

IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO.: A77/2010

In the matter between:

**BEST BEETLE**

Appellant

and

**CANDIDE PHYFER**

Respondent

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**JUDGMENT DELIVERED ON  
WEDNESDAY, 24 NOVEMBER 2010**

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**JAMIE AJ:**

[1] This is an appeal against a judgment in the Magistrate's Court for the District of Kuils River where summary judgment was granted against the Appellant in the sum of R5 000,00, together with certain ancillary relief.

[2] The facts of this matter may be simply stated:

[3] At all material times the Plaintiff was the owner of a deregistered (scrapped) 1974 model Volkswagen Beetle. In and during December

2008 the Defendant took possession of the Beetle. Subsequently thereto, and in December 2008, the Plaintiff, represented by one Marina Phyfer, sold the Beetle to the Defendant in terms of a verbal agreement for a purchase price of R5 000,00. The Defendant remains in possession of the Beetle, but has not paid the aforementioned purchase price. The Defendant does not tender the return of the vehicle to the Plaintiff.

- [4] On the Appellant's version it was a term of the agreement of sale that the purchase price would be paid against the supply and execution of the applicable original documentation required for the transfer of the vehicle, including the notification of change of ownership, duly signed, and the current license documentation.
- [5] The summons in the Court *a quo* was accompanied by a copy of the certificate of deregistration as well as a copy of the license documentation indicating that the vehicle had previously been registered in the name of the Plaintiff. The summons also tendered, against payment of the purchase price, delivery of the signed transfer documentation in respect of the Beetle.
- [6] In the affidavit opposing summary judgment the Appellant raised two defences, viz:

6.1 That it had not contracted with the Plaintiff at all but with the aforementioned Marina Phyfer;

6.2 That it had a counterclaim for unliquidated damages against Marina Phyfer in respect of alleged wrongful conduct on her part in seeking the intervention of the South African Police Services when payment by the Appellant was not forthcoming.

[7] A person may conclude a contract on behalf of an undisclosed principal. According to our law a legal bond is created between the principal and the other contracting party once the identity of the undisclosed principal is revealed and the principal then seeks to enforce the contract.<sup>1</sup>

[8] If however the identity of the contracting party is a material factor, then the party who did not know with whom he or she was contracting would be able to avoid the contract.<sup>2</sup>

[9] In the present case, it is not suggested by the Appellant that the identity of the party with whom it was contracting was material, or that, but for knowledge of the true identity of the owner of the vehicle, it would not have contracted to purchase the vehicle for the aforementioned purchase price.

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<sup>1</sup> Cullinan v Noordkaaplandse Aartappelkernmoerkwekers Koöperasie Bpk 1972(1) SA 761 (A) at 767 H to 768 A and 770 H to 771 A.

<sup>2</sup> Bird v Sumerville & Another 1963(3) SA 194 (A) at 204 G.

[10] Accordingly, I am in agreement with the Respondent and the Court *a quo* that this contention does not raise a defence cognisable in law, and that it accordingly did not serve to prevent the grant of summary judgment in this matter.

[11] Regarding the supposed counterclaim, it appears that all that Marina Phyfer did was to seek the assistance of the South African Police Services when the Appellant failed to make payment as it had undertaken to do. There is no allegation that she acted maliciously. Furthermore, and entirely destructive to the Appellant's case in this regard, is the failure of any allegation that she acted with the knowledge, or at the instance, of the Plaintiff.

[12] Accordingly, this ground too fails to disclose any defence to the Plaintiff's claim. In short, and should the Appellant be aggrieved at the conduct of Marina Phyfer, it remains open to it to pursue such remedies as it may be advised to against her.

[13] In the circumstances, I am satisfied that the Appellant failed to disclose a defence to the Plaintiff's claim for summary judgment, and that summary judgment was accordingly correctly granted.

[14] The appeal is accordingly dismissed with costs.

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**JAMIE AJ**

I agree.

  
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