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Civil Case 12408/2005

ROSENHOF SCHOOL

PLAINTIFF

T.T. RAMATONG

DEFENDANT

and

Civil Case 12410/2005

ROSENHOF SCHOOL

PLAINTIFF

P.E. NLEO

DEFENDANT

and

Civil Case 12409/2005

ROSENHOF SCHOOL

PLAINTIFF

M.C. APRIL

DEFENDANT

JUDGMENT

Mr P.H.T. Colditz from the firm Schoeman Maree Incorporated and Mr LL.Ketja from the firm Lovius Block respectively appeared for the plaintiff and the defendants at the trial.

By mutual agreement the 3 actions was joined by the parties and the court was requested to hear the 3 actions simultaneously. The causes of actions in all 3 actions are similar. All 3 the defendants have the same defence to their respective claims.

I will for easy reference refer to the defendants as defendants 1 to 3 following the order in which the respective defendants gave their testimony.

The plaintiff's claims are based on an alleged verbal lease agreements entered into by the plaintiff and the defendants. The plaintiff avers that the defendants are in arrears with their payments in terms of the aforementioned agreements in respect of the amounts set out in the particulars of claim in respect of each of the claims.

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In the plaintiff's Particulars of Claim in respect of each action the cause of action is set out as follows:-

"(i) agterstallige huurgeld verskuldig ten opsigte van die Verwoerders se huur vanaf Eiser ingevolge 'n mondelingse ooreenkoms van kwartiere in die koshuis geleë te Eiser en vir bekragtiging van die interdik wat in hierdie dagvaarding voorkom.

(The amount claimed in respect of the 3 defendants differ.)

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(ii) vir uitsetting uit die die perseel geleë te Skoolkoshuis, Rosenhof Skool, Gustavsingel, Fichardtpark, Bloemfontein.
Huurgeld verskuldig ingevolge 'n mondelingse ooreenkoms aangegaan tussen die partye ten aansien van die huur----- (the plaintiff proceeds by setting out the terms applicable to the relevant defendant).

Included in the plaintiff's Particulars of Claim is a prayer for interest *a tempore morae* and costs.

The three defendants' defence to the claims against them amount to a bare denial. All three the defendants denied that they ever entered into a lease agreement with the plaintiff.

Mr. Colditz for the Plaintiff informed the court that he abandons the prayer for the eviction of the defendants.

It became apparent from the defendants opposing affidavits filed in response to applications for summary judgments that the defendants were under the impression that the plaintiff was not entitled to enter into lease agreements with them as the flats they were occupying are the property of the department of Education.

The following facts are common cause:-

- 1) that the plaintiff is a public school and as such a juristic person. See section 15 of the South African Schools Act, Act 84 of 1996.
- 2) that the 3 defendants are employed as school care educators at the Rosenhoff School;
- 3) that the 3 defendants are accommodated on the school premises in flats;
- 4) that the 3 defendants, prior to them taking up their posts at the school, negotiated with Mr Gerber, the school principal, to obtain accommodation on the school premises;
- 5) that the accommodation were indeed provided to the 3 defendants on the school premises and that they are still residing on the school premises;

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- 6) that the 3 defendants agreed, after negotiations with Mr Gerber, to make monthly payments to the plaintiff. The defendants made payments in terms of this agreement and as the amount of the payments were from time to time increased by the school they even paid the increased amount up to the stage that they stopped making payments;
- 7) that the defendants are in agreement with Mr Gerber in respect of the amounts that were payable under the initial agreements as well as the increases in the initial payments.
- 8) that the defendants are in arrears with their payments in the amounts as set out in the plaintiff's Particulars of Claim in respect of the agreements they entered into with Mr Gerber. The plaintiff's calculations of the amounts that the defendants are in arrears as set out in exhibit B1 to B3 were at no stage placed in issue by the defendants.

It was evident from the evidence adduced on behalf of the 3 defendants as well as the pleadings that the following facts are in issue between the parties:-

- 1) whether Mr. Gerber, the principal, entered into a rental agreement with the defendants for the lease of flats on the school premises on behalf of the School Governing Body;
- 2) whether the School Governing Body had the right to lease out the flats in question to the 3 defendants.

The first question can only be answered after due consideration of the evidence that was adduced on behalf of all the parties in question.

Messrs. Gerber and Koen gave evidence on behalf of the plaintiff, and the 3 defendants also testified in support of their own respective cases.

There is not much in issue between the parties as far as the facts of this case are concerned.

Mr Gerber testified that he was the principal of the Rosenhof School until his retirement on the 31st of December 2005. As principal he also was an ex officio member of the school governing body in terms of the Schools Act. Rosenhof School is a specialised school for children with behavioural problems. It is expected from the principal and some other staff members to stay on the school premises. On the school premises there are some residential units that the School Governing Body has the right to lease out to staff members and even private individuals. The moneys collected in this way had to be paid into a fund created in terms of the Schools Act and had to be utilized for educational purposes. According to Mr. Gerber, a lot of new posts for educators were created at the school during 2001. The 3 defendants were appointed in some of these posts as school care educators. It was not compulsory for the 3 defendants to stay on the school premises. Initially the school governing body had misgivings about housing the 3 defendants on the school premises. The first defendant, Ms. Ramatong, however, informed Mr. Gerber that she does not have accommodation and as a consequence the School Governing Body entered into lease

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agreements with the 3 defendants. Initially the 3 defendants paid the agreed rental and even when the amount of rental was increased, they kept on paying. The 1st Defendant later on even entered into an agreement for the lease of a garage. According to Mr. Gerber, the 3 defendants were expected to sign written lease agreements but for some or other reason they failed to do so. During 2005 the 3 defendants stopped making payments in terms of their respective lease agreements. See in this regard Exhibits B1 to B3. The defendants, despite numerous meetings and requests, refuse to pay their rental. The matter was taken up with the Department of Education after it was found that the 3 defendants had entered into written lease agreements with the said department. The Department of Education, after obtaining a legal opinion, conceded that they have made a mistake to conclude lease agreements with the 3 defendants. The department's point of view was communicated to the 3 defendants but they still desist from paying rent to the School Governing Body.


Mr. Koen, who is a deputy director with the Department of Education, admitted that he, on behalf of the department of Education, entered into the lease agreements contained in Exhibits B1 to B3. According to Mr. Koen, the department realized that it was wrong in so doing after a legal opinion was obtained. According to Mr. Koen, the department offered to refund the 3 defendants.

Ms. Ramatong, the 1st Defendant, testified that the monthly amount she was paying was partly for rent and partly for "school fund". The other 2 defendants testified that they never entered into a lease agreement with the school and that the money they were paying was for school fund and to help the children. It was clear from their evidence that they felt aggrieved that they were paying more than the principal and some other staff members also staying on the school premises. The defendants' version that they contributed towards the school fund and that they were not paying rent is highly improbable for the following reasons:-

- 1) Once they entered into the written lease agreements with the department they stopped paying the so-called school fund.
- 2) One of the reasons they gave for stopping their payments to the school were that they cannot pay at two places.
- 3) Lastly, their main bone of contention with the school governing body was that the school principal was paying a lesser amount.

All the aforementioned factors points to the fact that they indeed were making payment in terms of verbal lease agreements as was testified by Mr Gerber. In the light of the inherent improbabilities in the defendants' versions, I find that the defendants did in fact enter into lease agreements with the plaintiff on the terms alleged by the plaintiff.

The second question that needs to be dealt with is whether the plaintiff had the right to lease out the residential units on the school premises. The rights of school governing bodies are regulated by the South African Schools Act No. 84 of 1996. Section 13(2) of the said Act read as follows:-



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"Subject to section 20(1)(k), a public school which occupies immovable property owned by the state has the right, for the duration of the school's existence, to occupy and use the immovable property for the benefit of the school for educational purposes at or in connection with the school."

Section 16 deals with the "governance and professional management of public schools" and read as follows :-

"(1) Subject to this Act, the governance of every public school is vested in the governing body and it may perform only such functions and obligations and exercise only such rights as prescribed by the Act.

The functions of a school governing body is set out in section 20 of the Act. Section 20(1)(g) has the following provision:-

"(1) Subject to this Act, the governing body of a school must-
(g) Administer and control the school's property, and buildings and grounds occupied by the school, including school hostels, if applicable;

Section 20(2) is also of great importance to determine a public school's duties and responsibilities pertaining to school facilities; it reads as follows :-

"(2) The governing body may allow the reasonable use of the facilities of the school for community, social and school fund-raising purposes, subject to such reasonable and equitable conditions as the governing body may determine, which may include the charging of a fee or tariff which accrues to the school."

It is to my mind abundantly clear from the wording of the aforementioned sections that the plaintiff had the right to lease out residential premises that formed part of the school premises. Mr. Colditz for the plaintiff, during his address referred the court to his heads of argument at the application for summary judgment as well as a legal opinion he had written at the request of a public school regarding "the utilisation, occupation and letting out of residential units and residences on the grounds of a public school."

I am in agreement with Mr Colditz's viewpoint regarding the legal position pertaining to residential units on school premises in as far as that it is relevant to the interpretation of the facts in the case in question.

In the alternative, if am wrong as far as my interpretation of the Act is concerned, it needs to be taken into consideration that in terms of our common law "a lessor need not warrant that he is entitled to let; all he warrants is that no person with a superior right will disturb the lessee's use and enjoyment of the property let." See Landlord and Tenant by W.E. Cooper 2nd Edition on page 27.

It is common cause that in case the defendants "use and enjoyment" were not disturbed by a person with a superior right.

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Accordingly the plaintiff must succeed with his claims against all three defendants.

In view of my aforementioned findings I made the following orders in favour of the plaintiff:-

- 1) Defendant No.1, Ms. T.T.Ramatong, Civil Case No. 12408/2005:-
 - (i) Judgment is granted in favour of the plaintiff against the 1st defendant in the amount of R10 620,00 plus interest at 15,5 % per annum from the 19th of March 2005 plus costs.
 - (ii) The automatic rent interdict is confirmed.
- 2) Defendant No.2, P.E.Nico, Civil Case No.12410/2005:-
 - (i) Judgment is granted in favour of the plaintiff against the 2nd Defendant in the amount of R4 800,00 plus interest at 15,5 % per annum from the 19th of March 2005 plus costs.
 - (ii) The automatic rent interdict is confirmed.
- 3) Defendant No. 3, Ms. M.L.April, Civil Case No. 12409/2005:-
 - (i) Judgment is granted in favour of the plaintiff against the 3rd defendant in the amount of R4 400,00 plus interest at 15,5 % per annum from the 19th of March 2005 plus costs.
 - (ii) The automatic rent interdict is confirmed.


T.M. VILJOEN
ADD. MAGISTRATE: BLOEMFONTEIN

