
SOUTH AFRICA / JUDGMENT

Technique Powerfloat Floors (Pty) Ltd v V and Another (48590/2017) [2017] ZAGPPHC 760 (3 November 2017) [2017] ZAGPPHC 760

COURT

North Gauteng High Court, Pretoria

BEFORE

Phiyega

CASE / FILE NUMBER

48590/2017

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IN

THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION,
PRETORIA)

CASE NO: 48590/2017

DATE: 03/11/2017

NOT REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

REVISED

03/11/2017

IN THE MATTER
BETWEEN:

TECHNIQUE
POWERFLOAT
FLOORS
(PTY) LTD
(Registration
number 2012/216977/07)
PLAINTIFF
And
A
V FIRST
DEFENDANT
FLOORS
FOR AFRICA SA
(PTY)
LTD (Registration number
2009/008682/07) SECOND
DEFENDANT

JUDGMENT

PHIYEGA AJ:

1

In or around March 2017, this court, as per Davis A J, ordered that Toyota Hilux with registration numbers or letters and numbers DCD 780 L, which had been removed from the Defendants by the Applicants through spoliation, be restored to the Respondent. The vehicle was duly restored to the Respondents and is currently in the possession of the Respondents.

2

Now, the Applicant which is a company with limited liability registered as such in terms of the laws of the Republic of South Africa. The Applicant company which claims that it is the owner of the vehicle, has launched a summary judgement application in terms of which it is reclaiming the vehicle from the Respondents by way of the rei vindicatio.

The respondents have entered an appearance to defend and are resisting the Application. The Defendants are relying on three defences for their resistance, namely (i) ownership; (ii) debtor and creditor lien; and (iii) salvage lien.

3

BACKGROUND

As indicated above, the applicant is a company with limited liability. The company is a successor in the title to a company which went by the name Quail King (Pty) Ltd.

Mr S V is the sole director of the Applicant/ Plaintiff company. Ms A V, the first Respondent / Defendant is the sole director of the 2nd Defendant/ Respondent. All parties to the proceedings are resident or have their main places of business within the area of jurisdiction of this court.

4

Mr V and Mrs V are married to each other out of community of property. Currently' Mr and Mrs V are engaged in a particularly acrimonious

divorce, which I am informed is pending in the court. I am further informed that there are other matters besides the divorce and this matter, which are pending in this court as stated above.

5

On the 7th March 2017, the Applicant was ordered to return the Toyota vehicle to the possession of the respondent by way of spoliation order. The spoliation order was granted because the Applicant herein, who claims ownership of the vehicle, removed it from the possession of the First, alternatively the Second respondents herein without a court order allowing him to do so.

6

The Applicant has instituted the current summary judgement application against the Respondent for delivery of the Toyota Hilux.

7

The Respondents have delivered a notice to defend the action and are resisting the application on the grounds of ownership. The

Respondents are asserting that the vehicle "was purchased for and by the 2"d Defendant to utilise in the business activities of the 2"d Defendant and since the day the vehicle as purchased and to date the znd defendant utilise(sic) the vehicle for business purposes". The Respondents, rely in the alternative, on debtor and creditor lien and in the further alternative, on a salvage lien for their resistance against summary judgement application.

8

It is common cause between the parties that the vehicle is registered in the name of the Applicant predecessor of the Plaintiff. This appears from the motor vehicle licence which indicates that the vehicle is registered in the name of Quail King (Pty) Ltd, issued by Mokgopong Registering Authority as well as from the Respondents opposing affidavit.

9

DISPUTED FACTS

The respondent asserts that the vehicle was purchased for and by the 2nd Respondent and has been used by the 2nd Respondent for business purposes. On the other hand, the Applicant states that it is the owner of the vehicle by virtue of the fact that it is registered in its name and that the documents evincing the ownership of the vehicle are in the name of the Applicant. Thus ownership of the Toyota is asserted by both the Applicant and the Respondents.

10

As has been stated previously herein, the Respondents further rely on two liens, namely a debtor/creditor lien and a salvage lien for the assertion that they are entitled to retain the vehicle until they are compensated for the expenses that they incurred.

11

ISSUES FOR

DETERMINATION

As the application is based on rei vindicatio, the issue of who is the owner of the vehicle has to be decided first. If the court finds that the Applicant is the owner of the vehicle the court must then determine whether the Respondents is entitled to retain same on the basis of a lien. If on the other hand the Court finds that the vehicle belongs to him, the Court must respect that aspect and leave the vehicle where it is currently. If on the other hand, the Court finds that there is a lien on the vehicle, the Court must allow the vehicle to stay with the Respondents / Defendant until the Applicant would have compensated the Respondents amounts it expended in the interest of the Applicant.

12

THE LAW

In South Africa ownership of motor vehicles is regulated in terms of the Road Traffic Act. Section 1 of the R9ad Traffic Act {20 of 1999} {'the Act') defines owner of a motor vehicle and provides as follows:

- 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 licenced as such or obliged to be licenced in accordance with the regulations under section 4, and "owned" or any like word has a corresponding meaning;

Thus, in terms of the Act, ownership of a vehicle is prima facie that which is reflected in the registration papers of the vehicle. The Registration papers clearly show the owner of the Toyota Hilux as Quail King (pty) Ltd, the predecessor in title to the Plaintiff. Furthermore the financing documents show that the instalment sale agreement in respect of the Toyota vehicle was concluded between Quail King (pty) Ltd and Wesbank. This relationship commenced on 4 July 2014 and would persist until 11 August 2020.

13

It is common cause among the parties that the vehicle is financed by Wesbank through an instalment sale agreement with Quail King Pty Ltd. As such, and until the vehicle has been fully paid off, Wesbank remains the titleholder in respect of the vehicle and can, in case of a default in payment of the instalments, apply to court for the repossession of the vehicle.

14

Quail King is the predecessor in title to Technique Powerfloat. In terms of the definition of owner of vehicle as per section 1(a) of the Act, Technique Powerfloat Floors, the Applicant herein, is the owner of the vehicle by virtue of the contractual agreement that it concluded with Wesbank . A further indicator that the Applicant is the owner of vehicle is to be found in the registration documents relating to the vehicle. These indicate that the vehicle is registered in the name of Quail King (Pty) (Ltd).The respondents have also acknowledged in their answering affidavit that the vehicle is registered in the name of the Applicant.

15

Taking the above into account, it must follow, at least, that the Applicant is the owner of the vehicle. It would be expected that if respondents still persist with asserting ownership of the vehicle, they must produce some or other proof in order to rebut the prima facie indicators that the Applicant is the owner of the vehicle .Failure by the Respondents to rebut that the ownership of the vehicle is that of the Applicant should result in the prima facie proof becoming conclusive proof that the Applicant is the owner of the vehicle. In order for the respondents to prove ownership they would have needed to produce evidence akin to that which is stipulated in section 1(a) of the Act. Such proof should also have been produced on the papers that they rely on in their opposition to the application. This was not done.

16

The respondents have not, on the papers filed in opposition to the Application, produced any reliable proof of their assertions that the vehicle belongs to the Second Respondent. The Respondents merely made bald and vague allegations. For example, the Respondents merely state that the vehicle was purchased by and for the Second Respondent without giving any particulars about how, when or from whom. They have not produced any contract indicating the terms of how the vehicle was purchased. Furthermore, the Respondents have not furnished the court with details of how they paid for the vehicle. It is not sufficient in motion proceedings for a party simply to allege without producing proof of the allegations that he relies on. In motion

proceedings the dispute between parties is decided on the documents before court. I mention this because at the hearing Counsel for the Respondents was trying to introduce evidence either from the Bar or through documents that they had not filed of record.

17

I have already indicated that the Respondents rely, in the alternative, on two further defences, namely a salvage lien and a debtor and creditor lien. Should I find that the Respondents have proved that they have a lien in respect of the vehicle, I am bound to order that they are compensated before the vehicle is removed from their possession.

18

A lien was described in the following manner by the appeal court in *Brooklyn House Furnishers (Pty) Ltd v Knoetze and Sons* 1970(3) SA 264 A at 270E-G:

"n Retensiereg, jus retentionis, is die reg wat die besitter van 'n saak van iemand anders, waaraan die geld of arbeid bestee het, verkry om die saak in sy besit te hou totdat hy vo/gens ooreenkoms of, waar daar geen ooreenkoms was nie, vir sy werklike uitgawes of arbeid, maar hoogstens tot die mate van die eienaar se verryking, behoorlik vergoed is. Dit is bloot 'n verweer teen die eienaar se rei

vindication, en makk op sigse/f geen eisorsaak uit nie. Ons reg ken drie soorte retensieregte, nl. (1) retensieregte vir die berging of bewaring van 'n saak ("salvage liens?"; (2) retensieregte vir verbeterings ("improvement liens"); en (3) retensieregte vir sku/d ex contractu ("debtor and creditor liens"). Die aard van die retensiereg word bepaal deur die aard van die uitgawes wat aan die saak bestee word, en deur die bestaan al dan nie tussen die partye van 'n kontraktue/veNondenheid'.

19

The court in the above matter emphasised that the nature of a lien is determined by the nature of the expenses which are incurred in respect of the res or whether or not a contract exists between the lien holder and the owner of the property which is the subject of the lien (at 270G-H).

20

Useful expenses which a lien holder has incurred and wishes the court to order that he be compensated for, are limited to the amount by which the value of the property has been increased or the amount of expenses incurred by the purported lien holder. The court in *Rhooode v De Kock and Another* (45/12) [2012] ZASCA 179 stated the following in regard to compensation for useful and necessary expenses:

"So far as useful expenses are concerned, the amount of compensation is limited to the amount by which the value of the property has been increased or the amount of the expenses incurred by the appellant, whichever is the less; and the court has a wide discretion. That was the Roman law: D 6.1.38;1 the position was the same in the Roman-Dutch law: Voet 6.1.36;2 and it remains the

same in the modern South African law: Meyer's Trustee v Malan 1911 TPD 559 at 568; Fletcher & Fletcher v Bulawayo Waterworks Co Ltd; Bulawayo Waterworks Co Ltd v Fletcher & Fletcher 1915 AD 636 at 648, 656- 657 and 664-665."

21

I deal first with the alleged salvage lien. A salvage lien arises as a result of one person having expended money in the preservation of someone's property. Such expenses should result in the property being preserved or increasing in value. A party claiming that it is entitled to a salvage lien in respect of another's property should prove that the expenses incurred were necessary. He should also be able to quantify the amounts that he incurred. Failure to provide proof of expenses incurred is fatal to the case of the alleged lien holder.

22

I now deal with the requirements necessary to prove a debtor and creditor lien. The debtor and creditor lien arises ex contractu between the lien holder and the owner of the property. Where the lien holder relies on a debtor and creditor lien he should be able to show the existence of a contract between himself and the owner of the property in respect of which the lien is held.

23

As stated before, the Respondents oppose the Application on three grounds, namely ownership, salvage lien and debtor and creditor lien. I have already determined that the Respondents have not provided the court with any evidence which proves that the Second Respondent owns the vehicle. All the evidence points to the Applicant being the owner of the vehicle. With regard to the liens that the Respondents rely on, I have not been furnished with any facts and figures in respect of the alleged salvage lien. Without proof of the expenses incurred and in the absence of proof that such expenses, had they existed, were necessary, the lien cannot be said to have been proved.

24

The Respondents have failed to prove their alleged salvage lien. Likewise, the Respondents have not provided the court with any

details of an agreement which would show that they are entitled to a lien ex contractu between them and the Applicant.

In the result I make the following order:

ORDER

1. The Plaintiff's/Applicant's application is granted
2. The Respondents are ordered jointly and severally, the one complying the other to be absolved, to restore forthwith possession of the Toyota Hilux with registration letters and number DCD 780 L to the Applicant

3. In the event of the Respondents failure to restore possession of the abovementioned vehicle, the Sheriff be authorised to take possession of the aforementioned vehicle and restore such possession to the Applicant at the cost of the Respondents.
4. The first and second Respondents are ordered to pay the costs of the application jointly and severally, the one paying, the other to be absolved.

48590/2017

HEARD ON: 20 October 2017

FOR THE APPLICANT: Advocate C D'Alton

INSTRUCTED BY: Ross & Jacobsz Inc (ref.: SP15/2017N5504/ED)

FOR THE RESPONDENTS: Advocate C S Neuland

INSTRUCTED BY: AV Naude Attorneys (ref.: M Stander/ V Deventer)

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