms of the common law, and who is registered as such in accordance with the regulations under section 4.<sup>1</sup>

15 The same documents of record which reflect Annandale as owner of the vehicle reflect Standard Bank Vehicle & Asset Finance as the title holder.

16 So by causing, if it did so, Annandale to be reflected in the registry as owner, the applicant did not represent that Annandale enjoyed the right to sell the vehicle. That right, according to the registry and the proven facts in this case, vested in the applicant.

17 But the respondent did not rely on the registry entries when it bought and paid for the vehicle. To his credit, the respondent's sales manager, Mr Saber, does not commit himself to so palpable an untruth. The evidence shows that everyone in the industry knows that the person registered under the Act as the owner of a vehicle does not as such have the right to sell it.

18 The respondent, furthermore did not believe from the registration documents that the person registered as title holder necessarily had the right to sell the vehicle. Alive to the possibility that the vehicle was subject to a reservation of ownership in favour of the institution that had financed its purchase at an earlier stage, the respondent checked with a credit bureau to see whether any instalment sale, and thus reservation of ownership, had been recorded.

19 Unfortunately for the respondent, the records of the credit bureau consulted by the respondent were inadequate. The applicant's interest in the vehicle was not recorded by the credit bureau and the respondent, on these papers, probably bought the vehicle unaware of the fact that the applicant was the owner. The respondent suggests that the applicant was somehow to blame for the inadequacy of the records of the credit bureau. But the credit bureau is independent of the applicant and the shortcomings in the records of the credit bureau cannot be attributed to the applicant.

20 Finally, on this score, the respondent could not have been induced to purchase the vehicle on the strength of anything said by the applicant in relation to its and Annandale's rights in the vehicle. This is because the registration records show that Annandale passed the vehicle to one Harrison. If these records are accurate, they show that Harrison became *both* the owner and the title holder of

the vehicle on 6 February 2013. The same records show that Annandale was registered as both owner and title holder two days earlier, on 4 February 2013. It is regrettably probable, on the respondent's version, that the respondent did *not* examine the registration records. If it had done so, it would have surely noticed that this vehicle had apparently changed hands from Annandale to Harrison in this extraordinary fashion. As the respondent itself paid for the vehicle on 22 February

2013, this material alone (ie that the vehicle had changed hands three times in 18 days) would probably have alerted the respondent to the fact that, on its version, a fraud was being perpetrated upon it.

21 In *Van der Molen v Fagan* [2013] ZASCA 203 the court considered an argument similar to that put up on behalf of the respondent. The SCA found that in these circumstances the argument that the respondent had "triggered" a misapprehension suffered by a purchaser after a fraudulent dealing with a motor vehicle did not assist the ultimate purchaser faced with a *rei vindicatio* where there had been a fraud subsequent to the acts alleged to have constituted the trigger and that the proposition of the appellant, which the court characterised as a reliance on the facilitation theory, did not apply in our law.

22 The defence of estoppel must therefore be rejected on the papers.

23 Finally, the respondent contended for an improvement lien over the vehicle on the basis that the respondent effected repairs to it. The applicant has tendered a written guarantee in substitution of the alleged lien. It is not suggested that the guarantee is defective in form but the amount of the guarantee is slightly less than that contended for by the respondent. Through counsel, the applicant tendered to consent to an appropriate order for the higher amount. It is trite that the court enjoys a discretion to permit a guarantee to be substituted for a lien. It was not suggested that this discretion should not be exercised in favour of the applicant.

24 This is a commercial case. Costs must follow the result. Counsel for the applicant asked for a punitive costs order. The respondent's heads of argument were filed late. It was suggested that the defences were patently without merit. There is something to be said for the request for a punitive costs order but I do not think that the respondent's conduct goes quite far enough to justify it.

25 I make the following order:

1 The respondent is hereby ordered immediately to return to the applicant 2008 model Maserati Granturismo motor vehicle with registration BC [...], engine no. M[...] and chassis no. Z[...] ("the vehicle");

2 If the respondent fails or refuses immediately to return the vehicle to the applicant, the sheriff for the area having jurisdiction or his deputy is hereby authorised and directed immediately to seize the vehicle, wherever it may be found, and to hand it over to the applicant.

3 The applicant is hereby ordered, against delivery to it of the vehicle, to furnish a guarantee to the respondent in the form of annexure E1 to the applicant's founding affidavit but for the amount of R101 190;

4 The respondent is ordered to pay the applicant's costs in the application.

NB Tuchten

Judge of the High Court

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1      Section 4 requires that motor vehicles be registered as required in the various provinces.