

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 19/27630

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

23.03.2020

DATE

SIGNATURE

In the matter between:

**AUTO SHOWROOM CC T/A ZIDO CARS**

Applicant

and

**FERHAN EBRAHIM PATEL  
THE SOUTH AFRICAN POLICE, BENONI VAN RYN  
DEEP SAFEGUARDING UNIT  
THE SOUTH AFRICAN POLICE, VEREENIGING**

First Respondent

Second Respondent

Third Respondent

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**JUDGMENT**

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**EICHNER-VISSER AJ**

[1] In both this application and the counter application, the Applicant and the First Respondent seek to be declared owners of a Landrover Discovery 4 with registration number and letters BH81XFGP ("the Landrover").

[2] The First Respondent was the previous owner of the Landrover while the Applicant is the current owner of the Landrover.

[3] The Second and Third Respondents are the South African Police Services who currently hold the Landrover in their possession.

[4] In the application and counter application, an Order is sought that the Second and Third Respondents hand over the Landrover to the owner so declared by this Court.

[5] On the 25<sup>th</sup> of February 2019, one Mr Zubair Ishmail Eshak ("Eshak") attended at the Applicant's premises in Kempton Park. Eshak told the Applicant's sales representative, one Irshad Lambat ("Lambat"), that he was the agent of the owner of the Landrover whom he advised was the First Respondent. Eshak told Lambat that he was duly authorised to sell the Landrover to the Applicant. He advised that he had in his possession the original vehicle registration papers, the service book and the spare keys of the vehicle.

[6] In addition, Eshak told Lambat that he had the identity document of the owner and, as an added measure, he made a video phone call from one of his phones and told Lambat that this was the owner of the Landrover and that the owner had authorised him to sell the Landrover.

[7] Lambat advises that he spoke to the First Respondent, alternatively a person who purported to be the First Respondent, during this video call. Moreover, Lambat advised that the person he spoke to on the aforementioned video call appeared to look the same as the person on the identity document which was handed to him by Eshak.

[8] Lambat requested to see the spare keys and the service book. He tested the spare keys of the Landrover and confirmed that the Landrover was, in fact, serviced by the agent that stamped the service book.

[9] Lambat advised that, during the course of the video call conversation that took place between him and the First Respondent, alternatively someone purporting to be the First Respondent, the First Respondent, alternatively someone purporting to be him, informed him that he had several business interests and would prefer to have payment of the vehicle done into the account of Eshak. Lambat requested that an e-mail be sent to him confirming that payment could be made into Eshak's account. Payment was duly made and, on the 26<sup>th</sup> of February 2019, the Applicant became the owner of the Landrover.

[10] On the 10<sup>th</sup> of April 2019, Constable Muamela and Warrant Officer Seretlo attached to the Third Respondent, attended at the Applicant's premises and seized the Landrover. The Landrover is currently at the Van Rhyn Deep Safeguarding Unit in Benoni, being the Second Respondent.

[11] The First Respondent states that he is a director of a company called Alitmimaan Investments (Pty) Ltd ("the company"). The company is the registered owner of the property situated at 148 Thornton Road ("the property").

[12] During January 2019, the company, duly represented by the First Respondent, entered into a verbal agreement of lease with Eshak in terms whereof Eshak let from the company a portion of the property for the purpose of selling motor vehicles.

[13] The First Respondent states that in early February 2019, while collecting rental from Eshak, he was driving the Landrover. Eshak advised him that he had clients who

requested him to find a vehicle with similar specifications to that of the Landrover which the First Respondent was driving. He advised Eshak that he would only sell the vehicle for a purchase price of R325 000.00. The First Respondent then agreed to allow Eshak to exhibit the vehicle to Eshak's interested clients.

[14] There was no commission fee agreed between Eshak and the First Respondent and Eshak stated that he would secure commission from the clients who purchased the Landrover. Eshak stated that he had a potential buyer, named Anver. However, this transaction fell through.

[15] Eshak then advised that there was another potential buyer with the name "Attie". Eshak requested the First Respondent drop off the vehicle together with the service book, spare keys, a copy of the First Respondent and the original registration papers of the vehicle.

[16] According to the First Respondent, it was expressly agreed between him and Eshak that he would only exhibit the Landrover to a potential buyer and should the potential buyer be interested, Eshak was to contact the First Respondent to arrange a meeting with the buyer in order to finalise the deal.

[17] Furthermore, it was agreed that the First Respondent would sign all documents necessary to transfer ownership and possession of the Landrover. Ownership and possession of the Landrover was to be effected by the First Respondent only upon receipt of payment of the full purchase price, and if the potential buyer was not interested, the First Respondent would collect the Landrover together with the original registration papers, service book and spare keys from Eshak.



[18] However, on the 23<sup>rd</sup> of February 2019, Eshak once again advised the First Respondent that he had another potential buyer who was from Pietermaritzburg. He advised that it was a car dealership owned by two persons, named Tariq and Yunis. Once again, Eshak requested that the First Respondent drop off the Landrover, the spare keys, the service book and registration papers for the same reason as previously advised. This was accordingly done by the First Respondent.

[19] From the aforesaid, the Court is satisfied that Eshak was given the necessary authority to sell the Landrover on behalf of the First Respondent. The First Respondent goes so far as to state that Eshak displayed a charming character and the First Respondent believed him to be an honest businessman.

[20] The legal question relates to the agent's apparent or ostensible authority. ***Claassen's Dictionary of Legal Words and Phrases*** defines "Ostensible authority" as follows:

*"a legal relationship between the principal and the contractor, created by representation, made by the principal to the contractor, intended to be and in fact acted on by the contractor, that the agent has authority to enter, on behalf of the principal, into a contract of a kind within the scope of the apparent authority so as to render the principal liable to perform any obligations imposed on him by such contract to the relationship so created, the agent is a stranger. He need not be, although he generally is, aware of the existence of the representation. The representation, when acted on by the contractor when entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract."*

[21] In order to establish the existence of ostensible authority, the principal has to prove the following:

21.1 Representation by words or conduct;

- 21.2 Made by the principal and not merely by the agent that the agent had the authority to act as he did;
- 21.3 Representation in a form such that the principal should reasonably have expected that outsiders would act on the strength of it.
- 21.4 Reliance by the third party on the representation, the reasonableness of such reliance and the consequence of prejudice to the third party.

[22] By Eshak having the original vehicle registration paper, the service book, the spare keys of the Landrover, a copy of the First Respondent's identity document and the video call which the First Respondent denies was him, the First Respondent has represented to the Applicant that Eshak had the necessary authority to enter into a contract with him to bind the First Respondent.

[23] Eshak may have not carried out his mandate as agreed to between him and the First Respondent but the Applicant cannot be held liable therefor.

[24] The First Respondent, in his counter application, brings a point *in limine* for a non-joinder, but does not proceed to argue the point, creating the impression that he does not persist with this point *in limine*. The Applicant, quite correctly, stated that the point *in limine* cannot succeed as the First Respondent has not denied that Eshak acted as his agent. There is therefore no need to cite the agent when the principal is cited as a material party to the application.

[25] The point *in limine* is therefore dismissed with costs.

[26] It is clear from the answering affidavit and the counter application, that Eshak acted as the First Respondent's agent and was authorised to sell the Landrover. The fact that

Eshak ostensibly or allegedly acted outside his mandate is of no consideration of the Applicant. Therefore, the First Respondent's claim lies against Eshak and not the Applicant.

[27] In terms of the laws of agency, the First Respondent once holding out that Eshak is his agent for the sale of the Landrover, is estopped from denying Eshak's authority to sell the motor vehicle and to conclude a sale agreement for the sale and purchase of the Landrover.

[28] In **Karabus Motors 1959 Ltd v Van Eck** 1962 (1) SA 451 (C) at 453 C – E the following was held:

*"It is a general rule of our law that if the fraud which induces a contract, does not proceed from one of the parties but from an independent third person, it will have no effect upon the contract. The fraud must be the fraud of one of the parties or of a third party acting in collusion with or as the agent of one of the parties."*

[29] The First Respondent's Counsel argued that the Applicant, as a motor dealership, ought to have known that there is fraud committed in this particular field of business and that he ought to have known that he was grabbing at a bargain and that he did not act as a reasonable motor dealer did. The dealership should have been suspicious buying a motor vehicle for R100 000.00 below its value. This is the good faith argument.

[30] The First Respondent's Counsel referred me to the judgment of **Caldeira v Ruthernberg & Others** 1999 (4) SA 37 (SCA). This judgment made specific reference to the common law rule as expressed in the matter of **Morum Bros Ltd v Nepgen** 1916 CPD 392 [at 394 to 397] that when an owner of a movable thing entrusts it to an agent for sale and the agent delivers it to a *bona fide* purchaser, the owner cannot recover it unless he compensates the purchaser for the amount of the price paid. The Court in the



Caldeira matter found that the aforementioned common law rule had no application as, on the facts of that matter, the purchaser was not a *bona fide* purchaser.

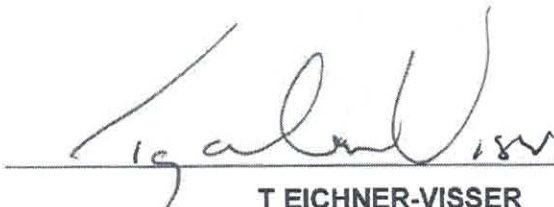
[31] I am of the opinion that the Applicant in this matter was a *bona fide* purchaser for the following reasons:

- 31.1 The First Respondent placed Eshak in possession of all documents relating to the vehicle, including the spare keys, as well as a copy of his identity document thereby creating by representation that Eshak had his authority to act as his agent for the sale of the Landrover;
- 31.2 It was not unreasonable for the Applicant to rely upon this representation which was moreover confirmed by the video call to the First Respondent who I am advised appeared to look like the person reflected in the identity document as the First Respondent.

[32] By reason of the aforementioned, I grant the following order:

1. The Applicant is declared the owner of the Landrover Discovery 4 bearing the registration number BH 81 XF GP as referred to at paragraph 1.1 of the Applicant's Notice of Motion;
2. The Second and Third Respondents are directed and authorised to hand possession of the aforesaid Landrover over to the Applicant or the Applicant's duly authorised representative;
3. The First Respondent's counter application is dismissed with costs;
4. The First Respondent pay the Applicant's costs.





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**T EICHNER-VISSER**  
**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

COUNSEL FOR THE APPLICANT: Y.F. SALOOJEE

INSTRUCTED BY: YUSUF BHAMJEE ATTORNEYS

COUNSEL FOR THE RESPONDENT: Z. KHAN

INSTRUCTED BY: Z. AREINGTON INC.

DATE OF HEARING: 3 MARCH 2020

DATE OF JUDGMENT: