

SUMMARY OF THE JUDGMENT

SUBLESSEE CLUTCHING AT STRAWS

Linksfeld Nursery CC and Another v Wickstrom and Others (34695/2014) [2015] ZAGPJHC 136 (8 July 2015)

Wisdom after the fact, in this instance again, highlights how beneficial it would be for persons negotiating even simple business partnerships, to reduce their agreement to writing. The dispute here arose between a lessee and sublessee who jointly ran a nursery and coffee shop business, and for which purpose the sub-lessee erected buildings on the premises. When the oral agreement came to an end, the parties disputed the terms thereof and the sub-lessee sought to demolish the buildings. The lessee successfully interdicted him as, amongst other things, the buildings accrued to the landlord as property owner.

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

FACTS

In June 2001, Linksfeld Nursery CC (Linksfeld) entered into a lease agreement with the Gauteng Provincial Government in respect of a property situated at Rietfontein. Linksfeld would conduct a nursery from the premises.

The parties negotiated an initial fixed period for the lease, whereafter it would continue on a monthly basis.

In 2002, Linksfeld entered into a verbal partnership agreement with one Wickstrom whereby they established a new entity known as Linksfeld Nursery and Home Improvements CC. According to Linksfeld, the partnership purpose was to run a nursery business in accordance with clause 5 of its (Linksfeld's) lease agreement with the Provincial Government. Wickstrom alleged that the partnership agreement entailed that he could, on his own, improve the leased property with the consent of the Provincial Government. For this purpose he had plans drawn up and erected a coffee shop, a florist as well as other buildings.

Linksfeld subsequently resigned from the entity and the partnership was dissolved. Wickstrom however continued to conduct his coffee shop and florist business on the premises, for his own account.

This continued until 2008, when Wickstrom walked out of the property. According to Linksfeld, Wickstrom was going through a divorce. According to Wickstrom, he left because Linksfeld reneged on an earlier verbal agreement to sell him the nursery business. Things turned sour thereafter, Wickstrom alleging that Linksfeld started to undermine his business by interfering with his customers and that he was in effect forced

to leave the business. In 2010 the coffee shop and florist were closed.

Also during 2008, the Provincial Government sold the premises to a company of which Wickstrom was the sole director. Transfer, however, was never passed as Wickstrom failed to come up with the purchase price as provided for in the sale agreement.

In February 2013, the Provincial Government purported to terminate the lease by sending Linksfield a notice of termination. This notwithstanding, Linksfield remained in occupation of the property beyond 2013 and was still in occupation.

Wickstrom returned in September 2014 to commence demolishing the structures he had built on the premises. Linksfield obtained an interim interdict as it argued that Wickstrom's actions were preventing his customers from accessing the nursery and that Wickstrom did not have any rights to engage in building activities or operations at the nursery or even to be on the property. Wickstrom argued that he had a right to the property by virtue of the agreement of sale and that what he was breaking down, belonged to him.

Linksfield was successful in obtaining an interim interdict prohibiting Wickstrom from demolishing the buildings he had erected. The present application dealt with the application to make the interim interdict final.

HELD:

- In order to be successful in an application for a final interdict, the following must be shown:
 - (i) the applicant must have a clear right;
 - (ii) an injury must have been committed or is reasonably apprehended;
 - (iii) there is no other alternative remedy.

Clear right

- Despite the purported cancellation of the lease agreement, Linksfield had remained a monthly lessee in accordance with the lease agreement. As such there was nothing in the papers before the court to suggest that the lease agreement had ceased to exist.
- Thus it was only Linksfield who had the right to occupation of the property in terms of an existing monthly lease. Wickstrom failed to prove that he had a better right over the property.

An injury actually committed or is reasonably apprehended

- The evidence revealed that Wickstrom vacated the property in 2010, leaving Linksfield to continue running the nursery business. He only returned in September 2014 to commence demolishing the structures he had built on the property.
- Wickstroms' defence that what he was breaking down belonged to him, was legally incorrect. In terms of the law, such fixtures accrued to the owner of the land, being the Gauteng Provincial Government.

No other alternative remedy

- In general an applicant will not obtain an interdict if he can obtain adequate redress through an award of damages.
- Evidence however indicated that Wickstrom was insolvent. Accordingly, to wait to prove damages against Wickstrom would involve complex and worn out proceedings whilst in the meantime the injury will be perpetuating.
- As such, this requirement was met.

The court held that the requirements for the granting of a final interdict were met and Linksfield was successful in its application.

CONTACT US

■ CAPE TOWN
Tel: 021 406 9100

■ SOMERSET MALL
Tel: 021 850 6400

■ TYGER VALLEY
Tel: 021 943 3800

■ CENTURION
Tel: 012 001 1546

■ CLAREMONT
Tel: 021 673 4700

■ STELLENBOSCH
Tel: 021 001 1170

■ MENLYN
Tel: 012 348 1682

■ BEDFORDVIEW
Tel: 011 453 0577

■ FISH HOEK
Tel: 021 784 1580

■ TABLE VIEW
Tel: 021 521 4000

■ ILLOVO
Tel: 011 219 6200