Dispute Resolution

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SOUTH AFRICA

Resisting an enrichment claim on the basis of non-enrichment

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Resisting an enrichment claim on the basis of non-enrichment

In the recent case of *Wamjay Holdings Investments (Pty) Ltd v Auckland Park Theological Seminary* (2022/9895) [2023] ZAGPJHC 1098; [2024] 1 All SA 298 (GJ); 2024 (3) SA 614 (GJ) (2 October 2023), the requirement that a plaintiff must prove that a defendant must have been enriched to succeed with a claim for unjustified enrichment was debated.

The dispute between the parties in this case related to an 8,000m^2 piece of land (the premises) owned by the University of Johannesburg (UJ). At the core of the matter was a dispute over the permissibility of the cession of rights in terms of a long-term lease agreement. In terms of the lease agreement, UJ would let the premises to Auckland Park Theological Seminary (ATS) for ATS to build a theological college. ATS, however, did not proceed to build the college and instead ceded its rights under the lease agreement to Wamjay Holdings Investments (Pty) Ltd (Wamjay) by means of a written cession agreement. Wamjay paid ATS R6,5 million for the rights under the lease agreement. Of relevance was that neither ATS nor Wamjay notified UJ of the cession and when this did eventually come to UJ's attention, UJ took the view that the rights in the lease agreement were personal to ATS and ATS therefore repudiated the lease agreement by purporting to cede to Wamjay rights that were incapable of cession. For this reason, UJ accepted ATS's repudiation and cancelled the lease agreement. The cancellation, however, was contested, which led to litigation that went as far as the Constitutional Court, which found that ATS's cession to Wamjay of its rights under the lease agreement justified UJ's decision to cancel the lease and held that UJ was entitled to do so.

Wamjay institutes proceedings

In the present case, but following on from the Constitutional Court's ruling, Wamjay instituted proceedings against ATS for unjustified enrichment to recover the R6,5 million which it paid to ATS to take over its rights under the lease agreement with UJ.

Wamjay put forth the argument that when it concluded the cession agreement with ATS, it believed that the cession was lawful. According to Wamjay, it therefore paid R6,5 million to ATS in the bona fide belief that it was obliged to make that payment in terms of a valid agreement which would give it occupation of the premises. However, because Wamjay did not take possession of the premises, it claimed that ATS had been unjustifiably enriched and should therefore pay back the R6,5 million paid to it.

Besides raising prescription as a defence to Wamjay's claim (which was rejected by Friedman AJ, ATS advanced the defence of non-enrichment. According to ATS, it did not retain any of the R6,5 million that Wamjay paid over to it and therefore had not been enriched. According to ATS, as a complete defence to an enrichment claim, it could allege and prove that it had spent all the money which it received by the time the claim was launched and that this was not done in bad faith.

Resisting an enrichment claim on the basis of non-enrichment

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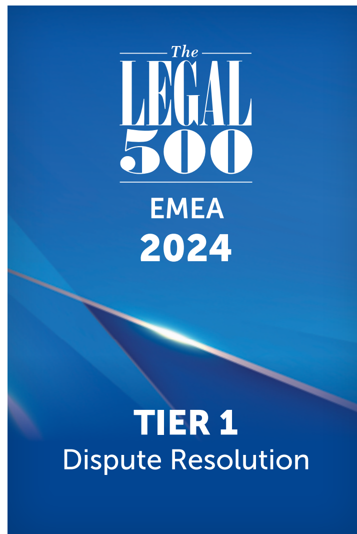

In considering this, Friedman AJ was of the view that one need not conclude that such a party acted in bad faith, in the true sense, to disentitle it to this defence. According to him, mere knowledge of the fact that the validity of the underlying agreement was hotly contested, should be enough to put a defendant on notice not to dissipate the money paid to it in terms of the agreement which it concluded with the plaintiff, which according to Friedman AJ, was the case here. He further reasoned that case law dictated that the negligent disposal of money received should not be treated exactly the same as money spent in bad faith. Additionally, according to Friedman AJ, it was the preferred approach that negligence should be one of the factors considered by a court assessing a defence of non-enrichment and that it should cut both ways – that the negligence of both parties should be relevant.

According to Friedman AJ, he would have grave difficulty in finding that ATS could rely on the defence of non-enrichment. In his view, ATS must have anticipated that UJ's claim could succeed and, at the very least, ought to have anticipated it. "*To spend the money in those circumstances, strikes me as inappropriately cavalier,*" he said. Additionally, Friedman AJ noted that there is a presumption of enrichment which arises when money is paid. A defendant who receives money therefore bears the onus to prove that he or she has not been enriched – ATS did not do so. Therefore, according to Friedman AJ, Wamjay's enrichment claim must succeed.

Eugene Bester and Serisha Hariram

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