

DENOVO

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GOOD FAITH – HIGHER STANDARDS FOR CONTRACTING PARTIES

Contracting parties often enter into written agreements, including a clause that generally states that parties to the contract should behave honestly and fairly in their dealings with one another (i.e. the good faith clause). According to our law of contract, where persons enter into a legally enforceable contract, their rights and duties are defined by the agreement they sign.

To apply the principles of contract law, the court stated in *Magna Alloys & Research (S.A.) (Pty) Ltd. v Ellis* that the mere fact that an agreement operated in an unfair or unreasonable manner would not ordinarily constitute a ground on which to challenge the agreement – that is the way the parties elected to contract. However, in the case of *Silent Pond Investments CC v Woolworths (Pty) Ltd and Engen Petroleum Ltd* the high court ruled that by including a ‘Good faith clause’ to the agreement, the parties intended to add more or a higher standard to their agreement than simply a provision that specific rights and obligations in terms of the agreement had to be performed.

The concerned clause read that:

“In implementation of this agreement, the parties hereto undertake to observe the utmost good faith and they warrant in their dealings with each other that they shall neither do anything nor refrain from doing anything which might prejudice or detract from the rights, assets or interest of the other of them.”

In terms of an agreement, Silent Pond obtained the right to operate an Engen petroleum station. Silent Pond was also required to operate a convenience store from the premises. A tripartite agreement was entered into between the parties, and Woolworths, in terms of which Silent Pond was authorised to use the Woolworths trade mark in relation to the convenience store. It transpired however that Woolworths was in the process of establishing a food retail outlet not more than 200 metres from Silent Pond’s petroleum garage. Silent Pond was highly aggrieved, as this is to the detriment of its business.

The court therefore granted an interdict preventing Woolworths from opening the envisaged stand-alone Woolworths store as it was a breach of the ‘Good Faith Clause’ in the Agreement.

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Die Klubhuis, 26 Pinaster Avenue,
Hazelwood, Pretoria, South Africa



www.vanhuysteens.co.za

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