

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 14359/2022

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: YES /N
DATE	SIGNATURE

In the matter between:

FAUSTO GUISEPPE DI TRAPANI

Plaintiff

and

HAOTIAN WU

Defendant

JUDGMENT

KAZEE AJ

- [1] This matter concerns a dispute between a landlord and tenant over arrear rental and a counterclaim for improvements effected on the property during the subsistence of the lease between the parties. Over the 15 years that the defendant occupied the premises and made improvements thereto, the relationship between the parties deteriorated, and the defendant was ultimately evicted from the property following a court order dated 8 September 2021 (case number 44242/2018).

[2] The issues for determination include:

- i. Whether a right of first refusal for the purchase of the property existed between the plaintiff and defendant, and if so, whether the defendant was given the opportunity to exercise the offer.
- ii. The legality and quantum of the rent escalation in December 2017?
- iii. Whether the defendant obtained consent for the renovations and improvements to the property totalling R 914,684.00 and, if so, whether the defendant is entitled to compensation therefor.
- iv. If the plaintiff was enriched due to the improvements to the property?

Background to the claim and counterclaim

[3] The terms of the initial lease agreement are common cause. The plaintiff and defendant entered into a two-year written lease agreement in January 2010, amended by an addendum dated 3 February 2010. Rent was set at R 20,000 a month, plus utilities, with an agreed minimum escalation of 10% at the end of the two years, should the plaintiff renew the lease.

[4] The relevance of the lease addendum is that, amongst other changes, clauses 24 and 27 of the lease agreement were deleted. The plaintiff states this is because the parties wanted to remove any obligations he may have toward the leasing agent, Jawitz Properties, in the future. The defendant contends that the true reason for deleting these clauses is that the parties reached an oral agreement that the defendant would put in an offer to purchase the property as soon as his financial position allowed him to obtain a home loan. I will return to the parties' testimony below.

[5] Following the expiry of the two-year term of the lease in 2012, the plaintiff renewed the agreement on a month-to-month basis and the rent was increased by 10% to R 22,000. In August 2015, the plaintiff relocated to Canada, and his mother managed the property, including the collection of rent and inspection of the property on his behalf. The plaintiff's mother is a qualified estate agent and the plaintiff trusted her in this role. The rental remained constant until December

2017, when it was increased to R 28,000.00. It is also common cause that the defendant was an erratic payer and frequently paid less than the total rental, skipped monthly payments, or paid for more than one month's rent at a time.

- [6] On 18 May 2018, the plaintiff's attorneys wrote to the defendant placing the defendant on terms and noting that he owed arrear rental of R 36,000.00 and informing the defendant of the plaintiff's intention to sell the property at R 3,6 million. The letter afforded the defendant 24 hours to submit an offer to purchase, failing which the property would be placed on the open market. The defendant put in a written, cash offer at R 3,3 million, which the plaintiff rejected. The rental continued at R 28,000.00 per month until the defendant's eviction in December 2021. At the time of the eviction, the defendant owed the plaintiff over R1 million. Taking into account prescription, the plaintiff has claimed R 896,000.00 in the particulars of claim. The property was ultimately sold on 5 March 2022 for R 3 million.
- [7] The defendant's counterclaim is based on an alleged verbal agreement between the parties entered into within the first two years of the lease. Based on the alleged right of first refusal, the defendant made several substantial improvements to the property. This included fixing the leaking roof, refurbishing the kitchen in 2014 at a cost of R 394,684.00 and enclosing the balcony, painting and waterproofing in 2016 for R 520,000.00. All the improvements are supported by invoices and other vouchers. As stated, the plaintiff does not deny the construction; however, the necessity of the improvements is challenged and the obligation to reimburse the defendant the expenses incurred is disputed. In the alternative to the contractual damages claim based on the right of first refusal, the defendant alleges that the plaintiff was unjustifiably enriched as a result of the improvements to the property. This, pleads the defendant, is evident from the sale of the property in March 2022. The defendant alleges that the market value of the property increased from R 2,6 million to R 3,514,983.00 and that the property was ultimately sold for R 3 million. The defendant accordingly claims R 914,684.00 for contractual damages and, in the alternative, an unjustified enrichment claim of R 400,000.00.

The evidence by the Parties

- [8] Both parties testified at the hearing and did not call any additional witnesses. Given the dispute of fact and the reliance by both parties on the plaintiff's mother and what she may or may not have communicated to the defendant, it is unclear why the mother was not called to testify.
- [9] On the material issues, the plaintiff was adamant that he did not purchase the property with the intention of resale or "flipping the property" and that the defendant did not raise the possibility of buying the property with the plaintiff. The parties generally communicated by text or e-mail every two to three months. The plaintiff testified that he was indeed aware of the renovations to the property and that the renovations to the kitchen were made before he left for Canada, and he had seen the reconfiguration of the kitchen when he inspected the property. He maintains that he did not give prior consent for the renovations to be made. The plaintiff confirmed that the defendant pointed out the changes to him and he acknowledged them. The plaintiff added that he expected the renovations to be removed, even though it must have been obvious that the cabinetry and additions were fixed and not movable items.
- [10] The plaintiff described the dismal state of affairs the property was in following the eviction of the defendant in December 2021. The plaintiff's mother carried out the inspection and noted that the geyser had been removed, the water mains were turned off, and in the kitchen the fixtures were removed, the gas stove was removed, the aircon units were removed which exposed the rooms to the elements and the extractor fan was removed. The state of affairs was reported to Bedfordview police station (SAPS) but this did not go anywhere. The plaintiff did not explain the nature of the report made and did not indicate whether he obtained a case number from the SAPS.
- [11] Under cross-examination, the plaintiff confirmed that his mother had the authority to sign all necessary documents while he was in Canada and to this effect, he concluded a special power of attorney in her name in September 2022, after the defendant's eviction.
- [12] The defendant testified that he raised the question of purchasing the property from the plaintiff in 2015 or 2016 in a discussion about having the roof fixed. After

the plaintiff relocated to Canada, the defendant raised the issue of purchasing the property with the plaintiff's mother and the last time he recalled raising the topic was in 2018, on his return from a trip to China.

[13] Concerning the improvements to the property, the defendant stated that he is not certain of the dates when the improvements were communicated to the plaintiff, but that he let the plaintiff know before the contractors started working on the property. The defendant confirmed that the roof was fixed during 2010 or 2011 after moving into the premises and the kitchen and balcony in the years thereafter. The defendant was adamant that he would not have spent that kind of money on improving the property if he was not going to purchase the property. On vacating the property, the defendant confirmed that he removed the improvements that he made to the property and placed the original appliances, including the geyser in the garage for re-installation. The defendant stated that all appliances left behind were in working order and that he purchased a new stove, similar to the one installed by the plaintiff, in the kitchen. As he had installed the solar geysers, he took this with him on vacating the property and took his furniture and other movables. The defendant was clear that neither the plaintiff nor his mother at any point instructed the defendant to stop the renovations.

[14] The defendant's testimony is clear that he believed the offer to purchase signed in 2018 was an agreement of sale at a purchase price of R 3,3 million. This is not the case and is evident from the content of the OTP. The defendant negotiated with the plaintiff's mother, who he believed had the requisite authority and understood that his signature concluded the sale agreement.

[15] In cross-examination, the defendant further explained that two offers to purchase were made on the property. The first was in 2015, when he signed a document in the presence of the plaintiff and his brother which he believed constituted an offer to purchase the property, before he commenced with the renovations to the kitchen. The plaintiff informed the defendant that he would give the document to his brother to continue with the necessary arrangements but nothing came of this and the defendant did not follow up on the issue. This evidence was not put to

the plaintiff and his response to this allegation is unknown. The second offer was the written OTP in March 2018.

[16] It is apparent from the oral evidence that the parties' relationship deteriorated over the decade and a half. What was discussed and may have been agreed to in the early years of the lease, was not reduced to writing, and the defendant contends that an oral or tacit agreement was concluded.

[17] This leaves the question of the outstanding rental, whether the defendant can claim reimbursements for the improvements effected on the property, and what if anything, is to be made of the right of first refusal.

The primary claim for outstanding rental

[18] On the primary claim for outstanding rental, the defendant does not dispute the arrears and that he did not pay rental to the plaintiff between December 2017 and the eviction in December 2021 (save for two months in March and April 2018).

[19] The defendant explained that he refused to pay the rental because the plaintiff unjustifiably increased the rental by 21% from R 22,000 to R 28,000 per month. In determining whether the increase was reasonable, I turn to the lease agreement and the Rental Housing Act, 1999.

[20] Although the agreement lapsed in February 2012, section 5(5) of the Rental Housing Act, 1999 applies in the circumstances and provides:

"If on the expiration of the lease the tenant remains in the dwelling with the express or tacit consent of the landlord, the parties are deemed, in the absence of a further written lease, to have entered into a periodic lease, on the same terms and conditions as the expired lease, except that at least one month's written notice must be given of the intention by either party to terminate the lease."

[21] The lease agreement, together with the addendum thereto, is clear that the plaintiff is entitled to increase the rent by a minimum of 10% every two years. The plaintiff did not invoke this right between March 2012 and November 2017.

It is apparent from basic calculations submitted by the plaintiff that, had the plaintiff elected to increase the rental by the minimum amount of 10% every two years, the monthly rental would be more than R 28,000 by December 2017.

- [22] It is self-evident that the rental of R 22,000 was no longer market-related and that the plaintiff was within his rights to increase the rental amount. The increase to R 28,000 was retained for the remaining four years until the defendant's eviction. There is little basis to the argument that, on reasonable notice of one month, the rental increase of 21% in December 2017 was excessive.

The counterclaim and the improvements to the property

- [23] The defendant argued that a right of first refusal existed between the plaintiff and defendant and that the plaintiff did not uphold this right when selling the property in 2022. The existence of any such right depends on the lease agreement and the addendum thereto. In this case, it is common cause that the lease agreement was terminated in 2021 and that the eviction in December 2021 followed the termination of the lease.

- [24] The defendant directed attention to the Constitutional Court judgment of *Mokone v Tassos Properties CC* 2017 (5) SA 456 (CC), in which the common law was developed so that when parties extend a lease agreement – without stipulating anything more – this is read to mean that all the terms of the lease, including terms that are “*collateral, and not incident, to*” the lease agreement, such as a right of pre-emption or first refusal, are similarly being extended, without more required of the parties. This, however, does not come to the assistance of the defendant in the present circumstances. Not only is there no express right of first refusal in the agreement but any such right does not survive the valid termination of the lease. On this basis, it is unsustainable for the defendant to contend that the right of first refusal survived the termination of the lease and continued until the sale of the property in March 2022. If a right of first refusal existed for the duration of the lease agreement, the issue does not arise in the present case because the property was sold after the termination of the lease agreement.

- [25] I find, however, that no such agreement was reached between the parties. This accords with the terms of the lease agreement itself, which provides in clause 26

that any amendment or variation to the terms and conditions of the agreement “*shall be in writing and signed by both parties*”. I note that even if I am incorrect in the above analysis, it is common cause that on 18 May 2018, the defendant was granted an opportunity to purchase the property, the defendant exercised the right by tendering a written offer to purchase, and the plaintiff rejected the offer. On this approach, the right of first refusal was granted to defendant, and the defendant duly exercised the right.

[26] Section 5(5) of the Rental Housing Act makes clear that the terms and conditions of the written lease are deemed to apply on a month-to-month basis until the termination of the lease. In this context, I turn to consider the improvements to the property.

- i. Clause 12 of the lease agreement provides that if the lessee makes alterations or improvements to the premises “*with or without the consent of the lessor, he shall in any event receive no compensation therefore and shall either at his own expense remove same immediately at the request of the lessor*”.
- ii. Clause 17.1 states that the lessor and lessee shall, within three days before the expiration of the lease, arrange a joint inspection of the premises with a view to ascertaining if any damage was caused to the premises during the lessee’s occupation thereof. If this does not take place, the property is deemed to be in a good and proper state of repair. This provision mirrors section 5(3)(f) of the Rental Housing Act. It is common cause that no such inspection took place and that the defendant removed a number of the improvements he made to the property, some of which I have recorded above.

[27] The lease agreement is clear in clause 12 that no enrichment claim is available for any improvements to the property, and this is so whether or not the plaintiff provided his consent to the improvements. In addition, the SCA judgment of *PRASA Corporate Real Estate Solutions v Community Property Company Ltd and Another* [2024] ZASCA 35, paragraph 26 is clear that it is impermissible for a party to plead a claim for unjustified enrichment in general terms but that it is

necessary to formulate the claim within the framework of the four recognised condictiones, being *condictio indebiti*, *condictio causa data causa non secuta*, *condictio ob turpem vel iniustam causam*, and *condictio sine causa specialis*. The courts have recognised that it is possible that if a litigant's claim does not fall under one of these four recognised enrichment claims, such a litigant would need to satisfy a court that an enrichment action should be extended to accommodate their claim (see also *Greater Tzaneen Municipality v Bravospan* 252 CC 2025 (1) SA 557 (CC) at paragraphs 22 and 40). The defendant's plea does not specify the claim in specific terms, and on this basis, I am constrained by the case as pleaded in the counterclaim.

[28] Whether adjudicated on the primary claim founded on contract or the alternative unjustified enrichment claim, the defendant's counterclaim is dismissed.

Order

[29] In the circumstances, I find as follows:

- i. The defendant is indebted to the plaintiff in the sum of R 896,000, plus interest thereon at 7% per annum from the date of summons;
- ii. The defendant's claims for improvements on the leased property is dismissed.
- iii. The defendant is to pay the costs including the costs of counsel, which for work completed after 12 April 2024 are to be calculated on Scale A.



**SHA'ISTA KAZEE
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

For the Plaintiff:

**Adv A du Plooy instructed by
Kyprianou Attorneys**

For the Defendant:

Adv D Snyman instructed by BDK

Attorneys

Date of Trial:

14 May 2025

Date of Judgment:

25 June 2025