

REPUBLIC OF SOUTH AFRICA



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

**CASE NO: A3055/2015
DATE: 13 OCTOBER 2015**

| | |
|-------|--|
| (1) | <u>REPORTABLE: YES / NO</u> |
| (2) | <u>OF INTEREST TO OTHER JUDGES: YES/NO</u> |
| (3) | <u>REVISED.</u> |
| | |
| DATE | SIGNATURE |

In the matter between:

MOUTON, CHRISTIAAN JOHANNES

APPELLANT

And

CORPORATE AIDS SERVICES (PTY) LTD

RESPONDENT

J U D G M E N T

WRIGHT J

1. The appellant and the respondent concluded a written agreement on 17 August 2010. In terms of this agreement the appellant bought a piece of removable property from the respondent for R1 500 000. The appellant paid a deposit of R80 000. The appellant had to pay the balance at R5 000 per month. A last payment had to be made by 31 May 2012 of whatever amount

was outstanding at that date. Clause 5.2 provided that the risk of profit or loss in regard to the property rests on the appellant from date of occupation. Under clause 10.1 the appellant undertook to adhere to and abide by the conditions of title of the property and the requirements of any servitude, town planning scheme as well as legal requirements, proclamations and regulations binding the owner of the property. Under clause 10.2 the appellant could not, without the respondent's prior permission erect any buildings. Under clause 11.1 the appellant could not, without the respondent's prior written permission make any improvements to the property. Under clause 11.2 the appellant is not entitled to any compensation for improvements, brought about with or without the respondent's permission "*behalwe vir sover sy regte in hierdie verband deur artikels 15[1] and 28[1] [a] [ii] van die Wet beskerm word.*" I take this as a reference to the Alienation of Land Act 68 of 1981.

2. Section 15(1) provides that, subject to section 15(2) which does not have application in this case, an agreement whereby a purchaser forfeits a claim for, amongst other things improvement which enhances the market value of the land and which was effected by him or her with the express or implied consent of the owner or seller shall be of no force or effect.
3. With the written permission of the respondent the appellant took occupation of the property. The occupation date was 1 July 2010. The appellant admits that he breached the agreement in that he failed to pay at least part of the purchase price by due date. The respondent notified the appellant of an intention to cancel the agreement unless the breach was rectified. It was not and the respondent purported to cancel the agreement. Acting on this attempt at cancellation the respondent applied to the Magistrate's Court seeking various relief including the eviction of the appellant. The application was unsuccessful, apparently on the ground that the notice of cancellation did not reach the appellant. The respondent launched a second application on the same ground. The learned Magistrate granted an eviction. That decision is now before my learned Brother and I on appeal.
4. The appellant, conceding that he breached the agreement and received notice to rectify the breach and that he did not rectify the breach, and conceding that he received notice of termination, opposed the application on a number of

bases. Firstly, he alleged an improvement lien over the property. Secondly, he alleged that he was protected by the provisions of the Extension of Security of Tenure Act 62 of 1997.

5. Assuming that the appellant spent over R300 000 on erecting wooden structures on the property, in my view the lien defence fails. Prior to the conclusion of the agreement on 17 August 2010 the respondent had given the appellant written permission on 24 June 2010 to commence building the structures prior to registration of the property into the name of the appellant. There is no evidence that the alleged improvements, even if they cost R300 000 increased the value of the property. The appellant seems to have assumed that spending money on the property necessarily increases the value of the property by the same amount. If in fact, the value of the property has increased there is no evidence to the extent of the increase in value.
6. It is common cause that the appellant proceeded to erect the wooded structures prior to any building permission having been obtained. As late as answering affidavit stage in the present proceedings the appellant conceded that he was still trying to get the necessary permission from the relevant municipality. Even if the structures have increased the value of the land, the alleged lien is not sought to be exercised in circumstances where it is done so bona fide.
7. Given that the appellant in any event concedes breach of the agreement and its subsequent cancellation it is difficult to see how the lien is exercised bona fide.
8. The appellant, relying belatedly on the Extension of Security of Tenure Act made a bald affidavit stating that he is an occupier for the purposes of that Act. Under the definition of occupier in section 1 of the Act, a person who earns in excess of a prescribed amount is not an occupier for the purposes of the Act. It is common cause that the prescribed amount is R5 000 per month. The appellant made the bald allegation that he earned under R5 000 per month. In further affidavits he sought to plead poverty alleging that he did odd jobs for which he earned less than R5 000 per month. Nowhere did the appellant explain how he would have paid the purchase price on these

earnings. In my view, the facts show that, at least for this reason, the appellant is not an occupier under the Act and therefore the Act is not applicable.

9. I propose the following order.

Order:

1. The appeal is dismissed with costs

**GC WRIGHT J
JUDGE OF THE HIGH COURT,
GAUTENG LOCAL DIVISION,
JOHANNESBURG**

NALANE AJ

I agree / disagree

| | |
|------------------------------|---|
| On behalf of the Appellant: | Adv HP West |
| Instructed by: | Locketts Attorneys C/o Monte Coetzer Inc 011 492 1450 |
| On behalf of the Respondent: | Adv GH Swanepoel |
| Instructed by: | DF Oosthuizen Inc 011 673 4278/9 |

Date of Hearing: 13 October 2015

Date of Judgment: 13 October 2015