

Summary

This case concerns an appeal to the Supreme Court of Appeal (SCA) wherein the court upheld an appeal against a decision of the High Court of KwaZulu-Natal. The High Court *a quo* found that it was not permissible for a written agreement, which required cancellation to be in writing and signed by the parties, to be cancelled by email.

Spring Forest Trading (the appellant) and Wilberry (Pty) Ltd (the first respondent) concluded an agreement in terms of which Spring Forest leased Mobile Dispensing Units from Wilberry for use in its car wash business. The agreement subsequently contained a cancellation clause, which stated that the agreement may only be cancelled in writing, and signed by the parties.

Due to the appellant not being able to meet its rental commitments, the parties agreed to cancel their agreement. The terms of the cancellation were consequently recorded in an email exchange, and the names of the parties appeared at the foot of each email.

The appellant then entered into an agreement with another entity to conduct the same business. In response, the first respondent successively instituted proceedings in the Durban High Court to interdict Spring Forest from continuing its new business on the grounds that this was in breach of their agreement. The High Court granted the interdict, which subsequently led to Spring Forest appealing this decision in the SCA. In the court *a quo*, it was held that the cancellation of the agreement by way of email was not valid as the parties names on the emails did not comply with the requirements of a signature in terms of s 13(1) of the Electronic Communications and Transactions Act 25 of 2002 (ECTA).

Held

On appeal the SCA held that the email exchange between the parties met the requirements for the cancellation of the agreement to be in writing. It furthermore found that the typewritten names of the parties at the foot of the emails constituted electronic signatures as envisaged in s 13(3) of the ECTA. The signatures thus complied with the requirement of the parties for the cancellation of the agreement to be signed by each party. The SCA therefore upheld the appeal by Spring Forest and ordered Wilberry to pay the costs of the appeal.

Value

The court held that the ECTA differentiates between occurrences where the law requires a signature and those on the other hand which the parties to a transaction impose this obligation upon themselves. Where a signature is required by law and the law does not specify the type of signature to be used, s 13(1) states that this requirement is met only if an 'advanced electronic signature' is used. However, on the other hand, where the parties to an electronic transaction require this, and the type of electronic signature to be used is not specified, the requirement will have been complied with if a method is used to identify the person and to indicate the person's approval of the information communicated as seen in s 13(3)(a). In addition, one must have regard to the circumstances when a particular method is used and whether it is appropriately reliable for the purpose for which the information was communicated, as found in s 13(3)(b) of the Act.

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