

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

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William Van Der Riet Family Trust t/a Cathedral Peak Hotel v Hospitality Industry Pension Provident Fund (64/2008) [2008] ZASCA 148 (November 2008)

In a judgment delivered today, the Supreme Court of Appeal has held that the Cathedral Peak Hotel in KwaZulu-Natal is obliged to pay increased employer contributions to the hospitality industry pension provident fund.

The dispute between the hotel and the fund arose from differing interpretations of the fund's rules, which have statutory force under the Pension Funds Act 24 of 1956.

The dispute has wider significance for other employer members of the fund.

The hotel contended that when it joined the fund, the document entitled 'agreement of participation', which it signed, pegged its contributions at 5%.

The fund differed, and sued the hotel in the Bergville magistrate's court for under-payments. The magistrate upheld the hotel's contentions, but the high court in Pietermaritzburg (Moleko J, with whom Radebe AJ concurred) reversed this judgment, finding for the fund.

The SCA has now upheld the high court's ruling.

Before the SCA, the hotel abandoned its previous contention (which the high court rejected) that the agreement of participation pegged its contributions to 5%. The SCA agreed that this argument was untenable.

However, the SCA also rejected a new argument the hotel advanced on appeal, which was based on an interpretation of the fund's rules themselves.

In a unanimous judgment by Cameron JA, with whom Scott JA, Cloete JA, Griesel AJA and Kgomo AJA concurred, the SCA has held that the rules, properly interpreted, entailed that the hotel's contributions automatically went up by 1% per year, until a minimum level of 6% was attained.

That was the level at which the fund was entitled to enforce contributions from the hotel, and the fund's action therefore had to succeed with costs.