

COMMERCIAL LEASE DISPUTE: CUTTING ELECTRICITY AND CHANGING LOCKS

Lau v Real Time Investments 165 CC (50134/2019) [2019] ZAGPPHC 313 (23 July 2019)

When a dispute arose regarding the manner in which the lessor was billing the tenant for electricity, the lessor decided to cut the electricity and later changed the locks to the premises depriving the tenant of access to and possession of the premises. Could he?

The Judgment can be viewed [here](#).

FACTS

Lau was a commercial tenant of shop premises in a building owned by Real Time Investments 165 CC (Real Time) in terms of a written lease agreement.

Lau leased the premises to operate an internet cafe. On 3 June 2019, Real Time disconnected the electricity supply to the premises as a result of a dispute regarding the manner in which Real Time was billing Lau for this. Lau attended the premises that day and realising that without electricity she would be unable to open for trade with the public, locked the premises and left.

Sometime thereafter Real Time, without any court order authorising it to do so, changed the locks to the premises and in so doing deprived Lau of access to and possession of the premises. Lau discovered this on 20 June 2019 and following this discovery, made attempts to regain access and possession, and to resolve the dispute between her and Real Time regarding the electricity account. The attempts failed and Lau brought the present application by way of urgency for a *mandament van spolie*.

The relief sought by Lau was, in the main, aimed at the restoration of access and possession. She also sought an order, in the alternative, that the electricity supply be restored.

Real Time challenged the application firstly on technical grounds relating to lack of urgency and non-compliance with the practice directives of the Court and secondly on the basis that Lau had failed to make out a case for the relief sought.

HELD

- In order to establish the right to claim a *mandament van spolie*, an applicant needs to demonstrate that firstly she was in peaceful and undisturbed possession and secondly that she was unlawfully deprived of that possession.
- Our courts have held that the element of unlawfulness of the dispossession relates to the manner in which the dispossession took place, not to the alleged title or right of the spoliator to claim possession. "The cardinal enquiry is whether the person in possession was deprived thereof without his acquiescence and consent. Spoliation may take place in numerous unlawful ways. It may be unlawful because it was by force, or by threat of force, or by stealth, deceit or theft, but in all cases spoliation is unlawful when the dispossession was without consent of the person deprived of possession, since consent to the giving up of possession of property, if the consent is genuinely and freely given, negates the unlawfulness of the dispossession."
- In the present matter there was no dispute regarding the fact that Lau was in possession of the premises or that she was dispossessed by Real Time. It is furthermore not in issue that Lau did not consent to being

dispossessed or that Real Time did not obtain a court order authorising the dispossession.

- Real Time also argued that the order sought by Lau was not one for the granting of a *mandament van spolie* but rather for the enforcement of her rights in terms of the lease agreement. This argument is misplaced. Lau was in possession of the premises at the time that Real Time dispossessed her and so the order sought is for the restoration of possession, not for the enforcement of any of the rights which she has or may have in terms of the lease.
- Our courts have further also held that "the use of electricity was an incident of occupation which the respondent had" and "by cutting off the electricity appellant had substantially interfered with the respondent's occupation and had performed an act of spoliation."
- In the present matter, Real Time thus committed two separate acts of spoliation - the first when it disconnected the electricity supply and the second when it changed the locks to the premises. The first act of spoliation had the effect of denying Lau the use of the premises - a limitation of her rights as a possessor, but it was the second act which dispossessed her entirely.

CONCLUSION

Taking all of the aforementioned into account the Court granted an order in favour of Lau to the effect that her possession of the leased premises be restored, including restoration of electricity supply.