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G.P.-S.918—1950-1—2,000. U.D.J. 219.

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(APPELLATE Provincial Division).
Provinsiale Afdeling).

Appeal in Civil Case.
Appèl in Siviele Saak.

SCHOOL BOARD FOR THE DISTRICT OF VRYBURG — *Appellant,*

versus

DAVID HENDRIK CLOETE — *Respondent.*

Appellant's Attorney / *Prokureur vir Appellant* R. S. & B.

Respondent's Attorney / *Prokureur vir Respondent* Wallis & Son

Appellant's Advocate / *Advokaat vir Appellant* R. P. B. Erasmus / J. W. Wilcocks

Respondent's Advocate / *Advokaat vir Respondent* F. S. Smuts

Set down for hearing on / *Op die rol geplaas vir verhoor op* Friday, 6th May, 1955.

1, 2, 3, E

Before: Centlivres, C.J., Schreiner, O'Hearn, Fagan & Steyn, J.J.A.

2.45 p.m.:— Stands over to Monday, 16th May, 1955.

(9.45 — 12.55,
2.15 — 4.0)

C.A.V.

Judgment:

Appeal dismissed, with costs.

Centlivres, C.J.
Schreiner & O'Hearn, J.J.A.
26—5—55.

Registrar.

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between :-

VRYBURG SCHOOL BOARD Appellant

&

DAVID HENDRIK CLOETE Respondent.

CORAM :- Centlivres C.J., Schreiner et van den Heever JJ.A.

Heard 16th May 1955. Delivered :- 26 : V : 55

J U D G M E N T

CENTLIVRES C.J. :- The appellant claimed, in a magistrate's court, the sum of £64. 11. 0d. from the respondent. The particulars of claim were as follows :-

" Eiser se vordering is vir die bedrag van £64. 11. 0. teen Verweerder synde 'n rekening vir bydrae soos bepaal deur Artikel 274 van Ordonnansie 5/1921, tot die losies van leerlinge Christiaan, Juliana, Harvis en Engela, synde Verweerder se vier kinders, in die Goeie Hoop Losieshuis, Reivilo, aangeneem deur Eiser op die spesiale versoek van Verweerder. "

The only defence raised by the respondent was that the claim was barred by prescription in terms of Sec. 3(2)(c)(iii) of Act 18 of 1943, the summons having been served more than three years after the right of action first ~~occurred~~ accrued. The magistrate

entered judgment for the respondent and the appellant appealed unsuccessfully to the Griqualand West Local Division which granted leave to appeal to this Court.

It was contended on behalf of the appellant that, despite the particulars of claim which appear to be based on contract, the appellant's claim was not based on contract, and that its claim was not prescribed because, on a proper interpretation of the provisions of Sec. 3(2)(c)(iii) of the Act, those provisions ~~only~~ apply only to cases where the claim arises out of contract. As I do not agree with that interpretation of those provisions it is unnecessary for me to consider whether the claim is or is not based on contract.

Under Section 267 of part C of Chapter 21 of Ordinance 5 of 1921 (Cape) the Administrator may, out of funds voted, grant assistance towards the maintenance of Good Hope boarding departments. Section 274 is as follows :

" Where a parent or guardian may be able to make some contribution towards the support of a child in any such boarding department, but his circumstances do not permit him to defray the whole of the cost of the maintenance of such child, the Committee of Management of the boarding department shall be permitted to accept such contribution, and in such a case the Administrator may make a grant of an amount which will cover the difference between such contribution and the amounts prescribed in section

" two hundred and seventy-one (a). If it has been determined by any person authorised thereto by the Administrator that a parent or guardian shall contribute and such parent or guardian shall not have paid such contribution at the end of a quarter, the Committee of Management may refer the matter to the School Board which shall then be empowered to collect the contribution and pay it over to the Committee of Management. "

The moneys claimed in the present case are the contributions ~~payable by the appellant~~ which the Committee may accept in terms of Sec. 274 and, for the purposes of this case, I shall assume that those moneys were payable not as the result of a contract but under the provisions of that section. The only question, therefore, which it is necessary to consider is whether the contributions ~~payable under~~ referred to in Sec. 274 are "the price of board or lodging supplied" within the meaning of Sec. 3(2)(c)(iii) of the Act.

Section 3(2)(c) provides that :

" (2) The periods of extinctive prescription shall..... be the following :-

(c) three years in respect of -

(i) any oral contract ;

(ii) any remuneration whatever or disbursements due (whether under a written or an oral contract) to any person for or in connection with services rendered or work done by him ;

(iii) the price of movables sold and delivered, materials provided or board or lodging supplied (whether such price is due under a written or an oral contract) ;

" (iv) rent due upon any contract ;

(v) interest due upon any contract including a mortgage bond ;

(vi) actions for damages other than those for which another period is laid down in this Act ;

(vii) the actio doli ;

(viii) subject to the provisions of paragraphs (a) and (b). condicitiones indebiti, condictiones sine causa and proceedings at common law for restitutio in integrum; "

Section 3 of the Act ~~is exhaustive in so far as it~~ does not apply one principle only in prescribing periods of prescription ; ~~which vary according to~~ it makes the period depend on the kind of action which is brought (e.g. in (b)(ii) and (iii) the actio redhibitoria and the actio quanti minoris), the subject matter of the claim (e.g. in (c)(iii) the price of board ~~and~~ or lodging) and the origin of the cause of action (e.g. in(c)(i) oral contracts and in (d) written contracts). The periods of prescription range from ninety days to thirty years, save that under sub-section (4) certain judgments of a court of law are never prescribed. When a period of prescription is prescribed in respect of the subject matter of the claim (as in paragraph (c)(ii) and (iii)) it is prima facie irrelevant whether the claim came into existence as a result of a contract or not. If the legislature had intended to confine the operation of par. (c)(ii) and (iii) to claims arising out of contract one would

have expected it to have said so in clear terms. It is unlikely that the legislature would have gone out of its way to make provisions in respect of the matters specified in par. (c)(ii) and (iii), unless it had intended that claims in respect of those matters should be subject to a special period of prescription irrespective of the manner in which those claims arose : if that had not been its intention one would have expected that par. (c)(ii) and (iii) would not have been enacted and that the legislature would have contented itself with the period of prescription prescribed in respect of oral and written contracts respectively. Moreover it is in the highest degree unlikely that the legislature intended that the period of prescription should be three years in respect of the matters referred to in par. (c)(ii) and (iii) only when the claim arises out of contract and that where the claim does not arise out of contract the period should be thirty years.

Counsel for the appellant, however, contended that the provisions of par. (c)(iii) contained indicia which showed that the legislature intended the operation of that paragraph to be confined to claims arising out of contract. He contended that the word "price" connoted that the period of prescription in respect of a claim for board and lodging applied only to

claims arising out of contract. I do not think that such a narrow meaning should be given to the word "price". In my opinion the word "price" in Sec. 3 simply means the amount charged or payable. The word is most frequently used to denote the amount payable by a purchaser of movables or immovables but the word is also used in a more general sense. In ordinary parlance one does not talk of the price of lodging : the more usual word is "rent" and when the legislature, as it does in Sec. 3, mentions "the price of lodging" it is obviously referring to the amount payable in respect of lodging. This applies equally to an amount payable in respect of both board and lodging and there seems to me to be no reason why the use of the word "price" should induce one to hold that the legislature intended that the period of prescription should be three years in respect of a claim for an amount payable for board and lodging only when such a claim arises out of a contract.

The words "the price..... of board or lodging supplied" also appeared in Sec. 6(b) of the Transvaal Prescription Amendment Act (No. 26 of 1908) and in reference to the word "price" in that section Wessels J.P. said in Alberts v Roodepoort-Maraisbury Municipality (1921 T.P.D. 133 at p. 136) :-

" I think that we can safely say that the word 'price' ought to be given a very wide meaning. "

I respectfully agree with Wessels J.P. In Union Government v Anderson (1934 T.P.D. 61 at p. 65) Tindall A.J.P. said in reference to the word "price" in Sec. 6(b) of the 1908 Act :

" I think the word 'price' in sub-section (b) is important and its presence in the sub-section indicates a change under a contract or an implied contract."

The learned judge made no refefnnce to the passage I have quoted from the judgment of Wessels J.P. in the previous case and, for the reasons I have given, I do not think that a narrow meaning should be given to the word.

In Swanepoel v Bloemfontein Town Council (1950 (3) S.A. 536 at p. 539) the Court approved of the dictum in Anderson's case (supra) and in doing so I think it erred.

The conclusion at which I arrive on this part of the case is that a wide meaning should be given to the word "price" in par. (c)(iii) and that it should not be interpretad so as to confine claims in respect of matters falling within that paragraph to claims arising out of contract.

The next contention raised by counsel for the appellant was that the words "whether such price is due under a written "or oral contract" show that the legislature intended that the period of prescription in respect of the matters referred to in par. (c)(iii) should apply only to claims arising out of

contract. I do not agree with this contention. The reasons why those words were inserted is obvious. They were inserted because the legislature wished to make it plain that the period of six years prescribed by par.(d) in respect of a written contract would not apply when there was a written contract in respect of the matters referred to in par.(c). In so far as a different meaning was placed on those words in Swanepoel's case (supra at p. 541) that case must be overruled.

In the case of the National Housing and Planning Commission v van Nieuwenhuizen (1952(4) S.A. 532) it was held that, where a landlord had claimed in terms of a written lease the amount expended by him in repairing the inside of the leased premises and the tenant had pleaded prescription under Sec. 3(2)(c)(ii) of the Act, sub-paragraph (ii) was only applicable to a claim arising out of the relationship of employer and employee. The effect of this decision seems to be that par. (ii) must be confined to claims arising out of contract. The decision was based on the provisions of Sec. 5(2) of the Act. It may be contended that if sub-paragraph (ii) must be confined to claims arising out of contract the same construction should be placed on subparagralh (iii). But I do not think that that case was correctly decided. Sub-section (2) of Sec. 5 is as follows :-

" (2) For the purposes of this Act a right of action in respect of a claim referred to in paragraph (c)(ii) of subsection (2) of section three, shall be deemed first to have accrued when the work or services in question have been completed or when the relationship of employer and employed has ceased in regard to the particular matter, whichever is the earlier date. "

When there is no relationship of employer and employed the right of action first accrues when the work or services have been completed but when such a relationship exists the right of action seems to accrue under Sec. 5(2) when such a relationship has ceased, if it has ceased before the completion of the work or services. This section seems to have been inserted to meet the special circumstances therein referred to and I do not think that it should be regarded as qualifying the wide language of Sec. 3(2)(c)(ii).

The appeal is dismissed with costs.

Schreiner JA.
v. d. Heever JA. } concur.

Watermeyer JA