



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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PRASA Corporate Real Estate Solutions v Community Property Company Ltd and Another (384/2023)
[2024] ZASCA 35 (28 March 2024)

The Supreme Court of Appeal (SCA) today upheld an appeal against an order of the KwaZulu-Natal Division of the High Court, Durban per Sibiya J (the high court), which ordered the Passenger Rail Agency of South Africa (PRASA) to pay an amount of R2 607 472.05 to the Community Property Company (Pty) Ltd (CPC) for electricity consumption charges. The appeal was with the leave of the high court.

The claim brought by CPC against PRASA arose from PRASA's consumption of electricity between October 2013 and July 2017 at premises it owned and occupied at the Bridge City precinct to the north of the Durban city centre. CPC based its claim upon an alleged contract concluded with PRASA. It alleged that it had entered into an electricity supply agreement with eThekweni Municipality (eThekweni) for the supply of bulk electricity to the Bridge City shopping centre which CPC owned. It claimed that it had supplied electricity to the PRASA premises via a sub-meter. The contract term upon which CPC relied, placed an obligation upon PRASA to pay for all services supplied by eThekweni. CPC was entitled to claim payment of the amounts that it paid on behalf of PRASA. In the alternative, CPC claimed that PRASA was unjustifiably enriched at its expense by failing to pay for the electricity it consumed.

The claim by CPC arose in the following context. During 2007, Crowie Projects (Pty) Ltd (Crowie Projects) entered into a joint venture agreement with eThekweni to develop a tract of land owned by eThekweni. The development envisaged the construction and operation of an underground railway station at the Bridge City precinct; the construction of a shopping centre; the construction of approximately 700 residential apartments on multiple levels above the shopping centre; and the construction of a bus and taxi rank adjacent to the shopping centre. It was envisaged that the underground railway station would be constructed and be operated by the South African Rail Commuter Corporation (to which PRASA is the successor). It would be located beneath the shopping centre.

The development was to be undertaken in phases as a sectional title scheme registered in terms of the Sectional Titles Act, 95 of 1996. To facilitate the development, Crowie Projects purchased two portions of the land owned by eThekweni. These were consolidated to enable the registration of the sectional title scheme (The Terminus) and to open a sectional title register.

On 14 December 2007, Crowie Projects entered into a Railway Co-ordination and Operation Agreement (the Co-operation Agreement) with PRASA's predecessor. The agreement regulated the development and operation of the railway station. It provided that Crowie Projects would construct a 'void' beneath the shopping centre which was to be built. It provided for a railway concourse on the ground floor of the shopping centre building. Upon completion of the 'void' and concourse, PRASA would acquire

ownership of that section of the sectional title scheme. PRASA would construct the railway station within the void.

On 12 September 2008, Crowie Projects entered into a sale of business agreement (the SOB) in terms of which it sold the Bridge City shopping centre to CPC as a going concern. Although the shopping centre business was not yet constructed, CPC acquired the rights to rental income to be generated by letting portions of the shopping centre. It also acquired ownership of the section comprising the shopping centre. The SOB anticipated that Crowie Projects would cede certain rights it held in terms of the Co-ordination Agreement to CPC. It provided that the agreements of cession would, where necessary, involve Crowie Projects, PRASA and CPC.

The dispute between CPC and PRASA arose in 2017 when CPC presented to PRASA and invoice for payment of an amount of approximately R3,2 million for electricity charges due to eThekweni. An attempt to settle the dispute through negotiation foundered. CPC then launched an application claiming payment of the amount it had paid to eThekweni. In doing so it relied upon a clause PRASA disputed the contractual claim on the basis that the Co-ordination Agreement had been concluded between Crowie Projects and PRASA. Since there had been no cession of rights to CPC nor cession of the claim, CPC was not entitled to rely upon the alleged contractual relationship. PRASA also disputed that PRASA was enriched without lawful cause at the expense of CPC.

The high court found that CPC had established its contractual claim on the basis that the Co-ordination Agreement had been concluded between CPC and PRASA. It found, however, that the claims relating to consumption charges between October 2013 and June 2014 had become prescribed.

Before the SCA PRASA abandoned reliance upon the prescription of portions of the claims. It conceded that, to the extent that the claims were contractual they only arose upon payment of the amounts due to eThekweni. That had occurred in 2018.

In relation to the contractual claim the SCA found that the SOB make specific provision for the cession of rights held by Crowie Projects in terms of the Co-ordination Agreement. Other than those rights which were ceded in terms of the SOB, no other cession had occurred. Nor were any of the anticipated tripartite agreements concluded. The clause of the Co-ordination Agreement upon which CPC relied did not feature in any of the out and out cessions in terms of the SOB. In light of the fact that the SOB stipulated a particular form in which the cession of rights would occur, there was no room for reliance upon a tacit cession. The SCA therefore found that CPC had failed to establish a contractual basis for the claim.

In relation to its unjustified enrichment claim, the SCA observed that even if it were to be assumed in favour of CPC that the transaction gave rise to enrichment of PRASA, CPC was unable to establish that it was impoverished. The SCA found that the SOB had incorporated a general indemnity provision in terms of which Crowie Projects undertook to compensate CPC for any loss it might suffer arising from PRASA's operations which PRASA and CPC could not agree upon. In light of the indemnity clause CPC was required to establish that its claim was not one that fell within the ambit of the indemnity clause. In the absence of such proof, CPC had failed to establish an essential element of enrichment liability. The SCA accordingly upheld the appeal, set aside the high court order, and replaced it with an order dismissing the application with costs.

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