

SOUTH AFRICA / JUDGMENT

Van Almenkerk vs Standmar Motors (Pty) Ltd (7244/2010) [2010] ZAWCHC 472 (13 September 2010) [2010] ZAWCHC 472

COURT

Western Cape High Court, Cape Town

BEFORE

Louw

CASE / FILE NUMBER

7244/2010

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IN

THE SUPREME COURT OF SOUTH AFRICA

(WESTERN

CAPE, HIGH COURT, CAPTE TOWN)

CASE

NUMBER: 7244/2010

DATE:

13 SEPTEMBER 2010

In

the matter between:

ABRAHAM

JOHANNES VAN ALMENKERK

.....Applicant

and

STANMAR

MOTORS (PTY) LIMITED

.....Respondent

JUDGMENT

(Application for leave to appeal) LOUW, J: This is an application for leave to appeal against the judgment and order made by me in this matter on 10 June 2010 that the applicant's claim in convention for the payment of the amount of R200 000, be dismissed. The question is whether there is a reasonable prospect that another court may come to a different conclusion. In the course of the judgment I relied on the judgment of the Appellate Division in the Sonap case (1992(3) SA 234 (A)). On behalf of the applicant it is submitted that I misinterpreted the case and, in any event, incorrectly

applied the principles set out in that case to the facts in the instant case because this is a case where a person is in fact

allowed to rely on its own misrepresentation to ward off a contractual claim. Secondly, it is submitted that my finding that a reasonable person in the position of the applicant would have appreciated that there was no contract to sell the trade-in at the price of at least R500 000, is wrong. The respondent opposes the application. However, in my view, this is a case where there is a reasonable prospect that another court might come to a different conclusion on the applicable law and its application to the facts and leave to appeal should consequently be granted. The applicant is granted leave to appeal to the full bench of this division against the order made by me and the judgment underlying that order on the claim in convention. The costs of the application will be costs in the appeal. LOUW, J

JUDGMENT

(Application for leave to appeal)

LOUW, J:

This is an application for leave to appeal against the judgment and order made by me in this matter on 10 June 2010 that the applicant's claim in convention for the payment of the amount of R200 000, be dismissed.

The question is whether there is a reasonable prospect that another court may come to a different conclusion.

In the course of the judgment I relied on the judgment of the

Appellate Division in the Sonap case (1992(3) SA 234 (A)). On behalf of the applicant it is submitted that I misinterpreted the case and, in any event, incorrectly

applied the principles set out in that case to the facts in the instant case because this is a case where a person is in fact

allowed to rely on its own misrepresentation to ward off a contractual claim.

Secondly, it is submitted that my finding that a reasonable person in the position of the applicant would have appreciated that there was no contract to sell the trade-in at the price of at least R500 000, is wrong.

The respondent opposes the application. However, in my view, this is a case where there is a reasonable prospect that another court might come to a different conclusion on the applicable law and its application to the facts and leave to appeal should consequently be granted.

The applicant is granted leave to appeal to the full bench of this division against the order made by me and the judgment underlying that order on the claim in convention. The costs of the application will be costs in the appeal.

LOUW, J

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Prepared on 10 October 2026 · Esheria