

Venter and Another v Els and Another

**(3639/2024) [2024] ZAWCHC 83
(18 March 2024)**

INTRODUCTION

The case of **Venter and Another v Els and Another (3639/2024) [2024] ZAWCHC 83 (18 March 2024)** specifically deals with the application of the provisions of section 14 of the Consumer Protection Act 68 of 2008 (“the Act”), and whether it applies to once-off, alternatively, private leases. Section 14(2)(b) speaks to the cancellation of fixed-term contracts. In this case the Landlord had given notice for early termination of a lease agreement in terms of a provision in the lease agreement, however the Tenant argued that it was in contravention of section 14 of the Act. The court was tasked to address and clarify the application and interpretation of section 14 of the Act.

BACKGROUND

The owners of immovable property in South Africa emigrated to Australia in 2018 and decided to rent out the property instead of selling it, pending their decision to permanently relocate to Australia. In **September 2020**, the Respondent and the Applicants concluded a written lease agreement wherein the Respondent would let the Applicants’ property from **1 December 2020 to 31 December 2023**. The First Applicant was contacted by the Respondent in **February 2023** to extend the lease beyond **31 December 2023**.

The Applicants had by this time made the decision to rather sell the property, as they were permanently established in Australia. The Respondent was advised accordingly, and the parties agreed to renew the lease, subject to the provision that the Applicants would be entitled to terminate the lease with 3 (three) months’ written notice.

During the final week of **October 2023**, the property was sold and the sale agreement provided that the Applicants had to deliver the purchaser vacant occupation on **1 April 2024**. The Applicants issued the Respondent with a notice to vacate from the property in line with the provisions of the lease agreement by **31 March 2024**.

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During **January 2024** the Applicants received a lawyer’s letter stating that the lease was a fixed term lease for purposes of the Act and that the Applicants were prohibited from terminating the lease early. The Applicants maintained that the cancellation was valid in terms of the provision of the renewed lease agreement and tried to negotiate with the Respondent, to no avail.

COURT’S INTERPRETATION

The court was seized with determining whether section 14(2)(b) of the Act was applicable to the lease agreement.

Slinger J held that the Act was enacted to promote a fair, accessible and sustainable marketplace for consumers and, also, to prohibit unfair marketing and business practices, which ultimately intends to foster responsible consumer behaviour. The Act has to be interpreted in such a way that it gives effect to the objects it aims to achieve, and it certainly does not seek to destroy, distort or hamper sound business practices.

Delpoort¹ argues that “*section 14 is not directed at fixed-term agreements where the period of the agreement is open for negotiation between the parties and the consumer enjoys the freedom to determine the duration to suit his needs. The section is aimed at fixed-term agreements offered to consumers on a take-it – or – leave -it basis, where the supplier unilaterally determines the period and customers have no choice but to accept the fixed term offered to them. This is typically the case on health-club contracts and mobile-telephone agreements. It is fair in these situations to allow the consumer to cancel the agreement early, subject to the payment of a reasonable penalty, since the consumer is from the outset locked into the fixed-term dictated by the supplier, without having any bargaining power. This would explain why the fixed-term agreements are limited to two years and why the onus is on the supplier to show a “demonstrable financial benefit” to the consumer if the term is to exceed two years. However, bringing lease agreements and sole mandates under section 14 would not in any way promote the purposes of the Act but would in certain circumstances actually prejudice the consumer.*”

The court further held that the lease was not entered into during the Applicants' ordinary course of business, and that they did not lease the property on a continual basis or to derive an income. The Applicants were engineers who leased out the property temporarily while deciding whether their emigration to Australia was permanent or not.

The court held that the Act was not applicable in these circumstances, and even if the Act was applicable, that the provisions should not be interpreted in such a way that runs counter to the objectives and spirit of the Act. Section 14(2)(b) should rather be construed as extra protection for consumers by nullifying contractual terms which are contrary to the provisions of the Act. Provisions which would be contrary to the Act would include provisions that would bind consumers to a fixed-term agreement without allowing them to terminate the agreement upon expiry of the fixed date, without penalty or charge or any other time by giving the supplier 20 business days' notice.

The court found the provisions of the lease agreement to be valid and binding upon the parties, and that the 3 months' notice given by the Applicants validly cancelled the lease agreement. The Respondent was thus ordered to vacate the property by **31 March 2024**.

CONCLUSION

This case highlights the interpretation of section 14(2) (b) and its applicability to various lease agreements. It further demonstrates the interpretation of conducting a business on a continuous basis, alternatively, conducting business in an informal or short-term basis. This case highlights the necessity of interpreting the provisions of an Act in such a way to give effect to the aims and objectives of that Act, and not in such a way to support a specific parties case.

Please Note: Each matter must be dealt with on a case-by-case basis, and you should consult an attorney before taking any action contemplated herein.

¹Henk Delpert, titled 'Problematic Aspects of the Consumer Protection Act 28 of 2008 In Relation to Property Transactions: Linked Transactions, Fixed-Term Contracts and Unsigned Sale Agreements', Obiters 2014.



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