LL Case No 207/1992

IN THE SUPREME COURT OF SOUTH AFRICA

APPELLATE DIVISION

In the matter between:

ARCHIBALD DOUW STEYN Appellant

and

LSA MOTORS LIMITED Respondent

CORAM: BOTHA, HEFER, VIVIER, EKSTEEN JJA

et KRIEGLER AJA

HEARD: 3 SEPTEMBER 1993

DELIVERED: 30 SEPTEMBER 1993

JUDGMENT

BOTHA JA:-

A hole in one is the cause of this litigation. The feat was achieved by the appellant, an amateur golfer with a low handicap, at the 17th hole of the Durbanville Golf Club, on Saturday 9 December 1989. He was taking part in a championship which was called the Helios Minolta Durbanville Open, after the sponsors of the tournament. The competition was one in which both professional and amateur players participated, commonly known as a "pro-am" event. Next to the 17th green there was on display a brand new 5 speed 2 litre Opel GSI motor car together with a board proclaiming:

> "Hole in one prize sponsored by Reeds Delta."

Reeds Delta is the trade name of the respondent. The appellant claimed the car. The respondent refused to deliver, on the ground that only professional players qualified for the prize.

The appellant brought an action in the Cape Provincial Division for delivery of the car or payment of its value, being R50 000. The respondent defended. The trial Judge (SCOTT J) dismissed the action with costs. The appellant appeals with leave granted pursuant to a petition to the Chief Justice.

The appellant's claim is founded in contract. The pleadings need not be analysed; they tend to obfuscate rather than clarify the true issues in the case as they emerged in evidence and in argument, both in the Court a quo and in this Court. In essence the appellant's case is this: the board at the 17th green was an offer by the respondent of the motor car as a prize for a hole in one; the offer was addressed to all the players in the competition; any player could accept the offer by scoring a hole in one; the appellant, by doing so, accepted the offer; and thus a binding contract was brought

into being. The respondent's defence is as follows: the board was not an offer, but a statement advertising an offer previously made; that offer was limited to professional players only; the appellant, being an amateur, was not entitled to accept it; and consequently there was no contract.

An amateur golfer is "one who plays the game as a non-remunerative or non-profit-making sport". This definition one finds in the "Rules of Amateur Status as approved by the Royal and Ancient Golf Club of St Andrews". A copy of a document bearing that title (1987 edition) was put in as evidence by consent at the trial. In terms of the minute of a pre-trial conference it was common cause that the appellant as an amateur golfer was subject to the Rules. The definition I have quoted appears in the preamble to the Rules. Rule 1 deals with the forfeiture of amateur status and Rule 2 with the

procedure for enforcement and reinstatement. In both instances the provisions are detailed and lengthy.

For present purposes we are concerned only with the opening part and clause 4(a) of Rule 1. They read as follows:

RULE 1

Forfeiture of amateur status at any age.

The following are examples of acts which are contrary to the Definition of an Amateur Golfer and cause forfeiture of Amateur Status:

4. Prizes and Testimonials

(a) Acceptance of a prize or prize voucher of retail value exceeding as follows:

	In G B & I	Elsewhere
For an event of more than 2 rounds	£170	$400 US or the equivalent
For an event of 2 rounds or less	2110	$260 US or the equivalent

or such lesser figure, if any, as may be decided by the Governing Body of ...golf in any country."

It is common cause that in this country the equivalent amount which was operative for the purposes of clause 4(a) at the relevant time was R600 (or there-abouts).

In evidence the appellant acknowledged that he was aware of the rules relating to his amateur status; he knew that if he played a hole in one at the 17th he could not claim the car without forfeiting his amateur status. His stance was that there was nothing in the rules to prevent him from claiming the car and taking delivery of it, as long as he was prepared to forfeit his amateur status by taking the prize; and he testified that he was content to suffer such forfeiture for the sake of getting the car. This had been his attitude, he said, even at the time when he played his shot at the 17th. He explained that he had been alerted to the possibility of winning the prize a week before the

tournament, when he read a report about it in a newspaper. At that time he had already entered for the competition; he had done so as a result of seeing a notice advertising the event and inviting entries which had been posted up at the Porterville Golf Club, of which he was a member. In that notice it was said that the competition carried prizes worth more than R30 000, but no mention was made of a prize for a hole in one. The press report which he saw did, however, mention that an Opel motor car worth R52 000 was on offer as a prize for a hole in one at the 17th, and it did so in unqualified terms, i e without any intimation that the prize would be available to professional players only. Having read the report he concluded that as an amateur competitor he also qualified for the chance of winning the prize.

On the day of the event announcements were made over loudspeakers at the clubhouse, particularly

in the initial stages when competitors were being called upon to tee off at the appointed times. The appellant testified that no announcements were made relating to the prize for a hole in one at the 17th, and he called three other amateur players as witnesses to depose to the same effect. The appellant said that on his first round around the course (this was a 36 hole strokeplay championship) he observed the car and the board at the 17th green. There was then a discussion between him and his wife, who was his caddy for the day, about the fact that the board did not limit the prize to professionals. The unqualified wording of the legend on the board confirmed his belief, the appellant said, that he would be entitled to claim the prize if he achieved a hole in one. That was his state of mind when he again reached the 17th hole on his second round and when he struck his lucky shot. He was surprised and

disappointed, he says, when he was told at the subsequent prize-giving ceremony that his amateur status disqualified him from taking the prize.

In cross-examination it emerged that the appellant had not taken part in a "pro-am" competition before, although he was a golfer with considerable experience. He had taken part in a large number of amateur tournaments and had assisted in the organization of such tournaments at his Club in Porterville. He admitted that he had never competed for any prize in excess of the R600 limit laid down by the rules relating to amateur status, and that in the competitions which he had helped to organize the prizes had always been fixed below that limit. He claimed to have had knowledge of one instance where "a blind eye was turned" on amateurs receiving "gifts" worth more than the permitted limit, and of another where a car had been offered as a prize to

both professionals and amateurs, but on further enquiry it transpired that this was purely hearsay information acquired by him subsequent to the event in question here. Regarding the prize money of R30 000 which had been mentioned in the notice advertising the event, he conceded that no amateur would have been entitled to claim a share in it in excess of the prescribed limit, even if he had made the best score of the day, and even though the notice did not differentiate in this respect between professionals and amateurs. In response to an invitation to explain the difference between that kind of prize money and the prize of a motor car, he said that in the former case the prizes related to the best scores for the tournament as a whole, and that they had already been allocated to professionals and amateurs separately before the commencement of the competition, whereas in the latter case the prize

was a "one-off" affair related to one shot at one hole, which entitled an amateur to claim it if he were prepared to sacrifice his amateur status. Concerning the announcements at the commencement of play he said that he had not listened to them with particular care, even though he knew that such announcements often related to local rules or rules of the day that would apply in the particular tournament. He admitted that he could have made enquiries, before he teed off, from the officials in charge of organizing the tournament, as to exactly what prizes were available to be won by the amateur competitors, both generally and specifically in relation to the motor car on offer at the 17th hole.

I turn to the other side of the story. It was told by a director of the respondent company, Mr Smal, who was also the vice-chairman of the Durban-ville Golf Club at the relevant time. His evidence

may be summarized as follows. Some time before the event he was approached by a representative of the sponsors of the tournament (Helios Minolta) with a proposal that the respondent provide an additional attraction for the tournament in the form of sponsoring a motor car as a prize for a hole in one, with a view to attracting more professional players to take part. After consideration Smal agreed to the proposal, on behalf of the respondent, and in doing so he stipulated that the prize would be available only to professional players. He then instructed the respondent's insurance brokers to procure insurance covering the respondent against the risk of any of the professional participants in the competition scoring a hole in one at the 17th. The insurance was duly effected and the respondent received a cover note issued on behalf of the insurance companies which jointly assumed the risk. By that time it was

known that 15 professional players had entered for the tournament, and the cover note in express terms limited the risk insured against to any one of those players scoring a hole in one.

Smal testified that no golf club is allowed under any circumstances to offer prizes to amateur players which exceeded the limit of a few hundred rand specified in the rules relating to amateur status. He knew this to be the case because of his long association with the Durbanville Golf Club. The Club is affiliated to the Western Province Golf Union, the constitution of which provides that any affiliated club is liable to suspension or forfeiture of its affiliation if it holds any competition, or allows any competition to be held on its course, the conditions of which are in breach of the rules of amateur status. Smal knew from personal experience that the governing body insisted on compliance with

the rules and he would not, he said, have done anything which could have placed his Club's continued affiliation in jeopardy. He had read press reports before the event in which it had not been stated that the prize for a hole in one was limited to professionals, but this did not trouble him, because he knew that the reports had not emanated from the respondent and that its agreement with the main sponsors was that only professionals would qualify for the prize (in fact the press reports had resulted from a press release issued by Helios Minolta); and, in addition, he expected every amateur player with a reasonable handicap to be conversant with the rules.

With regard to the board which was on display with the car on the 17 th green, Smal said that he had been responsible for the wording of the legend on it. He had not considered it necessary to add words to the message, indicating that only pro-

fessional players qualified for the prize, because he believed that the board was merely an advertisement publicizing the fact that the respondent had sponsored the prize. From the point of view of the respondent as a business concern beneficial publicity was the whole object of the exercise. Smal's view was that the respondent's offer of the prize had been made prior to the event, and that it had been made to the main sponsors, Helios Minolta, when the respondent accepted their proposal to sponsor the car as an additional prize. Smal stressed that at the time he had made it clear, on behalf of the respondent, that the respondent's offer was subject to the condition that only professional players would qualify for the prize. On the day of the event, Smal thought, there was nothing further to be done by the respondent in connection with the making of any offer, because, as he put it, "die dag. was nie ons s'n nie". He added,

however, that the respondent did see to it that the announcements which were made before the commencement of play and during the period of the initial tee offs, in so far as they related to prizes, specified that the prize of a motor car at the 17th was for the first professional to score a hole in one. To confirm this the respondent called as a witness the man who made the announcements, Mr Venter. He was an employee of the respondent who worked under Smal, but he acted as announcer at the request of the Club, of which he was a member. He knew that the respondent had confined its offer of the prize, as well as the insurance cover obtained in respect of it, to professional players. His evidence was that in between calling up players to tee off he from time to time made announcements relating to the main sponsors and to the respondent's sponsorship of the prize for a hole in one, for purposes of publicity and prestige.

He said that in every reference to the prize for a hole in one he specifically mentioned that only professional competitors qualified for it. He remained adamant on this point, despite challenging cross-examination.

The above survey of the evidence reveals only one conflict of fact arising from directly contradictory evidence, viz whether it was said in the announcements over the public address system that the prize for a hole in one on the 17th was for professionals only. This issue can be disposed of briefly. In dealing with the evidence on this point in his judgment the trial Judge observed that the appellant and his witnesses, on their own evidence, were practising their chipping and putting while waiting to tee off, and that it was not unlikely that their attention was directed to what they were doing rather than the public announcements which must have

been almost continuous as the players were being called to tee off. On the other hand Venter had good reason, as he explained in his evidence, for making it clear in his announcements that the prize at the 17 th hole was open only to professionals. Accordingly the trial Judge resolved the issue by accepting that such announcements were made but were not heard by the appellant. Counsel for the appellant sought belatedly to argue that the trial Judge had erred in accepting Venter's evidence. The argument is wholly without merit. On the record there is no reason to doubt the truth of Venter's evidence, while the evidence of the appellant and his witnesses on this particular point discloses a number of unsatisfactory features. I do not propose to go into the details. It suffices to say that no grounds have been shown for differing from the trial Judge's acceptance of Venter's evidence. Counsel for the respondent did

not seek to challenge the trial Judge's acceptance of the appellant's evidence that he had not heard the announcements.

The major divergences in the evidence of the two protagonists, the appellant and Smal, relate to the subjective perceptions and intention of each of them in regard to objective facts which are not in dispute. Each could only testify to his own state of mind; neither could directly challenge the evidence of the other. But it is still necessary, of course, to consider whether the evidence of each of them is acceptable. For convenience, I take Smal's evidence first. The gist of it was that he, representing the respondent, never intended to make an offer to the appellant at all. The trial Judge found that the probabilities favoured the conclusion that as far as the respondent was concerned the prize which it had sponsored was available only to professional players,

and that the respondent's refusal to deliver the motor car to the appellant was in good faith and not merely an attempt to renege on an undertaking it had given. The correctness of this finding is not open to doubt. Indeed, counsel for the appellant in argument before this Court (as in the Court a quo) did not dispute that the respondent had intended its offer of a prize to be limited to professional golfers only.

Turning to the evidence of the appellant, the gist of it was that he believed that he could claim the car if he played a hole in one. It is implicit in his evidence that he regarded the board at the 17 th hole as an offer of a prize by the respondent to all the players taking part in the competition and that he believed that the offer was open to be accepted by him. The trial Judge did not comment on this evidence in his judgment, except

perhaps obliquely to the extent of remarking, with reference to the appellant's avowed disappointment at being told at the prize-giving ceremony that he had not qualified for the prize, that "his disappointment is understandable". However, the appellant's evidence on the record is not without blemish. In particular there are passages in it suggesting, perhaps even strongly, that the idea of claiming the car by forfeiting his amateur status had first occurred to him only after he had played the fluke at the 17th hole. It appears, for instance, that after the shot had been played he was advised by an offi-cial and by some of the other amateur players: "Turn pro and claim the car"; that he had not asserted a right to claim the prize until days after the event; and that he had approached Smal after the prize-giving ceremony with a tentative enquiry as to whether it would be possible for him to obtain the

car if he was prepared to relinquish his amateur status. I do not propose, however, to pursue the question whether the appellant's evidence about his state of mind is acceptable. It would be invidious to do so in the absence of any finding by the trial Judge as to the demeanour of the appellant when testifying or the impression created by him as a witness; counsel for the respondent did not argue that the appellant's evidence should have been rejected by the Court a quo or was to be rejected by this Court; and it is not necessary to come to a conclusion on the question for the purposes of deciding the appeal, as will appear presently. In the circumstances I shall simply assume, in what follows, that the appellant's evidence as to his state of mind and his intention at the relevant time is credible and acceptable. On this footing the appellant's intention

was to accept what he believed to be an offer by the respondent to him, while the respondent through Smal had no intention of making any offer to the appellant. The minds of the parties never met; there was not consensus, but dissensus. The whole thrust of the argument for the appellant was in effect to brush this plain truth aside by simply fastening onto the wording on the board at the 17th hole: whatever Smal's subjective intention was, it was urged, the wording on the board conveyed an offer to all the players that any one of them, professional or amateur, who scored a hole in one qualified for the prize; it constituted an offer in unqualified terms of a reward in the classic mould of cases such as Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256 and Bloom v The American Swiss Watch Company 1915 AD 100; and the respondent could not be heard to say that its offer of a prize, was available only to the pro-

fessional players taking part in the competition. The argument is fundamentally fallacious inasmuch as it treats Smal's subjective intention as irrelevant and postulates the outward manifestation of his intention as the sole and conclusive touchstone of the respondent's contractual liability. That is contrary to legal principle. Where it is shown that the offeror's true intention differed from his expressed intention, the outward appearance of agreement flowing from the offeree's acceptance of the offer as it stands does not in itself or necessarily result in contractual liability. Nor is it in itself decisive that the offeree accepted the offer in reliance upon the offeror's implicit representation that the offer correctly reflected his intention. Remaining for consideration is the further and crucial question whether a reasonable man in the position of the offeree would have accepted the offer

in the belief that it represented the true intention of the offeror, in accordance with the objective criterion formulated long ago in the classic dictum of BLACKBURN J in Smith v Hughes [1871] LR 6 QB 597 at 607. Only if this test is satisfied can the offeror be held contractually liable.

There is no need to canvass authorities in support of the view just stated. In the recent case of Sonap Petroleum (SA) (Pty) Ltd (formerly known as Sonarep (SA) (Pty) Ltd) v Pappadoqianis 1992 (3) SA 234 (A) HARMS AJA considered the leading cases and the opinions of academic authors on the topic (at 238I-241D) and stated his conclusion as follows (at 239I-240B):

> "In my view, therefore, the decisive question in a case like the present is this: did the party whose actual intention did not conform to the common intention expressed, lead the other party, as a reasonable man, to believe that his declared intention represented his actual intention? To answer this question, a three-fold

> enquiry is usually necessary, namely, firstly, was there a misrepresentation as to one party's intention; secondly, who made that representation; and thirdly, was
> the other party misled thereby? ..... The last question postulates two possibilities: Was he actually misled and would a reasonable man have been misled?"

In that case the Court was concerned with dissensus relating to the terms of the contract proposed in the offer, but the test whether a reasonable man in the position of the one party would have been misled applies also where it is shown that the other party's declaration was not intended by him to be an offer at all. This is exemplified by the facts and the decision in Spes Bona Bank Ltd v Portals Water Treatment South Africa (Pty) Ltd 1983 (1) SA 978 (A) - see especially at 984D-985H. And in my view it must apply equally when the dissensus relates to the addressee of the offer, i e where the offeror does not intend the offer to be open for acceptance by the

other party, but the latter believes that it is and in that belief accepts it.

In the present case Smal did not intend the

message on the board at the 17th hole to be an offer; nor did he intend the respondent's offer of a prize for a hole in one on the 17th to be open for acceptance by any amateur player such as the appellant. The appellant (on the assumption made earlier) believed that the message on the board was an offer and that it was open to him to accept it. The dissensus between the parties thus relates to both the offer and its addressees. Notionally the two aspects of dissensus are discrete, and logically the second can arise for consideration only if the issue in respect of the first is resolved in favour of the appellant. They were argued separately. So, there was much debate in argument as to whether the words on the board, objectively speaking, and having regard

to the surrounding circumstances, constituted an offer or a mere advertisement of an offer previously made. I do not, however, consider it to be a profitable exercise to pursue the question thus formulated as a separate issue, nor to dissect the dissensus in this case into its two aspects and to deal with these separately. The decisive question is this: would a reasonable man in the position of the appellant have considered the words on the board to be an offer which it was open to him to accept? Posed in this way the question rolls the two aspects of dissensus into one enquiry, but I can see no objection in principle to dealing with the particular facts of this case in this fashion. It is certainly the most convenient way of resolving the fundamental issue in the case, and it is on this basis that I proceed to consider the facts.

To answer the question I have posed I shall

examine the appellant's conduct and test it against the objective criterion of reasonableness.

It will be recalled that the appellant first became aware of the offer of a prize for a hole in one when he read a report about it in a newspaper and noticed that the prize was not stated in the report to be available only to professional golfers. His evidence was that he concluded that as an amateur competitor he also qualified for a chance of winning the prize. In my opinion there can be no doubt that the appellant was unreasonable in coming to that conclusion simply on the strength of the newspaper report. The report, as the appellant admitted in cross-examination, was no more than an ordinary reporter's comment contained in the sporting columns of the paper and it did not disclose the reporter's source of information. Moreover, and more importantly, the report also mentioned the prize money put

up by the sponsors of the event, without stating that it would only be available to the professional competitors. The appellant, as we have seen, knew full well when he saw in the notice advertising the event that prize money of R30 000 was offered by the sponsors, that he could not qualify for those prizes (at least not in excess of the prescribed limit). The report could not have caused him to think that the prize for a hole in one stood on a different footing. It could not reasonably have induced in his mind a belief that the sponsors of the motor car intended to put up that prize for amateurs as well as professionals. Of course, since the report did not emanate from the respondent, it was in any event no representation by the respondent as to its intention. But I have discussed the appellant's reaction to it in order to show that his belief as deposed to by him was wholly unwarranted and unreasonable at its very

inception.

Accordingly, when the appellant arrived at the course on the day of the event, he had no real ground for believing that he could qualify for the prize of the motor car. But he did nothing to find out what his position was. He paid no particular attention to the announcements over the public address system, although he knew that they frequently related to the rules of play for the day. Had he taken care to listen, he would have heard Venter's statements that only professionals qualified for the hole in one prize. He made no enquiries, although he knew that officials of the Club, who were in charge of organizing the event, were readily available to answer any query about the prizes on offer in the tournament. So, when he set off on his first round he still had no valid reason for believing that he could qualify for the prize. And at that stage he

had no reason to think that any further information would be forthcoming along the course.

The next and crucial stage in the enquiry is the appellant's arrival at the 17th hole on his first round. His evidence, it will be recalled, was that he read the words on the board at the green, saw that the words did not limit the prize to the pro fessional players, and discussed the matter with his wife. His belief was confirmed that he could claim the prize if he succeeded in playing a hole in one. The fact that his existing belief, which he says was confirmed, had been baseless, must necessarily have a negative impact on the assessment of the reasonable ness of the confirmation that he found in the words on the board. But for convenience I shall leave that consideration out of account in the further examina tion of the appellant's mental reaction to the message on" the board.

That reaction must be tested against the background of the appellant's experience as a competitive amateur golfer. He knew the provisions of the rules relating to amateur status. He knew that when clubs organized competitions for amateurs the prizes were invariably fixed at a level of value below the limit prescribed by the rules. By necessary inference from his evidence he had had no experience or knowledge prior to the event in question of any instance where the rules had been breached. In regard to the hearsay information he obtained after the event, he himself regarded the one instance to which he referred as a case where "a blind eye was turned" to a moderate transgression of the prescribed limitation on the value of prizes. The fact that he had not previously participated in a "pro-am" competition should have placed him on his -guard in considering his position as an amateur in

relation to the prizes on offer. He knew that the Durbanville Golf Club had organized and was in control of the competition and that the role of the sponsors of the prizes was no more than to finance the prizes for the promotion of the prestige of the event and of beneficial publicity for themselves. He must have known that the allocation of the prizes and any conditions attached thereto had been negotiated between the Club and the sponsors before the commencement of the event. As a reasonable man he should have realised that the prizes on offer were not simply a matter between the competitors and the sponsors, but that the Club had a vital interest in the matter as well.

Against this background there can be no doubt, in my judgment, that the appellant acted unreasonably in regarding the wording on the board at the 17th hole as an offer by the respondent which

was open to him, as an amateur competitor, to accept. Two aspects, in particular, of his evidence demonstrate the unreasonableness of his subjective belief. The first is his inability to provide a sensible explanation for the distinction which he drew in his mind between the R30 000 prize money sponsored by the main sponsors and the motor car sponsored by the respondent. He was compelled to acknowledge that he could not have claimed the first prize for the best overall score of the day if he had achieved it, even if he were prepared to sacrifice his amateur status. The reason is obvious: no one could have believed that an amateur player qualified for that prize. And the reasons why no one could have believed that must surely apply also to the prize of a motor car for a hole in one. The appellant's attempts to differentiate between the two situations, as described earlier, are too irrational to bear scrutiny.

Accordingly it was manifestly unreasonable for the appellant to conclude, from the mere fact that the wording on the board did not expressly limit the prize to be won to the professional players, that it was an offer addressed to the amateur players as well.

The second aspect of the appellant's evidence relates to his avowed preparedness to sacrifice his amateur status for the sake of winning the prize. The appellant spoke so glibly of giving up his amateur status that it conjures up the picture of a man discarding an old worn-out jacket for which he has no further use. But of course the forfeiture by an amateur golfer of his status as such is a matter of much greater gravity than that. The appellant's attitude may have been in conformity with the letter of the Rules of the Royal and Ancient, but I have no doubt that it flies in the face of the spirit of

those Rules. The point of these observations is not to criticize the appellant for his attitude. I am concerned with the enquiry whether the appellant's belief that the respondent was extending an offer of a prize to him as an amateur was reasonable. The point, then, is this: was it reasonable to believe that the respondent intended to create an opportunity for an amateur player to collect the prize of a car by forfeiting his amateur status? The answer, in my judgment, is clear. The appellant may have been prepared to brush aside the dichotomy between professional and amateur players which pervades the golfing world, but he had no reason to deduce from the wording on the board at the 17th hole that the respondent's intention was the same.

In the final result my conclusion is that a reasonable man in the position of the appellant would not have believed that the respondent intended the

board at the 17th hole to constitute an offer by the respondent which was open for acceptance by the appellant. It follows that the Court a quo's dismissal of the appellant's action was correct. The appeal is dismissed with costs.

A S BOTHA JA

HEFER JA
VIVIER JA
EKSTEEN JA
KRIEGLER AJA

CONCUR