

SUMMARY OF THE JUDGMENT

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>> PROPERTY LAW UPDATE

LANDLORD TAKES OVER TENANT'S DUTY TO MAINTAIN CONDITION OF PROPERTY – WHAT CLAIM ARISES?

Reynecke v Nel (A281/2011) [2015] ZAFSHC 243 (3 December 2015)

To prevent his cattle traipsing across fences to the farms of others, the landlord in this matter attended to repairs of fences on the farm leased to a tenant, although this was the tenant's duty in terms of the lease agreement. On termination of the lease, when the landlord instituted a claim for the costs thereof on the basis that the farm was not returned in the same condition it was in at the lease commencement, the tenant could validly counter by saying that the farm was in an even better condition as a result of the new fencing. What was the tenant's correct cause of action?

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

FACTS

Reynecke and Nel entered into a verbal lease agreement in terms of which Reynecke leased a farm from Nel for one year. One of the terms of the verbal agreement was that upon the expiry of the lease, the farm would be returned to Nel in the same condition in which it was at the commencement of the contract.

Following the expiry of the lease and evacuation of the farm by Reynecke, Nel issued summons against him for recovery of some R1,5 million being the costs of repairs to fences, gates and poles. Nel maintained that the farm was not returned to him in the same state of repair as it was when Reynecke took occupation.

Reynecke defended the matter and argued that he returned the farm to Nel in a much better condition than it was when he took it over. The Magistrates' Court however found against Reynecke and he appealed to the High Court.

The facts presented to the High Court were that, at the commencement of the lease, the farm was livestock secure in that the fences separating various camps were able to keep livestock securely inside relevant camps. However, towards the end of the contract it came to Nel's attention that his livestock and that of his son had wandered off and strayed onto Reynecke's land because the fence was hanging low and/or lying flat on the ground. Nel thereafter obtained fencing from a contractor and with the help of two of his

employees, personally repaired the fencing despite it being Reynecke's contractual responsibility to attend to such defects. All the work was done during the currency of the lease.

Reynecke argued that Nel did not prove that the farm was not in a better condition when Reynecke left the farm. Reynecke alleged that what Nel was trying to argue (but did not plead in his papers) was for a claim based on enrichment.

Nel however maintained that his claim, based on the allegation that Reynecke failed to return the farm in the same condition in which it was at the commencement of the lease, did not restrict his claim to the condition of the farm when the lease terminated and that, properly interpreted, it accommodated Nel's evidence as to the repairs and/or replacements effected prior to the expiry of the contract.

HELD:

- In a civil action parties stand and fall by their pleadings as filed with the trial court insofar as pleadings define issues between litigants. The onus was thus on Nel to prove his claim on the balance of probabilities.
- Absolution from the instance is an appropriate order where, at either the close of the plaintiff's case or the close of the case when both parties have had the opportunity to present whatever evidence they consider to be relevant, the evidence before the court is insufficient for a finding to be made against the defendant. The defendant gets absolved from the instance. It is not a bar to the plaintiff reinstituting the action in so far as it has not prescribed.
- Nel's cause of action was the alleged failure on the part of Reynecke to restore the farm to Nel in the same condition in which it was upon commencement of the lease. The determinative stage for the purposes of the claim in the instant matter was, therefore, the end of the lease when Reynecke handed the farm back.
- On the facts, it was essential for Reynecke to show that at the commencement of the lease the fence around the relevant camps could keep livestock securely inside the camps in question and that at the end of the contract that was no longer the case. This was impossible as Nel himself had fixed the fences.
- It followed that the evidence did not support the claim made by Nel.
- However, on the evidence available, it could not be said that Nel had no claim against Reynecke and Reynecke's prayer for dismissal of the claim could not be entertained.

Absolution from the instance was an appropriate order in the circumstances and the court replaced the Magistrates' Court's order accordingly.

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