



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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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

Neutral citation: *Monyetla Property Holdings v IMM Graduate School of Marketing* (20023/2014) [2015] ZASCA 32 (25 March 2015)

The appellant, the owner of certain commercial property in Richmond, had leased office space and parking bays to the first respondent, a company in respect of whose debts the second respondent had stood surety. Clause 26.2 of the lease provided that should the first respondent remain in occupation of the premises pending a dispute as to whether the appellant had lawfully cancelled the lease, it would continue to pay all amounts due in terms of the lease.

The first respondent fell into substantial arrears in respect of its rentals and by 1 March 2009 had become indebted to the appellant in a sum in excess of R2 million. Consequently, on 6 March 2009, the appellant exercised its contractual right to cancel the lease. The first respondent disputed the validity of the cancellation and refused to vacate the premises. This led to the appellant instituting eviction proceedings in the high court in which it sought also payment of amounts in respect of rental under clause 26.2 for the period April 2009 to September 2009. Judgment was granted in the appellant's favour in respect of the sum.

Eventually the first respondent vacated the premises at the end of April 2010. Shortly before, the appellant had instituted further proceedings in which it sought further payments under clause 26.2 of the lease relating to the period October 2009 to April 2010. This claim was settled with the respondent's undertaking to pay a sum in excess of R1,7 million.

Thereafter, on 16 March 2012, the appellant issued summons in the present case claiming damages for the alleged breach of contract which had resulted in the cancellation of the lease, calculating its loss of the period 15 April 2010 to the date on which the lease had been due to expire. The amount claimed was therefore additional to the amounts in the two earlier proceedings.

The respondents pleaded that this claim had prescribed as it was instituted more than three years after the lease had been cancelled. The appellants sought to meet this by contending that the claim related to the period after it had vacated the period and that the damages therefore only became due on 30 April 2010 less than three years before action was instituted.

The Supreme Court of Appeal today held that the Gauteng Division had correctly upheld the special plea of prescription. It rejected the contention that the claim only arose after the first respondent had vacated the property and concluded that prescription had commenced to run and the debt sued upon had become due when the lease was cancelled.

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