

IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Case number: A101/2021

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

MARBLE & GRANITE DESIGNS CC

1st Appellant / 1st Defendant

THOMAS FRANCOIS GREYLING

2nd Appellant / 2nd Defendant

and

CUSTOM CAPITAL FINANCE (PTY) LTD

Respondent / Plaintiff

CORAM: MATHEBULA, J et DANISO, J

JUDGMENT BY: DANISO, J

HEARD ON: 25 APRIL 2022

DELIVERED ON: This judgment was handed down electronically by circulation to the parties' representatives by email and by release to SAFLII. The date and time for hand-down is deemed to be 12h00 on 15 August 2022.

[1] This is an appeal against the whole judgment of the Magistrate, Hennenman delivered on 12 May 2021.

[2] The judgment emanates from an action instituted by the respondent against the appellants for the return of rented equipment and payment of arrear and future rentals based on an uncured breach by the appellants of a rental agreement concluded by the parties. Judgment was subsequently granted in favour of the respondent as the plaintiff against the appellants as the defendants jointly and severally one paying the other to be absolved on the following terms:

“1. That the equipment be returned to plaintiff, damage still to be proven.

2. The defendants make payment to the amount of R15 609.82 in respect of arrear rentals.

3. Interest thereon at 6% above the prime rate from date of judgment to date of payment.

4. That the defendants make payment to the amount of R485 943.35 in respect of future rentals for the period 1 September 2019 to 30 September 2023.

5. Interest thereon at the prevailing rate from date of judgment until date of payment.

6. Costs on attorney and own client scale.”

[3] For the purposes of convenience, the parties are referred to as cited in the trial.

[4] In their plea, the defendants denied that the plaintiff was entitled to payment as claimed on several grounds. They alleged that the agreement was unenforceable due to the fact that at the time when the second defendant was presented with the

agreement to sign it, it was incomplete. The commencement date was not inserted. Furthermore, the reverse side of the agreement was illegible and he was not afforded an opportunity to read the agreement before signing it. An alternative contention was that the defendants' obligation to pay had not arisen as the plaintiff had not delivered and installed the equipment as provided for in clause 3.3. of the agreement.

[5] Accordingly, the issue to be determined by the trial court was whether the plaintiff had discharged its onus of proving the terms of the agreement and the alleged breach.

[6] The facts of this matter involve the following: The plaintiff carries on a business of financing the supply of office equipment by means of rental agreements. On 27 September 2018, the second defendant signed a rental agreement pertaining to the rental of 9 PABX telephone systems ("the equipment") from the plaintiff for a period of sixty (60) months at a monthly rental of R7 762.50¹ and a deed of suretyship in terms of which the second defendant bound himself personally as co-principal debtor with the first defendant in respect of the latter's obligations under the rental agreement. The first defendant also appended his signature on the delivery note "*contract and installation confirmation/certificate of acceptance*" and the "*customer satisfaction report*."²

[7] It is common cause that pursuant to the signing of the said documents, the first defendant paid the rentals due in terms of the agreement from October 2018 until June 2019 when first defendant fell into arrears with the monthly rentals and subsequently stopped further payments.

[8] In granting the judgment against the defendants, the court *a quo* was satisfied that the plaintiff's evidence tendered by Messrs Chris and Pierre du Toit had established that the second defendant had signed the agreement (Exhibit "A") in terms of which the plaintiff financed the equipment supplied to the first defendant by an entity known as IP Solutions (Pty) Ltd and pursuant to the conclusion of the said

¹ Exhibit "A".

² Exhibit "C" and "D" respectively.

agreement, the first defendant confirmed delivery and proper installation of the equipment at its premises as per Exhibit “C” and “D.” The date of the commencement of the rental payments was left blank due to the lapse of time that would arise due to the fact that the agreement was signed by the respective parties at different provinces, the plaintiff in Kwazulu Natal and the first defendant at the Free State. The court *a quo* was satisfied that the parties had concluded a binding agreement and that the plaintiff had performed its obligations in terms of the agreement.

[9] On the other side, the defendants’ contentions pertaining to the unenforceability of the agreement and the plaintiff’s failure to deliver the equipment was rejected on the grounds that the witness who testified for the defendants, Mrs Greyling (the second defendants’ spouse) was unreliable, untrustworthy and clearly fabricated her testimony. She sought to dispute the validity of the agreement, the veracity of the second defendant’s signature and the plaintiff’s performance despite the fact that she was not privy to the circumstances under which the agreement, the delivery note and the customer satisfaction report were signed. Her testimony also did not assist the defendants’ case as she contradicted herself with regard to whether the equipment was delivered at the first defendant’s premises or not. She told the court *a quo* that not all the rented equipment was delivered and the delivered equipment was defective, another version was that the first defendant had in fact not wanted the equipment.

[10] In their grounds of appeal and in argument before us the defendants persisted with the defences raised in the court *a quo* by essentially averring that the trial court erred by accepting the plaintiff’s evidence as it did not prove that the parties concluded a binding agreement and that the plaintiff had performed its obligations in terms of that agreement which would require the defendants to make the rental payments.

[11] The defendants’ defences are meritless. The principle applicable where the validity of a contract is disputed by a party on the grounds that he was not aware of the contents of the agreement before he signed it is trite: A person who signs a contract is taken to be bound by what appears above his signature whether or not he

had read the agreement or not before signing it and would thus be liable to perform the terms of the agreement. It was also pointed out in *South African Railways & Harbours v National Bank of South Africa Ltd*³ that:

“The law does not concern itself with the working of the minds of parties to a contract, but with the external manifestation of their minds. Even therefore if from a philosophical standpoint the minds of the parties do not meet, yet, if by their acts their minds seem to have met, the law will, where fraud is not alleged, look to their acts and assume that their minds did meet and that they contracted in accordance with what the parties purport to accept as a record of their agreement. This is the only practical way in which Courts of law can determine the terms of a contract.”

[12] It is for the signatory to explain the circumstances under which he appended his signature on the agreement. The onus was on the second defendant to explain why he did not read the agreement before he signed it and why he signed it even though it appeared to be incomplete and illegible.

[13] In this matter the defence’s case rested on the testimony of the second defendant’s wife who was not privy to the facts surrounding the conclusion of the agreement. Having regard to the discrepancies and improbabilities that exist in her version the court *a quo* was correct in rejecting it as false:⁴ The trial court was thus on solid ground in holding that on the plaintiff’s accepted evidence, the plaintiff had proved on a balance of probabilities that the second defendant was well aware that he was signing a rental agreement and that by appending his signature on the said agreement he assented to the terms of that agreement therefore the defendants were not entitled to resile from the agreement.

[14] It is indeed so that having regard to the contents of the agreement, the parties have not agreed on the commencement date of the rental payments. As appears from the agreement’s “SCHEDULE OF RENTAL” only the duration of the rental and

³ 1924 AD 704 at pages 715-6.

⁴ Stellenbosch Farmers’ Winery Group Ltd and Another v Martell et Cie and Others 2003 (1) SA 11 (SCA) at para 5.

the amount of rentals are reflected. The space provided for the insertion of the commencement date of the rental payments was left blank.

[15] An essential term of a rental agreement is an undertaking by the “renter” to pay a fixed rental at which the renter is to have use and enjoyment of that thing to be hired. The certainty that is required is that there must be an undertaking by the renter to pay rent.⁵

[16] The parties are at liberty to agree on the date and the duration of the rental payments and that would merely constitute a term of the agreement in that failure to do so does not invalidate the agreement.⁶ The trial court was therefore quite right in its conclusion that the absence of the date of commencement of the instalments does not render the agreement invalid.

[17] Regarding the disputed performance by the plaintiff, the material terms of the agreement relevant to this appeal are embodied in clauses 3.1. to 3.3. of the agreement which provide thus:

“3. DELIVERY

3.1 It is recorded that the equipment has been or will be purchased by CCF from the suppliers of the equipment at the Renter’s request and solely for the purpose of renting the equipment to the Renter in terms of this agreement. The equipment has been selected by the Renter and CCF makes so warrantless or representations as to the condition of the equipment.

3.2 The Renter shall at its own cost, arrange for the collection of the equipment and the installation of the equipment at the installation address specified on the front page. The Renter shall, in this respect, take delivery of the equipment on CCF’s behalf so that ownership of the equipment shall pass to CCF will such delivery and the Renter shall hold the equipment on

⁵ Cooper, *Landlord and Tenant* 2nd edition at page 3.

⁶ *Southernport Developments (Pty) Ltd v Transnet Ltd* **[2005] 2 All SA 16** (SCA), the Court at para 6 citing with approval *Kessler v Krogmann* **1908 TS 290** at 297.

CCF's behalf (or on behalf of its cessionary as the case may be) for the duration of this rental agreement.

3.3 The Renter shall upon taking delivery of the equipment from the supplier, sign the supplier's delivery note and shall procure that a copy of the delivery note is given, without delays, to CCF, against which delivery note payment shall be effected of the price due to the supplier for the equipment. By signing the said delivery note, the Renter confirms that it has inspected the equipment and has satisfied itself that the equipment is free from any defect and satisfactory for the purpose intended."

[18] The appellant's allusion that the plaintiff was required to deliver and install the equipment is gainsaid by the provisions of the agreement. Clauses 3.1. to 3.3. make it clear that the obligation to arrange for the collection or delivery and installation of the equipment fell squarely on the first defendant who had to also confirm the delivery and the proper installation by signing the delivery note and the customer satisfaction report (Exhibit "C" and "D"). On the available evidence, it is undisputed that the first defendant acted accordingly by signing the said documents thereby acknowledging delivery and the proper installation of the equipment. I'm of the view that the defendant's contention that more evidence was required from the plaintiff to prove that the first defendant had received the equipment and that it was installed properly is unsound.

[19] There is therefore no valid basis to interfere with the conclusions reached by the court *a quo*.

[20] In the light of the above reasons, I propose the following order:

Order

1. The appeal is dismissed with costs.

N.S. DANISO, J

I concur and it is so ordered

M.A. MATHEBULA, J

APPEARANCES:

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