

SOUTH AFRICA / JUDGMENT

Maringa Boerdery (Pty) Ltd and Another v JS Timbers (Pty) Ltd (3523/2022) [2023] ZAMPMBHC 21 (14 April 2023)

[2023] ZAMPMBHC 21

COURT

Mbombela High Court, Mpumalanga

BEFORE

Mashile

CASE / FILE NUMBER

3523/2022

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(MPUMALANGA DIVISION, MBOMBELA)

CASE NO: 3523/2022

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: YES
- (3) REVISED: YES

DATE: 14/04/2023

SIGNATURE:

In the matter between:

MARINGA BOERDERY (PTY) LTD

First Applicant

MARINUS JOSEPHUS ENSLIN

Second Applicant

and

JS TIMBERS (PTY) LTD

Respondent

J U D G M E N T

MASHILE J:

- [1] This is an application founded on rei vindicatio. It is for the return of certain movable properties (“movables”) sold to the Respondent (“Timbers”) on 11 January 2022 by either the First Applicant (“Maringa”) or the Second Applicant (“Enslin”). Or both. I will refer to Maringa and Enslin as the Applicants where the context so requires. The sale was initially oral but was later reduced to writing. The Applicants subsequently cancelled the sale agreement (“the agreement”) due to non-payment by Timbers.
- [2] The conclusion of the agreement by the parties is not contested nor are the movables that were sold. By the time this matter served before this Court on 13 April 2023, of the thirteen movables that were initially claimed only the return of one of them, the Agrico 2 tower centre pivot (“the Pivot”), remained in dispute. Ownership of the thirteen movables having been resolved and returned to the Applicants, the dispute concerns the Pivot referred to *supra*.
- [3] The facts of this matter are in fact common cause. For that reason, the need to delve into the facts beyond what I have described above, as this Court would under a different set of circumstances ordinarily do, does not exist. The core of the defence of Timbers is that there are disputes of fact, which the Applicants should have foreseen whose resolution cannot be accomplished on the parties’ papers. To the extent that the Applicants did not deal with this aspect, argued Timbers, the matter cannot be referred for oral evidence but ought to be dismissed with costs on the attorney client scale.
- [4] Tersely, while the Applicants claim ownership of the Pivot, Timbers asserts that the Pivot belongs to another party. This contention is put forward in circumstances where it is not immediately decipherable from the papers who the owner is other than the Applicants. Moreover, although Timbers was able to exhibit an invoice indicating the amount for which the Pivot was sold and proof of payment, it could not disclose the name of the purchaser. Additionally, the papers of Timbers are silent on where the Pivot is and it was not forthcoming during argument in Court with its whereabouts. Timbers could only go as far as making an allegation of the existence of an adverse claim by another party.
- [5] Conversely, the Applicants are steadfast that insofar as they are concerned, they have satisfied the requirements of the remedy under which they seek return of the Pivot, rei vindicatio. For a party to succeed with rei vindicatio, they say, it needs to demonstrate ownership of the property claimed and that it is in the possession of the party from which it is claimed. They purchased the Pivot from an entity known as HJC Multi Services (Pty) Ltd (“HJC”). To that end, they have attached an invoice generated by HJC and proof of payment in respect thereof. The Applicants point out that its ownership is not challenged anywhere in

the answering affidavit. Besides, Timbers accepted when it purchased the Pivot that the Applicants were indeed the owners.

- [6] Regarding possession, they allege that the Pivot is still in the hands of Timbers. Notwithstanding that Timbers has alleged presence of adverse claim, it has failed, as a party in possession, to institute interpleader proceedings to resolve the issue of ownership. Timbers has also attached an invoice and proof of payment for the Pivot. The two attachments, however, do not assist because both make no mention of the person invoiced and the party who paid for it.
- [7] Thus, there is no relationship between the invoice and the proof of payment on the one hand, and the purchaser, on the other. Timbers, say the Applicants, could not bluntly state that it is not in possession. For this reason, there are no disputes of fact that justify reference to oral hearing. The argument of the existence of disputes of fact is, they conclude, contrived to delay finality of the matter. For this reason, there are no disputes of fact that require reference to oral evidence.
- [8] From the above, the first question therefore, is to determine whether or not there exist disputes of fact inhibiting the Court to determine this matter on the papers presented. The second matter for consideration is whether or not the Applicants have succeeded to establish the requirements of the *rei vindicatio* for the return of the Pivot. Needless to add that should the Court find that they have, Timbers will be directed to return the movable. On the contrary, should the Applicants fail, that will be the end of the matter in Timbers can continue to hang on to the Pivot.
- [9] A brief exposition of the legal framework concerning disputes of fact and *rei vindicatio* is necessary. An owner is entitled to reclaim possession of property with *rei vindicatio*. To succeed, an owner must allege and demonstrate the following:

9.1 Ownership of the item, it being irrelevant that it is immovable or movable. See, *Goudini Chrome (Pty) Ltd v MCC Contracts (Pty) Ltd* [1] and

9.2 The party from whom the item is claimed must have been in possession of the item when the application or claim was launched or instituted respectively. See, *Chetty v Naidoo* [2].

- [10] Insofar as disputes of fact are concerned, it could be instructive to refer to *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [3] where the Court said at paragraph 40 that an Applicant who seeks final relief on motion must in the event of a conflict of the facts, accept the version set out by the respondent, unless the latter's allegations are, in the opinion of the Court, not such as to raise a real, genuine or bona fide dispute or are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers.

EVALUATION

DISPUTES OF FACT

[11] Timbers raises disputes of fact in circumstances where it is in possession of the Pivot belonging to a third party and therefore, in unlawful possession. That being the case, it has not instituted inter pleader proceedings to resolve the competing claims (adverse claims). The question then arises whether the disputes of fact is real and raised in good faith, as required by Plascon Evans Paints case supra. The answer must be in the negative. The case of Timbers does not improve with its argument because it could not deny that it was still in possession of the Pivot at the time when the Applicants launched this rei vindicatio for the return of the Pivot. Against that backdrop, it is befitting to reject the argument pertaining to disputes of fact as being contrived and bereft of merit.

REI VINDICATIO

[12] I have already outlined the requirements of a party wanting the return of an article on the basis of rei vindicatio above. The Applicants have demonstrated that they purchased the Pivot from HJC by the production and attachment of an invoice emanating from HJC and proof of payment of the amount. Timbers did not challenge the authenticity of those documents. The Pivot, I must conclude, belongs to the Applicants.

[13] Timbers sought to show that the Pivot has been sold to another party by attaching an invoice and proof of payment to its papers. Firstly, proof of sale is no demonstration of a party not being in possession. Moreover, there is nowhere in the answering affidavit where Timbers forthrightly state that the Pivot is not in its possession anymore. More difficult for Timbers, is that the invoice and proof of payment do not bear the name of the person or entity that has purchased the Pivot. In those circumstances, the only reasonable inference to draw is that the Pivot is in the possession of Timbers, a party from which

it is claimed.

[14] In the result, I am satisfied that the Applicants have satisfied the requirements of the rei vindicatio. As such, they are entitled to the return of the Pivot and that there are no real disputes of fact raised in good faith.

[15] I am constrained to make the following order:

1. The oral agreement dated 11 January 2022 duly reduced to writing on 21 February 2022, as varied, are declared validly cancelled.
2. The Respondent are to surrender, return and deliver the following movable assets to the Applicants:

2.1 Agrico 2 Tower Centre pivot.

3. The Respondent are to pay the costs of this application on an attorney and client costs.

B A MASHILE

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 14 April 2023 at 10:00.

APPEARANCES:

Counsel for the Applicant:

SM

Adv Van Vuren Instructed by:

A

De Kock Attorneys Counsel for the Respondent:

Adv

VE Kruger Instructed by:

J Terblanche Date of Judgment:

14

April 2023

[1]

[1992] ZASCA 208; [1993] 1 All SA 259 (A), 1993 (1) SA 77 (A) p. 82; C

[2][1974] 3 All SA 304 (A), 1974 (3) SA 13 (A)

[3]

[1984] ZASCA 51; 1984 (3) SA 623 (A) at 634E – 635C

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