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REFUSING TO MOVE OUT OF LEASED PROPERTY DUE TO IMPROVEMENT LIEN ONLY APPLIES TO RESIDENTIAL PROPERTIES

A lien for an improvement done on another person's property is known as an improvement lien.

In Marschall v Schleyer and Others (32366/2020) [2022] ZAGPJHC 743, Marschall leased a large 3-hectare property to the Schleyer's with the aim of running a bed and breakfast guesthouse. The Schleyer's fell into arrears on the rent, and they were given notice to remedy their breach. They failed to comply and the lessor cancelled the agreement and applied to court for an order evicting the Schleyer's and the sublessees.

The Schleyer's then argued that they could rely on improvement lien and that the cancellation was invalid, and they had a right to stay on the property due to all the improvements that they made to the property.

The court held that since the Schleyer's failed to rectify the breach, Marschall had validly cancelled the lease agreement. Based on the property description of the leased property in the Deeds Office, the property was described as an agricultural holding with the consent to operate a guest house. In South African law there is no improvement lien for a lessee over rural land nor does that lessee have the right to remain on the property/land until he/she is compensated for the improvements that was made to the land him/herself. A lessee can institute a claim for compensation after vacating the property. Thus, an eviction order was granted in favour of Marschall.

Those who are facing eviction from leased property frequently attempt to contest such actions on the grounds that they have an improvement lien on the property and must be compensated before being ordered to leave.

Lease agreements mostly excludes this lien by stating that no compensation will be payable for improvements. Tenants in residential property who want to rely on an improvement lien are advised to ensure that a legal agreement is in place for compensation for improvements.