

HC 6515/02

DEPUTY SHERIFF, MARONDERA
versus
TRAVERSE INVESTMENTS (PRIVATE) LIMITED
and
INTERNATIONAL FINANCE CORPORATION LIMITED

HIGH COURT OF ZIMBABWE
MATIKA J
HARARE 13 and 22 January 2003

Civil Trial

Mr *K. Musimwa*, for the applicant
Mr *T. Biti*, for the 1st claimant
Ms *D. Tomana*, for the 2nd claimant

MATIKA J: This is an application for an interpleader. The first claimant is Traverse Investments (Private) Limited and the second claimant is the International Finance Corporation Limited.

The Deputy Sheriff of Marondera, who is the applicant in this matter placed under attachment 37 859 raw wet hides and 22 621 wet blue hides on 29 July 2002. This property was attached by the Deputy Sheriff at the instance of the second claimant in respect of a judgment the second claimant obtained against Lowveld Leather Products (Private) Limited. Prior to the attachment of the said hides, the Deputy Sheriff had on 28 June 2002 attached the following property which is also being claimed by the first claimant, namely, 49 085 tonnes of course salt, a land cruiser vehicle registration number 493-872R, a Leyland Comet vehicle, registration No. 444-162J, a Hino Truck, registration No. 735-781L and a concrete mixer. The first claimant's claim is being disputed by the second claimant.

The parties are agreed as to issue of onus. Mr *Biti* correctly submitted that the onus of proving that the goods which were in possession of the judgment debtor at the time of attachment is on the first claimant. The first claimant must discharge the said onus on a balance of probabilities. The first claimant has produced voluminous invoices which were allegedly issued to it by various suppliers in respect of the alleged purchase of hides from the suppliers in question. Affidavits have also been produced from the suppliers in question in which it is alleged that not only were the

hides in question sold to first claimant, but that the suppliers in question delivered those hides to the judgment debtor's premises in Marondera. Some of the invoices produced by the first claimant also show transport costs as having been paid by the suppliers who were supplying the hides to the first claimant. This puts paid the argument by the second claimant that there was no proof of delivery such as delivery notes attached to the first claimant's papers. I agree with Mr *Biti's* submissions that first claimant has proved its ownership to the hides in question on a balance of probabilities. The second claimant has not advanced any proof to disprove the first claimant's evidence. All what the second claimant was trying to do was to speculate on the relationship between first claimant and the judgment debtor and to try to raise suspicion as to the way in which the two were conducting their transactions. This, in the court's view is not enough. The second claimant needed to furnish the court with cogent proof that the first claimant was not he owner of the property in question and that in fact the property in question is owned by the judgment debtor. The case cited by Mr *Biti* in his heads of argument is apposite, namely: *Bruce N.O. v Josiah Parkers & Sons Ltd* 1972 (1) SA 68 (R) at 70C-E at 69G-H -

"In my view, in proceedings of this nature the claimant must set out facts and allegations which constitute proof of ownership so that the question whether or not to refer the matter to trial would arise only in the event of there being a conflict of fact which cannot be decided without hearing oral evidence."

This court therefore finds that the first claimant has proved its ownership to the hides in question on a balance of probabilities.

The same also goes for the dyster forklift, the salt, concrete mixer and two of the motor vehicles, namely, Lyland Comet registration No. 444-162J and Hino registration No. 735-781L, the court finds that the first claimant has proved its ownership to the said goods. In respect of the said 2 vehicles, the first claimant produced vehicle registration books which were obtained in April and May, 2000, way before these proceedings were contemplated. Proof of registration of the said vehicles in the first claimant's name, is in the court's view, *prima facie* evidence of ownership. The onus then shifted to the second claimant to try to disprove the first claimant's *prima facie* entitlement to the said vehicles. This, in the court's view, the second claimant has failed to do. In fact, the second claimant has not said anything regarding the first claimant's allegations that it is the owner of the said vehicles, save to speculate that the first claimant might not be the owner of the vehicles in question because it produced registration books which were obtained in year 2000, as opposed to producing current registration books with current licences. The Toyota Land Cruiser, registration number 493-872R, is owned by first claimant's managing director, a Mr Francisco Marconati. There is a registration book in his favour dated 21 July 1998. In the circumstances, there will be no order in favour of first claimant in respect of this vehicle. It will be up to

HH 11-2003
HC 6514/02

Mr Marconati to assert his rights to the said vehicle.

Lastly, in respect of the following property:-

- (a) Dyster Forklift, the court is satisfied that the statement by one Louis Carli that he sold the said forklift to the first claimant for \$1 800 000,00 is sufficient evidence of proof of ownership of the said forklift by first claimant. The fact that the cheque which was issued to Mr Carli was made payable to Guardian Trust is neither here nor there.
- (b) In respect of the 49 085kg of salt, first claimant produced 2 invoices which clearly shows that it purchased the salt in question. In fact, first claimant purchased 72 000kgs of salt and some of it must have been used by the judgment debtor in the preservation process. The second claimant did not offer any cogent explanation as to why the salt in question should not be declared to be the property of the first claimant. In respect of the concrete mixer, there is a letter dated 21 December 2001, which was attached to the first claimant's papers, which alleges that first claimant purchased the concrete mixer from Chino First Metallurgy Construction Company. The second claimant has not disproved this assertion.

In the circumstances, it is ordered that:

1. The Deputy Sheriff releases the following property forthwith to the first claimant -
 - a) 37 859 raw hides;
 - b) 22 621 wet blue hides;
 - c) Dyster forklift;
 - d) Salt;
 - e) Concrete mixer;
 - f) Leyland Comet, registration No. 444-162J
 - g) Hino Truck registration No. 735-781L
2. The second claimant pays the costs of the first claimant and the applicant.
3. The Toyota Land Cruiser, registration No. 493-872R is declared to be the property of Mr Francesco Marconati.

4

HH 11-2003

HC 6514/02

Messrs Matipano & Musimwa, legal practitioners for the applicant.

Messrs Honey and Blanckenberg, legal practitioners for the 1st claimant.

Messrs Sawyer & Mukushi, legal practitioners for the 2nd claimant.