



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2024/006294

1. Reportable: No
2. Of interest to other judges: No
3. Revised

Wright J
20 November 2024

ATLAS TRUCK CENTRE (PTY) LTD

Applicant

and

GIO LOGISTICS (PTY) LTD

Respondent

JUDGMENT

WRIGHT J

1. The applicant, Atlas bought three trailers from the respondent, Gio pursuant to an oral agreement.
2. Gio delivered the trailers to Atlas and Atlas paid Gio.
3. Atlas on sold the trailers to others.
4. Then Absa announced its unassailable right to the trailers.
5. In short, it seems that Gio had bought the trailers, albeit in good faith, from a party or parties which owed money to Absa and which party or parties could not, because of Absa's reservation of ownership, pass on ownership to Gio.
6. Atlas, or more particularly those to whom it had sold, faced with unassailable claims by Absa, were liable to have their recent purchases taken from them. So Atlas paid Absa for the three trailers, the effect of which was that those who had purchased from Atlas then enjoyed apparent good title, at least free from eviction by Absa.
7. Atlas now seeks from Gio repayment of what Atlas paid to Gio for the trailers.
8. Atlas relies squarely on the implied warranty against eviction allegedly given by Gio in the oral agreement between the two parties.

9. It seems that Atlas and Gio had done many similar deals in the past. Mr Claassens for Atlas and Mr Botha for Gio, who concluded the deal, had known each other through similar deals for some time.
10. Mr Botha, in answer to Mr Claassens' founding affidavit, admits the oral agreement, delivery by Gio to Atlas of the trailers and payment by Atlas to Gio of the purchase price for the trailers. He says that the agreement was voetstoots. It is common cause that the agreement was voetstoots.
11. Mr Botha does not seriously dispute Absa's title. Rather, he relies on three things. Firstly, the voetstoots clause. Secondly, on a "specific" exclusion of the warranty against eviction and thirdly, in the alternative, on an alleged tacit acceptance of risk by Atlas regarding Gio's title to the trailers.
12. Mr Botha puts it as follows. "*there were never any discussions between Claassens and I, regarding the issue of a 'warranty against eviction', either alleged or at all. In fact, it was quite the opposite, it was expressly agreed between us that the vehicles were being sold "voetstoots" and I submit that any such alleged implied warranty which was specifically excluded in our agreement, alternatively, the Applicant tacitly accepted the risk of any uncertainty as to the Respondent's title in respect of the vehicles at the time.*"
13. The defence raised, namely the voetstoots clause and the alleged exclusion of the warranty against eviction read with the tacit acceptance of risk regarding Gio's title, is unsound.
14. The warranty against eviction is different to the voetstoots protection relied on by Gio. A voetstoots clause protects a seller against liability based on latent defects.

The warranty against eviction protects a buyer against another person with better title than that of the seller.

15. The voetstoots clause, common cause as it is, does not, by itself, oust the warranty relied on by Atlas. It would take clear evidence to dislodge the implied warranty.
16. I shall assume, in favour of Gio, but without deciding the point, that the onus remains on Atlas regarding the exclusion of warranty point. The evidence is strongly against Gio.
17. Firstly, the wording of Mr Botha quoted above, is against Gio. Mr Botha says that there was never a discussion about the warranty. That really is the end of the defence. If the warranty was not discussed then it could not, on the present facts, have been excluded. Mr Botha is clearly aware of the two different things in law, namely a voetstoots clause and the warranty against eviction. Gio has been legally represented since at least 3 November 2022, prior to the litigation. The attempt by Mr Botha to run together the voetstoots clause and the warranty does not hold water.
18. Secondly, on 5 October 2022 Atlas's attorney wrote to Gio's attorney, referring expressly to Atlas's liability to its purchasers under its warranty against eviction and seeking clearly to hold Gio correspondingly liable under Gio's warranty against eviction. The email also contains an attachment and in the letter attached demand is made for R1 104 000 and interest. It is alleged among other things that *“ Two trailers were “ left” with Atlas, purportedly as a “ deposit” towards settlement of Atlas’s damages and expenses. These trailers remain in Atlas’s*

possession, but the value thereof is probably negligible due to the worn condition thereof.”

19. This latter allegation is not denied in Gio’s attorneys’ reply on 3 November 2022 to the email of 5 October 2022. Nor is it denied in the answering affidavit. The effect of Gio leaving two trailers with Atlas, without giving a reason therefor, operates on the facts of this case as a tacit admission by Gio that it knew that it was liable to Atlas, and by extension, that there never really was an agreement to exclude the warranty against eviction.
20. In Gio’s attorney reply on 3 November 2022 there is an express denial of any admission of liability by Gio. There is a denial of liability generally. There is no denial that the sale from Gio to Atlas included the implied warranty against eviction. In my view, the reliance on there being no warranty against eviction is an afterthought.
21. At the hearing, Mr Hollander for Atlas asked for interest at 11.25%. According to a draft order uploaded after the hearing, Atlas now seeks only 9%.
22. Regarding costs, Mr Hollander sought costs on Scale C. In my view, Scale B suffices.

ORDER

1. The respondent is to pay to the applicant R1 104 000.
2. The respondent is to pay the applicant interest on this amount at the rate of 9% per year from 5 October 2022 to date of payment.

3. The respondent is to pay the applicant's costs, including those of counsel, on Scale B.



GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 19 November 2024

DELIVERED : 20 November 2024

APPEARANCES :

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