



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA  
JUDGMENT**

**Reportable**

Case no: 1149/2024

In the matter between:

**DR DARREN LEVIN INC.**

**First Appellant**

**DARREN LEVIN**

**Second Appellant**

and

**PROMENADE CENTRE (PTY) LTD**

**Respondent**

**Neutral citation:** *Dr Darren Levin Inc. and Another v Promenade Centre (Pty) Ltd*  
(1149/24) [2026] ZASCA 70 (13 May 2026)

**Coram:** MEYER, KGOELE and UNTERHALTER JJA and KGANYAGO and  
NORMAN AJJA

**Heard:** 2 March 2026

**Delivered:** 13 May 2026

**Summary:** Contract – Consumer Protection Act 68 of 2008 (CPA) – whether an agreement to lease immovable property is void and unenforceable under ss 51(1)(a)(i), 51(1)(b)(ii), 51(3), or 4(5) of the CPA, or *contra bonos mores* under the common law, when there was a pre-existing supplier-consumer relationship between the lessor and a natural person, and the lessor, not wishing to contract with the consumer to avoid the application of the CPA, instead enters into a lease with a large juristic person.

---

## ORDER

---

**On appeal from:** Western Cape Division of the High Court, Cape Town (Bremridge AJ, sitting as court of first instance):

The appeal is dismissed with costs, including those of two counsel.

---

## JUDGMENT

---

**Meyer JA (Kgoele and Unterhalter JJA and Kganyago and Norman AJJA concurring)**

[1] This appeal is against the judgment and order of the Western Cape Division of the High Court, Cape Town (Bremridge AJ), delivered on 12 June 2024 (the high court), dismissing the counterclaim of the first appellant, Dr Darren Levin Incorporated (DDL), and the second appellant, Dr Darren Levin (Dr Levin). They sought a declaration of invalidity of an agreement of lease of immovable property concluded between the respondent, Promenade Centre (Pty) Ltd (Promenade), and DDL, as lessee.

[2] The facts pertinent to the determination of this appeal are uncontroversial. Dr Levin obtained an MBChB degree from the University of the Witwatersrand in 2000. He has been practising as a general practitioner and family doctor since 2007. Promenade owns the Promenade Centre, a major shopping centre on Victoria Road in Camps Bay, Cape Town (the centre). On 31 October 2014, Dr Levin, in his personal capacity, entered into a lease agreement with Xtraprops 66 (Pty) Ltd (Xtraprops), in terms of which he rented Shop 102F in the centre for a period of five years from 1 December 2014 until 1 December 2019 (the 2014 lease). Xtraprops was a company affiliated with Mr David Solomon and Mr Jeffrey Solomon, with whom Dr Levin negotiated the lease in issue in this appeal. Dr Levin conducted his medical practice from those premises together with other medical professionals.

[3] On 25 April 2018, Dr Levin received a notice terminating the 2014 lease, effective from 31 October 2018. The reason for the termination was that major renovations were to be carried out at the centre. The 2014 lease permitted the lessor to terminate the lease with due notice in the event of major renovations. After the 2014 lease ended on 31 October 2018, Dr Levin continued to occupy Shop 102F under a month-to-month lease.

[4] Promenade offered Dr Levin, who wished to continue practicing from the centre, alternative premises, namely Shop 5B in the centre. On 30 January 2019, Dr Levin received a notice terminating the lease for Shop 102F, effective from 28 February 2019. Mr Jeffrey Solomon, on 26 January 2019, sent Dr Levin a WhatsApp message stating:

‘Darren, do you have a company or trust?

We no longer enter into leases with individuals.

Please confirm urgently.’

Dr Levin responded 15 minutes later, stating:

‘Hi Jeff. Not at present. I am a sole proprietor.

I intend to register as an incorporated entity, but I couldn’t do so until I knew I had secure rooms and a future for my practice.’

[5] On 28 January 2019, Mr Jeffrey Solomon explained to Dr Levin that Promenade had decided it no longer wished to enter into leases with individuals renting shops in the centre. The reason for the decision was to avoid the application of the CPA. Mr Jeffrey Solomon sent an email and WhatsApp message to Dr Levin later that morning, stating:

‘I confirm our discussions regarding your formation of Dr Darren Levin Inc and your undertaking to do so immediately.

We require the registration number within 7-10 days, in order for you to sign your lease and for us to have your premises ready before you have to vacate your current premises on 28/2/2019.

Please confirm that this process will commence immediately.’

In response, Dr Levin stated that he would do what he could to expedite the process.

DDL was subsequently incorporated on 31 January 2019.

[6] Shop 5B was not immediately available for hire from the Promenade by DDL, because it was, at that stage, leased to The Bay Skincare CC (Skincare). DDL accordingly entered into a sublease with Skincare for the remaining period of its tenancy of Shop 5B, which expired on 1 October 2020 (the sublease). Promenade agreed to enter into a lease agreement for Shop 5B with DDL for an initial period of ten years, because Dr Levin was not satisfied to conclude a lease for only five years. DDL and Promenade, therefore, entered into a ten-year lease of Shop 5B, commencing on 1 October 2020 (the 2020 lease), immediately following the expiration of the sublease between DDL and Skincare.

[7] Dr Levin moved into the new premises (Shop 5B), from which he practised for about 18 months following the conclusion of the sublease. He became dissatisfied with the new premises, mainly because they had no windows and, in particular, none overlooking the ocean, as he and his patients had previously enjoyed when he practiced from Shop 102F. He searched for other premises for his medical practice. On 10 September 2020, less than a month before the 2020 lease between Promenade and DDL was due to commence, he concluded a written lease agreement in his own name with a corporate entity, Camps Bay Investment Trust CC, in terms of which he rented premises in the building known as Suite 3, Central Parade, Victoria Road, Camps Bay, Cape Town, for a period of five years, from 1 October 2020 until 30 September 2025, with an option to extend that lease for a further period of five years.

[8] As a result of DDL's failure to pay rental, rates, and operating costs to Promenade for the month of October 2020, Promenade cancelled the 2020 lease on 8 October 2020. On 12 November 2020, Promenade initiated action proceedings in the high court against DDL and Dr Levin, for damages allegedly suffered due to DDL's breach of the 2020 lease and the consequent cancellation thereof.

[9] It also seeks to hold Dr Levin personally liable for its damages *qua* director of DDL, by virtue of the provisions of s 19(3) of the Companies Act 71 of 2008, which provide:

'If a company is a personal liability company the directors and past directors are jointly and severally liable, together with the company, for any debts and liabilities of the company as are or were contracted during their respective periods of office.'

In the alternative, it seeks to hold Dr Levin personally liable for the liability of DDL by virtue of a deed of suretyship which he executed in favour of Promenade on 4 February 2019, in terms whereof he bound himself as surety and co-principal debtor with DDL for the due and proper fulfilment of all its obligations, and for the punctual payment of all sums which have or may become due to Promenade in terms of or in connection with or arising in any way whatsoever under the 2020 lease.

[10] On 21 January 2021, DDL and Dr Levin filed their counterclaim. They claimed that the 2020 lease is void, invalid and unenforceable pursuant to the provisions of ss 51(1)(a)(i), 51(1)(b)(ii), 51(3) or 4(5) of the Consumer Protection Act 68 of 2008 (CPA), or *contra bonos mores* under the common law. At the commencement of the trial, the determination of the claim and of the counterclaim were separated. Pursuant to the separation, the high court first determined the counterclaim. The counterclaim raises this question: is the 2020 lease concluded by Promenade with DDL rendered void and unenforceable by reason of Promenade requiring a contract with DDL and not Dr Levin so as to avoid the application of the CPA.

[11] Dr Levin's testimony during the trial established that Promenade initially negotiated the 2020 lease with him in his personal capacity. The terms 'consumer' and 'supplier' in the CPA are broad enough to mean, in this context, that initial negotiations occurred between Dr Levin as a 'consumer' and Promenade as a 'supplier'. A 'consumer' is defined as 'a person to whom those particular goods or services are marketed in the ordinary course of the supplier's business' and 'a person who has entered into a transaction with a supplier in the ordinary course of the supplier's business, unless the transaction is exempt from the application of [the CPA] by section 5(2) or in terms of section 5(3)'. A 'supplier' is someone 'who markets any goods or services'. 'Services' include providing 'any accommodation or sustenance' or 'access, or of a right of access, to . . . any premises'. To market means to 'promote or supply any goods or services'. 'Promote' includes offering to supply goods or services within the normal scope of business or making 'any representation in the ordinary course of business that could reasonably be inferred as expressing a willingness to supply any goods or services for consideration'. Initially, Promenade offered Dr Levin the opportunity to hire Shop 5B as a lessee before Mr Jeffrey Solomon, acting on behalf of Promenade, required Dr Levin to enter into the lease through a company. Dr Levin's

evidence also showed that Promenade no longer wanted to contract with him as a natural person, to avoid the application of the CPA. However, it was willing to contract with DDL, being a large juristic person.

[12] Dr Levin and DDL further argue that a decision by a party to contract only with large juristic persons, when it previously had a 'supplier-consumer relationship', defeats the purposes of the CPA, deprives consumers of their rights, and results in a contract contrary to public policy. Such a decision, they concede, does not offend the provisions of the CPA on which they rely, if there was never an existing supplier-consumer relationship or if there was one in relation to a previous unrelated credit transaction. It is only, as in the present case, where the supplier commences to market a property for hire to a consumer in his personal capacity and midstream in the negotiations changes its stance and informs the consumer that a lease or contract will only be concluded with a juristic person, that the anti-circumvention measures relied upon by them afford protection to the individual, in this instance, Dr Levin.

[13] Dr Levin and DDL contend that Promenade's decision was a 'condition' under s 51(1) or 'conduct' under s 4(5) that frustrates the purposes of the CPA. They accept that there was no term in the 2020 lease requiring Dr Levin to form a juristic person. However, they argue, that s 51(1) prohibits 'an extra-contractual condition' imposed by one of the parties before a contract will be concluded.

[14] Their arguments raise the question of the proper interpretation of the relevant provisions of the CPA. In *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others*,<sup>1</sup> this Court stated that:

'The much-cited passages from *Natal Joint Municipal Pension Fund v Endumeni Municipality (Endumeni)* offer guidance as to how to approach the interpretation of the words used in a document. It is the language used, understood in the context in which it is used, and having regard to the purpose of the provision that constitutes the unitary exercise of interpretation. I would only add that the triad of text, context and purpose should not be used in a mechanical fashion. It is the relationship between the words used, the concepts expressed by those words and the place of the contested provision within the scheme of the agreement (or instrument)

---

<sup>1</sup> *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99; [2021] 3 All SA 647 (SCA); 2022 (1) SA 100 (SCA) para 25.

as a whole that constitutes the enterprise by recourse to which a coherent and salient interpretation is determined. As *Endumeni* emphasised, citing well-known cases, “(t)he inevitable point of departure is the language of the provision itself”.

[15] The CPA comprises seven chapters, each divided into parts. Chapter 1 is headed ‘INTERPRETATION, PURPOSE AND APPLICATION’. Part A is headed ‘*Interpretation*’ and comprises s 1 (Definitions), and s 2 (Interpretation). Section 2(1) stipulates that ‘[t]his Act must be interpreted in a manner that gives effect to the purposes set out in section 3’. Part B of the CPA is headed ‘*Purpose, policy and application of Act*’ (ss 3-7). Section 3 is headed ‘Purpose and policy of Act’, s 4 ‘Realisation of consumer rights’, s 5 ‘Application of Act’, s 6 ‘Threshold determination’, and s 7 ‘Requirements of franchise agreements’. Chapter 2 is headed ‘FUNDAMENTAL CONSUMER RIGHTS’ (ss 8-67). Part A is headed ‘*Right of equality in consumer market*’ (ss 8-10), Part B ‘*Consumer’s right to privacy*’ (ss 11-12), Part C ‘*Consumer’s right to choose*’ (ss 13-21), Part D ‘*Right to disclosure and information*’ (ss 22-28), Part E ‘*Right to fair and responsible marketing*’ (ss 29-39), Part F ‘*Right to fair and honest dealing*’ (ss 40-47), Part G ‘*Right to fair, just and reasonable terms and conditions*’ (ss 48-52), Part H ‘*Right to fair value, good quality and safety*’ (ss 53-61), and Part I ‘*Supplier’s accountability to consumers*’ (ss 62-67).

[16] Sections 3(1)(b), (c) and (d) read as follows:

‘(1) The purposes of this Act are to promote and advance the social and economic welfare of consumers in South Africa by-

...

- (b) reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers-
  - (i) who are low-income persons or persons comprising low-income communities;
  - (ii) who live in remote, isolated or low-density population areas or communities;
  - (iii) who are minors, seniors or other similarly vulnerable consumers; or
  - (iv) whose ability to read and comprehend any advertisement, agreement, mark, instruction, label, warning, notice or other visual representation is limited by reason of low literacy, vision impairment or limited fluency in the language in which the representation is produced, published or presented;
- (c) promoting fair business practices;
- (d) protecting consumers from-

- (i) unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and
- (ii) deceptive, misleading, unfair or fraudulent conduct . . . .’

[17] Section 4 contains provisions concerning matters of legal standing, interpretation and application of the CPA aimed at the realisation of consumer rights.<sup>2</sup> Amongst those provisions is subsection 4(5), which reads as follows:

- ‘(5) In any dealings with a consumer in the ordinary course of business, a person must not –
- (a) engage in any conduct contrary to, or calculated to frustrate or defeat the purposes and policy of, this Act;
  - (b) engage in any conduct that is unconscionable, misleading or deceptive, or that is reasonably likely to mislead or deceive; or

---

<sup>2</sup> Subsections 4(1)–(4) read thus:

‘(1) Any of the following persons may, in the manner provided for in this Act, approach a court, the Tribunal or the Commission alleging that a consumer’s rights in terms of this Act have been infringed, impaired or threatened, or that prohibited conduct has occurred or is occurring:

- (a) a person acting on his or her own behalf;
- (b) an authorised person acting on behalf of another person who cannot act in his or her own name;
- (c) a person acting as a member of, or in the interest of, a group or class of affected persons;
- (d) a person acting in the public interest, with leave of the Tribunal or court, as the case may be; and
- (e) an association acting in the interest of its members.

(2) In any matter brought before the Tribunal or a court in terms of this Act –

- (a) the court must develop the common law as necessary to improve the realisation and enjoyment of consumer rights generally, and in particular by persons contemplated in section 3(1)(b); and
- (b) the Tribunal or court, as the case may be, must –
  - (i) promote the spirit and purposes of this Act; and
  - (ii) make appropriate orders to give practical effect to the consumer’s right of access to redress, including, but not limited to –
    - (aa) any order provided for in this Act; and
    - (bb) any innovative order that better advances, protects, promotes and assures the realisation by consumers of their rights in terms of this Act.

(3) If any provision of this Act, read in its context, can reasonably be construed to have more than one meaning, the Tribunal or court must prefer the meaning that best promotes the spirit and purposes of this Act, and will best improve the realisation and enjoyment of consumer rights generally, and in particular by persons contemplated in section 3(1)(b).

(4) To the extent consistent with advancing the purposes and policies of this Act, the Tribunal or court must interpret any standard form, contract or other document prepared or published by or on behalf of a supplier, or required by this Act to be produced by a supplier, to the benefit of the consumer –

- (a) so that any ambiguity that allows for more than one reasonable interpretation of a part of such a document is resolved to the benefit of the consumer; and
- (b) so that any restriction, limitation, exclusion or deprivation of a consumer’s legal rights set out in such a document or notice is limited to the extent that a reasonable person would ordinarily contemplate or expect, having regard to –
  - (i) the content of the document;
  - (ii) the manner and form in which the document was prepared and presented; and
  - (iii) the circumstances of the transaction or agreement.’

- (c) make any representation about a supplier or any goods or services, or a related matter, unless the person has reasonable grounds for believing that the representation is true.’

[18] Section 5(1)(a) provides that the CPA applies to ‘every transaction occurring within the Republic, unless it is exempted by subsection (2), or in terms of subsections (3) and (4)’. Section 5(2)(b) provides that:

‘(2) This Act does not apply to any transaction –

- (b) in terms of which the consumer is a juristic person whose asset value or annual turnover, at the time of the transaction, equals or exceeds the threshold value determined by the Minister in terms of section 6.’

Section 6 enjoins the Minister, at intervals of no more than five years, by notice in the *Gazette*, to ‘determine a monetary threshold applicable to the size of the juristic person for the purposes of section 5(2)(b)’. On 4 February 2019, the threshold set by the Minister was R2 million. It is common cause that DDL had an asset value or annual turnover of R2 million or more and is thus, in terms of the CPA, a large juristic person to which the CPA does not apply.

[19] Section 51 of the CPA falls within the chapter headed ‘FUNDAMENTAL CONSUMER RIGHTS’ under the part headed ‘*Right to fair, just and reasonable terms and conditions*’. Section 51(1)(a) in relevant parts provides:

‘A supplier must not make a transaction or agreement subject to any term or condition if –

- (a) its general purpose or effect is to –  
 (i) defeat the purposes and policy of this Act.’

And s 51(1)(b) in relevant parts provides:

‘A supplier must not make a transaction or agreement subject to any term or condition if –

- (a) it directly or indirectly purports to –  
 (i) waive or deprive a consumer of a right in terms of this Act.’

And s 51(3) reads:

‘A purported transaction or agreement, provision, term or condition of a transaction or agreement, or notice to which a transaction or agreement is purported to be subject, is void to the extent that it contravenes this section.’

[20] The use of the word ‘by’ before subparagraphs (b), (c), and (d) in s 3(1) of the CPA, makes it plain that the purpose of promoting and advancing the social and

economic welfare of consumers is sought to be achieved by specific means, which are specified in subclauses (b), (c), and (d), namely: first, 'protecting the rights of historically disadvantaged persons who are easily exploited, and promoting their full participation as consumers'; and, second, protecting consumers from unfair trade practices.<sup>3</sup> In *Els v Venter and Another*,<sup>4</sup> this Court said that the purposes of the CPA '... include the promotion and advancement of the social economic welfare of consumers by, inter alia, establishing a legal framework for a fair, accessible, efficient and sustainable consumer market. The Act is also aimed at reducing and ameliorating disadvantages experienced in accessing the supply of goods or services by vulnerable, low-income consumers who live in remote areas or communities, and whose ability to read and understand advertisements, agreements and notices is limited because of low literacy, vision impairment or limited fluency. Its purposes also include promoting fair business practices; and protecting consumers from unconscionable, unfair, unreasonable and unjust trade practices, and deceptive, misleading, unfair or fraudulent conduct. In short, the Act is directed at protecting the rights of historically disadvantaged persons who are easily exploited, and promoting their full participation as consumers.'

[21] Section 4(5) falls within that part of the CPA headed '*Purpose, policy and application of Act*' and in the section headed 'Realisation of consumer rights'. Section 4 contains provisions concerning matters of legal standing, interpretation and application of the CPA aimed at the realisation of consumer rights. It does not confer any substantive rights. Subsections 5(a), (b), and (c) list matters specifically dealt with elsewhere in the CPA, affording substantive rights to a consumer, such as ss 40, 41, and 13. Sections 40 ('Unconscionable conduct'),<sup>5</sup> 41 ('False, misleading or deceptive

---

<sup>3</sup> *Els v Venter and Another* [2025] ZASCA 163 para 31.

<sup>4</sup> *Ibid.*

<sup>5</sup> Section 40(1) reads:

'(1) A supplier or an agent of the supplier must not use physical force against a consumer, coercion, undue influence, pressure, duress or harassment, unfair tactics or any other similar conduct, in connection with any –

(a) marketing of any goods or services;

(b) supply of goods or services to a consumer;

(c) negotiation, conclusion, execution or enforcement of an agreement to supply any goods or services to a consumer;

(d) demand for, or collection of, payment for goods or services by a consumer; or

(e) recovery of goods from a consumer.'

representations'),<sup>6</sup> and s 13 ('Consumer's right to select suppliers')<sup>7</sup> fall within the chapter of the CPA headed 'FUNDAMENTAL CONSUMER RIGHTS'. These sections confer substantive rights on consumers, and not the provisions of s 4.

[22] Section 51(1) prohibits a supplier from making a transaction<sup>8</sup> or agreement<sup>9</sup> subject to any term or condition that defeats the CPA's purpose and policy or deprives consumers of rights under the CPA. It is the transaction or agreement that may not be made subject to such term or condition. No transaction or agreement was concluded by Promenade with Dr Levin. The 2020 lease was concluded between Promenade and DDL. It was not made subject to any term or condition as envisaged in s 51(1). Section 51(1) clearly does not apply to non-contractual or extra-contractual terms or conditions as Dr Levin and DDL would have it. Section 13 stipulates when and under what circumstances pre-contractual conditions become actionable.

---

<sup>6</sup> Section 41(1) reads:

'(1) In relation to the marketing of any goods or services, the supplier must not, by words or conduct –

- (a) directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer;
- (b) use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception; or
- (c) fail to correct an apparent misapprehension on the part of a consumer, amounting to a false, misleading or deceptive representation, or permit or require any other person to do so on behalf of the supplier.'

<sup>7</sup> Section 13(1) reads:

'(1) A supplier must not require, as a condition of offering to supply or supplying any goods or services, or as a condition of entering into an agreement or transaction, that the consumer must –

- (a) purchase any other particular goods or services from that supplier;
- (b) enter into an additional agreement or transaction with the same supplier or a designated third party; or
- (c) agree to purchase any particular goods or services from a designated third party, unless the supplier –
  - (i) can show that the convenience to the consumer in having those goods or services bundled outweighs the limitation of the consumer's right to choice;
  - (ii) can show that the bundling of those goods or services results in economic benefit for consumers; or
  - (iii) offers bundled goods or services separately and at individual prices.'

<sup>8</sup> Section 1 of the CPA defines transaction as meaning:

'(a) in respect of a person acting in the ordinary course of business –

- (i) an agreement between or among that person and one or more other persons for the supply or potential supply of any goods or services in exchange for consideration; or
- (ii) the supply by that person of any goods to or at the direction of a consumer for consideration; or
- (iii) the performance by, or at the direction of, that person of any services for or at the direction of a consumer for consideration; or

(b) an interaction contemplated in section 5(6), irrespective of whether it falls within paragraph (a).'

<sup>9</sup> Agreement is defined in s 1 to mean –

'an arrangement or understanding between or among two or more parties that purports to establish a relationship in law between or among them.'

[23] Dr Levin – private medical practitioner, practicing in an affluent suburb – is not a low-income, vulnerable consumer. Dr Levin suffered no evident disparity of negotiating power vis-à-vis Mr Jeffrey Solomon when negotiating the 2020 lease. Parties can arrange their commercial affairs to avoid the application of legislation.<sup>10</sup> Merely contracting with a juristic person, and thereby avoiding the application of the CPA, cannot, without more, cause the consumer agreement to be void. The fact that Promenade no longer wanted to contract with Dr Levin as a natural person but rather with his professional incorporated juristic person, to avoid the application of the CPA, cannot, in this instance, be said to constitute an unfair business practice from which Dr Levin requires protection under the CPA. The 2020 lease was a commercial lease, not a residential one. Furthermore, the distinction which the argument of Dr Levin and DDL draws between offensive conduct and non-offensive conduct under the provisions of the CPA on which they rely, insofar as an insistence to conclude a contract only with a juristic person is concerned, is artificial and a nebulous construction of those provisions.

[24] I now turn to the public policy challenge.<sup>11</sup> For their common law invalidity argument, Dr Levin and DDL rely on the same protections they contend are afforded by the provisions of the CPA on which they rely in support of their CPA invalidity argument, and the infringement thereof. The question is whether it may be against public policy to insist on corporate structuring to avoid protective legislation. There may be circumstances in which that could offend public policy if the agreement was not genuine but was disguised to conceal the true agreement.<sup>12</sup> It cannot be said that the 2020 lease did not reflect the true nature of the agreement between Promenade and DDL.

---

<sup>10</sup> *Dadoo Ltd and Others v Krugersdorp Municipal Council* 1920 AD 530 at 548 (*Dadoo*); *Lipschitz NO v UDC Bank Ltd* 1979 (1) SA 789 (A) at 806F (*Lipschitz*); *Erf 3183/1Ladysmith (Pty) Ltd and Another v Commissioner for Inland Revenue* [1996] ZASCA 35; 1996 (3) SA 942 (A) at 953C-D.

<sup>11</sup> See the principles pertaining to the control of contracts by means of public policy in *AB and Another v Pridwin Preparatory School and Others* [2018] ZASCA 150; [2019] 1 All SA 1 (SCA); 2019 (1) SA 327 (SCA); 2019 (8) BCLR 1006 (SCA) para 27 (*Pridwin*), as amplified in *Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust and Others* [2020] ZACC 13; 2020 (5) SA 247 (CC); 2020 (9) BCLR 1098 (CC) para 156.

<sup>12</sup> *Dadoo* at 548; *Lipschitz* at 806F-G.

[25] This case does not involve efforts to circumvent the CPA in the context of a vulnerable consumer. Instead, it concerns a commercial lease with a tenant who lacks the vulnerabilities the CPA aims to protect against. In this instance, the necessity for Dr. Levin to use a juristic entity merely reflects the commercial realities of the transaction and does not constitute circumvention. We need not consider the potential implications if a tenant falls within the category of persons the CPA intends to protect. In conclusion, there has been no demonstration that the 2020 lease is ‘prima facie inimical to a constitutional value or principle, or otherwise contrary to public policy’, nor that its enforcement under the specific circumstances of this case would be prima facie against public policy.<sup>13</sup>

[26] As a result, the following order is made:

The appeal is dismissed with costs, including those of two counsel.

---

P A MEYER  
JUDGE OF APPEAL

---

<sup>13</sup> *Pridwin* para 27.

## Appearances

For appellants:

Instructed by:

G Quixley

Barry Aaron & Associates, Cape  
Town

Hendre Conradie Incorporated,  
Bloemfontein

For respondent:

Instructed by:

E Fagan SC with E Cohen

Smiedt & Associates Attorneys,  
Cape Town

Honey Inc. Attorneys, Bloemfontein.