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A signed contract is presumed to set the terms of an agreement in stone. But can such a contract subsequently be challenged based on prior verbal discussions, possible tacit understandings and perceived ambiguity or vagueness?

CHALLENGING A SIGNED CONTRACT BASED ON PRIOR VERBAL DISCUSSIONS

By LEANI FERREIRA

The scenario: a potential buyer of a property in a golf estate in its development stage is made to believe that a clubhouse of impressive proportions will form part of the finished development. The sale agreement the purchaser subsequently signs confirms that a clubhouse will be erected. But when later completed, the structure serving as the clubhouse is found to be, in the view of the property purchaser, far from what was expected, an expectation created by the sales pitch that painted a picture of an upmarket, furnished facility, as well as by the proposed design contained in a newsletter sent to buyers by the developer a while after building work on the estate had begun.

This is a broad outline of the facts presented to the court in *Kingswood Golf Estate (Pty) Ltd v Witts-Hewinson & Another.* The case raised the issue, among other things, of what extrinsic evidence (information not provided in the signed contract) could be adduced (cited as proof) to support the case of the claimant. The disgruntled buyers relied on the sales communications and a newsletter to argue that the agreement was for the erection of specifically an upmarket and furnished clubhouse.

It is common practice for parties to discuss and negotiate various aspects of an agreement before drawing up a written document and signing it. The question is: should uncertainty arise later around the interpretation of any clause in the agreement, can the conversations and discussions that preceded the conclusion of the agreement be used to amplify the content of the agreement?

In the golf estate case, for example, could the purchaser argue that the sales pitch details and newsletter were part and parcel of the agreement, entitling him to claim against the developer on the basis of a breach of contractual provisions? (This is often a preferred basis for instituting such a claim, rather than basing it on delictual grounds, as the proof required for a successful claim in the former instance is generally easier to provide.)

In a case such as this, the law makes provision for rules of interpretation of written agreements. One of these, pertinent in this instance, is the parol evidence rule.

THE PAROL EVIDENCE RULE

In essence this rule says that if a document was intended to provide a complete memorial of an agreement, extrinsic evidence may not later be adduced to contradict, add to or modify its meaning. The rule thus preserves the integrity of an agreement that has been reduced to writing and aims to prevent a party to such an agreement from seeking ways to redefine the terms of the contract. (Usually, the aim of the party seeking to adduce extrinsic evidence is to enforce the contract as re-defined or, at any rate, to rely upon the contractual force of the additional or varied terms, as established by the extrinsic evidence.)

The effect of the rule is to ensure that once an agreed transaction is reduced to writing, all other discussions between the parties regarding the terms of the agreement become irrelevant. The terms of the agreement are regarded as only those that appear in the contract itself.

However, extrinsic evidence is admissible to assist a court in determining the meaning of the words, expressions, sentences and terms used in an agreement.

EXCEPTIONS

As is the case with many rules of law, there are exceptions. The parol evidence rule only applies if the parties originally intended for the written contract to record the full extent of their agreement. Therefore, in instances where a contract is only a partial record of the transaction, the rule does not apply and evidence may be given to interpret the agreement between the parties or to confirm the terms of the contracts. However, in the golf estate case, the transaction was governed by the provisions of the Alienation of Land Act 68 of 1981 which requires that an agreement of sale of land must be in writing and signed by the parties. It was therefore apparent that there was no question in this case of the agreement being partially written and partially verbal.

In this case, the court was asked by the buyers to take the sales promises and newsletter into account to conclude that the agreement between the parties included that an upmarket, furnished clubhouse

would be erected. They held that this was necessary because the clause in the agreement dealing with this aspect was vague. However, the court refused to do so because it contravened the parol evidence rule.

THE PAROL EVIDENCE RULE IN GENERAL

Generally speaking, where it affects the everyday negotiation of agreements, it is therefore accepted that if the parties in an agreement have negotiated the terms of the contract and reduced it to writing so as to constitute a complete record of their agreement, then any other talks and discussions in respect of the transaction cannot be allowed to aid in the interpretation of the contract in a way that would vary or amend its terms.

The lesson for those signing contracts: When negotiating any agreement, make sure to note all necessary details and, if required and agreed to by the signatories, have these recorded in the written documents. If both parties agree to the content, and sign, the contract stands and there is little chance of one party being able to contest the terms of the contract at a later stage.

FIREPROOFING FARM LAND AGAINST FIRE CLAIMS

By MADELEIN WILLIAMS

The purpose of the Veld Fire and Forest Fire Act 101 of 1998 ('the Act') is to help prevent and combat veld, forest and mountain fires throughout South Africa by laying out very specific requirements for land owners to adhere to in avoiding the occurrence and spread of such fires.

The Act defines 'veld fires' as any fire on any area of land, whether cultivated or uncultivated, including any building or structure on or adjacent thereto, to which the Fire Brigade Services Act does not apply. As the Fire Brigade Services Act relates to land situated within the urban limits of a town serviced by the municipal fire brigade, veld, forest and mountain fires are those deemed to occur in open countryside; that is, land beyond the urban edges of a village, town or city.

In broad terms, the Act places the responsibility on all land owners beyond urban boundaries to take all possible practical measures to ensure that the likelihood of a fire either starting on their land or spreading through their land is limited. The Act states that a land owner is required to, amongst other things:

- do everything in his/ her power to prevent or stop the spreading of fire on his/ her land; and
- ensure that, in his/her absence, responsible persons are present on or near his/her land.

As to specifics, the Act requires a land owner to:

- prepare and maintain firebreaks between his/her own land and an adjoining property, unless an exemption is granted by the Minister; and
- have equipment, protective clothing and trained personnel for extinguishing fires.

OFFENCES, PENALTIES AND CHARGES

These, and all other obligations imposed by the Act, are not limited to the registered owner(s) of the land. A lessee or any person in physical control of the land is also required to comply. The latter notwithstanding, should any fines be imposed or costs charged by the local authority in respect of fire-fighting services provided, such monies will be charged to the municipal account of the land owner. The Act sets out, in sections 24 and 25, the penalties that may be imposed should a land owner contravene the regulations.

The maximum amount of the fine may be put into the Government Gazette and changed from time to time to take account of inflation.

Apart from the fines, which are punitive measures, the land owner will also be liable for charges in respect of services delivered by the municipal fire brigade, pertaining to the use of water, vehicles and personnel.

CIVIL LIABILITY FOR DAMAGES

This relates to the presumption of negligence on the side of the owner of the farm land on which the fire started, and shows the extent of liability on the part of the land owner when it comes to civil liability for damages.

Section 34 (1) of the Act states that if a person who

The prevalence of veld fires appears to be increasing as urban encroachment on rural areas, the spread of informal settlements, rising unemployment and poverty, and climactic change provide a perfect storm for conditions that require land owners to be extra vigilant in protecting their land, and livelihood, against the growing threat of fire. The Veld Fire and Forest Fire Act 101 of 1998 lays out the measures required for land owners to guard against fire, and subsequent claims.