



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 28 March 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Glowing Rooms (Pty) Ltd v Levin N O & Others (468/2023) [2024] ZASCA 33 (28 March 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing an appeal against the order of the Western Cape Division of the High Court, Cape Town (the high court).

The appellant leased a unit, from The Woodlands Trust (the Trust), for its 3D mini golf course. The first lease agreement was for a period of three years from 01 September 2016 to 31 August 2019. Following this, a second lease agreement was entered into on 27 February 2020, for another three years commencing on 1 September 2019 to 31 August 2022. In July and August 2022, the parties were in negotiations for a new lease agreement. The Trust disputed that these negotiations resulted in the conclusion of a new lease and alleged that the second lease agreement was terminated by the effluxion of time. The Appellant, on the other hand, claimed that a lease agreement had been concluded on the same terms and conditions as the second lease agreement and refused to vacate the premises. As a result, the Trust instituted an urgent eviction application.

The high court dismissed the eviction application, having found that the parties had entered into a new lease agreement pursuant to the negotiations in July and August 2022, despite it not having been reduced to writing. Immediately after the high court's ruling, the Trust sent a notice to the appellant, terminating the lease agreement on one month's notice in accordance with clause 2.1 of the lease agreement. Once again the appellant refused to vacate the premises, and the Trust instituted another eviction application. This time, the high court granted the eviction application and refused an application for leave to appeal by the appellant, which leave to appeal was granted by the SCA.

The core issues for determination by the SCA were whether the Trust repudiated the lease agreement; whether the notice of termination was valid; whether clause 2.1 of the lease agreement was contrary to public policy; and whether the SCA should have developed the common law in accordance with constitutional norms and values to refuse the eviction.

The SCA found that the argument that the Trust repudiated the lease agreement ignored the fact that the Trust's initial attempt to evict was dismissed by the high court, confirming the existence of the extant lease agreement. With this ruling, the Trust was limited to eviction through the terms of the lease agreement, allowing them to exercise their contractual right to terminate the lease.

In respect of the validity of the notice of termination, the SCA found that the notice was valid as it was not contradictory or confusing. The notice clearly and unambiguously stated that the Trust was exercising a contractual right in terms of clause 2.1 to terminate the lease agreement on one month's notice.

In the SCA, unlike the high court, the appellant did not argue that clause 2.1 was contrary to public policy *per se* but merely the implementation thereof was contrary to public policy. The SCA held that public policy demands that contracts freely and consciously entered into must be honoured and there was nothing in the implementation of clause 2.1 that was contrary to public policy.

The appellant argued that when a lease agreement grants the lessor a unilateral right to terminate the lease, it implies a duty to negotiate in good faith. At the very least, this duty should prevent a party from unilaterally cancelling without first providing a formal written lease for acceptance. The appellant called on the SCA to develop the common law in this regard. The SCA held that this was premised on a misconception of the SCA's right to develop the common law. Only where the common law is deficient are the courts under a general obligation to develop it. The SCA found that this matter was purely a commercial dispute about commercial premises. There were no fundamental rights implicated. The SCA held that nothing on the facts of this matter indicated that there was a need to develop the common law. There was no contractual duty to negotiate and any reliance on a general duty to negotiate in good faith was misplaced. As a result, the SCA dismissed the appeal with costs. However, it varied the date of eviction granting the appellant a period of three months to find other premises.

~~~~ends~~~~