

REMEDY TO GET BACK WHAT YOU THOUGHT WAS YOURS HAS LIMITATIONS

Monteiro and Another v Diedricks (1199/2019) [2021] ZASCA 15 (2 March 2021)

X and Y commenced legal proceedings regarding the ownership of a luxury car. When X took the vehicle to his dealer for its usual service, Y (a company) got wind of this and sent its employees to collect the car keys. Within 24 hours Y had sold the vehicle to an innocent third party.

Readers of this publication will recall the many instances reported where a person who has been dispossessed of something, unlawfully, may ask a court for a mandament van spolie, a remedy which is aimed at restoring the position that was, whatever the merits, as no-one may take the law into his own hands.

Will it be available in the present matter against the dealer and the director of Y, where the vehicle was sold in the meantime?

The Judgment can be viewed [here](#).

FACTS

In August 2019, Diedricks delivered a BMW motor vehicle to Autoglen Motors (Pty) Ltd (Autoglen) for routine maintenance. Street Talk Trading 178 (Pty) Ltd (Street Talk Trading), the registered owner of the vehicle on Autoglen's system, received an SMS notification from Autoglen that the vehicle was received at their premises for maintenance.

At the time Street Talk Trading and Diedricks were parties to litigation relating to the ownership of the BMW vehicle.

Following receipt of the SMS notification, Monteiro as sole director of Street Talk Trading, sent two employees to Autoglen to retrieve the keys of the vehicle. They ordered Autoglen not to release the BMW to Diedricks under any circumstances whatsoever. They showed the eNatis papers proving that Street Talk Trading was the registered owner of the vehicle. When Diedricks arrived later to collect the vehicle, Autoglen refused to let him take it. On the next day, Street Talk Trading sold and delivered the vehicle to a third party.

Diedricks launched a spoliation application against Autoglen, citing Monteiro as one of the respondents (although no spoliation order was sought against Monteiro). Autoglen opposed the relief on the basis that it was not in possession of the vehicle, having delivered it to Street Talk Trading.

The High Court granted an order requiring both Autoglen and Monteiro (in his personal capacity) to restore possession of the motor vehicle to Diedricks. Monteiro and Autoglen appealed to the Supreme Court of Appeal.

HELD

- It is well known that in order to succeed with a *mandament* (application to restore possession that was disturbed), the person bringing the application must have been in possession of the property and the dispossessor must have wrongfully deprived them of possession, without their consent. The underlying assumption is that the property exists and is capable of being restored to the possession of the party that establishes entitlement thereto.
- The order that was granted by the High Court required Autoglen and / or Monteiro to restore possession of the motor vehicle to Diedricks. But, as the motor was sold by its owner, Street Talk Trading, it is difficult to

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conceive how Autoglen or Monteiro could give effect to the order. Neither was in possession of the motor vehicle. Autoglen could not be expected to intervene in a contractual relationship to which it was not a party. No doubt, for this reason Diedricks did not move for an order against Autoglen. Nevertheless, an order was made against it by the High Court.

- Just as Autoglen could not, in law or fact, give effect to the order made, so too was Monteiro not capable of giving effect to the order. Certainly, Monteiro could not be compelled to take steps to restore possession without Street Talk Trading, the entity which took possession of the motor vehicle and disposed of it to a third party, being compelled, by a court order, to forbear such steps or to take them itself. Street Talk Trading was not joined in the proceedings. This was inexplicable given the facts. Had Street Talk Trading been joined in the proceedings, Diedricks may well have been able to obtain proper relief.

CONCLUSION

The appeal was accordingly upheld in favour of Monteiro and Autoglen.