

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO:

3530/2007

DATE:

10 NOVEMBER 2008

5 In the matter between:

COMMUNICARE

APPLICANT

versus

MISSIONS OUTREACH

RESPONDENT

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JUDGMENT

TRAVERSO, DJP:

15 1. This is an application in which the applicant asks for the following relief:

1.1 That the respondent and all those occupying the property known as a portion of the farm Morning Star, situated at Koeberg in the division of the Cape, held under deed of transfer No 21416/1948, and which was leased by the applicant to the respondent in terms of an agreement of lease dated 15 July 2000, be ordered to vacate the property on a date to be determined by the Court.

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1.2 That failing compliance with paragraph 1 above, the respondent and those in lawful occupation on the property under it be evicted from the property and

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1.3 Further an order is sought for the destruction and the removal of the structures erected by the respondent on the property as listed on a schedule which is attached to the notice of motion.

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Both the applicant and the respondent are section 21 companies who do outreach and community work. It is most unfortunate that this matter had to find its way into the courts. Be that as it may, the applicant relies on an agreement of lease for the relief that it is claiming, which contains inter alia, the following clause:-

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"Duration

The lease shall be for a fixed period of nine years and 11 months, commencing on 1 July 2000, with the option of extension on terms to be negotiated as and when appropriate, and further subject to three months written notice of termination to be given by either party to the other."

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There is also a breach clause, which is clause 11, and which provides that:-

5 "If the lessee should fail to pay rent or any other monies due under the lease punctually, or commit or permit any breach of the conditions of the lease and remain in breach for 14 days after the receipt of written notice of the breach from the lessor, the lessor would have the right to terminate the lease
10 without further notice and to re-take possession of the property."

On behalf of the applicant it was argued that the lease, properly interpreted, permits of three months notice of
15 termination during the initial fixed period. This of course is over and above the rights of cancellation provided for in clause 11, to which I have referred and which gives the lessor the right to terminate the lease in the case of breach.

20 The legal principles relevant to the interpretation of agreements are well-established. In the limited time available to me, I do not think that an extensive discussion of the relevant authorities will be appropriate.

25 I return to the matter under consideration. Clause 4.1 of the

lease, under "Use of Property" reads as follows:-

5 "The lessee shall be entitled to use the property for
agricultural purposes and for the erection and
operation of a rehabilitation and counselling centre,
including the provision of safe accommodation for
persons partaking in any programme, subject
always to the permission and conditions imposed
from time to time by the local authority or any other
10 statutory body."

The respondent took occupation of the premises and
conducted its business on the premises. It becomes apparent
from the papers that there was a time when the applicant no
15 longer wanted the respondent to occupy the premises. This
led to the applicant, on 14 March 2006, notifying the
respondent that it was conducting a drug rehabilitation centre
in conflict with the Prevention and Treatment of Drug
Dependency Act No 20 of 1992 insofar as the centre had not
20 been registered. The applicant put the respondent on notice
to rectify the breach, failing which it threatened to cancel the
agreement within 14 days. In order to comply with the
provisions of the Act, the respondent ceased operating the
drug rehabilitation centre. Thereupon, on 29 June 2006, the
25 applicant notified the respondent that the property was not

being used for the purposes for which it was let and purported to give the respondent three months of notice of cancellation in terms of the duration clause. On 13 July the applicant purported to cancel the lease based on two grounds which are set out in a letter dated 29 June 2006, namely the right to give three months notice and the alleged breach of the lease relating to the use of the property.

On behalf of the respondent it was argued that the duration clause does not provide either of the parties with the option to cancel prior to the expiration of the fixed period of nine years and 11 months. It was argued that the second comma in the paragraph to which I have referred to creates a clear division between the first part of the clause, namely the lease shall be for a fixed period of nine years and 11 months commencing 1 July 2000, and the second part of the clause which deals with the option to extend the period of the lease and that the lease may be terminated on three months written notice. It was argued that on a proper interpretation provision which deals with the termination of the agreement on 3 months written notice only finds application in respect of the extended period of the lease.

It was further argued that if the Court cannot intelligently interpret the lease, it must have regarded to the *contra*

preferentem rule. In my view this rule can find no application in the matter under consideration.

5 The meaning of clause 3 is in my view clear. The three months notice period can not conceivably apply only to a future possible extension of the lease which may or may not be agreed to between the parties. The agreement provides that the terms of the extension of the lease would still have to be negotiated by the parties. It is thereafter illogical to suggest
10 that parties could have intended at the time of entering into the agreement that, in anticipation of a possible contract to be concluded in the future, that contract would be subject to termination on three months notice. Particularly where the other terms of that agreement are still subject to negotiation.
15 Such an interpretation is untenable, and in any event does not accord with the ordinary grammatical meaning of the agreement.

Clause 11 of the agreement specifically provides that the
20 lessor may terminate the agreement if the lessee is in breach of the provisions of the lease. In the circumstances I find that the applicant was, on a proper interpretation of the lease agreement, entitled to cancel the agreement on three months notice.

In the circumstances I make the following order:-

1. The respondent and all those occupying the property as portion A of the farm Morning Star, situated at Koeberg in the division of the Cape, held under title deed of transfer No 21416/1948, and which was leased by the applicant to the respondent in terms of an agreement of lease dated 15 July 2000, are ORDERED TO VACATE THE PROPERTY on or before 28 February 2009.

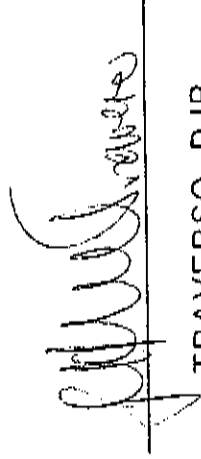
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2. Failing their compliance with the terms of paragraph 1, the respondent and those in lawful occupation of the property are EVICTED FROM THE PROPERTY.

3. The respondent is to deliver the property to the lessor in the same good order and condition in which it was received at the commencement of the lease.

4. The respondent is ordered to PAY THE COSTS OF THE APPLICATION.

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TRAVERSO, DJP

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