

SOUTH AFRICA / JUDGMENT

**ABSA Ltd NO v Yarram Trading CC
t/a Tijuana Spur [2005] ZAGPHC
376; 65/05/01 (19 September 2005)
[2005] ZAGPHC 376**

COURT
High Courts - Gauteng

BEFORE
Willis

CASE / FILE NUMBER
7865/05

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: 7865/05

DATE:2005-08-19

In the matter between

ABSA LIMITED N.O..... Applicant

and

YARRAM TRADING CC t/a TIJUANA SPURRespondent

JUDGMENT

WILLIS, J: This is an application for the eviction of the respondent from a shopping centre in Bryanston known as the Bryanston Shopping Centre. It is common cause that the respondent is a tenant in that shopping centre and that it operates a restaurant known as the Tijuana Spur there.

The point was taken in limine that the applicant did not have locus standi to apply for the eviction of respondent. I have already dealt with that aspect in a separate judgment and found that there was no merit in the point in limine.

It is common cause that the respondent is in occupation of the premises and is not paying the agreed rental in respect of the premises. There is, it would seem, a genuine and real factual dispute concerning the question of whether or not the landlord constructed the outside seating area as was agreed between the parties. There is an allegation that the terms of the agreement were varied orally. Unfortunately this will not assist the respondent by reason of the fact that it is quite clear that the applicable written agreement concluded between the parties contains the standard non-validity-of-any-amendment clause unless such variation or amendment is recorded in writing.

In so far as the apparently real dispute between the parties concerning the outside seating area is concerned, I think it is appropriate to decide this matter by relying on first principles. Where, for example, a tenant against whom eviction is sought, claims to have a valid counterclaim but is nevertheless resisting eviction, the court will ordinarily make an order for the eviction and let the dispute be ventilated in some other forum at a later stage. It is not ordinarily considered appropriate that a tenant should use a dispute as a reason to remain in occupation of premises without paying the rental.

Accordingly, an order is made in terms of prayers 1 and 2 of the Notice of Motion dated 19 May 2005. Counsel agreed that this was an appropriate matter where the costs of two counsel should be allowed and it is so ordered.

ON BEHALF OF APPLICANT:ADV HOFFMAN SC

Instructed by:

ON BEHALF OF RESPONDENT:ADV SUTTNER SC

DATE OF JUDGMENT:19 AUGUST 2005

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPHC/2005/376.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/absa-ltd-no-v-yarram-unknown-topic-agphc-2005>

Prepared on 10 October 2026 · Esheria