



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 10 March 2011

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

On 10 March 2011 the Supreme Court of Appeal handed down judgment in *Savvas Socratous v Grindstone Investments 134 (Pty) Ltd*, upholding an appeal against an order of the Mthatha High Court, in terms of which the appellant was evicted from premises from which he had conducted a supermarket business under the style of a national supermarket chain. During September 2008 a fire had broken out at the premises causing extensive damage. The lease agreement between the parties provided that if the property was destroyed and proved ‘untenantable’ either party was entitled to cancel by giving written notice to that effect.

The parties were in dispute about whether or not the building was ‘untenantable’. The respondent gave notice in terms of the agreement. The appellant refused to vacate. This precipitated much litigation in various courts, including litigation in terms of which the respondent sought confirmation of cancellation of the lease and the eviction of the appellant. The Mthatha High Court rejected the submission on behalf of the appellant that there was litigation pending involving the same parties, based on the same cause of action and related to the same subject matter. This court held that the Mthatha High Court had erred in this regard.

In upholding the appeal the court said the following:

'Courts are public institutions under severe pressure. The last thing that already congested court rolls require is further congestion by an unwarranted proliferation of litigation. The court below erred in not holding that against Grindstone when it dismissed the defence of *lis pendens* without due regard to the facts and on wrong principle. The court below ought not to have proceeded to consider the merits.'

The SCA also took a dim view of the respondent's failure to disclose material facts to the court below, including the fact that it had resorted to self-help to retake possession of the premises at the time that it had proceeded to seek the appellant's eviction in the high court.

Additionally, the SCA expressed its displeasure at the actions of the appellant pending the appeal. It had retaken possession of the premises and had let it to a subsidiary company. The court, however, was assured that because the premises had been let to a subsidiary company a decision in favour of the appellant could be executed. The appeal was upheld and the eviction order was set aside. The respondent was ordered to pay the appellant's costs on the attorney and client scale.