

REPUDIATION MUST LEAVE NO DOUBT

Pretorius v Bedwell (659/2020) [2022] ZASCA 4 (11 January 2022)

When the relationship between contracting parties sour, there is often a pointing of fingers as to which one was the cause of the ultimate failure of the agreement. It is important to identify the 'guilty' one, because the innocent party then has certain rights. In this matter, a purchaser reneged on an agreement with the seller to retransfer the property to him (the erstwhile seller) and sold the property to a third party. As a lot of time had passed, questions of prescription arose, with one party claiming that his actions showed that he had repudiated the agreement and that, since more than three years had elapsed, the claim had prescribed. The court here clarified what type of conduct would be necessary to prove that there indeed was repudiation.

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

FACTS

Bedwell was the owner of a holiday home in Oyster Bay in the Eastern Cape. In 2007 he needed money to complete a guest house project he had started. In order to gain access to further funds, he approached his brother-in-law, Pretorius, for a loan. The property would be tendered as security.

Eventually, however, they concluded a written agreement in terms of which Pretorius would purchase the property for an amount of R1,850,000. Pretorius would access a loan in respect of which a mortgage bond would be passed over the property. Bedwell would continue to occupy the property and would remain liable to maintain the property at his own cost and pay all rates and taxes. When Bedwell qualified for a mortgage loan in his own name, Pretorius would transfer the property back to Bedwell.

Pretorius paid the purchase price and the property was registered into his name on 18 October 2007.

Soon thereafter the relationship between them soured. On 8 April 2008, Bedwell visited the property in the company of friends. When this came to Pretorius' attention, he phoned Bedwell and instructed him to leave the property immediately. Bedwell and his friends only left the property the next morning. On the same day, 8 April 2008, Bedwell sent a letter to Pretorius (via fax, it appears) in which he raised his concerns relating to Pretorius' attitude. In the letter he reminded Pretorius of the existence of the agreements between them, some of which was verbal, and reminding Pretorius that the assets in the house were his (Bedwell's). He asked Pretorius to respond, but no response was forthcoming.

Instead, Pretorius approached his attorneys and, through them, sent a letter to the security company responsible for security at the house and to his estate agents, informing them that Bedwell would no longer be entitled to occupy the property. Bedwell received a telephone call from the security company wherein he was informed of the letter the security company had received instructing it to deny him access to the property.

Then, during 2009, Pretorius sold the property to a third party. Bedwell only learned of the sale after his son had attended a birthday party at Pretorius' house on 8 July 2010, when he (the son) noticed furniture at Pretorius' house which had been in the Oyster Bay house.

On 11 October 2011, Bedwell instituted action in the High Court, Pretoria (the trial court) against Pretorius for damages in the amount of R2,040,000. He based his claim on the repudiation of the contract by Pretorius, in that he had sold the property and the furniture. In Bedwell's papers before the court, he stated that he became aware of the repudiation during 2009 when he learnt that the property had been sold to a third party, alternatively when he was

evicted from the property by Pretorius.

Pretorius stated, on the other hand, that he had repudiated the contract on 8 April 2008 (when he evicted Bedwell from the property) and since Bedwell issued summons on 11 October 2011 only, the claim had prescribed, having been brought after three years.

By agreement the special plea only proceeded to trial as a separated issue. The trial court upheld the special plea. An appeal to the full Court (Pretoria High Court) was successful. The trial court's decision was overturned and replaced with an order dismissing the special plea of prescription.

The issue in the Supreme Court of Appeal was whether the order of the full court was correct.

HELD

- The onus was on Pretorius to prove that the claim of Bedwell had prescribed. This included proof of when prescription had commenced.
- Pretorius pleaded that he had repudiated the contract on 8 April 2008 when he allegedly evicted Bedwell from the property. According to him, this was the date upon which the debt arose, and Bedwell was, at that date, in a position to reject the repudiation or accept it, cancel the contract and claim damages. Pretorius did not plead that the repudiation had been accepted or that the contract was cancelled.
- Repudiation of a contract occurs where one party to the contract, without lawful grounds, indicates to the other party, whether by words or conduct, a **deliberate and unequivocal** intention to no longer be bound by the contract. In such event, the innocent party will be entitled to either: (i) reject the repudiation and claim specific performance; or (ii) accept the repudiation, cancel the contract and claim damages. If he or she elects to accept the repudiation, the contract comes to an end upon the communication of the acceptance of the repudiation to the party who has repudiated. Only then does a claim for damages arise. Accordingly, **prescription commences to run from that date**.
- Applying these principles to the present facts meant that Pretorius' plea of prescription had to fail. First, in the absence of an allegation that the repudiation of 8 April 2008 had been accepted and the contract cancelled, the special plea did not disclose a defence in law. Secondly, in any event, on Bedwell's evidence, it was doubtful that what occurred on 8 April 2008 objectively amounted to a repudiation by Pretorius; but even so, Bedwell clearly did not accept such a repudiation on that date. It follows that Pretorius did not prove that the running of prescription commenced on 8 April 2008, as alleged.

CONCLUSION

Accordingly, Pretorius' special plea of prescription did not disclose a defence in law and failed on the facts. It had to be dismissed.