



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

30 March 2011

STATUS: Immediate

HYPROP INVESTMENTS V SHOPRITE CHECKERS (315/10)

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 the appeal with costs.

During 2003, the appellants purchased a shopping centre in which the respondent carried on the business of a supermarket. In May 2005, the appellants launched an application in which they sought a declarator as to the liability of the respondent – their tenant -- to pay a *pro rata* share of the increase in rates payable on their property. They also sought an order to direct the respondent to pay them an amount of R2 086 766. 75, being the *pro rata* share of the rates increase that, on their interpretation of the lease agreement, the respondent was liable to pay.

Before the SCA the appellants' case was that the term 'the initial valuation date' in clause 7.3 of the lease meant the date of commencement of the lease. If that was so, it followed that the respondent was liable to contribute its *pro rata* share of the increase in rates from R627 871 to R13 425 400, being the amount of R2 086 766.75 claimed by them. The respondent's case was that 'the initial valuation date' referred to the first valuation after the completion of the building and this was a valuation of October 2002. This, it argued, was the base from which future increases in rates were to be measured.

The SCA held that despite its drawbacks, a sensible meaning could be attributed to clause 7.3. It court found important indications in the agreement that the parties intended the lease to become operative only when the building was completed. Clause 7.3 is a mechanism for the landlord to make provision for the tenant to

contribute, not to rates and taxes *per se*, but to increases in rates and taxes as and when they arise.

The court held that it would have been logical, equitable and would have made business sense for the parties to have agreed that the respondent would only be liable for increases in rates on the basis of an increased valuation of the completed building. In other words, the base from which increases were to be determined is a valuation of the completed building. The court held that 'initial valuation date' in clause 7.3 referred to 1 July 2002, the implementation date of the General Valuation of October 2002.

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