

⑤ Oct/Nov 2010. Q1

Is whether a lessee of rural premises may sublet without the lessor's consent.

There is a conflict in Roman-Dutch law of whether or not a lessee of rural premises may sub-let without the owners' consent.

This matter depends on 3 placcaats. One of which is the placaat of the States of Holland 1658.

Article 9 of this placaat reads: "Nor shall any occupiers/tenants, either pending or during the lease or after expiration of the lease thereof, make over directly or indirectly *zoodanige hyre* of land by sale, exchange or donation or any other contract without the owners' written consent."

The placaat of Charles V (1515), the Political Ordinance of 1580, and the placaat of the States of Holland 1658 remain in force except the penal conditions of the 9th article. The placaat of 1515 states: "No tenant shall be allowed to transfer any lease after the expiration unless with consent." The political ordinance of 1580 reenacted the placaat of 1515. Grotius (1620) said: "tenant may let the hired property again unless otherwise agreed."

Nan leeuwen after 1658 stated that a lessee may sublet without consent, but Rural property was not mentioned. Voet (1658) held that leased lands cannot be sublet.

Grotius, Van Leeuwen, Groenewegen, & Wassenaar held \perp lessee may sublet but Voet & Neostadius did not.

Many conflicting views of authority, but \perp placaat of 1658 is part of our law, but sec 9 does not apply to subletting. The correct view is \perp lessee of rural property is free to sublet.

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No alienation of land after \perp commencement of this sec shall subject to prov of sec 28, be of any force or effect unless it is contained in a deed of alienation signed by \perp parties thereto or their agents acting on their written authority.

Alienation is defined in sec 1 as to "sell, exchange or donate" This is \perp contract of sale of land which is oral & thus void.

where one or both of \perp parties have rendered partial or full performance before they became aware of \perp formal requirements

sec 28 regulates \perp position as follows

(1) If \perp person to whom land has been alienated has rendered full performance & \perp land has been transferred to her then \perp alienation is ab initio valid in every respect; even though \perp formal req have not been met

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Neither party can reclaim performance
It is a void contract which has become completely valid with retrospective effect.

(2) If a person to whom land has been alienated has rendered partial or full performance but the land has not been transferred to her. Each party is entitled to reclaim from the other what she has performed.

Alienee is also entitled to interest on any amount which she may have paid in terms of the D.O.A. Calc from the date of payment to the date of recovery @ a rate prescribed by the Minister.
She is also entitled to ^{reasonable} compensation for necessary & useful expenses she may have incurred in connection with the land.

The alienator is also entitled to reasonable compensation for the occupation, use or enjoyment which the alienee may have had on the land as well as compensation for any damage caused negligently or intentionally by the alienee to the land or by a 3rd person for whose actions the alienee is liable.

Sec 28(1) applicable to the alternative scenario.
Contract is thus valid ab initio.

Sec 28(2) is applicable to the 1st scenario.
P may claim back R100 000 from S plus interest from the date of payment to the date of recovery.

② P may claim reasonable compensation for necessary & useful expenses P spent on L house. L cost of building of L swimming pool may be regarded as a useful expense. S is entitled to reasonable compensation for L occupation, use or enjoyment which P may have had on L land.

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