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“Everyone is entitled to be stupid, but some abuse the privilege.”

PROPERTY LAW: RESTITUTION AND IMPROVEMENTS TO FIXED PROPERTY UNDER A VOID CONTRACT OF SALE

In a matter before the Supreme Court of Appeal the facts were that Mr and Mrs de Kock (the “Sellers”), married in community of property, sold immovable property to Mr Rhoode (the “Purchaser”), subject to the suspensive condition that the Purchaser had to obtain a loan for the full purchase price within 12 months of the date of sale.

The Purchaser took occupation of the property but failed to secure a loan. An attempt was made by the parties to extend the period for fulfilment of the suspensive condition, but this amendment was never signed by Mrs de Kock and was therefore not valid, rendering the agreement void.

The Purchaser had in the meantime paid R400 000.00 to the Sellers towards to the purchase price and also proceeded to make improvements to the property.

The legal questions put to the Supreme Court of Appeal in Rhoode v De Kock and another (2013) were answered as follows:-

1. In order for the Sellers to obtain an ejectment order in terms of the relevant legislation and be restored in possession of the property based on the reivindicatio (action to recover property), the Sellers do not have to tender repayment of the deposit paid by the Purchaser. The Purchaser is entitled to the return of his deposit (subject to any counterclaim – in this case for occupational rental), but has to claim this amount from the Seller. The Sellers' cause of action is complete without the tender to return the deposit.
2. The Purchaser did not establish a lien (for necessary or useful expenses) which would have entitled him to remain in possession of the property until he was compensated for the alleged improvements made to the property. The reasons were because the Purchaser could not quantify his expenses and there also were no evidence that the value of the property increased. The court voiced the opinion that to enforce a lien in these circumstances, that would have the effect of resisting the application for ejectment until receipt of compensation for an amount that has not been quantified, would be an abuse of the process of the court.

Law & Laughter

Q: “How many lawyer jokes are there?”

A: “Only three. The rest are true stories”

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FRANCHISE AGREEMENTS: THE IMPLICATIONS OF THE CONSUMER PROTECTION ACT

When considering entering into a franchise agreement, one must keep in mind that all such agreements fall within the ambit of the Consumer Protection Act (“CPA”) and its regulations. The regulations contain comprehensive provisions as to what franchise agreements should include which serves as a useful guide to first time franchisees. Some of the general elements to be aware of is:

- Although a lot of the points set out in the CPA are traditionally found in the average franchise agreement, franchisors will now need to check and amend their franchise agreements so as to ensure that they are compliant with the CPA.
- The Act and the regulations thereto are regularly updated and franchisors will therefore need to remain aware and have knowledge of any new or updated legislation.
- Ensure that the franchise agreement contain an express reference to the “cooling off” right of the franchisee. In terms of this right, a franchisee may within 10 business days from the date of signature of the agreement, cancel such agreement without consequences.
- A franchise agreement must contain provisions which regulate and prevent arbitrary franchise fees, supply prices and activities which are unreasonable in relation to risk and reward and in general normal business practices. Both parties must have a balanced relationship insofar as to protect legitimate business interests of the franchisor but at the same time protecting the franchisee and consumer against exploitation or negative effects set out in a franchise agreement.
- In order to maintain transparency and restrain aforementioned exploitation, the franchise agreement must contain conditions in terms of which the franchisor is not entitled to any undisclosed direct or indirect benefit or compensation such as “kickbacks”, rebates, discounts, etc. unless this is disclosed in writing to the franchisee, together with an explanation thereof.

It is imperative for franchisees and franchisors alike to be aware that the legal franchise landscape has changed and steps should be taken to ensure that franchise agreements comply with the changed laws.

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