

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

PRITCHARD PROPERTIES (PROPRIETARY) LIMITED ... Appellant

AND

BASIL KOULIS Respondent

CORAM : JANSEN, KOTZÉ, TRENGOVE, BOSHOFF, JJA
et CILLIÉ, AJA

HEARD : 11 NOVEMBER 1985

DELIVERED : 2 DESEMBER 1985

J U D G M E N T

BOSHOFF, JA

I agree with Cillié AJA that the contract

of/.....

of lease in question can be construed without seeking aid from circumstances outside the written contract and without relying on inferences to be drawn from the fact of the deletion and meaning of the deleted word "latter". In my respectful view it is for this reason not necessary to express any opinion on whether or not any assistance can be derived from a deleted yet partially legible word to ascertain the intention of the parties in construing an ambiguity or uncertainty in a contract.

But for this qualification I am in entire agreement with the reasoning and conclusion arrived at by Cillié AJA.

I/.....

I agree that the appeal be allowed
with costs and that the order of the Court a quo
be altered as suggested by the learned Judge.

JUDGE OF APPEAL

Case no 324/84.

MC

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BASIL KOULIS

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Coram: JANSSEN, KOTZÉ, TRENGOVE, BOSHOFF JJA et
CILLIÉ AJA.

Heard: 11 November 1985.

Delivered: 2 December 1985.

J U D G M E N T

JANSSEN JA :-

I have had the advantage of reading the

judgments /

judgments of KOTZÉ JA, BOSHOFF JA and CILLIÉ AJA.

I am in respectful agreement with the result arrived at by KOTZÉ JA, but for different reasons. They are the following.

In my respectful view the rules relating to the role of "surrounding circumstances" in interpreting a contract afford no real guidance to the solution of the present problem. It is therefore in the present case not only unnecessary to attempt to state such rules but also undesirable to do so without a full analysis of the relevant cases and the considerations involved. Here the word-with-deletion is not a "surrounding" circumstance but part and parcel of the document, plain to see for any reader. As every character on the

document must be read and integrated with the others,
 so also the line through the visible word "latter",
 together constituting a compound character, must be
 considered in arriving at the meaning of the document.

I am in full agreement with the court a quo that "to
 ignore it would be to adopt an ostrich-like attitude"
 (1984 (4) SA 327(W) at the bottom of p 333-334) and
 also that if it is looked at, the meaning that emerges
 from the document as a whole is that found by the court
a quo (at p 330 A-F). This meaning is substantially that
 propounded by KOTZÉ JA (without reference, however, to
 the deletion of the word "latter").

I may only add that in my view the obiter view
 expressed by JAMES JP in Valdave Investments (Pty) Ltd v

Total SA (Pty) Ltd van Another 1977(2) SA 94(D)

should be followed, and that in respect of the two
conflicting lines of cases mentioned by the court a quo,
the better view is to be found in that mentioned by the
court a quo under "(iv)" at the bottom of p 331-332 E.

I would therefore dismiss the appeal with
costs.

E.L. JANSEN JA.