



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: 13 May 2026

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

Dr Darren Levin Inc. and Another v Promenade Centre (Pty) Ltd (1149/2024) [2026] ZASCA 70 (13 May 2026)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal against the judgment of the Western Cape Division of the High Court, Cape Town (the high court), with costs, including those of two counsel.

The appeal concerned whether a commercial lease concluded between the respondent, Promenade Centre (Pty) Ltd (Promenade), and the first appellant, Dr Darren Levin Incorporated (DDL), was void and unenforceable under ss 51(1)(a)(i), 51(1)(b)(ii), or 4(5) of the Consumer Protection Act 68 of 2008 (CPA), or contrary to public policy under the common law.

The second appellant, Dr Darren Levin (Dr Levin), a medical practitioner, had previously leased premises in the Promenade Centre in Camps Bay, Cape Town (the centre) in his personal capacity. When those premises became unavailable because of renovations, Promenade offered alternative premises but informed Dr Levin that it no longer concluded leases with individuals, as it wished to avoid the application of the CPA. Dr Levin then incorporated DDL, which entered into a ten-year lease with Promenade for Shop 5B in the centre.

After Dr Levin became dissatisfied with the premises and DDL failed to pay rental and related charges, Promenade cancelled the lease and instituted action against DDL and Dr Levin. DDL and Dr Levin counterclaimed, contending that the lease was void because Promenade had insisted on contracting with a juristic person to avoid the application of the CPA. The high court dismissed the counterclaim, and DDL and Dr Levin appealed to the SCA.

The SCA held that, although Promenade initially negotiated with Dr Levin in his personal capacity and required him to contract through a company to avoid the CPA, this did not render the lease void. DDL was a large juristic person with an asset value or annual turnover exceeding the statutory threshold, and the CPA therefore did not apply to the lease.

The SCA held further that s 4(5) of the CPA does not create substantive consumer rights but forms part of the provisions dealing with the interpretation, application and realisation of consumer rights. It also held that s 51(1) applies to terms or conditions of a transaction or agreement, and not to non-contractual or extra-contractual conditions imposed before a contract is concluded.

The SCA emphasised that parties may arrange their genuine commercial affairs so as to avoid the application of legislation. Merely contracting with a juristic person, thereby avoiding the CPA, does not, without more, render the agreement void. Dr Levin was a medical practitioner, commercially well-positioned in the negotiations, and not a vulnerable or low-income consumer of the kind principally protected by the CPA. The lease was also a commercial lease, not a residential lease.

The SCA rejected the argument that the lease was contrary to public policy under the common law, as it relied on the same alleged CPA protections that the court had found were not infringed.

As a result, the appeal was dismissed with costs, including the costs of two counsel.

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