



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Corub Property (Pty) Ltd v Barbuzano (427/2022) [2023] ZASCA 89 (8 June 2023)

Today the Supreme Court of Appeal (SCA) upheld the appellant, Corub Property (Pty) Ltd's appeal. It further set aside and replaced the order of the full bench of the Gauteng Division of the High Court, Johannesburg (the high court).

The appellant, in its capacity as owner of the Lindhaven Shopping Centre, Lindhaven, Johannesburg (the shopping centre) and lessor of various shops in the shopping centre, initiated action proceedings in the Regional Court, Roodepoort (the regional court) against the respondent, Mr Paul Gancalves Barbuzano in his capacity as lessee of leased premises in the shopping centre (shop 9), amongst others, for payment of arrear municipal electricity and water charges consumed on the leased premises, which included shop 9 and the common areas. The appellant succeeded with its claims and the regional court ordered the lessee to pay the appellant the amount of R400 000.00 plus interest and costs. Aggrieved by that order, the lessee appealed against it to the high court and the high court upheld the appeal.

The issue for determination before the SCA was whether the lessee was, in terms of the lease agreement, liable to pay to the lessor additionally for the kilovolt (KVa) component, and not only for the kilowatt (KWh) component of the monthly readings of the electronic electricity meter that was installed for shop 9.

The Van der Linde Family Trust (VLFT) was the previous owner of the shopping centre. On 31 October 2008, the lessee and VLFT concluded the written lease agreement (the lease) in terms whereof VLFT let shop 9 to the lessee for a period of five years from 1 July 2008 until 31 August 2013. The lessor purchased the shopping centre from VLFT, and ownership passed to it on 11 September 2012. With the termination of the lease looming, the lessee, on 13 June 2013, renewed the lease with the lessor on the same terms of the initial lease he had concluded with VLFT.

The lessee conducted the business of a supermarket from shop 9 and was an anchor tenant. The supermarket initially had a bakery. The electricity meter that was installed for shop 9 is, what was referred to in the evidence, a 'Buy-Rite' or 'CT' or 'low voltage demand' meter. The rationale for the installation of that type of electricity meter is that an anchor tenant usually requires a bigger circuit breaker because it usually is a large electricity consumer. The circuit breaker installed for shop 9 is a 200 Ampere circuit breaker. The electricity meter has two registers: a kilovolt (KVa) register and a kilowatt hour (KWh) register. Monthly electricity readings are taken and captured from both registers.

The lessor appointed a company called Collective Utility Management (CUM) as its agent to manage the shopping centre's utility account on its behalf. The services rendered by CUM to the lessor included monthly meter readings, the calculations in accordance with the applicable municipal by-laws and the compilation of the monthly invoices rendered to the tenants of the shopping centre. The Greater Johannesburg Metropolitan Council (the municipality) adopted a uniform set of electricity by-laws for the entire Metropolitan area served by Metropolitan Electricity namely, the 'Greater Johannesburg Metropolitan Electricity Bylaws' (the applicable municipal by-laws). The lessor purchases the electricity supplied to the shopping centre from the municipality and, in turn, resells the electricity to its tenants. Additionally, the applicable municipal by-laws stated that this electricity shall in respect of each purchaser be metered through a sub-meter.

The SCA, in assessing the evidence, indicated that according to the lease agreement in place between the lessee and the lessor, the lessee is obliged to pay, on demand to the lessor, the charges for all electricity consumed on the leased premises; that the lessor is obliged to determine such liability of the lessee; that the lessor's obligation is to calculate such liability in accordance with the applicable municipal by-laws; and that the lessee's obligation is to pay to the lessor, the cost of electricity that was so calculated by the lessor in accordance with the applicable municipal by-laws.

In coming to a conclusion on the issue for determination, the SCA held that the high court pronounced upon a claim that was not raised in the pleadings. It further held that, through the evidence of the witnesses: (a) the lessor established that the monthly meter readings at the shopping centre generally and specifically of shop 9 were properly undertaken and correctly recorded jointly by the two meter readers, for capturing and preparation of invoices at CUM's offices; (b) the lessor established that the lessee of shop 9 was to be classified as a large consumer with low voltage demand; (c) the lessor corroborated the evidence of the technical manager that the lessee was, in terms of the municipal by-laws, a large consumer with low voltage demand with the analysis revealing that the lessee was charged the correct tariff for the Kwa electricity component and for the water in shop 9.

The SCA further held that a reading of the record shows that the judgment of the regional court correctly analysed the pleadings and the factual issues presented by the parties and that the favourable credibility findings made by the regional court in respect of the witnesses were justified and correct, adding that their evidence in respect of the facts relevant to a determination of the appeal were neither refuted by the lessee and his witnesses, nor did the lessee present countervailing evidence.

In the result, the SCA held that the lessor has proved the lessee's liability and the amount of such liability as claimed by the lessor for the municipal electricity and water charges consumed on the leased premises during the relevant period. The appeal was accordingly upheld with costs and the order of the full bench of the high court set aside and replaced with a new order.

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