



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

***Transnet Limited v Erf 152927 Cape Town (Pty) Ltd
(798/10) [2011] ZASCA 148 (26 September 2011)***

Media Statement

The Supreme Court of Appeal (SCA) today dismissed an appeal against a judgment of the Western Cape High Court, Cape Town, in terms of which Transnet's application to evict the respondents from a certain property was dismissed.

Transnet is the owner of the property. In February 2007, it applied for the eviction of the respondents from the property, relying solely on its ownership and the fact that the respondents were in occupation of the property. The eleventh respondent, Lorcom Six (Pty) Ltd, contended that it was entitled to occupy the property in terms of an oral lease agreement concluded between itself and Transnet. It stated that, while Lorcom occupied a small portion of the property, it had sublet the remainder to the first respondent, Erf 152927 Cape Town (Pty) Ltd, which had in turn sublet portions of the remainder to the other respondents against whom Transnet sought an eviction order.

It was common cause that the first respondent had purchased the property from Transnet on 18 February 1998, pursuant to the exercise of an option. Lorcom claimed that it was in occupation of the property by virtue of the oral lease referred to above, pending the transfer of the property to the first respondent. Despite a court order in 1998 directing Transnet to take all such steps as may be required and necessary to transfer the property to the first respondent, transfer has still not taken place, partly due to technical difficulties but, at least in part, because of obstructiveness on the part of Transnet.

Transnet's application was dismissed by Koen AJ in the court below on the basis that there had been a foreseeable bona fide dispute of fact on the question of the existence of an oral lease and that the defence based on the lease could not be rejected on the affidavits alone.

Koen AJ also rejected Transnet's submission that, if a dispute of fact was found to exist with regard to the conclusion of an oral lease, the court should refer the matter for oral evidence.

The SCA examined the contents of the affidavits in some detail and concluded that the court below was correct in holding that the defence contended for by Lorcom, namely the oral lease, created a bona fide dispute of fact and was not so far-fetched or clearly untenable that the court was justified in rejecting it merely on the papers.

The SCA also agreed with the court below that Transnet ought reasonably to have foreseen a dispute of fact in regard to the conclusion of an oral lease with Lorcom. Lorcom came into possession of the property lawfully, with Transnet's consent, and remained in undisturbed possession with Transnet's consent until the oral lease referred to above was allegedly concluded. Thereafter, Transnet knew that Lorcom and at least some of the respondents continued to occupy the property, but took no action to evict Lorcom or anyone else. Following Transnet's demand to vacate the property, it had been unequivocally told that Lorcom was in lawful occupation of the property and that any eviction proceedings instituted by Transnet would be resisted. As was found by the court below, had any reasonable level of enquiry been made before the application proceedings were instituted, Transnet would have concluded that a serious dispute of fact in regard to the existence of an oral lease was indeed likely to arise. This being so, the SCA held that the court below was correct in exercising its discretion by dismissing Transnet's application, instead of referring the matter to oral evidence.

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