

YOUR AGREEMENT v YOUR INTENTIONS AT THE TIME

Auckland Park Theological Seminary v University of Johannesburg (1160/2018) [2019] ZASCA 24 (25 March 2020)

It happens so often that parties conclude a written agreement, stating that the content thereof embodies the full extent of their obligations, and then afterwards, when problems arise, they seek to introduce details that they thought were common cause. In the present case, the university leased property to a company under a registered long term lease. When the company ceded these rights to a third party which sought to effect certain alteration, it was suddenly argued that the initial lease was unique and particular to the parties involved, and therefore incapable of cession. The judgment illustrates the difficulties and highlights again how important it is to make sure that agreements contain a proper (and informed) record of the parties' intentions.

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

FACTS

The University of Johannesburg (UJ) is the registered owner of Portion 1 of Erf 809 Auckland Park Township. In April 1996 the UJ's predecessor in title (the Rand Afrikaans University (RAU)) applied to the Minister of Education in terms of the Rand Afrikaans University Act for consent to let the property. The Minister granted his approval.

In December 1996, UJ and the Auckland Theological Seminary (ATS) concluded a written notarial long lease in respect of the property and the lease was registered against the title deed. In March 2011, ATS and Wamjay Holding Investments (Pty) Ltd (Wamjay) concluded a written cession agreement in terms of which the former ceded its rights (but not its obligations) in the lease to the latter.

The cession was registered by Wamjay against the title deed of the property in April 2012 and it thereafter took occupation of the property.

During June 2012 Wamjay submitted detailed architectural plans to the local authority for approval for the purposes of constructing a pre-primary, primary and high school with an Islamic ethos on the property. This was followed with drawings and artists' impressions of the proposed school(s).

In October 2012 UJ purported to cancel the lease on the basis that, amongst other things, on a proper interpretation of the lease, the rights in the lease were *delectus personae** and personal to the ATS and therefore incapable of cession. (*A person's entitlement to dispose freely of his/her personal rights is restricted in circumstances where one is dealing with a *delectus personae*. This means that the nature of a particular juristic act (such as a contract) is such that it excludes the transfer of the personal right created by it because the nature of the legal relationship between the parties is such that, legally, it will only be recognised as such if it binds the determined specific creditor and debtor. Under these circumstances, the identity of the parties becomes part of the substantive content of the juristic act.)

ATS, in ceding its rights had accordingly, so UJ contended, repudiated the lease, which repudiation had been accepted by UJ.

UJ therefore issued summons for: (a) the eviction of ATS and Wamjay and all persons occupying the property through them; and (b) the cancellation of the notarial long lease against the title deed of the property.

The trial court found in favour of UJ, concluding that 'the lease was one of *delectus persona*'.

With the leave of the trial court, ATS and Wamjay appealed to the full court, who were in agreement that the appeal should fail. ATS and Wamjay then appealed to the Supreme Court of Appeal.

HELD

- So much of the evidence presented to the trial courts and also the Supreme Court of Appeal was plainly inadmissible because of the application of the integration (or *parol evidence*) rule. This rule provides that where a document was intended to provide a complete memorial of a juristic act, extrinsic evidence may not contradict, add to or modify its meaning.
- This means that, in general, when a contract has been reduced to writing, the writing is regarded as the exclusive embodiment or memorial of the transaction and no extrinsic evidence may be given of other utterances or acts by the parties which would have the effect of contradicting, altering, adding to or varying the written contract. In other words, the extrinsic information becomes “legally immaterial for the purpose of determining what are the terms” of the agreement.
- On face value, any contractual rights may be transmitted unless their nature involves a *delectus personae* or the contract itself shows that they were not intended to be ceded. The restriction on cession imposed by the *delectus personae* concept is simply a manifestation of the general principle that rights may freely be ceded provided the cession does not disadvantage the debtor: “... speaking generally, the question of whether one of two contracting parties can by cession of his interest, establish a cessionary in his place without the consent of the other contracting party depends upon whether or not the contract is so personal in its character that it can make any reasonable or substantial difference to the other party whether the cedent or the cessionary is entitled to enforce it.”
- In the present matter, there was nothing in the lease itself that showed that ATS’ rights under the lease rights were not intended to be ceded. UJ sought to meet that difficulty by adducing oral evidence, under the guise that such evidence was being introduced as to context. Properly construed, however, such evidence was introduced to add to, vary or contradict the general words of the lease. By virtue of the integration or *parol evidence* rule, such evidence was plainly inadmissible and should have been disallowed by the previous courts that heard this matter.
- The parties expressly agreed in the agreement under question that no party may rely on any warranties or representations not expressly included in the lease agreement. They agreed that the written lease is intended to be the sole memorial of the agreement between themselves. The lease agreement contained no express or implied provisions to the effect that rights therein contained are personal to ATS. On a proper interpretation, the rights on the lease were not *delectus personae* and personal to ATS and were capable of cession.

CONCLUSION

In the result the appeal was upheld.