



CASE SUMMARY:

Beadica 23 CC and Others v Trustees for the time being of the Oregon Trust and Others

1 Introduction

- 1.1 In the recent landmark judgment handed down in the *Beadica 23 CC and Others v Trustees for the time being of the Oregon Trust and Others*,¹ the Constitutional Court confirmed the proper constitutional approach to the judicial enforcement of contractual terms and the grounds upon which a court may refuse to enforce contractual terms for being unfair, unreasonable or unduly harsh.
- 1.2 Prior to the case, there was great uncertainty regarding the extent to which values such as fairness and reasonableness could serve as separate, self-standing grounds upon which a court could refuse to enforce otherwise valid contractual terms. The Constitutional Court has now confirmed that these abstract values are *not* autonomous, self-standing requirements for a valid contract. A court may only refuse to enforce a contractual term where the enforcement thereof is so unfair, unreasonable or unjust that it is contrary to public policy.

2 Facts of the case

- 2.1 The *Beadica* case involved a dispute about the renewal of a lease agreement. The applicants were four close corporations that entered into franchise agreements with Sale's Hire to operate the Sale's Hire franchised businesses for a period of ten years. They acquired their businesses pursuant to a BEE initiative financed by the National Empowerment Fund. The applicants operated their businesses from premises leased from the first respondent, the Oregon Trust. Notably, it was a term of the franchise agreements that the franchises had to operate from approved premises leased from the Trust. Sale's Hire (as franchisor) had an election to terminate the franchise agreements if the franchisees were ejected from the approved locations or if the lease agreements were terminated.
- 2.2 The lease agreements provided for an initial term of 5 years but granted the applicants an option to renew the leases for a further period of 5 years. This option to renew could be exercised by the applicants on written notice to the Trust given 6 months prior to the termination of the lease.
- 2.3 The applicants failed to exercise their renewal options within the prescribed time periods and purportedly attempted to exercise them at a later stage. The Trust, alleging that the options to renew had lapsed and the lease agreements terminated by the effluxion of time, demanded the applicants vacate the leased premises.
- 2.4 The applicants instituted an urgent application in the High Court for a declaratory order that the renewal options had been validly exercised and that the Trust be prohibited from taking steps to

¹ 2020 (5) SA 247 (CC).

evict them. The High Court granted their application on the basis that the termination of the leases would result in a disproportionate sanction as it would cause the termination of the franchise agreements, the collapse of the franchisees' businesses and the failure of the BEE initiative.

- 2.5 The Trust successfully appealed to the Supreme Court of Appeal to overturn the High Court's ruling. The SCA held that a court could only decline to enforce contractual terms in cases where it is clear that the enforcement of such terms would offend against public policy. It held that in the current case there were no considerations of public policy which would render the renewal clauses unenforceable.
- 2.6 The applicants then applied for leave to appeal to the Constitutional Court on the grounds that enforcement of the renewal clauses would be contrary to the values of the Constitution, particularly their constitutional right to equality, in that it would result in the collapse of their businesses and the failure of a BEE initiative.
- 2.7 The Trust and the other respondents relied on the 2007 Constitutional Court case of *Barkhuizen v Napier*² which held that the party seeking to avoid the enforcement of a contractual term on the basis of public policy bore the onus of adequately explaining their failure to comply with the term. The respondents argued that the franchisees had failed to discharge this onus, and accordingly the enforcement of the renewal clause could not be found to be contrary to public policy. The applicants' explanation for their failure to comply with the renewal clause was that they were unsophisticated and did not grasp the implications of non-compliance with the renewal clause.

3 Reasoning of the Court

- 3.1 The majority judgment held that a court may not refuse to enforce contractual terms on the basis that the enforcement would, in its subjective view, be unfair, unreasonable or unduly harsh in the circumstances. Abstract values such as fairness and reasonableness have not been accorded self-standing status as requirements for the validity of a contract. Rather, these values form important considerations, alongside the principles of contractual autonomy and *pacta sunt servanda* (honouring contracts freely and voluntarily entered into), in determining whether the enforcement of a contractual term is contrary to public policy. Accordingly, it is only where the enforcement of contractual term would be so unfair, so unreasonable or so unjust so as to be contrary to public policy that a court may refuse to enforce it. Generally speaking, public policy refers to those principles, social policies and normative values behind our laws informing their interpretation and content. Today, our public policy is rooted primarily in constitutional values (freedom, equality, dignity and so on).
- 3.2 Relying on the *Barkhuizen* case, the Court held that the enforcement of a contractual term may only be refused by a court if an applicant can show –
 - 3.2.1 good reason for its failure to comply with the term in question (this requirement recognises the contractual autonomy parties and the public policy imperative to enforce contractual obligations that have voluntarily undertaken by the contracting parties, which in turn gives effect to the constitutional values of freedom and dignity); and
 - 3.2.2 that the enforcement of the strict terms would be contrary to public policy.

² *Barkhuizen v Napier* 2007 (5) SA 323 (CC).

- 3.3 The Court held that the applicants failed to adequately explain why they did not comply with the renewal clause. The explanation offered by the applicants (that they were not sophisticated business people and did not understand the full implications of the renewal clause) was rejected by the Court on the basis that the clause was drafted in clear and simple terms. The only inference that could therefore be drawn was that the applicants had simply neglected to comply with the renewal clause.
- 3.4 The Court reasoned that as nothing prevented the applicants from complying with the terms of the renewal clause, the harsh outcome of their failure to do so could not by itself constitute a sufficient basis for the conclusion that the enforcement of the renewal clause would be contrary to public policy. The Court dismissed the applicants' appeal with costs.
- 3.5 Note that there were two dissenting judgments in this case. The second judgment disagreed that the applicants had failed to adequately explain that they did not comply with the renewal clause and would have upheld the appeal. The third judgment discussed the role of ubuntu in our law of contract.

4 Conclusion

- 4.1 The *Beadica* case has provided clarity on the extent to which values like fairness and reasonableness will impact a court's decision to enforce a contractual term. In short, the fact that the enforcement of a particular term of the constitution may have an unfair, unreasonable or unduly harsh effect on a member will not by itself be sufficient reason for a court to refuse to enforce that term.
- 4.2 In order to successfully persuade a court to refuse to enforce a term of the constitution, a contracting party will be required to satisfy the court that:
- 4.2.1 there is an adequate explanation or reason for its failure to comply with the term in question; and
- 4.2.2 the enforcement of the strict terms of the contract would be contrary to public policy in the circumstances of the case.
- 4.3 The values of fairness and reasonableness are not free-standing grounds upon which a court may refuse to enforce a contractual term. Rather, they are important considerations that a court will take into account in determining whether the enforcement of a contractual term is contrary to public policy.