

SOUTH AFRICA / JUDGMENT

Padayachee v Van Den Heever N.O. and Others [2023] ZAGPJHC 174 (13 February 2023)

[2023] ZAGPJHC 174

COURT

South Gauteng High Court, Johannesburg

BEFORE

ML Senyatsi

CASE / FILE NUMBER

33857/2020

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REPUBLIC OF SOUTH
AFRICA

IN THE HIGH COURT OF
SOUTH AFRICA

GAUTENG DIVISION,
JOHANNESBURG

CASE

NO:33857/2020

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

DATE: 13 FEBRUARY 2023

In the matter between: KEVENTHREN PADAYACHEE
(Identity Number: [...])
Applicant
and
THEODOR WILHELM VAN
DEN HEEVER N.O.
C/O
D & T TRUST (In
his capacity as co-liquidator of
ART HOLDINGS
INTERNATIONAL (PTY) LTD
(Registration Number:
2017/1083112/07)
t/a GEORGIU FUTURE
INVESTMENTS) First
Respondent
DHANESVARIN APPAVOO
N.O.
t/a GEORGIU FUTURE
INVESTMENTS) Second
Respondent
BENJAMIN JOHANNES
SCHEFFER
(Identity Number:
[...]) Third
Respondent
THE STANDARD BANK OF
SOUTH AFRICA LIMITED
(Registration Number:
1962/000738/06) Fourth
Respondent

Delivered: By transmission to the parties via
email and uploading onto Case Lines
the Judgment is deemed
to be delivered. The date for hand-down is deemed to be
13 February 2023.

JUDGMENT

SENYATSI J:

- [1] This is an opposed application for a final interdict for registration of ownership and title of a motor vehicle purchased by the applicant from Art Holdings International (Pty) Ltd (in liquidation) (“Art Holdings”).

- [2] The applicant purchased the vehicle and fully paid for it after using his own car as a deposit and topping up the purchase price with cash. The vehicle concerned, which is the subject of the dispute is a Volkswagen Amarok 2.0. Bi TDI light delivery vehicle under the hire-purchase agreement with Standard Bank.
- [3] The car was delivered to the applicant and all that was outstanding is the delivery of the registration papers and the spare keys which never happened.
- [4] Unbeknown to him, the car belonged to the third respondent, Mr Scheffer who had placed it with Art Holdings to sell it on his behalf. The latter was mandated to sell it and use part of the proceeds of payment to settle the balance of the account with the fourth respondent, Standard Bank and pay the rest to Mr Scheffer.
- [5] After the applicant paid cash to Art Holdings, the latter failed to settle the account on hire-purchase with Standard Bank. Consequently, Mr Scheffer instituted liquidation proceedings against Art Holdings and the latter was liquidated. An appeal against the liquidation judgment is pending. The liquidation order was granted on 25 August 2020.
- [6] Standard Bank still holds the title of the car as it has not been fully paid. It is, however, not opposing the application presumably because the monthly repayments are up to date from Mr Scheffer's evidence.
- [7] Mr Scheffer contends that although an application for leave to appeal the liquidation is still pending, it does not suspend the final liquidation order.
- [8] Mr Scheffer furthermore contends that since the sale of the vehicle, he continued to service his repayment obligations to Standard Bank. He contends that should the transfer and registration be granted in favour of the applicant, he will suffer damages as he would not have recourse against the first respondent and the applicant for the instalments amounts paid while the vehicle is kept by the applicant. He contends that furthermore that he was obliged to oppose the application as allowing the application, would entitle the applicant to receive undue preference over other creditors.
- [9] The requirements for a mandatory interdict are trite. These are:
- (a) the applicant must show that he has a clear right;[1]
 - (b) the applicant must show actual or imminent threatened violation of that right; and
 - (c) that there is no other remedy that will give him/her adequate protection.
- [10] If all the requirements have been met by proven fact the court has a discretion to grant the final interdict requiring a party to do a positive act to correct the wrong committed. This is so especially when the facts alleged by the applicant are admitted by the respondent. The position may be different if the respondent's version consists of bold or not creditworthy denials, raises fictitious disputes of facts which are implausible, farfetched, or so clearly untenable that the court is justified in rejecting them merely on the papers.[2]

- [11] In *Maccsand v Mazassar Land Claim Committee & Others*[3] the court held that the balance of convenience is often the decisive factor in an application for an interim interdict. The exercise of the discretion vested in the court where the other requirements for an interdict are fulfilled, must turn on the balance of convenience.
- [12] The nature of the balance of convenience required in such a case was well summed up by Holmes J in *Olympic Passenger Service Pty Ltd v Ramlagan*[4] in the following statement:
- “In such cases, upon proof of a well-grounded apprehension of irreparable harm, and there being no adequate ordinary remedy, the court may grant an interdict – it has a discretion, to be exercised judicially upon a consideration of all the facts. Usually, they will resolve itself into a nice consideration of the prospects of success and the balance of convenience - the stronger the prospects of success, the less need for such balance to favour the applicant: the weaker the prospects of success, the greater the need for the balance of convenience to favour him. I need hardly add that by balance of convenience, it is meant the prejudice to the applicant if the interdict be refused, weighed against the prejudice to the respondent if it be granted.”*
- [13] There is no quibble that the applicant paid the purchase price of the Amarok motor vehicle in full. There is also no denial that the delivery of the vehicle by Art Holdings to the applicant occurred and that the result of which is that the applicant is in possession thereof.
- [14] Furthermore, there is no dispute that the applicant has not been provided with the registration papers of the vehicle. No evidence has been provided as to why that is so in spite of the fact that the full purchase price has been paid.
- [15] There is also no denial that Art Holdings failed to pay Standard Bank the full balance owed to the bank by Mr Scheffer for the Amarok vehicle to enable the registration papers to be released to the applicant.
- [16] The applicant alleges that he is unable to take out insurance cover on the vehicle because the registration papers have not been delivered to him. This is untenable as the applicant need not be registered as the owner to be able to take insurance cover of the motor vehicle. All he needs to demonstrate is an insurable interest given that he has paid the full purchase price for the vehicle. The title will remain with Standard Bank for as long as it has not recovered the full financed amount for the vehicle.
- [17] It is also undisputed that the fourth respondent is the title holder as it has financed the purchase price of the vehicle for Mr. Scheffer. As I understand it, when Art Holding sold the vehicle to the applicant, it did so as an agent on behalf of Mr. Schaefer.
- [18] Is a mandatory interdict under these circumstances an appropriate remedy for the applicant? The answer to this question should be given in light of the facts of this case, and in my view, it should be in negative.

- [19] It cannot be disputed that when possession of the vehicle was relinquished to Art Holdings, the vehicle was still the subject of a higher purchase agreement between Mr. Scheffer and Standard Bank. It can be inferred from the facts that Standard Bank was not notified of the sale. Art Holdings had undertaken to settle the full balance of the amount owing on the vehicle to Standard Bank and failed to do as agreed with Mr. Scheffer. This led to its liquidation that was brought by Mr. Scheffer.
- [20] It has been submitted on behalf of Mr. Scheffer that although the liquidators of Art Holdings have not filed papers to oppose the relief sought, the order required by the applicant is not competent. This is premised on the effect of liquidation in terms of the Insolvency Act of 1936.
- [21] The relief sought against Mr. Scheffer is on the basis that Art Holdings acted as his agent when the vehicle was sold. Mr. Scheffer contends that the relief sought against him is not competent because he did not commit any wrong to the applicant.
- [22] Having regard to the higher purchase agreement concluded between Mr. Scheffer and Standard Bank, I find no basis upon which the first and second respondents can be ordered to make payment to Standard Bank. The first and second respondents were not privy to the higher purchase agreement concluded between Mr Scheffer and Standard Bank and therefore cannot be bound by its terms.
- [23] The applicant, at most, has an alternative personal claim against Art Holdings or its principal Mr Scheffer, although it will be difficult, in my view, to impute the wrongdoing by Art Holdings to the applicant.
- [24] It is to be noted that the vehicle registration documents are in the possession of Mr Scheffer who refuses to renew the vehicle license on behalf of the applicant, and that despite this, the applicant does not seek any relief against Mr. Scheffer.
- [25] Having considered the facts and the principles applicable in mandatory interdict applications, I am of the view that the applicant has not succeeded in showing that he has no alternative remedy. Accordingly, the application must fail.

ORDER

[26] The following order is made:

- (a) The application is dismissed with cost

ML SENYATSI

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

DATE APPLICATION HEARD: 08 August 2022

DATE JUDGMENT DELIVERED: 10 February 2023

APPEARANCES

Counsel for the Applicant: Adv

DJ Coetzee

Instructed by:

Jordaan Attorneys Inc

Counsel for the Third Respondent: Adv

T Rossi

Instructed by: Greyvensteins

Inc

- [1] Edrei Investments 9 Ltd (In liquidation) v Dis Chem Pharmacies (Pty) Ltd 2012 (2) SA 553 (ECP) 556; Setlogelo v Setlogelo 1914 AD 221 at 227; Van Deventer v Ivory Sun Trading 77 (Pty) Ltd 2015
- [2] Ve Dyalo v Mnquma Local Municipality & Another [2016] ZAECMHC
- [3] [2004] ZASCA 114; [2005] 2 All SA 469 (SCA) (30 November 2004) at para 18
- [4] 1957
- (2) SA 382 (N) at 333F

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