

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

CASE NO: 15893/22

In the matter between

MARGARETHA BASSON

APPLICANT

AND

ADRIAN JEREMY BOWRING

RESPONDENT

Date of Hearing: 07 October 2022

Date of Judgment: 24 April 2023 (to be delivered via email to the respective counsel)

JUDGMENT

THULARE J

[1] A *rule nisi* which operated as an interim order was issued against the respondent in terms of which he was ordered to make over and restore applicant' peaceful and undisturbed full possession, use and control of a Conqueror Trailer, registration No. C[...] vehicle register No. Y[...] (the trailer) and that in the event the respondent failed to comply the sheriff of the court and any other person appointed by the sheriff was

directed and authorized to give effect to the order by taking possession and delivering the trailer to the applicant and that the respondent was interdicted and restrained from lawfully interfering with the applicant's possession, use and control of the trailer. The respondent anticipated the return date after the applicant threatened him with contempt of court proceedings. The respondent wished to have the order reconsidered on the basis that the applicant had appointed an agent, Conqueror Trailers Western Cape (Pty) Ltd (the company) represented by Andre Jacobus Rudolph (Andre) for the purpose of selling her trailer, who was duly authorized to market and sell the trailer and the respondent having purchased the trailer validly, he considered himself entitled to take transfer of the trailer. The company, although according to the papers it was involved in the facts that found the dispute between the parties, it did not file any papers and was not represented at the hearing of this application.

[2] The issue was whether the *rule nisi* should be made final.

[3] The applicant was the owner of the trailer and about January/ February 2022 approached Conqueror Trailers Western Cape (Pty) Ltd (the company) with a view to selling it. The company conducted business which entailed the trading in and purchasing of trailers. The applicant contacted Andre Jacobus Rudolph (Andre) of the company and requested Andre to find a purchaser for the trailer. Andre requested her to bring the trailer and the applicant delivered the trailer to the premises of the company for the purpose of selling it, in or during April 2022. The applicant and Andre agreed that the company would market the trailer and that in the event that the trailer was successfully sold, she would receive an amount of R335 000-00 which was her reserve price. This amount was inclusive of commission of R20 000-00. The applicant delivered the trailer but kept the original registration documents of the trailer.

[4] During May and June 2022 the applicant and Andre discussed replacement of the awnings on the trailer which was replaced around July 2022. The applicant also renewed the license of the trailer and handed the disc thereof to Andre on 22 July 2022. On or about that day Andre invited the applicant to view the trailer and during that

process, Andre informed the applicant that there was some work done on the trailer, as the trailer was in the process of being sold to a prospective purchaser who required certain extras to be done to the trailer. The applicant was extremely happy at this development. The applicant expected Andre to contact her later regarding the transfer of the trailer to the prospective purchaser once the transaction was finalized.

[5] Thereafter the applicant did not hear from Andre. She became suspicious and drove to the company's premises to confront Andre personally. She then noticed that the trailer was not on the premises. Andre was not on site, but telephonically confirmed to her that he had delivered the trailer to the purchaser, the respondent, before receiving the purchase price. The applicant contacted her attorney. Andre later admitted that he had been dishonest to the applicant and that he had received the purchase price from the respondent but was then not in a position to pay that money to the applicant.

[6] The company advertised the trailer on an online platform called PRE-LOVED and marketed the trailer for sale under the caption "BARGAIN BUY" for a purchase price of R370 000-00. The respondent reacted to the advert and contacted Andre on 21 May 2022 about the trailer. Upon enquiry he was advised by Andre that the trailer was available for sale. On 23 May 2022 at 11am the respondent arrived at the premises of the company and went to their showroom where the public could browse caravans and trailers for sale. At his request prior to arrival the displays of the trailer had been opened in order for him to view his condition of the awnings and the trailer in general. He also made enquiries about the history of the trailer and Andre confirmed that it had only one prior owner and was mainly used for camping trips. After viewing the trailer the respondent accepted the offer as per the advertisement and a verbal sale agreement was concluded.

[7] Andre confirmed to the respondent that the company, which was Andre's employer, would attend to the registration of the trailer into the respondent's name as soon as the respondent effected payment of the purchase price. On 24 May 2022, the respondent received an invoice for the payment of the purchase consideration in respect of the

trailer. The invoice was issued by the company to the respondent on 23 May 2022. On 24 May 2022 the respondent paid the total purchase price of R370 000 into the company's Standard bank account, as provided for in the invoice. The respondent indicated to Andre that Andre was under no direct pressure to deliver the trailer as the respondent did not plan on using it in the immediate future. It was agreed that Andre would start the process of registering the trailer in the respondent's name and would conclude a minor service on the trailer after which the respondent would collect it.

[8] By 2 June 2022 Andre had not done the roadworthy certificate and change of ownership, and he promised that it would be done in the week of 9 June 2022. This was not done. The respondent then insisted on delivery of the trailer and the respondent offered to attend to the transfer of ownership personally. It was agreed that the respondent would collect the trailer on 25 July 2022. On 25 July 2022 the respondent's brother-in-law, Richard Bellbridge (Bellridge), collected the trailer from the company's premises. A lay only known as Elmarie, at the company's premises handed the trailer over to Bellridge after demonstrating to Bellridge the trailer's features. The demonstration took about 30 minutes after which Bellridge took delivery of the trailer. On that morning of 25 July 2022 Andre sent a whatsapp message to the respondent wherein Andre confirmed that the paperwork of the trailer was not ready yet but that he, Andre, would deliver the paperwork to the respondent the following morning. The respondent did not receive the trailer's registration papers.

[9] Andre alleged that he delivered the trailer to the respondent without having any authorization from the applicant to do so. According to him, he did not complete any of the relevant registration papers which was required to transfer ownership of the trailer into the respondent's name as he knew that he was not authorized to do so on behalf of the applicant and the applicant had kept the original certificate of registration of the trailer in her possession. He knew that he acted outside the scope of authority when he sold and delivered the trailer to the respondent without the applicant's knowledge or assistance as the owner. He intended making good any damages that either of the parties may have suffered as a result of his conduct.

[10] In *Pretorius v Loudon* 1985 (3) SA 845 (A) at 861F-G it was said:

"... the underlying principle... I have found is this, that it would be inequitable that an owner, who has led others into the reasonable belief that the person to whom he has entrusted his goods is entitled to dispose of them, should be allowed to recover such goods from a person who has acquired them honestly and for value, unless the owner tenders to repay such value."

[11] The advert was placed on PRE-LOVED by the company. The photos displaying the features of the trailer are under the logo of the company. Below the written features of the trailer on the advert is the price and underneath the price is the telephone number and the email address of the company. Nowhere does the advert give any indication that the company was acting as an agent of the applicant. Nowhere in the advert is the applicant or her details appearing. An innocent member of the public, in the position of the respondent, would not have known that the company was acting as an agent of the applicant. The company was in the business of selling caravans and trailers and had a showroom for members of the public to browse. The advert displayed the trailer as a "bargain buy", inviting prospective buyers with a "don't miss out!" call. "Buy" is commonly understood as to get something by paying money for it. "Buy" is a common and informal word which means a sale transaction. The advert makes no mention that the company only had the mandate to market the trailer, and had no mandate to sell and transfer it, as the applicant now wants this court to believe. The advert left any reasonable reader with the message that the trailer could be acquired by exchange by the purchaser paying the money, R370 000-00, to the company. No indication was given that any prospective buyer should contact the applicant and that the sale and transfer was to be handled by the applicant.

[12] When the respondent made the offer after viewing the trailer, neither the company nor Andre gave any indication that they were acting as agents of the applicant. Andre confirmed to the respondent that it was the company that would attend to the

registration of the trailer into the name of the respondent as soon as the respondent effected payment of the purchase price for the trailer. The tax invoice that was issued to the respondent, for payment for the trailer, bore the business address of the company, to wit, 1[...] O[...] Street, Wellington. It also bore the name of the company. There was no mention of the applicant on the invoice, or any indication that the purchase price was payable to her by the purchaser. The respondent paid the purchase price into a Standard Bank account provided by the company. This was the bank account where the company's name appeared as the account holder. There was no way that a third party in the position of the respondent, would have known about the applicant's ownership of the trailer and whatever role if any, that the applicant was to play in the sale of the trailer. As per the advert, the respondent did not miss out on a bargain buy of a trailer which was sold by the company. It was the company that explained the features of the trailer to the respondent's representative, and the respondent's representative respondent took delivery of the trailer from the company.

[13] The company was never the owner of the trailer as it did not purchase the trailer from the applicant. The company sold the trailer to the respondent as if it was the owner. The respondent did not acquire the right of ownership directly from the applicant as the applicant did not sell the trailer to the respondent. The company advertised the trailer in such a manner that it created the impression that it had the mandate to sell and transfer ownership of the trailer to a purchaser. It provided an invoice in its name, as well as an account number where it was an account holder into which the purchase price was to be paid, and never disclosed that the registration documents were still being held by the owner of the trailer, the applicant, specifically for the purpose of the transfer of ownership. The company, or Andre in its name, created the impression to the respondent that the company was the owner of the trailer. The false impressions created to the respondent caused him to buy the trailer with the belief that the company was the owner thereof and that upon the completion of the sale ownership of the trailer would transfer to him.

[14] The company through its representative, Andre, was an agent for sale for the trailer. The company or Andre were the applicant's agent for sale and became her agent for sale at the moment that she entrusted the trailer to the company or Andre. The principle in *Pretorius v Loudon* placed a limitation on an owner's *rei vindicatio* where such owner placed their property in an agent for sale and where the agent then sold and delivered the property to a *bona fide* third party. The principle protects the third party's possession against the claim of the owner of the property. The respondent bought the trailer from the company through its representative, Andre, the persons to whom the applicant entrusted the trailer. The respondent was a *bona fide* purchaser. He did not know that the applicant was the seller of the trailer. The company or Andre could never have been the respondent's agent at any stage, for the simple reason that he never knew that they were not the owners of the trailer. As a result the company or Andre could not be an intermediary or broker for the respondent. I saw the respondent as the person who bought the trailer because he was misled by the applicant's agent for sale, specifically around the nature, scope and content of the authority given by the applicant in respect of the sale of the trailer. The details of such authority are facts peculiar and within the knowledge of the applicant and her agent, whether it be the company or Andre or both.

[15] There was a need to protect a *bona fide* purchaser where the owner of the property allowed that the property be disposed of normally as part of the stock of a person who sold such stock to the public [*Konstanz Properties (Pty) Ltd v Wm Spilhaus en Kie WP (Bpk)* 1996 (3) SA 273 (A) at p. 287]. The applicant delivered the trailer to the company and the trailer was displayed on the shop floor of the company as part of the company's stock and the public, including the respondent browsed it as such. It was displayed with other trailers displayed by the company for sale. The nature of that floorplan agreement was not disclosed to the public or to the respondent. The trailer was exhibited as such and contemplated to be sold and that the applicant would then be paid. The manner of advertisement, display, payment for, explanation of features and delivery of the trailer was such that it proclaimed that the ownership of the trailer was vested in the company.

[16] The applicant delivered the trailer to the company that sold trailers, well aware that it was going to be displayed as part of the company's stock and could freely be disposed of in the normal nature of the company's business. The applicant, by her conduct, created the impression to a purchaser who was a client of the company, that the company had the authority to pass ownership to the purchaser. It was the conduct of the applicant which formed part of the impression which misled the respondent into the belief that the company or Andre, from whom the respondent acquired the trailer, was the owner and was entitled to dispose of it. The applicant should reasonably have contemplated that a prospective purchaser might act on the representation to his prejudice, and she was negligent in not taking reasonable steps to prevent it. The applicant did nothing to ensure that an innocent client of the company or Andre, like the respondent, who bought the trailer and paid the company with the intention that with the delivery thereof he would be the owner, was not misled and prejudiced. The *rei vindicatio* would hold if the property was sought from and was still in the possession of the company or Andre [*Konstanz Properties* at p. 288]. It would be unfair to order the respondent to forthwith make over and restore applicant's possession, use or control of the trailer which he *bona fide* purchased from the company.

[17] For these reasons I make the following order:

- (a) The *rule nisi* is discharged.
- (b) The applicant, Margaretha Basson to pay the costs.

DM THULARE
JUDGE OF THE HIGH COURT