

SOUTH AFRICA / JUDGMENT

SA Bulk Commodity Trading and Storage Services (Pty) Ltd v Sheng Teng (Pty) Ltd (2024/124871) [2025] ZAGPJHC 155 (21 February 2025)

[2025] ZAGPJHC 155

COURT

South Gauteng High Court, Johannesburg

BEFORE

E Raubenheimer

CASE / FILE NUMBER

2024/124871

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA,

GAUTENG

DIVISION, JOHANNESBURG

CASE

NO: 2024-124871

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES / NO

(3)

REVIEWED: YES/NO

21

February 2025

In

the matter between: SA
 BULK COMMODITY TRADING AND STORAGE
 SERVICES
 (Pty) Ltd
 Applicant
 And
 SHENG
 TENG (Pty) LTD
 Respondent

JUDGMENT

Raubenheimer AJ:

Order

[1] In this matter I make the following order:

1. The ordinary forms, service and time periods provided for in the Uniform Rules are dispensed with, and the procedure as is deemed is met in terms of Rule 6(12) and is application is deemed as an urgent application;
2. The Respondent and all those who occupy by, through or under it are evicted from the premises situated at building 27 A at SA Bulk Park, Germiston (the leased premises) with immediate effect and shall vacate the premises within 10 days from the date of the granting of this order;
3. That the Sheriff of this Honourable Court and/or his deputy and/or the South African Police Service, as well as the Municipal Law Enforcement are authorized and directed to do all things necessary so as to give effect to paragraph 2 supra;
4. The Applicant is granted permission to turn off the electricity supply at the leased premises, in order to engage contractors to ensure that the leased premises is compliant with electrical standards;
5. The Respondent to pay the applicants, cost of this application on a C scale including cost of counsel. The application is dismissed with costs on scale B.

[2] The reasons for the order follow below.

Introduction

- [3] The applicant is the owner and operator of an Industrial Park, SA Bulk Park in Germiston Industrial South. The property is a commercial property consisting of warehouses, factories, offices, staff and ablution facilities which are leased to various tenants.

- [4] The respondent leases premises from the applicant from which it conducts a plastic recycling business. The nature of the business is such that it consumes large quantities of electricity and water.
- [5] The parties concluded a lease agreement in October 2020 for a period of 5 years from the commencement date of 1 December 2020.
- [6] Apart from the monthly lease amount payable as well as payment for the use of municipal services the lease agreement provided for compliance with the provisions of the Environmental Conservation Act, Act 73 of 1989, the National Environmental Management Act, Act 107 of 1998, the Hazardous Substances Act, Act 15 of 1973, the Atmospheric Pollution Prevention Act, Act 45 of 1965, the National Water Act, Act 36 of 1998, the Occupational Health and Safety Act, Act 85 of 1995 and the Compensation for Occupational Injuries and Diseases Act, Act 130 of 1983.
- [7] The respondent was also required to comply with the requirements and conditions of any license in respect of the conducting of its business.
- [8] No contravention of any conditions of title in respect of the property on which the leased premises is situated or town planning scheme applicable to the building is permitted and the respondent is obliged to comply with the mentioned provisions and may not do anything which may cause nuisance or disturbance to the occupiers of the building in which the leased premises is situated or any adjacent building or premises.
- [9] The respondent is prohibited from doing or omitting anything that could render or void the insurance policies held by the applicant in respect of the premises.

The factual matrix/chronology of events

- [10] In early September 2024, the applicant during an inspection of the premises uncovered evidence to the effect that the electricity meter had been tampered with. This resulted in a drastic reduction of the electricity usage measurements. The modem used for transmitting meter readings was replaced and the correct readings were retrieved. When the reconciliation was done it transpired that the respondent owed a substantial amount in respect of electricity usage. This led to a dispute not only in respect of the outstanding amount pertaining to electricity usage but also outstanding rent.
- [11] The applicant notified the respondent on 4 October 2024 of an immediate cancellation of the contract due to the mentioned breaches by the respondent. This notice was given after the applicant disconnected the electricity supply to the leased premises and after the respondent launched an urgent spoliation application on 2 October 2024.

- [12] Judgment in the spoliation application was delivered on 15 October 2024 in which the applicant was ordered to restore electricity supply to the leased premises. The applicant filed an application for leave to appeal this judgment on 22 October 2024. Argument in the application was heard on 4 November 2024 and leave to appeal was granted on 11 November 2024.
- [13] The applicant issued a second notice of cancellation on 16 October 2024 due to the non-payment of outstanding rent as well as electricity and water usage.
- [14] A comprehensive inspection was conducted of the electrical compliance inside the leased premises by an independent external electrical contractor on 17 October 2024. The purpose of the inspection was to ascertain whether there was compliance with electrical standards in accordance with the provisions of the applicable statutory instruments.
- [15] The inspecting electrician issued a report on 22 October 2024 to the effect that there was widespread non-compliance which was not only in contravention of the law but also poses a substantial risk of fire, damage and injuries.
- [16] Over the weekend of 25 October 2024, there were a number of altercations between the parties as the applicant disconnected the electricity based on the disturbing findings of the inspecting electrician and on advice that the application for leave to appeal had the effect that the spoliation judgement had been suspended. The applicant then discovered on Monday 28 October that the electricity had been reconnected and electricity had been consumed during the weekend.
- [17] The applicant disconnected the electricity again but after interactions with the respondent which included threats of a contempt of court application it reconnected the electricity supply.
- [18] On 29 October 2024, a notice of breach was issued to the respondent based on the non-compliance with electrical standards and the resultant risks posed thereby. The respondent was notified of the immediate cancellation of the lease agreement and its subsequent unlawful occupation of the premises.
- [19] In opposition the respondent avers that the applicant has not satisfied the urgency requirement and that it does not bear the responsibility to service and maintain the water and electricity supply on the leased premises as this is the responsibility of the applicant.
- [20] It further avers that it has been overcharged by the applicant for electricity consumption and that it has no obligation to pay the amounts claimed by the applicant.
- [21] It also claims that it was not afforded the contractual time period of 14 days to remedy the breaches alleged by the applicant.

Analysis

- [22] In the assessment of the urgency of the application the nature of the applicant and the risks that it is exposed to should be considered.[1]
- [23] The applicant is the owner and operator of an industrial park containing factories, warehouses and other manufacturing facilities. As such it bears great and comprehensive compliance responsibilities and potential liabilities.
- [24] The applicant has been provided with a report cataloguing substantial non-compliance by the respondent. Despite being notified of the non-compliance, the respondent persists with its assertion that it does not bear responsibility for the maintenance or servicing of the electrical infrastructure on the premises and the distribution thereof to the various machines and points of contact. This despite the contract of lease specifically and pertinently dealing with this aspect and placing the responsibility therefor on the respondent.
- [25] The respondent on the one hand submits that it does not bear the responsibility for the servicing and maintenance of the electrical infrastructure inside the premises and on the other hand avers that it was not provided with the contractually required 14 days within which to remedy its non-compliance.
- [26] The respondent is either responsible or it is not. If the latter is true, it would not be obliged to remedy any non-compliance.
- [27] The respondent was already informed of non-compliance as early as September 2024 of the tampering with the electrical meter. It was then again notified on at least 2 further occasions. At no stage did the respondent do anything to remedy its non-compliance. The only steps that it took was to obtain a certificate of compliance in respect of the distribution board for the electricity supply to the premises. The certificate specifically states that the respondent deals only with the supply of electricity to the premises and not to the distribution of the supplied electricity within the premises.
- [28] Neither counsel could shed any light on the interpretation of the contents of the certificate and it consequently has to be taken on its face value where it is specifically stated that the respondent only deals with the supply of electricity up to the distribution board.
- [29] The certificate does not deal with the other hazards and risks identified in the report of the inspecting electrician, neither were the existence of the hazards and risks and the lack of safety equipment such a fire extinguishers denied by the respondent.
- [30] It can not be expected from the owner of an industrial park in possession of a report identifying serious risks to wait until the risks manifests.[2]

- [31] The respondent has indicated its intention not to vacate the premises, not to comply with the provisions of the contract both in respect of payment and compliance with its safety obligations[3]. The applicant has on at least three occasions given notice of breach and none of these breaches were remedied. Not only is this an indication that the applicant will not be afforded substantial redress at a future hearing[4] but it also exacerbates the risks to the applicant and the other lessees of premises in the park[5].
- [32] I am consequently satisfied that the applicant has demonstrated that the matter is urgent.
- [33] In assessing the eviction of the respondent the nature of the parties, the essence of their relationship and the nature of the premises has to be considered.
- [34] Both parties are juristic persons and the relationship between them is a commercial relationship. The premises are commercial premises.
- [35] The relationship between the parties is consequently regulated by the content of the contract concluded between them.
- [36] The contract contains the rights and obligations of the parties and no recourse is to be had to any other source[6]. Neither was it argued by any of the parties that the source of the rights and duties of the parties is to be found elsewhere.
- [37] The contract is clear and unambiguous in respect of the compliance obligations of the respondent. It also deals with the remedies of the applicant should the respondent not comply with its obligations.
- [38] The applicant notified the respondent on three occasions of its non-compliance with the provisions with the contract.
- [39] The non-compliance of the respondent lies on two distinct levels. The first is its non-payment of electricity and water use and monthly rental. The response of the respondent to this non-compliance was to dispute the amounts in respect of water and electricity use. The non-payment of rent was not disputed and was paid.
- [40] The second level dealt with non-compliance with the various statutory obligations dealing with safety, health, environment and the like. The response of the respondent was to deny that it has to comply with these obligations and that it is the responsibility of the applicant. The respondent likewise did not remedy the breaches it was notified about.
- [41] Clause 25 of the lease agreement contains the right of the applicant in the case of the first level of non-compliance. The applicant is then entitled to after notice of the breach exclude the respondent and any of its employees, suppliers or customers until such time the outstanding monies have been paid. The applicant furthermore has the right to forthwith cancel the lease, retake possession of the leased premises and institute action for the outstanding monies.

[42] The applicant has cancelled the lease agreement validly after the respondent failed to remedy its breaches in respect of the second level.

[43] Despite the cancellation of the contract the respondent refused to vacate the premises hence the application to court.

Conclusion

[44] The applicant has made out a case for the cancellation of the contract and the contractual consequences of eviction should follow.

[45] For all the reasons as set out above I make the order in paragraph 1.

E Raubenheimer

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 21 February 2025

COUNSEL FOR THE APPLICANT: Adv vd Berg INSTRUCTED BY: Nourse Inc COUNSEL FOR THE RESPONDENT: Adv Rasivhetshela INSTRUCTED BY: Singhs Attorneys Inc DATE OF ARGUMENT: 07 November 2024 DATE OF JUDGMENT: 21 February 2025

[1] Twentieth Century Fox Film Corporation v Anthony Black Films (Pty) Ltd 1982 (3) SA 582 (W)

[2] Tau v Mashaba and Others 2020 (5) SA 135 (SCA)

[3] Nelson Mandela Metropolitan Municipality v Greyvenouw CC 2004 (2) SA 81 (SE), Stock v Minister of Housing 2007 (2) SA 9 (C).

[4] Mogalakwena Local Municipality v Provincial Executive Council, Limpopo and Others [2014] ZAGPPHC400

[5] Schweizer Reneke Vleis Mpy (Edms) Bpk v Minister van Landbou 1972

(1) SA 235 (T)

[6] Roazar CC v Falls Supermarket CC 2018 (3) SA 76 (SCA)

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