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PREMISES LEASED FOR PURPOSES OUTSIDE ZONING ALLOWANCE: IS THE AGREEMENT VOID

What happens when a Landlord rents out premises, contrary to the zoning of such property?

In the recent case of *Swart v Bergh* (2022), the Free State High Court gave some clarity on this question. In this case, the Landlord rented out property, which was zoned as residential, in terms of the Bloemfontein Town Planning Scheme, to a Tenant, which premises was to be utilized as a coffee shop by the Tenant. When the Tenant became aware that the premises were being utilized contrary to the zoning thereof, she immediately stopped paying the rental amount, and shortly thereafter terminated the lease. The Landlord then issued summons against her for payment of the arrear rental and municipal charges. The Tenant pleaded that the agreement was illegal and void.

The Bloemfontein Town Planning scheme provides that any contravention of its provision shall constitute an offence, punishable by a fine or imprisonment. Similarly, The Spatial Planning and Land Use Management Act (SPLUMA) also states that land may only be used for the purposes permitted by a town planning scheme.

The Court stated that it cannot be expected of a Tenant to establish from the relevant authorities, before entering into a lease agreement, whether the premises may be used for business purposes, and that the Landlord must be aware of the applicable zoning of the premises.

The High Court ruled that the lease agreement was void and unenforceable, and therefore concluded that the rental amount cannot be claimed from the Tenant.