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

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Status: Immediate

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City of Tshwane Metropolitan Municipality v Brooklyn Edge (Pty) Ltd and Another [2022] ZASCA 23 (1 March 2022)

Today the SCA upheld an appeal to a limited extent against the North Gauteng Division of the High Court, Pretoria (high court). It substituted part of the order of the high court with an order that the first respondent pay to the appellant an amount of R8 550 000 plus interest thereon at the bond interest levied by the appellant's approved banker, calculated from 1 February 2005 to date of payment. It also directed the appellant to pay 80% of the first respondent's costs of appeal.

On 31 July 2003, the appellant, the City of Tshwane Metropolitan Municipality (the City) and the first respondent, Brooklyn Edge (Pty) Ltd (Brooklyn Edge), then known as Nieuw Pivot Investments (Pty) Ltd, entered into a deed of sale. In terms thereof the City sold immovable properties to Brooklyn Edge. The deed of sale provided that the properties may be transferred into the name of a nominee of the purchaser. Alleging that Brooklyn Edge had so nominated it, the second respondent, Pivot Property Development (Pty) Ltd, instituted an action in the North Gauteng Division of the High Court, Pretoria in which it essentially claimed enforcement of the deed of sale. As a co-plaintiff, Brooklyn Edge claimed the same relief in the alternative. The high court held that the second respondent had not accepted the purported nomination, but gave judgment in favour of Brooklyn Edge. It refused the City's application for leave to appeal, which was subsequently granted by the SCA.

On appeal, the City challenged the order only on the following grounds: (a) that the deed of sale was unenforceable because a tacit suspensive or resolutive condition was not fulfilled or failed; (b) that the deed of sale was void for vagueness because the purchase price was not determined or determinable; (c) that the deed of sale was void ab initio because of failure to comply with s 79(18) of the 1939 Ordinance; (d) that the deed of sale was invalid for non-compliance with s 14(2) of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA); (e) that the claim for the transfer of the properties was premature; (f) alternatively, that Brooklyn Edge's claims have prescribed; and (g) further alternatively, that the in duplum rule was inapplicable.

In respect of the first ground the City relied on a provision in the deed of sale that should closure of the properties in question as a public park and their rezoning not be finalised successfully, the transaction shall be deemed to have been mutually cancelled (the deemed cancellation clause). The City contended that it tacitly provided that these outcomes had to be finalized within a reasonable time. The SCA held that the proper interpretation of the deemed cancellation clause in its context was that the parties agreed that each party would undertake all efforts to procure the closure and the rezoning, irrespective of how long they take. Only if that objectively proved to be unachievable, would there be a deemed cancellation. As a result the SCA found that the deed of sale did not contain the alleged tacit condition. On the second ground, the SCA held that the deed of sale was not void for vagueness as alleged by the appellant. Coming to the third ground raised by the appellant, the SCA pointed out that a witness for the respondents who was a specialist valuer in the employment of the City at that time, testified that the Properties Committee had considered the market value of the properties and was satisfied with the

proposed purchase price. That in itself amounted to compliance with s 79(18)*(d)(*ii) of the1939 Ordinance. As a result the Court held that the contentions of the City were devoid of a factual basis. With regards to the fourth ground, the SCA stated that the council resolution and the deed of sale were validly completed juristic acts under the 1939 Ordinance and that they gave rise to enforceable rights. The date of commencement of the MFMA was 1 July 2004. Should s 14(2) have been applicable to the transaction, it would have retrospectively interfered with vested rights. A statute would only have retroactive operation if that was clearly indicated by the legislature. No such meaning was pointed out or could be detected in s 14 of the MFMA or its context. It followed that s 14(2) was not applicable to the deed of sale. Thus the City's challenge based on s 14(2) also had to fail. On the fifth ground, the SCA held that the contention that Brooklyn Edge prematurely claimed transfer of the properties, could be briefly disposed of. The order of the high court directed the City to formally finalise the closure by the submission of a closure certificate and to render the assistance necessary to enable the publication of the amendment scheme to effect the rezoning. Regarding the sixth ground, the SCA held that prescription as an alternative defence could not stand under these circumstances and on the seventh and last ground raised by the appellant the SCA agreed with the appellant that the in duplum rule was not applicable, as it only applied to arrear interest and that in terms of the deed of sale there was no arrear interest. This is the reason for the aforesaid amendment of the high court order.

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