

SUMMARY OF THE JUDGMENT

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>> PROPERTY LAW UPDATE

VERBAL LEASE RISKS A CHALLENGE TO TERMS OF AGREEMENT

Mason v Swanepoel (4505/2013) [2016] ZAFSHC 28 (19 February 2016)

Liability for protracted renovations effected to a property can put a landlord in a tight spot if held liable for the costs thereof. This is exactly the claim disputed in this ruling, where the tenant argued that the verbal agreement with the landlord included a provision that the latter would repay the costs upon termination of the agreement.

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

FACTS

In January/February 2011, Mason and Swanepoel entered into an oral agreement in terms of which Mason was granted the right to stay in a farmhouse called Wetherun on the farm Pandam, on which the Swanepoel family lived. The conditions of the agreement were that Mason would restore Wetherun, at his cost, to its original condition or to a habitable condition. In return, Mason would occupy the house and/or live in it for as long as he wanted. Mason was a Canadian citizen and had temporary residence in South Africa. As a freelance journalist, he was obliged to travel frequently and was in South Africa for a few months at a time.

During May 2011 until 14 February 2013, Mason spent some R230,000.00 towards the useful and/or necessary restoration of Wetherun. During this time, Mason stayed with the Swanepoel family, sometimes for long periods.

In February 2013, Swanepoel summarily terminated Mason's occupation of the farmhouse. This followed on increasingly uncomfortable relations between them, the last straw being when Mason made blasphemous utterances to Swanepoel's son.

Mason argued that Swanepoel unlawfully cancelled the agreement and that he was entitled to damages in respect of the cost of the renovations, and/or that he was entitled to the costs based on the unjust enrichment of Swanepoel.

Swanepoel defended the matter and although admitting the agreement, stated that the terms thereof were different to those claimed by Mason. He argued that the agreement was that Mason would restore/renovate Wetherun and that he would not be obliged to compensate Mason for any costs incurred except if the farm were to be sold. He also raised the fact that the agreement with Mason was invalid for contravention of the Subdivision of Agricultural Land Act.

The issues before the court were thus:

- Was the agreement void for being in contravention of section 3 of the Subdivision of Agricultural Land Act?;
- Was it an express/tacit/implied condition of the agreement that Mason would be compensated upon termination of the contract by either party, or did the parties agree that compensation would be paid only upon the sale of the farm?;
- Was Swanepoel entitled to cancel the agreement because Mason made certain blasphemous statements?;
- Did Swanepoel repudiate the agreement without just cause and was he therefore in breach?; and
- Whether Swanepoel was unjustifiably enriched as a result of the renovations to Wetherun.

HELD:

Applicability of Subdivision of Agricultural land Act

- The preamble to the Act states that its purpose is to “control the subdivision and, in connection therewith, the use of agricultural land”.
- Section 3(d) of the Act stipulates that subject to the provisions of section 2:

“no lease in respect of a portion of agricultural land of which the period is 10 years or longer, or is the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee, either by continuation of the original lease or by entering into a new lease, indefinitely or for periods which together with the first period of the lease amount in all to not less than 10 years, shall be entered into ... unless the Minister has consented in writing”

- One of the objects of the Act is to prevent subdivision of agricultural land which results in fragmentation of the land so as to render farming thereon uneconomical or unsustainable.
- The granting of occupation rights to Mason did not fall within the contemplation or purview of the Act. The portion of land on which Wetherun stood was not intended to be subdivided or to be used for the purpose of farming. The agreement concluded by the parties therefore did not amount to a lease as contemplated by the Act.

Unjust enrichment

- The farm Wetherun belonged to a Trust, of which Swanepoel was a trustee.

- As such it was the Trust which would be unjustifiably enriched by the improvements made and should have been joined to the proceedings. A claim based on unjust enrichment against Swanepoel could therefore not be sustained.

Breach of contract

- It was clear that initially a good friendship existed between the Swanepoel family and Mason and Mason stayed with the family for long periods whilst Wetherun was being renovated. This gradually soured and ended in Swanepoel chasing Mason off the farm.
- When Mason was ordered to leave the farm, he took it as an unjustified repudiation by Swanepoel of the agreement. Swanepoel however pleaded that he was entitled to terminate the contract as a result of the blasphemous utterances by Mason.
- However, the facts show that it was not agreed between the parties that the making of blasphemous statements would be a ground for termination of the contract, nor could it be said to be an implied or tacit term of the contract as Swanepoel conceded that his religious beliefs did not play a part in the conclusion of the contract nor was it agreed that he could cancel the contract if Mason made blasphemous statements.
- It followed that it was not reasonable or rational, in the absence of any agreement to this effect, to import such utterances into the contract and rely thereon to cancel the contract, however devout a Christian Swanepoel was.
- Swanepoel accordingly unlawfully terminated the agreement.
- With regard to the question whether Mason was entitled to damages, the evidence and probabilities favoured Mason's version. Swanepoel's version of the agreement - that Mason would not be paid any compensation if the contract was terminated - was illogical and made no economic sense, given that Mason would have no prospect of recovering his money unless the farm was sold.

Mason was therefore entitled to damages arising from the unlawful cancellation of the agreement being the damages in respect of the renovations to the farmhouse Wetherun.

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