

11/01/2018



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

REGISTRAR OF THE HIGH COURT OF
SOUTH AFRICA GAUTENG DIVISION, PRETORIA

PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001

2018 -01- 11

JUDGE'S SECRETARY
REGTERS KLERK

GRIFFIER VAN DIE HOË HOF VAN
SUID AFRIKA GAUTENG AFDELING, PRETORIA

CASE NUMBER: 68226/2010

In the matter between: -

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Applicant/Defendant

and

BLAIR ATHOLL HOMEOWNERS ASSOCIATION

Respondent/Plaintiff

JUDGMENT LEAVE TO APPEAL

Murphy J

1. The applicant, the defendant in the action, applies for leave to appeal against the judgment in the action.

2. The dispute between the parties centres on a proper interpretation and interpretation of clause 6.16.1 of an agreement between the parties. I held that the language of the relevant clause interpreted in the context of the agreement as a whole and in the light of the background circumstances clearly indicated that in recognition of the fact that the plaintiff had accepted responsibility to perform the duties normally performed by the defendant municipality, the parties to the agreement intended that the plaintiff would pay for bulk water supplied to the estate at the same tariff as is supplied to other municipalities. In so far as there may be any ambiguity in the meaning of the expression "at the normal rate of the Municipality", such is resolved principally with reference to the immediate textual context of the clause and in the light of some of the indirectly relevant background facts, testified to by the witnesses, but none of whom were signatories to the agreement.

3. The applicant's application for leave to appeal, spanning some 45 pages, and supported by extensive heads of argument, raises a plethora of points, grounds and free-ranging propositions which for the most part misrepresent the findings of the judgment and reflect a measure of confusion on the part of the drafter. In the light of my conclusion in relation to the application, there is little point in traversing them in any detail. Suffice it to say, they largely miss the point and fail to focus on what may be a sound basis for appeal.

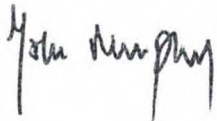
4. Section 17(1) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be given where the judge is of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard.

5. Clause 6.16.1 of the agreement suffers a measure of ambiguity in its use of the expression "at the normal rate of the Municipality" which *may* (as opposed to *would*) afford the defendant some prospect of success on appeal. The textual context of the clause, in particular, its introduction by the words "in recognition of the acceptance of the responsibility... of the duties normally performed by the Municipality" discloses an intention to provide exceptionally for a rate that ordinarily would not apply. The defendant evidently agreed for the obvious reason it will not provide the water services it normally provides ratepayers and thus would charge a rate reflecting that fact. The context of the agreement as a whole, particularly the structural and contractual arrangements regarding the provision of services to the estate, and the background facts, leave little doubt that the plaintiff would pay for bulk water at the normal rate paid by other municipalities. A central tenet of the agreement is that the municipality would not provide its normal services to the estate and, for that reason, exceptional arrangements needed to be made.

6. I doubt therefore that another court will interpret the clear terms of the agreement differently. However, this matter is of substantial importance not only to the parties concerned, but also to the community of Tshwane as a whole. A large residential estate has been given the benefit of an equitable arrangement in exchange for assuming the responsibilities of an over-burdened municipality tasked with a multiplicity of social demands. A decision of a superior court on such contractual

arrangements will provide authoritative guidance in planning future residential developments and greater certainty about the viability of public/private partnerships of this kind at the upper end of the residential market. That alone, in the peculiar context of this case, is a compelling reason to grant leave to appeal. The parties agreed that any appeal would be best heard by the SCA. For the reason just expounded, I accept that is so.

7. In the result, the applicant is granted leave to appeal against the judgment to the Supreme Court of Appeal. The costs of the application will be costs in the appeal.



JR Murphy

Judge of the High Court

Date heard: 6 December 2017

For the applicant: Adv T Strydom SC and Adv T Mkhwanazi

Instructed by: Hugo & Ngwenya Inc

For the respondents: Adv K Luderitz SC and Adv G Amm

Instructed by: Werksman Attorneys

Date of judgment: 11 January 2018