

Short notes on:

## **UPDATE: COVID-19, THE CPA AND EVICTIONS**

### ***Introduction***

Recently there has been a rise in commercial evictions. Debates around same include the possible applicability of the Consumer Protection Act 68 of 2008 as amended (hereafter "the CPA") because of the relief mechanisms contained therein for tenants.

However, what happens when the tables are turned? And the landlord refuses a renewal?

*Airport Inn and Suites (Pty) Limited v Strydom (2020/28545) [2021] ZAGPJHC 63 (7 May 2021)*<sup>1</sup> was an opposed application matter in which the Applicant sought an eviction order, a financial claim and ancillary relief against the Respondent.

In respect of same, the court had to determine whether the CPA applied to the commercial lease agreement entered into by the Applicant and the Respondent.

### ***The Facts Of The Case***

The Applicant and the Respondent entered into a written commercial lease agreement (hereafter "the agreement") on 30 January 2020. In terms of the agreement, the Respondent was leasing a restaurant and bar from the Applicant. The restaurant and bar were located at the Airport Inn and Suites, a three-storey apartment block that the Applicant operated.

The agreement provided for a fixed term of twelve months, stipulated the rental amount to be paid each month and included a clause allowing an option for renewal of the lease that could not unreasonably be refused.

On 7 August 2020, the Respondent launched an urgent application against the Applicant. The Respondent sought an order to compel the Applicant to disclose information about a catering contract awarded to an unknown catering company. The parties agreed to remove it from the roll,

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<sup>1</sup> *Airport Inn and Suites (Pty) Limited v Strydom (2020/28545) [2021] ZAGPJHC 63 (7 May 2021)*, [www.saflii.org](http://www.saflii.org) Accessed on: 25 June 2021.

and it has not been enrolled again since. The Respondent contends that to protect himself and others from the risk of contracting COVID 19, he had to launch the application against the Applicant after being unsuccessful when trying to obtain information from the Applicant on numerous occasions.

The attorneys for the Applicant sent a notice to vacate to the Respondent. It listed the reasons why the Applicant wants the Respondent to vacate the premises. Some of these reasons include the fact that the Respondent launched an application against the Applicant, citing irreconcilable differences between the parties regarding the interpretation of the lease agreement. The application further indicated a failure by the Respondent to settle residential rental arrears. They also communicated that the Applicant is refusing the option for renewal. In response to this, the Respondent stated that the agreement provided that the Applicant could not deny the renewal of the agreement unreasonably. In addition, the Respondent cited many provisions in the CPA and that, in its opinion, had no connection between with residential and commercial lease agreements.

In determining whether the CPA applied to the agreement, the court had to establish whether the Applicant, the Respondent and the lease agreement fall within the definitions set out in the CPA.

The court determined that the Applicant is considered a 'supplier', the Respondent a 'consumer' and the agreement a 'transaction' in terms of the definitions in the CPA. The determination made by the court established that the Applicant acted in 'the ordinary course of business' when entering into the agreement. Therefore, the CPA applies. The CPA makes provision for a renewal of a lease agreement. However, it is not automatic.

The court also found that the reasons set out by the Applicant for refusing the renewal of the agreement was unreasonable and further found that, the urgent application launched by the Respondent was for valid and reasonable reasons and was not an abuse of the court process.

Due to the court finding the reasons for refusing the renewal unreasonable, the agreement was renewed for another 12 months. As a result, the Applicant could not prove its claim for the arrear amount for the commercial lease agreement.

## **Conclusion**

In conclusion, it can be expected that landlords will continue to argue that the CPA does not apply to them because the renting out of their property is not in the "ordinary course of business". However, as seen in this case and in terms of section 5 of the CPA, the Act will apply to all transactions, excluding the exemptions listed in the Act.

These transactions include certain lease agreements. If the exemptions do not apply to a particular lease agreement, then the CPA affords the tenant protection and changes the position of the landlord. Therefore, landlords should, before entering into any lease agreement, obtain legal advice or make sure they are familiar with the relevant legislation.

Contact an Attorney at SchoemanLaw for your legal needs!

