THE SUPREME COURT OF APPEALOF SOUTH AFRICA

JUDGMENT

Case No:222/2012
Reportable

In the matter between:

INDEPENDENT OUTDOOR MEDIA (PTY) LTD	**First Appellant**
CHEVRON SOUTH AFRICA (PTY) LTD	**Second Appellant**
FORMID TRIO CC	**Third Appellant**
ROXBURGH BODY CORPORATE	**Fourth Appellant**
THE ANGLICAN CHURCH OF SOUTH AFRICA (DIOCESE OF CAPE TOWN)	**Fifth Appellant**
BURNSIDE COURT (PTY) LTD	**Six Appellant**
LSG LUFTHANSA SERVICE CAPE TOWN (PTY) LTD	**Seventh Appellant**
INKQUBO PROPERTIES 22 CC	**Eighth Appellant**
JMS MARKETING CC	**Ninth Appellant**
BODY CORPORATE OF 72 ON KLOOF	**Tenth Appellant**
THE OWNER OF ERF 572 CAPE TOWN	**Eleventh Appellant**

and

THE CITY OF CAPE TOWN	**Respondent**

Neutral citation: *Independent Outdoor Media v City of Cape Town* (222/2012) [2012] ZASCA 46 (28 March 2013)

Coram: Mthiyane DP, Leach and Theron JJA and Erasmus and Saldulker AJJA
Heard: 19 February 2013
Delivered: 28 March 2013

Summary: City of Cape Town's Outdoor Advertising and Signage Bylaw ─ Validity thereof ─ City having had the legislative authority to enact the Bylaw ─ Bylaw not void for vagueness ─ differentiation between first party and third party advertising having a rational government purpose ─ Bylaw not invalid.

O R D E R

On appeal from: Western Cape High Court, Cape Town (Louw J sitting as court of first instance):

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

J U D G M E N T

LEACH JA (MTHIYANE DP, THERON JA, ERASMUS and SALDULKER AJJA concurring)

[1] The validity of the Outdoor Advertising and Signage Bylaw 10518 ('the Bylaw'[1]) of the City of Cape Town ('the City') is the principal issue arising for decision in this appeal. The first appellant, Independent Outdoor Media (Pty) Ltd, carries on business by placing advertisements on illuminated signs which it owns and erects, largely within the Cape Town metropole. The present litigation concerns seven advertising signs situated within the City's municipal precincts erected by the first appellant on certain immovable properties owned by the other appellants. The signs in question are illuminated outdoor signs of substantial dimensions: numbered 2 to 10 in the papers, presumably in order to link each to the correspondingly numbered appellant on whose property they are to be found. Four of them measure 12m x 3m, two are 12.4m x 1.2m while the remaining three measure 9m x 4m, 9m x 3m and 3.5m x 2.8m respectively. Two are billboards while the other signs are attached to buildings.

[2] In September 2010, the City (the respondent in this appeal) launched motion proceedings in the Western Cape High Court, Cape Town, alleging that each of these signs lacked the requisite permission required under the Bylaw for their erection and display. It also alleged that the signs contravened the National Building

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[1] Promulgated on 5 December in provincial Gazette 5801.

Regulations and Building Standards Act 103 of 1997, that certain of them encroached upon land owned by the City, and that others offended the Roads Ordinance 19 of 1976. It therefore sought an order that both declared the signs to be unlawful and directed the appellants to remove them.

[3] In opposing the application the appellants contended, inter alia, that the Bylaw was invalid as it offended the Constitution. In a counter application, the first appellant, sought a declaratory order to that effect. The high court (Louw J) rejected the appellants' argument in regard to the alleged invalidity of the Bylaw and, as the necessary permission under the Bylaw to use the signs and billboards had not been obtained (this is common cause), it ordered the appellants to remove them. It also dismissed the first appellant's counter application. With the leave of the high court, nine of the original respondents (all save the second and tenth respondents cited in the court below – referred to in this appeal as the second and tenth appellants) appeal to this court against that order.

[4] The appellants correctly conceded that if the Bylaw is valid the signs are unlawful, in which event the remaining issues relating to their alleged unlawfulness are solely of academic interest. The validity of the Bylaw is therefore the essential issue which has to be decided. But before doing so, it is necessary to address a preliminary issue.

[5] In 2010 the City brought proceedings similar to the present against a company known as Bouley Properties (Pty) Limited (Bouley) in the Western Cape High Court, Cape Town. As in the present case, Bouley sought to impugn the constitutional validity of the Bylaws by way of a counter-application seeking an order declaring the Bylaw to be inconsistent with the Constitution and therefore invalid. Its argument in that regard was to all intents and purposes identical to that now raised by the appellant. In a judgment delivered on 21 December 2010,[2] the high court (Cleaver J) held that the Bylaw was not constitutionally invalid, and dismissed Bouley's counter-application. Bouley proceeded to attempt to appeal on two fronts. First, it applied to the Constitutional Court under Rule 19(2) of the rules of that court

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[2] *City of Cape Town v Bouley Properties (Pty) Ltd* (9410/2012) [2010] ZAWCHC.

for leave to appeal directly to it against the high court's order. At the same time it also applied to the high court for leave to appeal against its order. When the high court refused the latter application, Bouley applied to this court[3] for such leave.

[6] None of these attempts bore fruit. On 1 February 2011 the Constitutional Court unanimously dismissed Bouley's application for leave to appeal, stating in its order that it had 'concluded that the application should be dismissed, with costs, as it bears no prospects of success'. Thereafter on 4 May 2011, this court dismissed the application for leave to appeal lodged with it.

[7] The respondent argued, both in this court and in the court below, that the Constitutional Court's dismissal of Bouley's application for leave to appeal amounts to a binding precedent having the effect that the Bylaw passes constitutional muster and is valid.[4] For this reason alone, so the respondent argued, the appeal should fail.

[8] In my view this cannot be accepted. The principles at issue had not been debated before the Constitutional Court in open court nor adjudicated upon in a fully reasoned judgment and the reasons why the court concluded that Bouley's application had no reasonable prospects of success are unknown. In these circumstances it cannot be said that the Constitutional Court necessarily agreed with all the reasoning of Cleaver J in the high court and its order 'might mean no more than that, whether for the reasons in the judgment, or for other legal considerations, there is no reasonable prospect of a different order being granted on appeal'.[5]

[9] Consequently, as a matter of principle, even though in the light of the limited issue raised in the application (the alleged invalidity of the Bylaw) one is hard-pressed to think of any reason that could have motivated the decision other than the opinion that the Bylaw is valid, the refusal of Bouley's application cannot be construed as the Constitutional Court placing its imprimatur on the reasoning of the

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[3] Under s 21(2) of the Supreme Court Act 59 of 1959.
[4] The court a quo found it unnecessary to deal with this issue as it was not persuaded that the high court's judgment in Bouley was clearly wrong, and for that reason alone felt it was binding.
[5] Goldstone J in *Mphahlele v The First National Bank of South Africa Ltd* 1999 (2) SA 667 (CC) para 18.

high court. In my view, then, such refusal did not create a binding precedent on the constitutional validity of the Bylaw. (I find a measure of reassurance in reaching this conclusion by knowing that in a number of foreign jurisdictions having not dissimilar procedures, the refusal of leave to appeal without detailed reasons has not been regarded as creating a binding precedent of the higher court.[6])

[10] I therefore turn to the issue of the validity of the Bylaw. It may be useful to place it in its historical context. Since at least September 1958 when it was by regulation[7] vested with the necessary authority, the City has enjoyed the power to regulate outdoor advertising within its area of jurisdiction. Thereupon in 1966, the City passed Bylaw 1959 of 1966 relating to outdoor advertising, s 6 of which contained a blanket ban on so-called 'third party advertising' (more about which will follow in due course). In October 1999 in *City of Cape Town v Ad Outpost (Pty) Ltd and others* 2000 (2) SA 733 (C) the Western Cape High Court struck down s 6 as being inconsistent with s 16(1) of the Constitution, but suspended its declaration of invalidity for a period of six months in order to enable the City to rectify the defects it had found. Although that period lapsed on 1 April 2000, it unfortunately took the City until 27 April 2000 to react. This it did by adopting a new bylaw which replaced the whole of Bylaw 1959 of 1966. Then on 5 December 2001 the City promulgated the Bylaw which lies at the heart of the present debate.

[11] The appellants' initial argument was that the City had lacked the necessary legislative authority to enact the Bylaw. This was based on the contention that although the City could legislate in respect of public property, it could not do so in respect of property in private hands, and that by seeking to regulate signs and advertisements situated on both private and public property, it had acted beyond its powers.

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[6] See eg *Hughes Tool & Co v Transworld Airlines Inc* 409 US 363 at 411; *Maryland v Baltimore Radio Show Inc* 338 US 912 at 917-919; *Hopfmann et al v Connolly et al* 471 US 459 at 461; *Supreme Court Employees Welfare Association v Union of India* 1990 AIR 334 1989 SCR (3) 488 at 504-5; *M/s. Rup Diamonds v Union of India* 1989 AIR 674 1989 SCR (1) 13 at 17-18.

[7] *Standard Regulations Relating to Advertising Signs and the Disfigurement of the Front or Frontages of Streets* promulgated in Provincial Notice 593 of 1958 on 26 September 1958.

[12] Although raised specifically in the appellants' heads of argument, I understood leading counsel for the appellant to have abandoned this point during argument, stating that it was 'a given' that the City could regulate advertising within the bounds of its jurisdiction. But the point was resuscitated by appellants' junior counsel in reply, and so I must deal with it.

[13] The issue may be disposed of briefly. Under s 56(1) of the Constitution a municipality has executive authority in respect of, and has the right to administer, the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution, while under s 152(2) a municipality may make and administer Laws for the effective administration of the matters it has the right to administer.[8] Part B of Schedule 5 of the Constitution lists '(b)illboards and the display of advertisements in public places' as matters of local government falling within municipal competence. However, as private property cannot be construed as being a 'public place', a concept further defined in the Bylaw as meaning 'any public road, public street, thoroughfare, bridge, subway, footway, foot pavement, foot path, sidewalk (or similar pedestrian portion of a Road Reserve), lane, square, open space, garden, park or enclosed place vested in the Municipality, or other state authority or indicated as such on the Surveyor General's records, or utilised by the public or zoned as such in terms of the applicable zoning scheme', the appellants argued that the Bylaw could only regulate advertising in places so defined as being public. However, so the argument went, as the Bylaw purports to give the City the authority to regulate signs generally, regardless of their nature and irrespective of their location ─ and indeed in certain instances specifically regulates advertising of signs on private property, eg window signs which are defined as meaning signs 'which are temporarily or permanently painted on or attached to the window height and glass of building' – this fell beyond the City's legislative competence.

[14] In my view this argument cannot be accepted. In dealing with a similar argument in Bouley, the high court said the following in regard to the meaning of the provisions of Part B of Schedule 5:

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[8] Compare *Johannesburg Municipality v Gauteng Development Tribunal* 2010 (6) SA 182 (CC) paras 54-57.

'Since the City already has authority over public places in terms of Part B of Schedule 5, there would clearly be no need for it to be granted a separate authority to regulate advertisements in public places. Consequently, the meaning of the term in relation to advertising must be different from the meaning of "public place" as generally understood and as defined. There is a further reason why the phrase should not be interpreted in the manner proposed by [appellant's] counsel. Since the phrase "in public places"[9] qualifies the display of advertisements only and does not apply to billboards, the interpretation proposed by [appellant] would result in the City having authority to regulate billboards on private property, but not signs on private property. This could clearly not have been intended. A further result of accepting [appellant's] interpretation would be that the City would not have the authority to regulate outdoor advertising on property owned by the City, as the definition of "public places" in the By-Law includes land which is vested in the City of other state authority.'

[15] Not only do I find myself in respectful agreement with this reasoning, but the appellants' argument also overlooks the basic premise that an advertisement is a form of communication which takes place between at least two parties; the advertiser and the person whose custom the advertiser seeks to attract. Indeed it is for this reason that in order to attract as many potential customers as possible advertising hoardings, billboards and the like are generally situated alongside public places, roads, streets and thoroughfares. I therefore do not see how an advertiser who places its advertisement on private property can be said not to be advertising in public where its communication is directed at and received by people frequenting public places.

[16] Moreover, two of the most important objectives sought to be attained by regulating outdoor advertising are the prevention of visual pollution and the furtherance of road safety, neither of which could be achieved if the narrow interpretation the appellants seek to place on the phrase 'advertisements in public places' were to be accepted. As was pointed out by the high court in Bouley,[10] if the City lacked authority to regulate outdoor advertising on private property 'the uncontrolled proliferation would then ensue to the detriment of the local community',

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[9] In the Bylaw.
[10] Para17.

a result which the high court correctly observed would be 'absurd and could not have been contemplated by the drafters of the Constitution.'

[17] In the light of these considerations I have no difficulty in concluding that the City was perfectly entitled to regulate outdoor advertising signage erected upon private property and that the appellants' initial point objecting to its competence to do so is groundless.

[18] I turn to the second leg of the appellants' argument, namely, that the Bylaw impermissibly differentiates between first party and third party advertising. The former, referred to as 'locality bound advertising' in the Bylaw, is defined as meaning:

'[A]ny sign displayed on a specific erf, premises or building and may include . . . such a sign on municipal owned land, adjacent to, abutting on and/or within 5 metres of the aforementioned erf; premises or building which sign refers to an activity product service or attraction; located, rendered or provided on or from that erf or those premises.'

On the other hand third party advertising is defined as follows:

'[T]he advertising of goods or services that are not made, procured, sold or delivered from the property on which the sign and/or sign advertising of those goods or services is fixed or placed, and includes advertising which is not locality bound as well as the display of a sign which is made, procured or sold from the property but advertises goods or services which are not made, procured, sold or delivered from that property.'

[19] Fundamental to the appellants' case on this issue is the manner in which these different categories of signs are dealt with in the Bylaw. These differences include the following:

(a) certain first party signs do not require municipal approval at all whereas all third party signs need it;

(b) once granted, a first party sign carries with it so-called 'evergreen approval' in that it endures without the necessity to renew it whereas the approval of third party signs lasts for no more than five years and carries with it no guarantee of renewal;

(c) the application fee for third party signs is considerably higher than that for first party signs;

(d) more stringent restrictions are placed on the dimensions of third party signs than those relating to first party signs;

(e) free standing third party signs are subject to more onerous linear spacing requirements than first party signs;
(f) third party signs may not be erected within 80m of traffic lights at intersections, a restriction that does apply in respect of first party signs.

[20] Relying upon the requirement prescribed in *Harksen v Lane NO* 1998 (1) SA 300 (CC) para 53 that a differentiation between people or categories of people must bear a rational connection to a legitimate government purpose, it was argued by the appellants that there can be no conceivable connection between these differences and any legitimate government purpose. The appellants further argued that such differences fly in the face of the right of property owners to use their properties as they see fit, including their right to derive income from their properties by allowing third parties to advertise there.

[21] On the other hand, the City contended in response that it is a more intrusive limitation upon rights to inhibit an owner from advertising its own product on its own property than to restrain a third party from advertising on the same site. It also argued that advertising by first parties not only allows the source of the advertisement to be immediately identified by its location; that due to the natural beauty of the City and its considerable cultural history, the need to regulate outdoor advertising in the city is of paramount importance; that third party signage contributes more to visual clutter pollution in Cape Town than first party advertising; and that concerns in regard to traffic safety justify stricter controls of third party signs, particularly those near traffic lights and at other places of potential danger.

[22] It must be remembered that the Constitution has endowed the City with the power to regulate outdoor advertising within its precincts. It is not for a court to substitute its economic and social beliefs for the City's legislative capability and to decide what the City ought or ought not to do. If the City's legislation has a rational legislative purpose which is not arbitrary the courts cannot interfere with its function.[11] As was stated by O'Regan J in *East Zulu Motors v Empangeni/Ngwelezane Transitional Local Council* 1998 (2) SA 61 (CC) para 24:

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[11] See eg *S v Lawrence; S v Negal; S v Solberg* 1997 (4) SA 1176 (CC) paras 41 and 44 and Cheadle, Davis, Haysom *South African Constitutional Law: The Bill of Rights* § 4.6.1.1.

'The first question to be answered in any equality challenge, therefore, is whether the governmental action or regulation under consideration is rational. The question is not whether the government may have achieved its purposes more effectively in a different manner, or whether its regulation or conduct could have been more closely connected to its purposes. The test is simply whether there is a reason for the differentiation that is rationally connected to a legitimate government purpose.'

[23] In regard to the question of rationality, the appellants dispute certain of the underlying facts relied upon by the City to justify the Bylaw. In particular they dispute that third party signage makes a greater contribution to visual pollution than first party signs and that there is any necessity to distinguish between first and third party signs situated close to traffic lights. Each side has offered different facts and opinions on these issues but, at the end of the day, I do not think this dispute carries the day one way or the other. What is of importance is that the parties recognise that signs do create visual pollution and, whether proven scientifically or not, the potential of advertising signage to distract a driver's attention at an area of a roadway where utmost concentration is required must be a valid consideration to take into account in considering whether signs should be permitted in such a situation. There can therefore be no doubt that the Bylaw has a rational connection to a legitimate government purpose. As Davis J observed in *Ad Outpost*,[12] correctly in my view:

'The restriction of third party advertising was designed to ensure that the rich environment of Cape Town should be protected. Clearly there is a rational distinction between own party advertising in that it would be a far more serious invasion of a person's rights to prevent a person advertising his or her own product on such person's premises. Thus an understandable distinction can be drawn between a prohibition of own party advertising and third party advertising. Furthermore, applicant has proclaimed as an objective the preservation of the unique environmental heritage of Cape Town. In exercising its powers of control of advertising it has chosen to curb third party advertising to minimise environmental damage. This prohibition of third party advertising as opposed to own party advertising constitutes, in my view, a rational distinction. For this reason I cannot find that the Bylaw has breached a constitutional guarantee . . .).'

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[12] At 744D-F.

[24] In addition to the factors mentioned by the learned judge, the City stressed before us that the different time periods for which first party and third party signs are approved enables it to reassess the continued desirability of permitting an approved advertising sign to continue to be displayed in the light of changing circumstances, and that the exemption of first party signs from the linear spacing requirements imposed on third party signs allows owners to advertise their businesses wherever they are located. Both of these considerations provide a rational and legitimate purpose to distinguish between first and third party advertising.

[25] I have not lost sight of the fact that commercial speech is worthy of protection, but the City was perfectly entitled to regulate outdoor advertising within its municipal precincts and even though, in doing so, it differentiated in certain respects between first and third party signage, in my view it did not act arbitrarily but for a rational and legitimate purpose. The differentiation between first and third party advertising thus does not visit the Bylaw with invalidity.

[26] I turn now to the third leg of the appellants' argument, namely, that the Bylaw should be struck down as it is vague and overbroad. The foundation of this argument is that laws should be 'written in a clear and accessible manner'[13] and if not, should be struck down. With limited exceptions, s 1 of the Bylaw provides that a person shall not 'display any advertisement' or 'erect or use any sign or advertising structure for advertising purposes' without the necessary approval from the City or any other applicable legislation. The appellants' argument is that these prohibitions are not clearly defined and rendered nugatory as the respective definitions of 'advertisement', 'advertising structure' and 'sign' are so vague that they cannot be determined. In Part A of the Bylaw these concepts are defined as follows:

'"*Advertising structure*" means any physical structure built or capable of being used to display a sign.

"Advertisement" means any representation of a word, name, letter, figure or object of an abbreviation of the word or name, or any symbols; or any light which is not intended solely for illumination or as a warning against any dangers and "*advertising*" has a similar meaning.

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[13] *Affordable Medicines Trust v Minister of Health* 2006 (3) SA 247 (CC) para 108.

"Sign" means any object, product, replica, advertising structure, mural, device or board which is used to publicly display a sign or which is in itself a sign; and includes a poster and a billboard.'

[27] Like any other legislation, reasonable certainty and not perfect lucidity is required in respect of a municipal bylaw.[14] But while the language used in the definitions quoted above may not be a model of lucidity, I have no doubt that any reasonable reader will understand the Bylaw to seek to regulate outdoor advertising in the urban area of the City. That is readily apparent from the preamble which records that the object of the Bylaw 'is to regulate outdoor advertising in the jurisdiction of the City of Cape Town' and that it 'sets out the procedures to be followed and the criteria used when obtaining approval for a sign applicable to outdoor advertising in the City of Cape Town.'

[28] I am also of the opinion that the definitions, too, are reasonably certain. Moreover it can be regarded as trite that a definition in an enactment is not to be slavishly applied but must give way to the ordinary meaning of the word where the context so indicates. Thus In *Town Council of Springs v Moosa* 1929 AD 401 at 416-7, De Villiers ACJ, after quoting with approval the observation in *The Queen v The Justices of Gloucestershire*[15] that an interpretation clause 'merely declares what . . . may be comprehended within that term, where the circumstances require that they should', went on to say:

'(A)n interpretation clause has its uses, but it also has its dangers, as it is obvious from the present case. To adhere to the definition regardless of subject-matter and context might work the gravest injustice. . ..'[16]

Despite the lapse of some 86 years, that observation remains as valid today as it was then.

[29] The argument in regard to vagueness centred mainly on the definitions of 'advertisement' and 'advertise'. Both these concepts are of simple context and well known. Thus, for example, The Concise Oxford English Dictionary (12th ed) defines

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[14] See *Bertie van Zyl (Pty) Ltd v Minister of Safety and Security* 2010 (2) SA 181 (CC) para 103.
[15] *The Queen v The Justices of Gloucestershire* 112 ER 554.
[16] At 417.

the verb ‘advertise’ as meaning to ‘publicise (a product, service or event) in order to promote sales or attendance’ or to ‘make (something known)’ and the noun ‘advertisement’ as being ‘a notice or display advertising something’. The definition of an advertisement in the Bylaw must be viewed with that meaning in mind.

[30] As the Bylaw’s definition of ‘advertisement’ makes no mention of the various representations referred to being directed towards these customary understood purposes, it was presumably intended to bring within the confines of the word something which otherwise might arguably not have fallen within its normal meaning. Thus for example a representation merely of a brand name of a well-known manufacturer or product, or of a mere letter (such as the ‘f’ used by a well-known internet social networking site), or of a well-known logo or symbol (such as the famous ‘tick’ of a well-known sportswear company or the singing bird of another social networking site) would by itself alone be intended to be regarded as an advertisement under the definition. So too would a set of flashing lights designed to attract attention to a particular commercial outlet.

[31] Significantly, the definition of ‘advertisement’ was not coined solely by those responsible for the drafting of the Bylaw. It was clearly plagiarised from the definition of the word in the Advertising on Roads and Ribbon Development Act 21 of 1940[17] which regulates outdoor advertising on rural roads. Despite my research, I have been unable to find any decision in which that definition required judicial interpretation during the 73 years it has been on the statute books. The probable explanation for this is that the Act and its definition are clear. A reading of the Act, as too the Bylaw, shows that an ‘advertisement’ is what we all know an advertisement to be as amplified by the additional connotation conveyed by the definition.

[32] By a similar process of reasoning, there is to my mind also nothing so vague about the definition of a ‘sign’ in the Bylaw which is likely to confuse a reasonable

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[17] Which reads: ‘”advertisement” means any visible representation of a word, name, letter, figure or object or of an abbreviation of a word or name, or of any sign or symbol; or any light which is not intended solely for illumination or as a warning against any danger.’

person. Again, and indeed as the definition provides, a sign is a sign and includes a billboard or a poster. I therefore find myself in agreement with the learned judge in the court a quo who said:

'While broad definitions are provided for the terms "sign", "advertisement", "advertising" and "advertising structure", these definitions are not in my view inappropriate since the City . . . needs to be able to regulate all outdoor advertising, including new forms of advertising which may arise. The fact that there is no reference to outdoor advertising in the definition does not mean that someone wishing to erect a sign or an advertisement will be in any doubt as to the fact that he or she may not do so without the permission of the City. I do not agree with the submission that the definition of a sign is circuitous. While there may be some overlapping in the definition, the words "or which is in itself a sign", do not result in the definition being vague in the sense advanced by Bouley. As counsel for the City pointed out, in order to avoid absurdity, all that needs to be done is to apply the normal meaning or the dictionary definition of the word "sign" when it appears in the body of the Bylaw's definition. I am accordingly of the view that on a proper purposive interpretation and in the context of the text as a whole, the Bylaw is not impermissibly vague or overbroad.'

[33] In the light of these considerations, the appellants' attack upon the validity of the Bylaw is without merit and the counter-application to have it declared invalid was correctly dismissed. This renders it unnecessary to decide the various other issues raised in the court below, namely, either the alleged breaches of the National Building Regulations and Buildings Standards Act 103 of 1977 and the Roads Ordinance No 19 of 1976, or the alleged encroachment of certain of the signs upon the City's property. As the necessary permission under the Bylaw had not been obtained for the signs in question, and for that reason alone the City has to succeed, all such further issues become of academic interest.

[34] Consequently, apart from costs, the only further matter to be dealt with is the appellants' suggestion that the court a quo had erred in granting permanent interdictory relief against them as there was another satisfactory remedy available, namely, the laying of criminal charges for breaches of the Bylaws.

[35] The City contended that history has shown that the laying of criminal charges had proved to be ineffectual in the past. Delays arising in the prosecution process, inter alia due to representations made on behalf of the persons charged, had resulted in unlawful signs remaining on display and continuing to generate income

for the accused for lengthy periods. In the light of this and 'the relatively low maximum sentences that are handed down by the criminal courts and the fact that the criminal courts lack the power to grant orders of the kind sought in this case, namely that the offending signs be removed' the court a quo observed that 'criminal proceedings do not constitute an adequate alternative remedy in a case such as the present'.

[36] I agree. In my view there is no reason why an interdict should not be granted to stop unlawful signs being displayed in breach of the Bylaw, and while a criminal prosecution may well follow upon an offender making itself guilty of unlawful conduct, it would be a sad day if the criminal courts were to be clogged by a vast number of cases of such a nature. The court a quo was quite correct to have granted the interdict that it did.

[37] The final issue to consider is that of costs. It was argued by the appellants that they were seeking to enforce a constitutional right and that, consequently, even if unsuccessful, they should not pay the City's costs. However, as counsel for the appellants readily conceded, the fact of the matter is that this litigation is commercial in nature in that the appellants would not have sued had they not been making money out of their advertising (indeed the first appellant's business is to place on outdoor advertisements). The appellants' private commercial interests were paramount and, that being, so I see no reason why they should not pay the City's costs.[18]

[38] The appeal is dismissed with costs, including the costs of two counsel.

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[18] *Rootman v President of RSA* [2006] JOL 17547 (SCA) para 14.

L E Leach

Judge of Appeal

APPEARANCES:

For Appellant:	J Heunis SC (with him M Osborne) Instructed by: Ashersons Attorneys, Cape Town Webbers Attorneys, Bloemfontein
For Respondent:	A Breitenbach SC (with him R Paschke) Instructed by: Fairbridges Attorneys, Cape Town McIntyre & Van der Post, Bloemfontein