

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: 2011/07680

In the matter between:

**HYPROP INVESTMENTS LTD
ABLAND (PTY) LTD**

First Appellant
Second Applicant

and

**NCS CARRIERS AND FORWARDING CC
NORBERTO JOSE SANTOS COSTA**

First Respondent
Second Respondent

SUMMARY

FULL COURT:

LANDLORD AND TENNANT; HOLDING OVER and DAMAGES

Holding Over remedy may be claimed either in contract or under delict. In both cases the ordinary measure of damages will be the market related rental; the damages flowing under contract naturally from the breach, or in delict as a reasonably foreseeable consequence of the wrongful act. .

If damages other than market related rental are sought then, if claimed under contract the landlord must make out a case for special damages which are circumscribed by the contemplation of the parties at time of contract; or if a delictual route is preferred for the class of damages claimed, then the requirements of foreseeability and remoteness must be satisfied. Ancillary charges therefore not necessarily precluded

PRACTICE AND PROCEDURE:

PLEADINGS: CAUSE OF ACTION – HOLDING OVER CLAIMS

Provided ordinary damages for market related rental are claimed, unnecessary to plead whether case is one in contract or in delict.

If damages claimed not based on market rental value then; special contractual damages requires the claimant to prove that these were within parties' contemplation at the time of contract, while foreseeability of the particular class of harm which may not be too remote is required under delict. These allegations cannot be inferred by law.

MOTION PROCEEDINGS: LIQUIDATED OR ILLIQUID DAMAGES

Whether damages for market related damages liquidated depends on pleaded response; market rental value will in law be the same as the rent provided for in the agreement unless the defence raises evidence to the contrary.

MOTION PROCEEDINGS: DISPUTE OF FACT

What suffices to create dispute of fact; Room Hire case applied.

EVIDENCE- HOLDING OVER

*Rental per terminated agreement is simply evidential material as to market related rental-
different to damages for cancelation due to a breach where the claim is for actual agreed rental
for unexpired portion of lease while premises remain unlet.*