

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 33693/2016

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

A handwritten signature in black ink, appearing to be "M. D. D. D.", written over a horizontal line.

29 June 2017

SIGNATURE

DATE

In the matter between:

CHRISTIAN FAMILY CHURCH INTL

APPLICANT

And

BLACK SHADES INVESTMENT (PTY) LTD

RESPONDENT

JUDGMENT

VICTOR J:

[1] The applicant is the Christian Family Church International and the respondent is Black Shades Investment (Pty) limited whose director member of the applicant church.

[2] The issue for determination in this matter is whether the applicant is entitled to evict the respondent in the light of the respondent's defences that it has an improvement lien in respect of the improvements effected to the property and whether the applicant has locus standi to bring this application.

[3] The applicant seeks an order that leave is granted to it to supplement its founding affidavit by incorporation therein of the further supplementary affidavit by John Bernard Slabbert; that the agreement of lease concluded in writing on 23rd and 25th of May 2016 between the applicant and respondent relating to shop 3 in the building situated at Silver Wings Boulevard and Atlas Road Park Kempton Park is cancelled and that the respondent and all persons claiming title under it or through it are to immediately vacate the premises. In the event that the premises are not occupied by any person, the applicant in such event seeks an order that the Sheriff is authorised and empowered to take whatever steps necessary to unlock the premises and to perform an inventory of all movable items and that the applicant be authorised to change the locks and remove all the movable items, and that the costs be paid by the respondent and Mr George Webb jointly and severally, the one paying the other to be absolved on the scale as between attorney and client.

Background History

[4] This matter has a sad history. The Christian church and its member are at odds about premises that were let to the respondent, who was supposed to set up a restaurant for the churchgoers use.

[5] From the date of conclusion of the lease to date the respondent has not opened up the restaurant and it is for that reason that the applicant seeks the eviction of the respondent. The rental payable was nominal. The respondent was required to pay the costs relating to water and lights and electricity and certain other costs.

Improvement Lien

[6] The respondent claims that he has effected improvements to these premises in the amount in excess of R500 000.00. He has failed to put up any evidence of what the improvements are or proof of costs. It is trite law that where a party wishes to rely on a right of retention the case must be made out clearly. See *FHP Management (Pty) Ltd v Theron NO and Another* 2004 (3) SA 392 (C). A lessee wants to prevent eviction from its premises on the basis of an improvement lien, must set out all the detail. However the principal of an improvement lien has been overtaken. The legal question whether there exists an improvement lien in South African law in respect of urban property has been dealt with decisively.

[7] In the matter of *Business Aviation Corporation (Pty) Ltd & Another v Rand Airport Holdings (Pty) Ltd* 2006 (6) SA 605 (SCA), Brand JA dealt with the question whether a retention lien for improvements is applicable to urban property. This was also an action by the respondent for the eviction of the appellants from an urban property owned by it. The appellants raised the defence inter-alia that they were entitled to retain the property under an enrichment lien, as they had expended money on necessary and useful improvements for which they had not been compensated. In analysing the two placaten emanating from the Estates of Holland in the 17th century Brand JA he concluded that while the placaten were introduced into South African Law, they were not applicable to urban leases, and that the Article 10 placaten raised in that case did not provide an answer to the appellant's

reliance on an enrichment lien. The respondent's defence on the enrichment lien must fail.

[8] The respondents have raised a further defence, and that is that the applicant does not have *locus standi* to bring application because it is not the registered owner. The applicant is the Christian Family Church International, a church which has been formed and established for the purposes of religious, charitable, educational, philanthropic and benevolent purposes. The respondent incorrectly claims that the Title Deeds reflect the name Family Harvest Church International. I have considered the Title Deeds, and quite clearly, although the original owner was the Family Harvest Church, it is clear that the church changed its name and there is an endorsement on the Title Deed to the effect that the name changed and it is now the Christian Family Church International Johannesburg. The respondent's defence on this *locus standi* point must fail because quite clearly the applicant is correctly cited as the owner of the premises.

[9] The respondent further contends that the delay in opening the restaurant was as a result of the delay caused by the applicant, more particularly the conflict between it and the church, the respondent being run by Mr Webb, that there is an intractable dispute between them. The relationship has broken down irretrievably. This caused delay in opening the restaurant in various ways as there was a lack of communication. This defence must fail as it cannot shield a recalcitrant tenant.

Costs

[10] Mr Webb, despite knowing about the *locus standi* point, pressed on. He was forced to argue the matter himself because he could not find legal representatives to argue his matter. The matter has a long history of postponements, and the postponements reflect the number of opportunities

the applicant and indeed the court has granted to Mr Webb to try and find legal representatives.

[11] The legal representatives that he did find seemed to go on and off record for a number of unknown reasons. The court allowed the matter to stand down for two days while he sought legal representation. The matter was heard on the 15th of May 2017, where a final postponement was granted by my brother Reynecke A.J., and Mr Webb was warned at that stage that he was to make sure that he had legal representation. When the matter came before me Mr Webb said that he had been in hospital for eight days. I then directed that he should bring a certificate to that effect. He came back to court on the next day, and was unable to produce a certificate. I had placed him on terms that if he did not produce a medical certificate or come to court with legal representation, he would have to argue the matter, which he did, and he did so coherently, and he based his arguments on the Heads of Argument that one of the firms of attorneys had lodged for the purposes of the opposed application.

[12] Unfortunately the Heads of Argument that he used did not take into account the case that I have referred to about the placacten being adopted into an urban lease. The retention argument also fails on a further basis, in that Mr Webb has failed to detail the improvements that he has made, the cost thereof and exactly what they consist of.

[13] At some stage security for the improvements was tendered by the applicant. He refused to accept that security. By the time this matter was argued the tender of security was withdrawn.

[14] In the result the respondent's defences fail. Mr Webb has progressed this matter unnecessarily particularly on the locus standi point when a copy of the Title Deed was attached to the supplementary founding affidavit.

[15] There have been numerous appearances, and it has been submitted that the respondent is a proprietary limited company, has no assets and it is not trading. He was placed on notice some months ago that a cost order would be sought against him personally because of the lack of detail as to whether the respondent is solvent, and whether it can pay its debts. Mr Webb submitted without any proof, that he had, that the respondent was trading, that it was solvent and that it could pay any costs order in due course. I am not persuaded by that argument, and no documentation was placed before me, and it is for that reason that the costs order is to be paid by the respondent company and Mr George Webb jointly and severally.

[16] I have allowed the admission of the further supplementary founding affidavit attaching the Title Deed, the Constitution of the applicant as well as extract of a minute resolving that Pastor Slabbert be the person who negotiated the lease and to deal with the breaches of the lease by the respondent. The reasons are as follows. The limitation on introducing new matter in reply is not the 'law of the Meads and Persians' – see *Hexvallei Besproeingsraad en 'n Ander v Geldenhuys NO en Andere* 2009 (1) SA 547 SAC at 553E para 22. The limitation does not apply to an element of a cause which should not been placed in dispute in the first instance such as the ownership of the property as the Title Deed is clear. A respondent cannot sit back and laconically dispute the applicant's ownership of the property when it signed a lease agreement with the applicant. In addition the respondent's claim that the applicant does not set out any legal personality is nonsensical. The founding affidavit is clear as to the legal personality of the applicant.

In the result I make an order in terms of the draft marked X, which deals with the cancellation of the lease and the eviction of the respondent from the premises.



M VICTOR

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION

Appearances

Counsel for Applicant: Adv D Vetten

Appearance for the Respondent: Mr Webb in person