Contract cancellation by e-mail finally comes up trumps

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LAW TALK

MODERN business is fast-paced, often concluded in a rush of e-mails, phone calls and even by SMS or WhatsApp. The law can be slow in keeping up with advancements in technology and needs to be adapted and interpreted by courts in a way that is sensible in the 21st century.

Often a contract will contain a "non-variation" clause to the effect that it cannot be varied or mutually cancelled unless such variation or cancellation is recorded in writing and signed by the parties.

In the recent case of Spring Forest Trading cc v Wilberry (Pty) Ltd t/a Ecowash & Another, it fell to the Supreme Court of Appeal ("SCA") to decide whether a contract, which contained a non-variation clause, had been validly cancelled by an exchange of e-mails.

Spring Forest had agreed to lease certain equipment from Ecowash. It soon became unable to make its payments and, after negotiations, Ecowash e-mailed Spring Forest suggesting the mutual cancellation of the agreement. Spring Forest replied by e-mail and agreed that the contract would be cancelled. The foot of each e-mail included that person's typewritten name and not what would be regarded as a "traditional" handwritten signature.

Believing that the contract was cancelled, Spring Forest continued its business in a manner that would have breached the contract, if the contract was still valid and effective.

Ecowash approached the High Court seeking damages, arguing that the contract was never validly cancelled and that Spring Forest was committing a breach by continuing its business in the way it was. In making its finding, the court examined section 13 of the Electronic Communications and Transactions Act, 2002 ("ECTA") and determined that the signatures contained in the e-mails did not constitute proper signatures in terms of ECTA. For this reason the High Court held that the e-mails exchanged between the parties did not constitute a valid cancellation.

Spring Forest took the decision on appeal to the SCA. In finding in favour of Spring Forest, the SCA determined that the typewritten names of the parties did constitute proper signatures in terms of the ECTA. The court held that the cancellation had been validly effected in terms of the contract and overturned the high court decision.

Those in business should be mindful of the way the courts are likely to deal with similar disputes regarding variation or mutual cancellation of contracts. Following the Spring Forest decision, our courts are likely to regard agreements via e-mail (and other means of electronic messaging) as valid in terms of a non-variation clause, even if only "signed" with a typewritten name.

If you are concerned about the possible ramifications of the SCA's judgment, we recommend that the standard non-variation clause in your future agreements be adjusted to protect your business from any negative consequences that may arise in this regard.

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