



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 2 DECEMBER 2019

STATUS Immediate

Shepherd Real Estate Investments (Pty) Ltd v Roux Le Roux Motors CC
(1318/2018) [2019] ZASCA 178 (2 December 2019)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Today the Supreme Court of Appeal (SCA) upheld an appeal by the appellant against a judgment of the Western Cape Division of the High Court, Cape Town (the high court).

Shepherd Industrial Commercial Real Estate CC (Shepherd) and the respondent concluded a lease agreement, in terms of which the former let to the latter commercial property for an initial term of five years, with a renewal period of '5 years plus 5 years'. The clause of the agreement that made provision for the renewal of the lease agreement provided that the respondent would have an option to renew the agreement at a prescribed annual escalation of the rental amount for the first renewal period. The respondent duly exercised the option to renew the lease agreement for a five-year period. Subsequently, Shepherd ceded its rights and delegated its obligation under the agreement to the appellant. When the respondent tried to renew the agreement for a further five-year period, the appellant indicated that it was amendable to the proposed renewal at a rental amount that it stipulated, which was unacceptable to the respondent. The appellant then made application to the high court for the ejectment of the respondent, which application failed.

Before the SCA, the appellant argued that the option for renewal was void for vagueness as the rental amount for the further extension was not determined or determinable, which was denied by the respondent. In the alternative, the appellant raised a defence of rectification, further alternatively, the appellant argued that it was a tacit term that the rental should be determined *arbitri boni viri*.

The SCA held that it is a long-established principle of our law that an agreement to agree is void unless it contains a deadlock-breaking mechanism. On the interpretation of the lease agreement, the SCA held that the agreement was incomplete and constituted an unenforceable agreement to agree.

The SCA held that the appellant was not entitled to rely on the rectification defence as it had relied on the validity of the renewal clause in its main defence and, accordingly, it could not

approbate and reprobate. Further, a tacit term could not be imported as it would go against the express terms of the agreement. In the circumstances, the appellant's application for ejectment should have succeeded. The SCA accordingly upheld the appeal and granted an order for the ejectment of the respondent.