UNRAVELLING RENT CONTRACTS

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Courts face dilemma over aspects of specific performance

OUR courts are quite reluctant to grant specific performance orders, whereby a party to a contract is ordered to do certain things as required of him / her in terms of the contract .

When a tenant's use and enjoyment of the dwelling has diminished, the court has discretionary powers to compel the landlord / landlady to place the dwelling in a condition fit for the purpose it was let.

The court can order certain repairs and renovations to make the dwelling habitable.
A governing clause in a written lease contract may prevent a tenant from approaching the court for a specific performance order.
The following are a few examples of such a clause: -

a) The tenant agrees that the dwelling is in good state of repair and will maintain the dwelling during the lease period.
b) The tenant may agree that the dwelling is not in a good condition and accepts it with its defects at a lower rental.

The High courts have discretionary powers and each case is examined separately, even with a clause that places the onus on the tenant to carry out repairs.

The courts, however, have generally refused to award specific performance orders because it believes that it would be difficult to enforce such an order. Judge Satchwell in Mpange v Sithole[1] rejected this view, finding support from the Appellate Division.
Mpange, Zithulele and 20 other tenants approached the High court in the Witwatersrand local division in 2007. Tenants paid R420.00 rentals per month and also contributed between R450.00 to R900.00 to replace the board partitions with brick walls.

The 113 tenants occupied small "rooms" in a three story warehouse or factory "converted" for residential use. There were two toilets, illegal and unsafe electrical connections, no privacy between rooms, insufficient and unhygienic sanitation facilities, broken walls and windows and accumulation of refuse.

Satchwell J[2] believed that the tenants' Constitutional rights were breached. These infringements were the right to access to adequate housing, the right to privacy (thin "walls") and the right to dignity (living under squalid conditions and being deprived of access to services).

[1] Mpange and Others v Sithole 2007 (6) SA 578 (W)
[2] "J" after a judge's name refers to a judge of the High Court; JA refers to a judge of the Supreme Court of Appeal. Instead of judge Satchwell, it is written as Satchwell J.

The Constitutional Court stressed the need for High courts and the Supreme Court of Appeal to look at the values contained in the Constitution and international law when developing the common law.

Satchwell J quoted relevant provisions of the United Nations Committee on Economic, Social and Cultural Rights (the Committee) on the right to adequate housing: -

> "The Committee has dealt with the meaning of 'adequate housing' in General Comment 4. There, the Committee has emphasised the integral link between the right to adequate housing and other fundamental human rights, including human dignity.
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> In relation to habitability, the Committee has noted: 'Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. "The physical safety of occupants must be guaranteed as well. (The Right to Adequate Housing (Art 11(1)) UNCESCR General Comment 4 (1991) 13 December 1991 E/1992/23 at para 8).'"
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> "Further, the Committee has stressed the need for effective domestic legal remedies to deal with many of the component elements to the right to adequate housing.
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> "Such remedies include mechanisms to deal with: '(c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination and (e) complaints against landlords concerning unhealthy or inadequate housing conditions."

Although Satchwell J argued in favour of the courts' powers to grant specific performance decrees, he was unable to make such an award in this instance for the following reasons:-

1. The landlord was not the owner. An order of this nature had serious implications for the owner who may not be able to institute a claim against the landlord.
2. Delaying the proceedings so that the owner could be joined with the respondent-landlord would further prejudice the constitutional rights of the tenants.
3. The court was not in possession of the proposal detailing repairs and regeneration of the building to be undertaken, cost implications, time frame, disruption for tenants and alternate accommodation during the period of regeneration.

According to the judge, the desperate tenants of Leyland House were at the mercy of an unscrupulous slum landlord.
They faced the legal dilemma of being evicted and becoming homeless, and on the other hand, as paying tenants, living under unsafe conditions.

Since it was not possible to grant a specific performance order, Satchwell J looked at reducing the rentals and referred to the judgment[3] of Nienaber JA for the guidelines to calculate a reduction in rental.

The rentals were reduced from R420.00 to R170.00 per lease or housing unit.

The landlord was given the opportunity of retuning to court to have the rentals changed once he rendered the building fit for human habitation through renovations and repairs.

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[3] Thompson v Scholtz 1999 (1) SA 232 (SCA).