

SOUTH AFRICA / JUDGMENT

Shell SA Marketing v H L Hall & Sons and Others (89496/2014) [2015] ZAGPPHC 1155 (2 November 2015) [2015] ZAGPPHC 1155

COURT

North Gauteng High Court, Pretoria

BEFORE

Bertelsmann

CASE / FILE NUMBER

89496/2014

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 89496/2014

DATE:

2015.11.02

In

the matter between

SHELL

SA

MARKETING Plaintiff

and

H

L HALL &

SONS 1st

Respondent

TIEKIEDRAAI

EIENDOMME (PTY)

LTD 2nd

Respondent

REGISTRAR

OF DEEDS, PROVINCE OF

MPHUMALANGA

3rd Respondent

JUDGMENT

[LEAVE TO APPEAL]

BERTELSMANN J: The first and second respondents seek. leave to appeal against the judgment of this Court in favour of the applicant in the principal proceedings declaring that a deed of sale had. Been entered into by the applicant and first respondent in purchased a filling station from the latter terms of which applicant

The action arose out of a written contract of lease, which included a pre-emptive clause; clause 21. The correct

interpretation of clause 21 of the lease is the kernel of the litigation. An attack upon the Court's finding regarding the correct

interpretation of this clause is the ground upon which leave to appeal is sought.

The lessor, the first respondent, undertook in terms of clause 21 not to sell the premises upon which the filling station is conducted

during the currency of the lease, without having first made an offer to Shell to self

the premises on the identical terms and conditions in all respects upon. which the lessor was prepared to sell or dispose of the premises or any relevant portion thereof to a third party.

The argument presented on behalf of the respondents at the final hearing and on appeal was that the term, "identical terms and conditions", should not be interpreted literally. A notification to the applicant by the first respondent, as lessor,

containing less than the full terms and conditions of,

the proposed sale to the second respondent was sufficient notification in terms of the clause/so it was submitted.

When the first respondent entered into negotiations with the second respondent, it gave "notice" to the applicant of its intention to sell the property. The notice contained, as it was termed counsel appearing for the first and second respondents at the leave to appeal hearing, the essentials of the agreement: The two parties who were

proposing to enter to into a deed of sale with one. another, and-terms upon

which they intended to contract with one another. Not all the terms and conditions of the proposed sale were provided to the applicant in the principal case It was argued that the additional clauses disclosed at some later stage did not influence the terms and conditions that had been conveyed and that the applicant in the principal proceedings had therefore been given adequate notice of the terms and conditions of the proposed sale.

This argument cannot be upheld. Regardless of the terminology employed in clause 21.2 and 21.3 to which repeated reference was made, it is clear that the terms governing the notice that had to be given to the respondent in these proceedings, had to contain the identical terms -arid conditions of the proposed safe. There is nothing ambiguous about the word "identical". It is clear that the intending seller was obliged to inform his lessee of each and every term and condition that was to be included in the proposed contract with the second respondent. It is common cause that this was not done.

Consequently, there was no compliance with the express

conditions of clause 21. There is reasonable prospect that another Court would come to a different conclusion on appeal.

The result is that the application for leave to appeal is dismissed with costs.

IN THE HIGH COURT OF SOUTH AFRICA

PRETORIA 02 November 2015

BEFORE THE HONOURABLE MR JUSTICE BERTELSMANN

In the matter between:

SHELL SOUTH AFRICA MARKETING (PTY) LTD

APPLICANT

AND

H L HALL & SONS (GROUP SERVICES) LTD

1ST RESPONDENT

TIEKIEDRAAI EIENDOMME (PTY) LTD

2ND RESPONDENT

REGISTRAR OF DEEDS, PROVINCE OF MPULANGA

3RD RESPONDENT

HAVING HEARD counsel for the parties and having read the application for leave to appeal against the judgment of the Honourable Justice BERTELSMANN delivered on

22 MAY 2015.

IT IS ORDERED THAT:

The application for leave to appeal be and is hereby dismissed with costs.

REGISTRAR

HP. .

Attorney. STRAUSS SCHER

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