

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 91533/2015

(1)	REPORTABLE:	no
(2)	OF INTEREST TO OTHER JUDGES:	no
(3)	REVISED:	yes
DATE		28/01/2016
SIGNATURE		[Redacted Signature]

In the matter between:

GOTTINI LAKE TRADING 177 (PTY) LTD

Plaintiff

And

SANDRA BOTES

Defendant

JUDGMENT

VAN DER WESTHUIZEN, J

- [1] In this action, the plaintiff claimed from the defendant payment of damages due to the alleged breach of an oral agreement and which damages relate to the alleged loss of profits and the actual costs of the additions and improvements to the property, alternatively the amounts

with which the defendant was unjustly enriched at the expense of the plaintiff.

- [2] The parties had agreed to a separation in terms of the provisions of Rule 38(4) between the issue of liability and the quantum claimed by the plaintiff.
- [3] It was submitted on behalf of the plaintiff that the court was to determine the following issues:
 - (a) Who the parties to the lease agreement were, whether in respect of the oral agreement, or any subsequent written agreement to follow on the oral agreement.
 - (b) Who became the owner of the improvements erected on the property.
- [4] It was common cause: that the plaintiff had effected improvements to the property known as Portion 7 of the Farm Sterkfontein, 173, Registered Division IQ, Mogale City Local Municipality, that the defendant was the registered owner of the said property; and that at all material times the defendant was represented by a third party.
- [5] It was alleged that the plaintiff leased the said property from the defendant for the purpose of conducting an auctioneering business on a portion of the said property and that the plaintiff would erect the necessary buildings for that purpose. The said lease was entered into in terms of an oral agreement. One Hendrik Jacobus Burger Wright represented the plaintiff, and the representative of the defendant was one Carel Botes, her son.
- [6] It is gleaned from the evidence presented at the trial, that it was common cause that the aforesaid oral agreement would be reduced to a written agreement of lease. In this regard, three draft written agreements were

provided to the defendant, none of which was either accepted orally or in writing. The oral agreement simply remained in place in the plaintiff's view. Despite no written agreement being reached, the plaintiff proceeded with the erection of the buildings and commenced with the business of auctioneering. The auctioneering business dealt specifically with the auctioneering of live-stock.

- [7] At the time of the conclusion of the oral agreement, the basic rubrics of the agreement, to be reduced to writing, were apparently agreed upon. It later transpired during the leading of evidence that there was no actual consensus between the parties in respect of the rental to be paid and the ownership of the improvements to be made to the property during the existence of the lease, or who the parties to the written agreement were. It was furthermore undisputed that the defendant did not dispute the identity of the parties to the agreement as contained in the draft written agreements. This issue was only raised during the leading of evidence on behalf of the defendant.
- [8] It is to be noted that the defendant did not personally appear, nor testified at the trial due to alleged illness. She was apparently satisfied that her son was to testify on her behalf. Further in this regard, there was a distinct dispute relating to the defendant's personal knowledge of the building activities undertaken on the property and the business being conducted there.
- [9] It was alleged on behalf of the defendant that a trust, the Royal Family Trust, was the alleged owner of the property or alternatively held a prior lease agreement in respect of the property. The allegation relating to the issue of ownership was gainsaid by the common cause fact that the defendant was the registered owner of the property as indicated on the relevant documentation provided at the trial. The evidence proffered in respect of a prior lease agreement held by the Royal Family Trust was equally unsatisfactory and unconvincing. Such fact was never raised in response to any of the draft written agreements handed to the

defendant. It was clearly a lame attempt to derail the plaintiff's claim. At best for the defendant, the Royal Family Trust may have managed the affairs of the defendant. Other than that, it had no interest in the property or could be a party to any agreement entered into by the defendant. In subsequent drafted agreements, drafted by an attorney on the instructions of the said Carel Botes, never contained any reference to the Royal Family Trust.

- [10] The evidence led on behalf of the plaintiff in respect of the ownership of any improvements to the property as allegedly agreed upon during the concluding of the oral agreement, and which would lie with the plaintiff, indicated such fact in all three draft agreements prepared by the plaintiff and handed to the defendant. The issue of the ownership of improvements were contained in specific clauses of those draft written agreements. Those clauses also contained a term that in the event of the defendant repudiated, or cancelled the agreement without a breach being alleged, the plaintiff would be entitled to compensation in respect of the improvements. It is further of importance that the draft lease agreement prepared by the attorney on Carel Botes's instructions, contained a similar clause. It was common cause that the said attorney had the draft agreements prepared by the plaintiff when he drafted the new version in terms of which the plaintiff was to be substituted by another party.
- [11] Further in the aforesaid regard of ownership in the improvements, counsel for the plaintiff drew attention to the fact that Carel Botes conceded in cross-examination that the plaintiff was the owner thereof. Accordingly, the issue of ownership of the improvements became settled.
- [12] A further issue requires some consideration. That issue relates to the alleged repudiation of the oral agreement on the part of the defendant. In this regard, the plaintiff testified that at some point he required a financial input to continue with the erecting of the improvements and

conducting the auctioneering business. He identified certain possible entities or persons to assist in that regard. He eventually opted for the assistance from one Jade Cah, a person well known in the auctioneering field. It was subsequently agreed between the plaintiff and the said Cah to substitute the plaintiff in a new lease agreement with the defendant and the plaintiff to be substituted with an entity to be renamed as Cah Landbou (Pty) Ltd. However, the said new lease agreement so concluded, although plaintiff's substitute was cited as Cah Landbou (Pty) Ltd, had a registration number of an entity known as Mixaware (Pty) Ltd, of which the sole shareholder and director was the said Jade Cah.

- [13] From the foregoing, it is apparent that the oral lease agreement was not reduced to writing between the plaintiff, renamed as Cah Landbou (Pty) Ltd, and the defendant as intended. In this regard the plaintiff alleged that due to the aforesaid fact, the oral agreement was repudiated on the defendant's behalf and that the plaintiff was misled into signing a document terminating the oral agreement. The plaintiff never received the new written agreement which was intended to be handed to him together with the document to terminate the oral agreement, so substituting it with a new lease agreement. In this regard, the evidence of Carel Botes is not only untruthful, but wholly unconvincing and smacks of opportunistic gymnastics. It is apparent that the plaintiff's business was high-jacked by Jade Cah assisted by Carel Botes. It is clear that the 'new' lease agreement did not contain the reservation of ownership of the improvements as well as the term relating to compensation, as was indicated in an earlier draft thereof that was handed to the plaintiff earlier and prior to the appearance of the cancellation document presented to the plaintiff. That draft, prepared by the attorney of Carel Botes, and who had copies of the plaintiff's draft agreements, in fact contained the reservation of ownership and the term relating to compensation. Carel Botes conceded in evidence that he was aware that the plaintiff and the said Jade Cah were in partnership, when he met with the said Cah earlier in the year. Nevertheless, he pressed on

with the drafting of the final new lease agreement in terms of which the plaintiff was not a party.

[14] From the immediate foregoing, it is apparent that the oral agreement between the defendant and the plaintiff was repudiated on the defendant's behalf. The contrived cancellation of the oral agreement did not deprive the plaintiff of its ownership in the improvements and the value thereof.

[15] Consequently, on the findings:

(a) that the defendant was the owner of the property to be leased.

(b) that the defendant was at all times represented by Carel Botes and that the Royal Family Trust was not a party to any agreement and had no interest in the property; and

(c) that the ownership of the improvements remained with the plaintiff as well as the value thereof,

the plaintiff discharged its onus.

I accordingly grant the following order:

1. The plaintiff is entitled to claim compensation from the defendant in respect of the improvements undertaken to the property known as Portion 7 of the Farm Sterkfontein, 173, Registered Division IQ, Mogale City Local Municipality.
2. The defendant is to pay the costs of the action.


C J VAN DER WESTHUIZEN J
JUDGE OF THE HIGH COURT
PRETORIA

On behalf of Plaintiff: H F Geyer
Instructed by: DF Oosthuizen Incorporated

On behalf of Respondent: J H van den Berg Lubbe
Instructed by: Smith van der Watt Incorporated

Date of hearing: 25-29 August 2025

Date of Judgment: 28 January 2026