THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not reportable

Case no: 127/17

In the matter between:

JAN GEORGE GABRIEL STOLTZ **APPELLANT**

and

PROF L J S STEENKAMP **RESPONDENT**

Neutral citation: *Stoltz v Steenkamp* (127/17) [2018] ZASCA 84 (31 May 2018)

Coram Shongwe ADP, Majiedt and Saldulker JJA and Rogers and Schippers AJJA

Heard: 22 May 2018

Delivered: 31 May 2018

Summary: Contract – purchase and sale – approach to mutually destructive versions restated – purchase price not proved.

ORDER

On appeal from: Gauteng Division, Pretoria (Du Plessis J sitting as court of first instance):

The appeal is dismissed with costs.

JUDGMENT

Majiedt JA (Shongwe ADP, Saldulker JA and Rogers and Schippers AJJA concurring):

[1] The appellant, Mr Jan George Gabriel Stoltz, sold a 1995 model Case harvester to the respondent, Prof L J S Steenkamp, during 2006. The purchase price of the harvester was in dispute. Mr Stoltz sued Prof Steenkamp for the balance of the purchase price in the Gauteng Division, Pretoria. Du Plessis J upheld the claim. On appeal to the Full Court of that Division, the matter was remitted to the trial court for the hearing of further evidence, discovered by Prof Steenkamp shortly before the appeal was to be heard by the Full Court. Du Plessis J, after hearing the new evidence, reversed his first decision and dismissed the action. The appeal is before us with the leave of the high court.

[2] Most of the facts, excluding the disputed purchase price, were common cause and are briefly as follows. The parties had been close friends for almost 40 years. The harvester was sold to Prof Steenkamp in terms of an oral agreement. The agreement was concluded some time between December 2005 and July 2006 – precisely when is disputed. The harvester was delivered to Prof Steenkamp at the end of August 2006. It is common cause that Prof Steenkamp had to settle the outstanding debt on the harvester of R341 134.55 with Absa Bank, which had financed the harvester. He did so on 24 July 2006. The crux of the disputed purchase price is that Prof Steenkamp

alleged that the outstanding balance with Absa constituted the full purchase price. Mr Stoltz, on the other hand, averred that the purchase price was R750 000. He sued for the sum of R408 865.45, being the difference between the alleged purchase price and the settlement amount. He alleged that this amount was to be paid in three equal annual instalments by the purchaser, Prof Steenkamp.

[3] On the common cause facts Mr Stoltz had bought the harvester in 2001 for the sum of R525 000. According to him, he held an auction of his farming equipment at the end of 2005. At the auction he had declined an offer of R600 000 for the harvester. After the conclusion of the oral agreement, repeated requests for payment of the balance went unheeded, according to Mr Stoltz. He then started recording his telephone conversations with Prof Steenkamp. Transcripts of the conversations were handed in as an exhibit by consent.

[4] Professor Steenkamp's version was that the agreement was that he would buy the harvester for the amount still owed on it to Absa. He did so and took delivery of the harvester. He was unaware of being recorded during his telephone conversations and was unable to admit or deny the contents of the transcripts. He could recall having attended the auction where he made a bid of R350 000 for the harvester. The harvester was knocked down to another bidder for R400 000, although Prof Steenkamp was unsure of this amount. Prof Steenkamp denied that there had been a rejected offer of R600 000.

[5] A valuation by an assessor and loss adjuster, Mr Roelf van der Merwe, dated 26 October 2010, was handed in by agreement. The content of the valuation was admitted. Mr van der Merwe valued the harvester at between R320 000 and R400 000 as at May 2006. He concluded that 'this is a fair reflection of the value at the time of purchase and we are satisfied that R350 000 is a good price for the unit purchased by Prof Steenkamp at the time'.

[6] In his first judgment, Du Plessis J decided the matter on the probabilities. He regarded both parties as poor witnesses (with Mr Stoltz only

marginally better than Prof Steenkamp), whose different versions could not be relied upon for a determination of the main issue. He adjudged the probabilities to favour Mr Stoltz on primarily two grounds, namely the contents of the transcripts and, secondly, the fact that Mr Stoltz had declined an offer of R600 000 for the harvester at the auction.

[7] When the matter was heard by the Full Court it merely ordered that the application for remittal to the trial court be granted. The Full Court did not set aside the trial court's order, nor did it issue directions as to how the further evidence was to be dealt with. Faced with this glaring omission, Du Plessis J commendably, with the parties' consent, adopted a sensible approach and limited the hearing to the new evidence (a disputed document) and matters related thereto.

[8] The further evidence is a handwritten document which purports to record aspects of the sale of the harvester. It reads as follows (translated by me, following the Afrikaans as literally as possible)[1]:

P.O. Box 170
Ogies
2230

10 December 2005

To whom it may concern;

[1] The Afrikaans version reads:

Posbus 170
Ogies
2230

10 Desember 2005

Aan wie dit mag aangaan;
Hiermee verklaar ondergetekende dat Prof L J S Steenkamp (ID 4608075035085) aan my 'n deposito ten opsigte van stroper Case 2188 betaal het ten bedrae van R35 000.00. Die res wat ek aan Absa bank nog verskuld is +- R333 000.00 sal hy by Absa finansiering reël wat die hele bedrag wat ek nog skuldig is aan die bank sal bedra wat die totale koopsom van stroper afhandel.

Geteken: (Stoltz) op 10 Desember 2005 te Ogiesfontein
ID 2612132023009

The undersigned hereby declares that Prof L J S Steenkamp (ID 4608075035085) has paid to me a deposit in the sum of R35, 000-00 to me in respect of harvester Case 2188. The rest for which I am still indebted to Absa bank +- R333 000.00 he will arrange financing with Absa which will amount to the full sum for which I am indebted to the bank which will finalize the total purchase amount of the harvester.

Signed: (Stoltz) on 10 December 2005 at Ogiesfontein

ID 2612132023009

[9] Prof Steenkamp testified that he accidentally discovered the document some four days before the hearing of the appeal by the Full Court. Although he initially said that he found the original, it became clear that what he found was a copy. The whereabouts of the original is unknown – on his version, it was probably with Absa. The last part of the document, commencing with the words 'which will finalize the total purchase amount of the harvester' and the words 'on 10 December 2005 at Ogiesfontein', were alleged to have been inserted afterwards by Prof Steenkamp, ie after the document had been signed by Mr Stoltz. It was common cause that Prof Steenkamp was the author of the document and that it was not a deed of sale. It appears from the evidence that the document was intended to assist Prof Steenkamp with his application for financing at Absa Bank. It was meant to impress the bank, though how exactly that was to happen is unclear.

[10] Despite the inscriptions on the document reflecting that it was signed by Mr Stoltz at Ogiesfontein on 10 December 2005, it was his evidence that he had in fact signed it while hospitalized at the Urology Hospital in Pretoria during February 2006. Two handwriting experts testified regarding the disputed part of the document. On behalf of Prof Steenkamp, Colonel Gerhardus Cloete testified that it was not possible to say whether or not the disputed parts had been inserted afterwards – particularly in the absence of the original, there was no balance or probability either way. Mr Jannie Bester, on behalf of Mr Stoltz, was adamant that the disputed parts had indeed been added afterwards. This difference in the opinions of the experts is not

germane to the main issue. The matter can be decided on the undisputed part of the document and on other evidence.

[11] In dismissing the claim after hearing the further evidence, Du Plessis J regarded the probabilities (particularly the harvester's market value and the evidence regarding Mr Stoltz's precarious financial position), and the existence and contents of the undisputed portion of the document, as sufficient to find against Mr Stoltz. Du Plessis J found that Mr Stoltz had failed to prove the purchase price of the harvester. For the reasons that follow I am of the view that this conclusion by Du Plessis J as trial Judge is unassailable. It is well-established that an appellate court has very limited powers to interfere with the factual findings of a trial court. Absent palpable misdirections by the trial court, its factual findings are presumed to be correct (*R v Dhlumayo & another* 1948(2) SA 677(A) at 705-706).

[12] The approach to resolving two irreconcilable, mutually destructive factual versions is well-established (*Stellenbosch Farmers' Winery Group Ltd and another v Martell & Cie SA and others* [2002] ZASCA 98; 2003 (1) SA 11 (SCA) para 5). The record bears out the findings by Du Plessis J that neither Prof Steenkamp nor Mr Stoltz could be relied on as witnesses. Both of them were poor in their testimony, evasive (Prof Steenkamp more so than Mr Stoltz), contradictory and mendacious in certain respects. They conceded that they had agreed to make a false representation to the bank with regard to the deposit of R35 000 reflected in the document as having been paid by Prof Steenkamp. This was, on their own admission, not an isolated incident – they had previously in other instances connived to convey untruths to financial institutions to obtain credit. Absent credible testimony, regard must be had to the probabilities on the main issue.

[13] The undisputed part of the document was common cause. That favours Prof Steenkamp's version that the purchase price was the outstanding balance due to Absa. If Mr Stoltz was correct, one would have expected the sum of R750 000 to feature somewhere in the document. The most compelling piece of evidence, as far as the probabilities are concerned, is in

my view the market value of the harvester. The following factors impel me to the conclusion that the harvester was worth far less than R750 000:

(a) On the uncontested valuation of Mr van der Merwe, the harvester was worth between R320 000 and R400 000 in May 2006. I accept that this valuation was obviously not known to either party at the material times during 2006, but it has some relevance.

(b) The evidence regarding the alleged R600 000 bid at the auction is unreliable. Its veracity is dependent on Mr Stoltz's evidence only. Absent independent corroboration from, for example, the auctioneer or from Stoltz's neighbours, the Truters, who allegedly made the bid, that evidence cannot be relied upon.

(c) Mr Stoltz had purchased the harvester for R525 000 five years before the sale to Prof Steenkamp. The harvester had been in constant use and subject to routine wear and tear. It must have depreciated in value by 2006.

(d) Professor Steenkamp did not seek finance from Absa beyond the amount required to discharge Mr Stoltz's indebtedness to the bank.

[14] Du Plessis J was plainly correct in his finding that, on the probabilities, Prof Steenkamp would not have paid R750 000 for the harvester and that Mr Stoltz had failed to prove the purchase price. The trial Judge's findings are justified by the evidence and there is no basis to interfere with it. The appeal must fail.

[15] The following order issues:

The appeal is dismissed with costs.

_____

S A Majiedt

Judge of Appeal

APPEARANCES:

For Appellant:	F Erasmus
Instructed by:	Van Heerden & Brummer Inc, Witbank
	Honey Attorneys, Bloemfontein
For Respondent:	H Fourie
Instructed by:	Tjaard du Plessis Inc, Pretoria
	Symington de Kok Inc, Bloemfontein