

Short notes on:

PREVENTING THE DESTRUCTION OF EVIDENCE

Introduction

Evidence is a crucial element in all areas of the law, more specifically in civil litigation and/or criminal cases. Evidence is important as it will indicate to the Court that the facts are in your favour and that you have a strong case.

But what can you do if the evidence you require is not in your possession but in the possession of the other party? Furthermore, what if you know that the other party will not disclose this evidence and perhaps even destroy the evidence?

South African law adopted the English Law principle, namely, the Anton Piller Application to help in such instances.

What is an Anton Piller Application?

Anton Piller is an Application to Court which is done without the other party's knowledge. In terms of the Application one seeks an Order which provides you with the right to enter someone's premises to search and seize evidence without prior warning. The purpose of such application is intended to prevent the destruction of relevant evidence, particularly and commonly in cases of alleged trademark, copyright or patent infringements.

However, like all applications you have to meet the requirements before proceeding with such an application. The requirements are:

1. Strong *prima face* (based on first impression, accepted as correct until proven differently) case against the other party;
2. Potential of suffering damages;
3. Sufficient evidence which shows the other party is in possession of the evidence;
4. Reasonable belief that the evidence can easily be destroyed should the other party become aware of the application.

Once such application has been granted, the Applicant is granted the right to seize items. However, one cannot gain entry by force and should the Respondent(s) refuse entry they would be in contempt of Court.

On granting the Order, the Court will appoint the Sheriff having jurisdiction and an independent attorney to enter the premises of the Respondent(s). The items on the Court Order may only be removed which are kept at the Sheriff's office for inspection thereof and for the Applicant to prove his/her case. If the seizing of the property is not done in accordance with the Court Order you run the risk of the Order being set aside.

When searching the property of the Respondent(s) one should not step over the line of the right to privacy and that is why such seizure has to be carried out with the utmost care.

Conclusion

The Anton Piller Application is an extreme remedy and all, of the requirements will have to be met before such an Application is granted. Contact us at SchoemanLaw Inc. to assist you in all your legal needs.