THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

In the matter between

Case No: 13187/2016

ABSA BANK LTD	**APPLICANT**
and	
NEDBANK LTD t/a THE MOTOR FINANCE CORPORATION	**1st RESPONDENT**
SCORPION TAILPIPES CC	**2nd RESPONDENT**
MJ SWANEPOEL	**3rd RESPONDENT**
AS STEYN	**4th RESPONDENT**
FC de KOKER	**5th RESPONDENT**

Coram: ROGERS J

Heard: **29 NOVEMBER 2016**

Delivered: **15 DECEMBER 2016**

JUDGMENT

ROGERS J:

Introduction

[1] The applicant ('Absa') claims the return of four vehicles of which it claims to be the owner. The first respondent ('MFC') opposes the application. The second to fifth respondents are the persons who purchased the vehicles in terms of instalment sale agreements concluded with MFC. Absa was represented by Mr L Olivier SCA and MFC by Mr Ohannessian SC leading Mr M Reineke.

[2] Absa's claim is a reivindicatio. MFC's opposition is that Absa has failed to establish its ownership, alternatively that it is estopped from asserting its ownership.

[3] On 11 August 2016 an order was made by agreement between Absa and MFC that if Absa succeeded in establishing its ownership, MFC would pay Absa the amount outstanding in respect of each vehicle. It was further agreed that the application would not be served on the second to fifth respondents. This explains why the second to fifth respondents have not participated in these proceedings. MFC has evidently decided that it rather than its clients should suffer the loss if Absa succeeds.

[4] During argument it appeared to me that points of contention did not arise so much from disputes of fact as from alleged deficiencies in the evidence presented. MFC alleged that Absa had failed to allege sufficient facts to establish its ownership and in particular had failed to prove that it had paid for the vehicles. Absa in turn alleged that MFC had failed to allege sufficient facts to give rise to an estoppel. I suggested that it might be in the interests of justice for each side to supplement their papers where they were able to do so that I could determine the matter on the basis of all the available evidence. The parties were unable, however, to agree on this course of action. I must thus decide the application on the papers as they stand.

[5] It is unnecessary to give details of the four vehicles. I shall identify them simply by reference to their manufacturers, namely Kia, Mitsubishi, Ford and Toyota respectively.

Background facts

[6] Both Absa and MFC are involved in vehicle financing inter alia by way of floorplan agreements with motor dealerships. Absa previously had a floorplan agreement with a dealership called Paarlweg Motors CC ('PWM'). The contractual arrangements included a floorplan agreement and an agency agreement. For convenience I shall refer to them collectively as the floorplan agreement

[7] The modus operandi envisaged by the floorplan agreement was that PWM would request Absa to buy vehicles from the seller at the price agreed between PWM and the seller. PWM was authorised to purchase such vehicles on Absa's behalf. PWM had to obtain an invoice issued by the seller to Absa recording the seller's knowledge of the agreement and its intention to pass ownership to Absa. PWM was authorised to accept the invoice as Absa's agent. When the seller delivered the vehicle to PWM, the latter would take possession on Absa's behalf as owner.

[8] PWM was required to display visible signage that the vehicles were subject to wholesale finance with Absa. PWM acknowledged that Absa would retain ownership of a vehicle until it had been paid for in full. PWM was prohibited from doing anything which would give the impression that it rather than Absa was the owner of the vehicles. PWM was required to conduct its transactions with third parties in such a way that the third party understood that Absa was the owner. Subject to Absa's rights, PWM was permitted to sell the vehicles in the ordinary course of its business but Absa would only sign documents to effect transfer of ownership to PWM upon receipt of full payment of the amount owed to Absa.

[9] According to Absa, it purchased the four vehicles in question pursuant its agreement with PWM – the Kia in December 2015, the Mitsubishi and Ford in the latter part of May 2016 and the Toyota in early June 2016. The administrative

modus operandi followed does not appear to have been strictly in accordance with the agreement. The sellers issued their invoices to PWM which in turn issued matching invoices to Absa. Absa alleges that it effected payment directly to the sellers – on 9 December 2015 (the Kia), 31 May 2016 (the Mitsubishi), 3 June 2016 (the Ford) and 9 June 2016 (the Toyota). It is not in dispute that PWM came into possession of the vehicles. Absa alleges that it was the owner and was still the owner when it launched the present proceedings.

[10] On 13 June 2016 Absa notified PWM in writing that due to the conduct of the facility Absa had no alternative but to call for repayment of the outstanding balance owing, namely R2 803 320, within seven days and to cancel the facility with immediate effect. If the full amount was not settled within seven business days, Absa reserved the right to take all necessary steps to protect its interests. Absa alleges that the outstanding balance included the amounts owing in respect of the vehicles in issue in the present case.

[11] At some stage the four vehicles were ‘sold’ by PWM to customers who obtained finance from MFC. PWM abused its access to Absa’s computer system so as to generate documents which resulted in the licensing authorities registering each vehicle in the name of MFC as ‘title holder’ and the customer as ‘owner’ (more on this below). The agreements between MFC and its customers are not part of the papers but it may be assumed that MFC, having purchased the vehicles from PWM, on-sold them to the customers in terms of instalment sale agreements which reserved ownership to MFC.

[12] The dates on which the vehicles were thus sold by PWM do not appear from the papers. From documents attached to MFC’s answering affidavit it can be concluded that the sales of the Kia, Mitsubishi and Ford occurred by no later than 17 June 2016 (by that date the documents which PWM caused to be issued for licensing purposes were in existence).

[13] PWM was placed in provisional liquidation on 4 July 2016.

[14] Following an exchange of correspondence between attorneys acting for Absa and MFC, the present application was launched on 26 July 2016.

Vehicle registration

[15] In terms of the National Road Traffic Act 93 of 1996 a vehicle is registered in the name of an ‘owner’ and ‘title holder’. Depending on the circumstances, the same person or different persons may be ‘owner’ and ‘title holder’. The expression ‘owner’ is defined in s 1 as meaning inter alia the person who has the right to the use and enjoyment of the vehicle in terms of the common law or a contract with the title holder or a motor dealer who is in possession of the vehicle for the purposes of sale and who is licensed or obliged to be licensed as a dealer. The expression ‘title holder’ means the person who has to give permission for the alienation of the vehicle in terms of a contract with the owner or the person who has the right to alienate the vehicle in terms of the common law. The ‘title holder’ is thus closer to the common law notion of an owner than the ‘owner’ as defined in the Act.

[16] Regulation 53A of the regulations promulgated in terms of the Act provides that no motor dealer may display a vehicle for purposes of sale unless the vehicle has been registered in his or her name as dealer stock. Counsel on both sides expressed some puzzlement as to what exactly this means.

[17] In practice, it appears that when a dealer displays a vehicle for sale which belongs to a financier in terms of a floorplan agreement, the vehicle is registered in the name of the financier as ‘title holder’ and in the name of the dealer as ‘owner’. In the present case, the sales of the Kia, Mitsubishi and Ford to PWM and the matching sales from PWM to Absa were reflected in sequential registrations. Pursuant to the sales to PWM, the latter was registered as ‘title holder’ and ‘owner’. Pursuant to the matching sales from PWM to Absa, the latter was registered as ‘title holder’ while PWM remained the ‘owner’. It appears that the registrations followed the sequence of the transactions though presumably they occurred simultaneously.

[18] In the case of the Toyota, which was acquired by PWM only a few days before it was sold to MFC’s client (the fifth respondent), PWM caused the vehicle to

be registered in its own name as ‘title holder’ and ‘owner’. The failure to reflect Absa as ‘title holder’ was almost certainly part of the abuse which PWM had by then embarked upon.

[19] Absa has a computer system to which its dealers have access. The dealers can generate the documents required by the licensing authorities to effect a change of registration. PWM abused this system to generate documents in Absa’s name, thereby permitting the vehicles to be registered in the name of MFC as ‘title holder’ and the second to fifth respondents as ‘owner’.

[20] The eNatis system is a national register of motor vehicles kept and administered by the registration authorities in compliance with s 77 of the National Road Traffic Act. The system reflects the registration history of any given vehicle.

[21] The ownership of a vehicle is not in law determined by its registration under the Act (*Absa Bank Ltd v Knysna Auto Services CC* [2016] ZASCA 93 paras 7-8 and 11). Vehicle registration is not in this respect akin to the registration of immovable property in the deeds office.

Absa’s ownership

[22] Mr Ohannessian submitted that because the sellers had not issued invoices to Absa as required by the agreement, ownership in the vehicles did not pass to Absa. I reject this argument. The fact that Absa and PWM did not follow the exact administrative procedures envisaged in their agreement does not mean that ownership did not pass. The issue is one of fact, not contract. The original sellers clearly intended to sell the vehicles and in fact delivered them to PWM. That they intended to pass ownership cannot seriously be contested. They may have intended to pass ownership to PWM, being the entity to whom they issued their invoices. However, and as between PWM and Absa, there can be no doubt that they intended Absa to acquire ownership of the vehicles. This appears to have been by way of a matching sale by PWM to Absa. In each case PWM issued an acknowledgment that it had sold the vehicle to Absa, that it had taken delivery on behalf of Absa and that

notwithstanding PWM's possession of the vehicle ownership remains vested in Absa as contemplated in the floorplan agreement.

[23] Mr Ohannessian argued, in the alternative, that ownership would only have passed from the sellers to Absa (via PWM) if the purchase price was duly paid to the sellers. He submitted that Absa had failed to prove payment.

[24] It may be correct that the sales by the sellers to PWM were cash transactions, the intention being that ownership would pass against payment of the purchase price. The notion, however, that ownership might still vest in the original sellers has an air of unreality about it. There is no suggestion that they have asserted ongoing rights of ownership. We do not know that the sellers parted with possession prior to receiving payment. If any of them did, one would have expected that by now they would have come forward if they had not been paid. The Kia was sold to PWM as long ago as December 2015. Even in the case of the other three vehicles, the sales occurred more than five months before the date on which the application was argued before me.

[25] Ironically enough, the party that sold the Ford to PWM was MFC itself and Absa's alleged payment was made to MFC. MFC was the presumably the owner by virtue of an instalment sale agreement with a customer. On 26 May 2016 MFC furnished a settlement quotation for the vehicle. If MFC did not receive payment, this would no doubt have been stated in the answering affidavit. MFC did not allege that it was the owner of the Ford because the old instalment sale agreement had not been settled but by virtue of the more recent sale of the vehicle by PWM to MFC's new customer (the fourth respondent).

[26] The absence of assertions of ownership by the sellers provides strong commercial support for Absa's allegation in the founding papers that it purchased, paid for and retained ownership of the vehicles. Absa's deponent, Mr Graham, the team leader of its Retail Business Bank Commercial Asset Finance Legal Recoveries Department, stated that all Absa's records relating to the application were under his control and that he had personally inspected them.

[27] There were matching sets of documents for each vehicle purchase. These included invoices issued by the sellers to PWM, invoices issued by PWM to Absa, and invoice cover sheets in which PWM furnished Absa with particulars of the sellers' bank accounts and the amounts owing to the sellers. Mr Graham's allegation that Absa duly effected payment to the sellers in accordance with these documents is in my view sufficient in the absence of other evidence to suggest that payment was not duly made. There is no such countervailing evidence. I have already referred to the fact that none of the sellers has asserted a claim of ownership. I find far-fetched the notion that Absa, a leading financier, would claim that substantial amounts are owing to it by PWM in respect of the vehicles if Absa had not actually parted with money. To do so would be fraud.

[28] Included in each set of documents was something which Mr Graham identified as 'proof of payment'. Mr Ohannessian said that on close analysis these documents did not prove payment because they do not contain dates or amounts. The documents in question seem to be screenshots of banking information. They contain particulars inter alia of the sellers and their bank accounts. There is background screen information which is not legible. If there were good reason to doubt that payment was made, these documents might be equivocal. It is shoddy practice for a deponent to attach a document of poor legibility and which requires elucidation to explain its full import. Absa's attorneys should have put this right before issuing the application.

[29] However I do not think in the circumstances of this case that the unsatisfactory nature of these documents justifies a conclusion that Absa has failed to prove payment. After all, and as I have said, it would have sufficed for Mr Graham to allege payment without furnishing documentary proof. The fact that the documentary proof may fall short in the absence of elucidation should not in the circumstances be regarded as a fatal defect. Although the annexed versions of the screenshots may not be dispositive, I have no reason to doubt that Mr Graham examined computer records of this kind to satisfy himself of payment. The other circumstances I have mentioned point very strongly in favour of the conclusion that payment was made.

[30] I am thus satisfied that Absa has proved its ownership.

Estoppel

[31] The law applicable to MFC's defence of estoppel is uncontentious. For convenience I refer to the owner as X, the person raising the estoppel as Y and the person from whom Y purported to acquire ownership as Z. I shall frame the legal principles with reference to a vehicle, that being the type of property in issue in the present case. Our law jealously protects ownership. X is estopped from asserting its ownership only where Y was misled, by X's negligence, into believing that Z was the owner of the vehicle or was entitled to dispose of it. To make good the defence, Y must prove the following: (i) that X, by conduct or otherwise, represented that Z was the owner of the vehicle or was entitled to dispose of it; (ii) that X made the representation negligently; (iii) that X's representation was relied upon by Y; (iv) that Y's reliance on the representation was the cause of his acting to his detriment. (See *Quenty's Motors (Pty) Ltd v Standard Credit Corporation Limited* 1994 (3) SA 188 (A) at 198G-199B; *Knysna Auto Services* supra para 16.)

[32] X's conduct in entrusting possession of the vehicle to Z is not sufficient to constitute a representation that Z is the owner or has the right to dispose of it. X must have entrusted Z with the indicia of ownership or the right to dispose of the vehicle. Such indicia may be the documents of title or of authority to dispose of the vehicle or may be found in the manner or circumstances in which X allowed Z to possess the vehicle, for example allowing Z to exhibit the vehicle for sale with his other stock in trade – the so-called 'scenic apparatus' (*Electrolux (Pty) Ltd v Khota & Another* 1961 (4) SA 244 (W) at 247-248), quoted with approval in *Quenty's Motors* at 199C-G).

[33] To this statement of the principles must be added the requirement that Y must have acted reasonably in forming the view he did of X's representation (*Electrolux* at 246G-H; *Konstanz Properties (Pty) Ltd v Wm Spilhaus en Kie (WP) Bpk* 1996 (3) SA 273 (A) at 284I-J; *Concor Holdings (Pty) Ltd t/a Concor Technicrete v Potgieter* 2004 (6) SA 491 (A) at 495B-C; *Knysna Auto* para 18.) Furthermore Y's reliance on X's representation must be reasonable (*NBS Bank Ltd*

v Cape Produce Co (Pty) Ltd & Others 2002 (1) SA 396 (SCA) at 412C-E; *Pangbourne Properties Ltd v Basinview Properties (Pty) Ltd* [2011] ZASCA 20 para 15; *LAWSA* 2nd Ed Vol 9 para 661).

[34] MFC's deponent is a Ms L Botha, MFC's National Manager: Special Support & Litigation, Collections and Recovery. She states that the facts asserted in her affidavit are within her personal knowledge unless the contrary is indicated. She does not claim to have been involved in the transactions by which MFC purported to acquire ownership. The nature of her position indicates that she would only have become involved after it emerged that Absa was asserting ownership. Her affidavit displays no personal knowledge of the contracts which MFC concluded with PWM or with its four customers (the second to fifth respondents). The contracts are not annexed to her affidavit. She gives no particulars as to when they were concluded, what their terms were and who represented MFC in concluding them.

[35] Ms Botha makes conclusory assertions regarding estoppel, culled from the legal principles summarised above. She says that Absa allowed PWM to display the vehicles for sale and through its negligence allowed PWM to represent that it was the owner or entitled to dispose of them. The high watermark of factual detail is an assertion that at the time each vehicle was purchased, the second to fourth respondents did not observe any visible signage at the premises or on the vehicles recording that they were subject to wholesale finance with Absa. (The vehicles in question would be the Kia, Mitsubishi and Ford. Nothing is said about the fifth respondent and the Toyota.) The 'evidence' in support of her contentions takes the form of a confirmatory affidavit from a candidate attorney who says he spoke with the customers in question to confirm these facts.

[36] There is no admissible evidence as to what the customers did or did not see. In any event, MFC's defence of estoppel is concerned with representations made to Absa, not to the customers. Ms Botha states that the three customers were acting as MFC's agents. She gives no facts to support that conclusion. It may be that when MFC subsequently concluded instalment sale agreements with them, they were to act on MFC's behalf in taking delivery of the vehicles. It is very unlikely that they were made agents of MFC for any other purposes. I find the suggestion ludicrous

that MFC would have relied on private individuals in determining whether it was safe to conclude financing transactions. Furthermore, the customers almost certainly saw the vehicles on PWM's floor before concluding their agreements with MFC. They could not have been agents of MFC at that stage. And the customers would have had no reason to be on the lookout for indications that the vehicles were subject to wholesale finance with a bank. Ms Botha does not say that MFC sent the customers back to PWM's premises specifically to look for notices or stickers.

[37] Absa by contract imposed on PWM the obligation to display the relevant notices and stickers. On the assumption that PWM failed to do so, it does not necessarily follow that Absa was negligent. Although Absa had the right to conduct inspections, I doubt whether its failure to exercise this right would, in the absence of proven reason for suspicion, amount to negligence. There would in any event be practical limitations on the frequency with which inspections could be conducted. Absa was not called upon to answer a contention that it had failed to conduct inspections at reasonable intervals.

[38] Ms Botha alleges that Absa negligently gave PWM opportunity to generate documents for the licensing authorities on the strength of which the latter registered the vehicles in the name of MFC as 'title holder' and each of the four customers as 'owner'. Mr Ohannessian submitted that MFC would not have parted with money until the vehicles were so registered. In other words, so the argument went, MFC relied on such registration in concluding that there was no impediment to its ownership of the vehicles. (Payment in this context means payment by MFC to PWM since MFC certainly did not make payment to Absa.)

[39] One would have thought that registration as 'title holder' would occur after the acquisition of ownership (including payment of the purchase price), not before. However Mr Graham himself says in his founding affidavit that financial institutions refuse to make payment unless they are registered as title holders of the vehicle concerned. Accordingly, and although Ms Botha was not involved in MFC's acquisition of the vehicles, I am willing to accept that MFC only parted with funds once it was registered as 'title holder'.

[40] However, if the practice of the financial institutions is as Mr Graham and Ms Botha state, there appears to me to be a fundamental obstacle to a successful estoppel in the case of bank-to-bank transactions (ie where the seller is a bank by virtue of a floorplan agreement and the purchaser is a bank by virtue of an instalment sale agreement with the new user of the vehicle). In such a case both banks would know (i) that the purchasing bank will only part with money once it is registered as title holder; (ii) that the selling bank nevertheless remains owner until it has been paid. The purchasing bank cannot thus reasonably rely on its registration as title holder as an assurance that the selling bank has surrendered ownership.

[41] Furthermore, if MFC relied to its prejudice on representations contained in registration documents, this must have been through the agency of one or more of its employees, none of whom has been identified or provided evidence. If the employees who represented MFC when it parted with money looked at registration documents, we do not know what exact documents they saw:

(i) One possibility is that MFC's employees saw the confirmations of registration which PWM generated by abusing its access to Absa's computer system. These documents boldly proclaim that they are issued without prejudice to Absa's rights, that they have been generated electronically on a floorplan administration system and do not constitute a representation that Absa intends to pass ownership to the named 'title holder' and 'owner', and that Absa remains owner until paid in full. These documents would have been lodged with the licensing department. MFC attached copies (there were only three because the Toyota was never registered in Absa's name as 'title holder'). Mr Ohannessian said that MFC procured them only after the institution of the present proceedings. He may be right though there is no clear evidence on the point. Ms Botha simply says that these documents were collected from the licensing department by an employee of MFC. She does not say when this happened.

(ii) Another possibility is that MFC saw the registration history of the vehicles on the eNatis system. MFC, being a vehicle financier, would like Absa undoubtedly have access to the eNatis system. If so, MFC would have observed that, immediately prior to the registration of the vehicles in the name of MFC and its customers, the Kia, Mitsubishi and Ford were registered in the name of Absa as

'title holder' and PWM as 'owner'. MFC would thus have been aware that Absa had financed the vehicles with reservation of ownership. MFC would have known that the facilitation of the transaction through re-registration of the vehicles in MFC's name as 'title holder' would not in itself mean that Absa had ceased to be the owner. MFC would have known that Absa would retain ownership until paid

(iii) A third possibility is that MFC saw a copy of the actual registration certificates reflecting itself as title holder and its customers as owners. The current registration certificates would not reflect the history of registrations. Registration certificates in this form have not been included in the papers. If MFC has copies, Ms Botha chose not to annex them to her affidavit.

[42] If the documents MFC saw and relied on were those mentioned in (i) or (ii) above, MFC would have been alerted to Absa's probable ownership and would not have acted reasonably in paying out money on the assumption that there was no impediment to MFC's ownership. MFC would have been put on notice and would not have acted reasonably without directing some enquiry to Absa, particularly since MFC was evidently being asked to pay PWM, not Absa.

[43] Even if the documents MFC saw were those mentioned in (iii), I do not think MFC acted reasonably in assuming that there was no impediment to its ownership. MFC, as a large vehicle financier, would be familiar with floorplan agreements and reservations of ownership. MFC knew that the person purporting to sell the vehicles was PWM, a motor dealership, which in all probability had a floorplan agreement with another financier. MFC would know that re-registration can occur without simultaneous transfer of ownership. As I have said, that seems to be what happens in bank-to-bank transactions.

[44] MFC has not explained how its own floorplan agreements are administered. For all one knows, MFC like Absa has a computer system to which dealers are permitted access for purposes of generating registration documents. MFC may well be familiar with Absa's system and the documents which can be generated from it by dealers (including the clear statement that re-registration does not affect Absa's

ownership). Such systems can be abused. The registration certificate is not irrebuttable proof of ownership. Most dealers may be honest but the occasional bad apples are to be expected. I cannot believe that a large financier would part with money simply on the strength of a registration certificate unless its approach were that it is not cost-effective to investigate every transaction and that it will thus 'take its chances' and suffer the occasional loss where necessary. The latter sort of approach might be a pragmatic business decision but would not satisfy the law's requirement for reasonable reliance. A reasonable institution in MFC's position would at least check the eNatis system to check whether the immediately preceding registration was in the name of another financier as 'title holder'.

[45] Since the onus rested on MFC to plead estoppel, Absa was entitled to deal with the defence in reply. If that meant that MFC needed an opportunity to file a second set of papers, it could have sought leave to do so. In his replying affidavit Mr Graham said that no reasonable financial institution would rely only on the eNatis registration. Financial institutions conduct HPi searches. HPi, he says, is a national vehicle database operated by Transunion containing information of any outstanding instalment sale agreements, major insurance claims and the like. He says that if MFC had conducted this simple and easily accessible search, it would have been aware of Absa's ownership. MFC did not seek an opportunity to respond to these allegations.

[46] MFC alleged that Absa was negligent in allowing PWM to have access to the computer system after Absa's demand and cancellation of 13 June 2016. Even if Absa was negligent in this respect, MFC would have to prove that it acted reasonably in relying on the registration documents generated by PWM. I have already explained the absence of evidence as to what exactly MFC relied upon and why in my view reliance on such documents would in any event not have been reasonable.

[47] As to whether Absa was negligent in the respect alleged, the premise of the argument is that PWM accessed the computer system after 13 June 2016. If the date of 17 June 2016, reflected in the three confirmations of registration attached to Ms Botha's answering affidavit, is the date on which PWM generated the

documents, that was a few days after the cancellation. Identical confirmations dated 28 June 2016 were attached to Absa's founding affidavit. Mr Olivier informed me that when these documents are printed off the system they bear the date of printing. Since MFC presumably did not have access to Absa's system, it may be a fair assumption that the confirmations were generated by PWM on 17 June 2016. As I have said, I am willing to assume that MFC only parted with money after these documents were generated and the registration particulars altered.

[48] I nevertheless think it would be a marginal call to say that Absa was negligent in failing to terminate PWM's access in the three or four days following the dispatch of the termination letter. PWM had been given seven days to settle its account and Absa might have been waiting to see how PWM reacted. If PWM had settled the facility, PWM would have acquired ownership of all the vehicles. There is no evidence that Absa had reason to believe that PWM would act fraudulently.

[49] What I have said above applies mainly to the Kia, Mitsubishi and Ford, which were registered in Absa's name as 'title holder' immediately prior to BMW's fraudulent transactions. Perhaps counter-intuitively, MFC's defence of estoppel is weaker, not stronger, in the case of the Toyota which was never registered in Absa's name as 'title holder'. Because PWM defrauded Absa by failing to cause the Toyota to be registered in Absa's name in accordance with the successive sequence of transactions, PWM did not need to take advantage of Absa's computer system in order to procure registration into MFC's name as 'title holder'.

[50] If Absa is to be criticised, it can only be because it failed to take steps to ensure that the Toyota was registered in its name as 'title holder'. One must bear in mind, though, that the Toyota was probably only delivered to PWM on or about 9 June 2016. Absa duly received from PWM the standard acknowledgment that Absa was the owner. Absa was entitled to assume that PWM would register the vehicle in the usual way. Within a few days PWM had caused the vehicle to be re-registered in MFC's name as 'title holder'. I do not think that MFC has demonstrated any negligence by Absa in this relatively brief window period. And even if Absa had taken steps to ensure that it was registered as 'title holder', matters would then have unfolded in the same way as occurred in the case of the Kia, Mitsubishi and Ford. It

follows that if the defence of estoppel fails in respect of these three vehicles, it must also fail in the case of the Toyota.

[51] I have thus come to the conclusion that MFC has failed to establish facts to make good its defence of estoppel.

Conclusion

[52] The application must thus succeed. In terms of the agreed order of 11 August 2016, the following order is made:

(i) The first respondent is directed to pay the applicant, in respect of each of the four vehicles identified in the notice of motion, such amount as the applicant may prove to the first respondent's reasonable satisfaction to be outstanding in respect of the vehicle under the floorplan agreement.

(ii) The first respondent is ordered to pay the applicant's costs, including any costs that stood over for later determination.

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ROGERS J

APPEARANCES

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