



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED

FROM The Registrar, Supreme Court of Appeal

DATE 05 AUGUST 2021

STATUS Immediate

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

Harbour Arch Investment Holdings (Pty) Ltd v Capital Propfund 4 (Pty) Ltd (case no 437/2020) [2021] ZASCA 108 (05 August 2021)

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) upheld an appeal against an order of the Western Cape Division of the High Court, Cape Town, which upheld an application brought by Capital Propfund 4 (Pty) Ltd, for an order declaring a leases assignment agreement it had concluded with Harbour Arch Investment Holdings (Pty) Ltd to be of full force and effect. Specifically, Capital Propfund sought enforcement against Harbour Arch Investment of a payment obligation provided for in that agreement.

The background to the leases assignment agreement is this: Capital Propfund concluded a 30-year Notarial Land Lease Agreement with Transnet Ltd in respect of a portion of commercial land owned by Transnet in Culemborg near the Cape Town Harbour. Capital Propfund, as the lessee under the land lease, then concluded tenant agreements with various tenants who occupied different portions of the property. Through a leases assignment agreement, Capital Propfund assigned to Harbour Arch Investment all its rights and obligations under both the land lease and the various

tenant leases as a going concern at a purchase price of R235 million. In terms of Clause 18 of the leases assignment agreement, in the event that Harbour Arch Investment developed additional floor space on the property, it had to pay Capital Propfund an amount of money computed on a specified formula.

After Harbour Arch Investment acquired ownership of the property from Transnet, it advertised its plans to construct additional floor space on the property. Capital Propfund demanded information pertaining to the proposed development together with payment as provided in the leases assignment agreement. Harbour Arch denied obligation to make payment maintaining that the payment obligation was no longer applicable since it was now the owner of the property. Capital Propfund's application to the high court for an order declaring the leases assignment agreement to be of full force and the enforcement of the payment obligation was successful. The high court held that the merger of the land lease and the property rights had no bearing on the payment obligation because the leases assignment agreement made no provision for its termination upon merger.

The SCA found that the payment obligation was only applicable as long as the land lease remained valid. It found that in terms of clause 18.3 of the agreement the obligation was limited to the sub-lessee and its successors in title to the land lease and that nothing in the wording of clause 18.3 or anywhere in the leases assignment agreement showed an intention that the payment obligation would be applicable even when the land lease terminated. It further held that Capital Propfund could not create under the leases assignment agreement a perpetual benefit when its own rights were limited to the existence of the land lease.

--- ends ---