

THE CASE OF MISSING FORMALITIES – WHY YOUMESSI TRADING CC V SIMPHUNZI IS IMPORTANT

Introduction

In this case, the plaintiff and the defendant entered into a sales agreement to sell a tertiary institution, Hartwick Technical College (a “college”). They agreed on a price for the college (R700 000), and at the time of the sales agreement, the lease of the premises was in the name of the plaintiff. According to the plaintiff, he and the defendant entered into a verbal agreement for the defendant to let from him.

They further apparently agreed that the lease would be reduced as soon as he paid a certain amount of the purchase price. Some of the material terms of the alleged lease as pleaded by the plaintiff were that the defendant would pay to the plaintiff R30 000.00 per month in advance until the sum of R400 000.00 being part payment of the purchase price for the college due on the 1 April 2015 was paid. After the sum of R400 000.00 would have been paid the monthly rental was to be reduced to R25 000.00 per month.

The plaintiff instituted a claim against the defendant in R936 611.00 for rental for the period from April 2015 to August 2017. The defendant further stated that one of the material terms of the sale of business agreement was that the school was accredited and/or licensed with the Department of Higher Education to operate as an independent college.

The court had to decide whether the verbal agreement of lease was binding. If so, whether the tenant had a restitution right because the advertisement was not placed furthermore, that the collage was not registered with the Department of Higher Education.

Lessons learnt

The court found that the defendant was the victim of plaintiff's opportunistic behaviour, and he sold a college and learning institution that did not (yet) exist, at least legally and therefore it could not be sold as a going concern.

The plaintiff failed to prove the existence of a verbal agreement as well as the terms thereof. Furthermore, the claim for arrear rentals and other amounts claimed are dismissed with costs.

The purported agreement for Hartwick Technical College's sale entered into on 25 March 2015 is declared invalid and of no force or effect. The plaintiff was ordered to repay the sum of R700 000.00 to the defendant in respect of the purchase price for the sale of the business together with interest thereon.

Conclusion

It is pertinent that all the formalities are adhered to when constructing any commercial agreement and further that all agreements are reduced to writing. Contact an attorney at SchoemanLaw for assistance.

