



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 3 March 2025

Case No. 2025-019090

In the matter between:

ERVEN 176/177 WADEVILLE (PTY) LTD

Applicant

and

JC IMPELLERS (PTY) LTD

First Respondent

ARBITRATION FOUNDATION OF SOUTHERN AFRICA

Second Respondent

JUDGMENT

WILSON J:

- 1 The applicant, Wadeville, leases property to the first respondent, JC Impellers. The parties are locked in a series of disputes arising from the lease. Wadeville has terminated the lease, and has issued proceedings for JC Impellers' eviction. Wadeville is also pursuing an appeal against a decision of this court which found that Wadeville had spoliated JC Impellers of the electricity supplied to the leased property (see *JC Impellers (Pty) Ltd v Erven 176/177*

Wadeville (Pty) Ltd [2024] ZAGPJHC 1025 (2 October 2024)). For its part, JC Impellers has referred to arbitration a dispute about whether Wadeville was entitled to terminate its lease, together with a claim for damages JC Impellers says it has suffered as a result of being spoliated of its electricity supply.

- 2 Wadeville now approaches me on an urgent basis for an interdict restraining JC Impellers, and the second respondent, AFSA, from proceeding with the arbitration until the eviction application and the appeal against the spoliation order have been finalised. At the hearing I formed the *prima facie* view that the matter may be urgent, and I allowed the parties to address me on the merits. On mature reflection, however, I have decided that the matter is not urgent after all. These are my reasons for reaching that conclusion.
- 3 Because it had already instituted proceedings for JC Impellers' eviction at the time JC Impellers referred a dispute to arbitration, Wadeville objects to the jurisdiction of the arbitrator to determine the validity of its termination of JC Impellers' lease. It also fears that an arbitral award that directs it to pay damages flowing from the termination of JC Impellers' electricity supply may ultimately be contradicted by an appeal judgment in its favour on the question of whether it spoliated JC Impellers' electricity supply. Wadeville worries about whether it will be able to challenge any arbitral award for damages against it that predates such an appeal judgment.
- 4 Wadeville has chosen to approach me after the disputes have been referred to arbitration but before an arbitrator has weighed-in on whether they have jurisdiction to entertain the disputes referred, and on whether the disputes should be postponed pending either of the proceedings presently before this

court. It is plain from the arbitration agreement that the arbitrator has such powers. The arbitration agreement appears at clause 48 of the lease. That clause is a “separate, divisible agreement” from the rest of the lease (clause 48.11), and provides the arbitrator with the “fullest and freest discretion with regard to the [arbitration] proceedings” – including the right to determine their own jurisdiction, and “to raise matters . . . as if the dispute was heard before a Judge in the High Court” (clause 48.7).

5 The arbitration agreement accordingly provides the arbitrator with all the tools needed to address Wadeville’s concerns. The arbitrator is entitled to decide whether they have the jurisdiction to decide the lease termination dispute. The arbitrator is also, as far as I can see, perfectly entitled to postpone the arbitration – or that part of it concerning JC Impellers’ claim for damages – pending the outcome of the appeal or the eviction proceedings Wadeville is currently pursuing. There is a range of other alternatives open to the arbitrator, the appropriateness of which will depend on the proper construction of the arbitration agreement in light of the lease of which it forms a part.

6 It is a curious feature of the lease in this case that it permits a dispute concerning “the termination or purported termination of or arising from the termination of” the lease to be referred to arbitration (clause 48.1.4) while also permitting Wadeville to approach a court for an eviction order (clause 48.9.2), notwithstanding the referral of a lease termination dispute to arbitration. In contested commercial eviction proceedings, there is likely to be a substantial overlap between the question of whether the lease has been validly terminated, and the question of whether the lessor is entitled to an eviction

order. This obviously creates jurisdictional problems for any arbitrator seized with a lease termination dispute against the backdrop of a pending High Court ejectment application. However, it seems to me that it is, at least in the first instance, for the arbitrator, rather than the urgent court, to unscramble that egg.

7 Wadeville asks me to pre-empt all of this, because it considers that JC Impellers is using the arbitration process merely to delay the eviction proceedings, and because Wadeville thinks that it is more convenient, given that there are already two cases involving the lease currently before the court, for the arbitration to be stayed pending the determination of those cases.

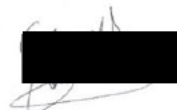
8 The obvious answer to this contention is that there is nothing preventing Wadeville from making those arguments to the arbitrator. But a more fundamental answer involves the importance of holding the parties to their arbitral bargain. Courts will not lightly interfere with the implementation of arbitration agreements freely struck. Save where there is a challenge to the validity of the arbitration agreement itself, respect for contractual autonomy generally requires that a party submit to arbitration where a referral is properly made on an arbitral agreement.

9 Mr. Carstens, who appeared for Wadeville, relied on the decision of the Supreme Court of Appeal in *Canton Trading 17 (Pty) Ltd v Hattingh* NO 2022 (4) SA 420 (SCA) ("*Canton*") to argue that I have the power and the duty to prevent a meritless referral to arbitration being used to waste time and obstruct Wadeville's pursuit of its lawful remedies in this court. But I do not think *Canton* applies here. The issue in *Canton* was whether the parties had actually agreed

to submit disputes arising on their building contract to arbitration. The court's remarks about the duty "to steer a course between the discouragement of time wasting obstruction and protecting a party from being forced to arbitrate a dispute without their consent" (*Canton*, paragraph 30) were made in that context. I accept that I have the power to prevent a party from being forced into an arbitration to which it has not really agreed. But nothing in *Canton* gives me the power to prevent Wadeville from being subjected to an arbitral process to which it has agreed, but which it presently finds inconvenient.

- 10 In any event, the fact remains that Wadeville suffers no prejudice from being told that its jurisdictional and procedural arguments must be submitted, in the first instance, to the arbitrator. If the arbitrator mistakes their jurisdiction, or presses forward with the arbitration in circumstances which deprives Wadeville of its right to have its case "fully and fairly determined" (*Telcordia Technologies Inc v Telkom SA Ltd* 2007 (3) SA 266 (SCA), paragraph 72), Wadeville will have its remedies then. In other words, there is no reason to think that Wadeville would be deprived of substantial redress if it is required to press its case before the arbitrator in due course. It follows that Wadeville's application is not urgent.

- 11 The application is struck from the roll, with costs.



S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on

Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 3 March 2025.

HEARD ON: 25 February 2025

DECIDED ON: 3 March 2025

For the Applicant: JC Carstens
Instructed by Martin Attorneys

For the First Respondent: B Manentsa
B Ndlovu
Instructed by Mota Africa Attorneys