

## HOLDING ONTO LEASED PROPERTY BECAUSE OF YOUR IMPROVEMENT SPEND

### Marschall v Schleyer and Others (32366/2020) [2022] ZAGPJHC 743 (6 October 2022)

*Persons facing eviction from leased premises often try to challenge such proceedings on the basis that they have an improvement lien over the property and must be reimbursed before they can be asked to move out. In the right circumstances, this may assist an occupier. But improvement liens apply only in respect of residential, and not agricultural, land. Tenants must take note and, if they seek to be reimbursed for improvements to leased premises, ensure to have a proper agreement in place to this effect.*

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

### FACTS

From about 1995 onwards, Mr and Mrs Schleyer rented a large 3 hectare property from Marschall for the purpose of running a bed and breakfast guesthouse.

In October 2019, Marschall sent a letter of demand to Mr and Mrs Schleyer for payment of arrear rental of some R201,666 by the end of October 2019. Certain other breaches of the lease agreement were also pointed out, specifically that they had entered into unauthorised longterm subleases. They were therefore placed on terms to rectify their breaches of the lease, failing which, so the demand read, the lease agreement would be cancelled.

The arrear rental was not paid and none of the undertakings requested by Marschall were furnished. He proceeded to cancel the lease, lawfully.

In the matter under discussion, he applied to court for an order evicting the tenants and sublessees. Mr and Mrs Schleyer resisted the application and argued that the cancellation was invalid and that they were in any event entitled to remain on the property by virtue of an improvement lien in respect of improvements they had made to the property.

### HELD

#### **Validity of cancellation**

- In the facts presented, it was clear that Marschall had validly cancelled the lease upon failure to rectify the breach by the tenants.

#### **Was Mr and Mrs Schleyer entitled to remain on the property on the basis that they had a lien over the property for certain (alleged) improvements effected?**

- The Deeds Office description of the property was that it was an agricultural holding. In terms of the Town planning regulations and bylaws, the property was zoned as 'agricultural land with consent use to operate a guest house'. This made the property rural land as opposed to urban land.
- In our law, a lessee of rural land does not have an improvement lien over the land and is not entitled to remain on such land until he is compensated for the improvements allegedly made to the land by him. He may only institute a claim for compensation after vacating the land.

## CONCLUSION

As a result, the eviction order was granted.