

RELYING ON AN AGREEMENT WITH A PREVIOUS LAND OWNER TO DRIVE OVER A PROPERTY

Legemaat N.O and Others v Arplorox (Pty) Ltd and Others (60278/2019) [2021] ZAGPPHC 569 (30 August 2021)

In an almost wild disregard for a farm owner's rights, the mining company in this matter used a dirt road on a farm to stockpile and transport coal to a siding, knowingly without consent from the owner. The owner's efforts to manage the dispute came to nil and it was ultimately forced to apply to court. There the mining company asserted their rights by claiming that there was indeed an existing oral agreement with the farm's previous owner, allowing it to use the road. The court made short strife with this argument, confirming that in order for any right to the use of immovable property to bind future owners, a servitude registered against the title deed is the way to go. The oral agreement was also not proven. The judgment highlights how important it is to formalise arrangements where your personal or business endeavours require of you to use parts of land that belong to another.

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

FACTS

The trustees of the Vaalbank Trust (the "Trust") owned three adjacent agricultural properties on which it planted maize to be used as fodder for dairy cows. There is: (i) a railway siding situated on an adjoining property (that belongs to the government) on the farm's southern boundary; (ii) a public road which runs across the Trust's farm; and (iii) a private track which runs from the siding to the public road, across the farm.

The only servitude registered against the title deed of the Trust's farm is an Eskom power line and substation servitude. No right of way servitude is registered over the farm.

In November 2016, the Trust attended a community engagement meeting regarding Arplorox's intention to stockpile and transport coal to the siding. The meeting was intended for Arplorox to reassure community members that they would take steps to ensure the community was not negatively impacted by their activities.

At this meeting, the Trust confronted Arplorox and informed them that there was no access road from the siding to the public road over the farm and that Arplorox was not entitled to utilise the private track across the farm for the purposes of transporting coal to the public road.

Despite this meeting and without the permission of the Trust, Arplorox proceeded to: (i) utilize the track for purposes of transporting coal from a mine to the siding; (ii) erect two weighbridges on the farm, alongside the track; (iii) cut trees down situated on the farm; (iv) widen and compact the surface of the track (allowing for two coal trucks to travel next to each other); (v) erect a water tank on the farm alongside the track; (v) construct an unlined dam on the farm; and (vi) erect a fence on the farm.

On various occasions, the Trust approached Arplorox to resolve differences. The Trust insisted that Arplorox remove all structures on its property and find an alternative transport route. When the Trust attempted to inspect the structures erected on the farm, it was repeatedly met with violence, intimidation and aggression by Arplorox's employees or representatives.

The Trust then brought an application to Court for an order obliging Arplorox to: (i) hand over the undisturbed possession of a private road on the Trust's property; and (ii) remove all structures erected by Arplorox on the Trust's property. Arplorox resisted the action and argued that the Trust had to offer a lease or purchase option to it in

The Big Small Firm

stbb.co.za

Commercial Law | Conveyancing | Development Law | Labour Law | Estates | Family Law | Litigation | Personal Injuries & Third Party Claims

Cape Town
Claremont
Fish Hoek
Helderberg

T: 021 406 9100
T: 021 673 4700
T: 021 784 1580
T: 021 850 6400

Blouberg
Tyger Valley
Illovo
Fourwavs

T: 021 521 4000
T: 021 943 3800
T: 011 219 6200
T: 010 001 2632

Centurion
Bedfordview
East London

T: 012 001 1546
T: 011 453 0577
T: 043 721 1234

respect of the land, questioning the Trust's ownership of the farm; and relied on an agreement for the use of the track that existed between the farm's previous owner and MS Rail. It was shown that the siding had previously been leased by MS Rail and they had graded and used the track with the permission of the previous owner, to be accessible for light delivery vehicles for security personnel. It was a mere plantation dirt road at the time.

HELD

Agreement with the previous owner

- It is trite that in order for any right to the use of immovable property to bind future owners, either: (i) a servitude must be registered against the title deed of the property (via court order or agreement); or (ii) a lease with the former owner must be proven and accordingly entitle such a lessee to invoke the *huur gaat voor koop* rule. (* See our note below)
- Arplorox provided no evidence of a servitude or a lease. The agreement that MS Rail had with the former owner was an informal arrangement. Even if it was a formal agreement or lease, no evidence was produced showing that this right had been ceded to Arplorox from MS Rail.
- Arplorox, knowing that the Trust was the owner of the property, acted in bad faith, went ahead and invaded the Trust's farm, knowing full well it was not legally entitled to do so and without any regard for the lawful owner of the farm.

CONCLUSION

Arplorox therefore had to hand over the undisturbed possession of the road traversing the property of the Trust and remove all structures erected by itself. The Court further interdicted them from utilising the road.

(* Whether the maxim *huur gaat voor koop* also applies automatically to non-residential leases, has not been formally resolved. This point was not relevant here though.)