

MANDAMENT GRANTED AGAINST PROSPECTIVE TENANT

Rae's Property CC v Lucky F O Automobile (Pty) Ltd and Another (28949/2019) [2019] ZAGPJHC 319 (6 September 2019)

The mandament van spolie is a remedy that ensures the restoration, before all else, of unlawfully deprived possession to the possessor. A classic example is that in certain circumstances, even a thief may use this remedy to hold onto goods, if the deprivation occurred unlawfully. This matter deals with the application of this principle, where a prospective purchaser and tenant moved into premises before an agreement was concluded.

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

FACTS

Rae's Property CC (RP) obtained an eviction order in March 2019 against its tenant, F O Automobile (Pty) Ltd (FOA), which order was executed on the 1st of July 2019. After the eviction, negotiations for the sale of the property ensued between FOA and RP's attorney. At this time, FOA paid R1,200,000 into the trust account of RP's attorney, the money being meant to serve as a deposit on the purchase of the property. FOA failed to raise the balance of the purchase price and the sale fell through. FOA and RP's attorney then commenced negotiations for FOA to re-occupy the property.

On the 16th of August 2019, FOA took occupation of the property although no new lease agreement had yet been concluded. RP then brought an application based on the *mandament van spolie*, i.e. that it wanted peaceful possession of the property to be restored to it. It argued that there was no sale or lease agreement, despite the negotiations, and they were hence despoiled of their property.

HELD

- It has long been established that a party claiming possession of property need not necessarily prove ownership but either physical possession or must have control over the property to sustain a claim of mandament van spolie. The aim of this remedy is *in essence*, "the restoration before all else of unlawfully deprived possession to the possessor. It finds expression in the maxim 'spoliatus ante omnia restituendus est' - the despoiled person must be restored to possession before all else). The spoliation order is meant to prevent the taking of possession otherwise than in accordance with the law. Its underlying philosophy is that no one should resort to self-help to obtain or regain possession. The main purpose of the mandament van spolie is to preserve public order by restraining persons from taking the law into their own hands and by inducing them to follow due process.

... All that the despoiled person needs to prove is that –

- a) She was in possession of the object; and
- b) She was deprived of possession unlawfully."

- In the present matter it was clear that FOA was in possession of the property.
- However, FOA could not show that there was any agreement as to its occupation of the property and it followed that FOA in fact despoiled RP of its possession and was in unlawful occupation thereof.

CONCLUSION

The order was accordingly granted in favour of RP.