



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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eThekwini Municipality v Mounthaven (Pty) Ltd (1068/2016) [2017] ZASCA 129 (29 September 2017)

Today the Supreme Court of Appeal (SCA) dismissed an appeal against the KwaZulu-Natal Local Division, Durban (High Court).

The issue on appeal was whether a claim for the re-transfer of property from the respondent, Mounthaven (Pty) Ltd (Mounthaven), to the appellant, eThekwini Municipality (the Municipality) constituted a debt as contemplated in Chapter III of the Prescription Act 68 of 1969 (the Prescription Act).

The issue arose within the following context: On 24 May 1985 the Municipality sold vacant immovable property described as Lot 2678 Verulam (Extension 25), measuring 771 square meters (the property) to Mounthaven at a public auction for an amount of R60 000. One of the conditions contained in the Deed of Transfer was that Mounthaven would erect buildings to the value of not less than one hundred thousand rand (R100 000 00) within a period of three (3) years from the date of sale. Mounthaven failed to develop the land within the stipulated period and the property remains undeveloped.

On 23 May 2012, the Municipality wrote a letter to Mounthaven in which it invoked the terms of the conditions in Clause C.2 of the Deed of Transfer (the reversion clause) and demanded re-transfer of the property. Mounthaven failed to comply with the demand and on 19 February

2014 the Municipality launched an application invoking the conditions and claiming re-transfer of the property. Mounthaven raised a special plea of prescription to the High Court.

At the High Court, the Municipality contended that the Prescription Act was not applicable as the claim did not constitute a debt which is subject to extinctive prescription under the Act. It further submitted that the claim was founded on *rei vindicatio* and was thus a mechanism to its perfect ownership of the property. The High Court found that the claim constituted a debt and concluded that it had prescribed after a period of three years. On the question whether the claim was a vindication of a real right, the High Court held that property can only be transferred by registration and that it does not occur automatically. It reached the conclusion that the Municipality did not have an absolute real right to the property and that it lost its right of action when it prescribed after three years.

On appeal to the SCA, the Municipality raised four contentions relating to prescription. First, that its claim for re-transfer of the property is not a claim for payment of money, goods or services, or an obligation to render something and thus does not constitute a 'debt', as contemplated in Chapter III of the Act. Secondly, that the reversion clause constitutes a real right, and is thus not a debt; thirdly and alternatively, if the claim is a debt, it is secured by a mortgage bond and is not extinguished by prescription for a period of thirty years. Finally and further alternatively, if the claim is a debt, then the respondent's failure to develop the property constitutes an on-going wrong.

In respect of the first contention, the SCA found that an interpretation that constricts the meaning of 'debt' to 'delivery of goods' confines it to the delivery of movables to the exclusion of all immovable property. This would create a baseless distinction between movable property and immovable property for the purposes of prescription because in cases where the legislature has sought to make this distinction it has done so expressly. It thus concluded that a claim for re-transfer is a debt and it prescribed after the effluxion of the three year period. Regarding the second contention, the SCA held that that the right of action against Mounthaven is a personal right and not a limited real right and has consequently prescribed through the effluxion of a period of three years. Finally, it held that the two alternative grounds of appeal were without merit.