HOW COURTS SORT FACT FROM FICTION - A TALE OF JAGS, DECEPTION AND DAMAGES

“Truth will out” (Shakespeare)

You are wondering whether you can win in court against an opponent where your two versions of what happened are totally at odds with each other.

How will a judge decide where the truth lies? It’s an important question because even though you know you are telling the truth, the court must base its decision on the evidence put before it. In other words, whether or not Shakespeare’s “Truth will out” will apply to your court case is going to depend on what evidence you have, and on how you present it.

A recent damages claim for fraudulent misrepresentation illustrates…

Selling R320k worth of Jaguar XF as a R1m XFR

* A dealership (owned by a close corporation) sold a “Jaguar XFR” to a buyer, who financed the purchase through a bank at a price of R985,139-29. Legally the sale was from the dealership to an intermediary, which then sold the vehicle on to the bank, which then sold it to the buyer on instalment sale.

* When the buyer failed to make payments due under the instalment sale agreement, the bank seized the vehicle from him. In the process it became aware that it was in fact a Jaguar XF, not the XFR reflected in all the documentation.

* That made a big difference to the bank because a Jaguar XFR5.0 V8 S/C is, the Court was told, a very different beast from its cousin the XF5.0 V8. What was most relevant to this case was that “the Jaguar XF is a considerably cheaper kind of Jaguar vehicle than the Jaguar XFR”.

* The bank cancelled its agreement with the intermediary on the grounds of misrepresentation and the intermediary had to repay the R985k to the bank.

* The intermediary then in turn tried to recover its losses from the dealership, which however refused to pay back a cent and refused to accept return of the vehicle. To reduce its losses, the intermediary sold the XF on for R275k, after which it sued the dealership for its net loss of R710k.

* The two versions of events given by the dealership and the intermediary were irreconcilable and the factual evidence heard by the Court was an interesting and complex mix of allegedly forged signatures, unsigned documents, the mysterious addition of an “R” badge to the vehicle, and a disclosure that the dealership had bought the vehicle for R320k just days before on-selling it for R985k.

How did the Court decide?

* The Court followed “the technique generally employed by courts in resolving such factual disputes” which it summarised as (format supplied):

“To come to a conclusion on the disputed issues a court must make findings on -

* + The credibility of the various factual witnesses;

* + Their reliability; and

* + The probabilities.”

* Those three factors are of course closely inter-linked, and the Court’s assessment of them will lead it to decide whether whichever party bears the onus of proving a fact or facts has succeeded in doing so. There’s a clear blueprint there for any litigant wondering whether their version of events is likely to be accepted as fact, or rejected as fiction.

* In this case, the “We did nothing wrong” evidence given for the dealership by the close corporation’s member and ex-member was rejected by the Court, which referred to both the general probabilities and to several important changes of story both on the papers and on the witness stand with comments like “…had to change his version drastically during cross-examination as to how the transaction came about…”.

The end result - the Court found that the member had made a misrepresentation, knowing that it was false, that the vehicle was a Jaguar XFR and not a Jaguar XF. The ex-member was found co-responsible for the fraudulent misrepresentation and all three (member, ex-member and dealership) held jointly and severally liable for damages of R710,139-29 plus interest and costs.