



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

25 November 2015

STATUS: Immediate

MASSTORES (PTY) LTD V PICK N PAY RETAILERS (PTY) LTD (20711/14)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal (the SCA) today dismissed with costs an appeal against the granting of a final interdict in the Gauteng Division of the High Court, Pretoria. In terms of the interdict, Masstores (Pty) Ltd (trading as Game) was restrained from unlawfully interfering in the contractual relationship between Hyprop Investments Ltd (Hyprop) and Pick n Pay Retailers (Pty) Ltd (Pick n Pay). The alleged unlawful interference related to the fact that Masstores was operating a supermarket at its Game store at the Capegate shopping mall in Brackenfell, Western Cape. Pick n Pay based its application for an interdict on the fact that Masstores was in breach of a restraint provision in Masstores' lease agreement with Hyprop, namely not to conduct a supermarket. This restraint was related to a clause in Pick n Pay's lease agreement with Hyprop in terms whereof Pick n Pay had an exclusive right to conduct a supermarket (as did Checkers) at Capegate.

The SCA endorsed the high court's findings that:

- (a) On the ordinary dictionary meaning of the word, the evidence on the affidavits and the photographic evidence, Masstores was in fact conducting a supermarket at Capegate;
- (b) Pick n Pay had proved the delict of unlawful interference by Masstores in the contractual relationship between Pick n Pay and Hyprop; and
- (c) The exclusivity provision containing restricting rights in favour of Pick 'n Pay was not a collateral right unconnected with the lease agreement, but was integral to the right of occupancy. That right had therefore passed from Hyprop's predecessor-in-title to Hyprop.

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