IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)

Not Reportable

Case No: 1791/2025

In the matter between:

VELASKER PROPERTY INVESTMENT (PTY) LTD Applicant

and

THE GLOW ENTERPRISE (PTY) LTD
t/a ROAST KIMBERLEY Respondent

Neutral citation: *Velasker Property Investment (Pty) Ltd v The Glow Enterprise (Pty) Ltd t/a Roast Kimberley* (1791/2025) (12 September 2025).

Heard: 01 August 2025.

Delivered: 12 September 2025.

Summary: Law of lease – Commercial lease – Failure to pay rental as agreed – Landlord entitled to terminate the lease on reasonable notice to the tenant.

ORDER

1. The cancellation of the memorandum of the agreement of lease dated 1 November 2024 entered into between the applicant, Velasker Property Investment (Pty) Ltd, and the respondent, The Glow Enterprise (Pty) Ltd t/a Roast Kimberley, is confirmed.

2. The respondent and all those holding title under it, are to vacate the property known as Shop […], K[…] Centre, Cnr of Phakamile Mabija Road and York Street, Kimberley, Northern Cape (the property), within a period of 30 days from date of this order.

3. In the event that the respondent fails to vacate the property as set out in paragraph 2 above, the sheriff of this Court is directed to carry out the eviction of the respondent and all those holding title under it from the property.

4. The respondent is to pay the costs of the application on the scale as between attorney and client.

JUDGMENT

Phatshoane DJP

[1] The applicant, Velasker Property Investment (Pty) Ltd, is the registered owner of the property known as Shop […], K[…] Centre, situated at the corner of Phakamile Mabija Road and York Street, Kimberley (the property). It seeks an order confirming the cancellation of a commercial lease concluded between itself and the respondent, The

Glow Enterprise (Pty) Ltd t/a Roast Kimberley, in respect of the property; an order that the respondent vacate the property; and further ancillary relief with regard to costs. On 18 July 2025 the application was launched on an urgent basis; however, for reasons not apparent from the record, it was postponed to 1 August 2025.

[2] Mr Bradley John Bordiss (Mr Bordiss), a deponent to the founding affidavit, is a member of Bordiss Property CC and a managing agent for the applicant. On 1 November 2024 the applicant and the respondent concluded a lease agreement in terms of which the applicant leased the property to the respondent for a period of five years, commencing on 1 December 2024 and terminating on 30 November 2029. The monthly rent was R20 600 for the first six months of the lease period and thereafter R26 600, with an annual escalation of 7% to be effected on 1 June of each year.

[3] The further salient terms of the lease were that the respondent would be liable to make payment of a deposit of R61 180, a pro rata payment of municipal rates and taxes, operating costs of the property, costs for refuse removal, sanitary fees, domestic and industrial effluent fees levied from time to time on the property, costs of security guards, costs for water consumption, and costs in respect of use of electricity or gas on the property. The property would be used solely for the preparation, cooking of fast foods and related services. The express written consent of the applicant would be required in case the property was used for any other purpose. The respondent also undertook not to make any alterations or additions or to partition the leased premises. The applicant would be entitled to cancel the lease should the respondent default in the payment of the rental or breach the terms of the lease. The respondent would be liable to pay legal costs that the applicant would incur in enforcing the terms of the lease on an attorney and client's scale.

[4] The applicant avers that the respondent continuously breached the terms of the lease in that it failed to make payment of its monthly rental and other charges as and when they fell due. It is further argued that the respondent partitioned the leased

premises and used them for a different purpose without the prior written consent of the applicant.

[5] On 23 May 2025 the applicant's managing agent addressed an email to the respondent highlighting that the respondent failed to honour a payment arrangement dated 30 April 2025 and accordingly he cancelled the lease. The respondent was given seven days' notice to vacate the premises and to remove its paraphernalia by 31 May 2025. The applicant alleges that on 3 June 2025 the respondent was indebted to it in the amount of R26 002.07. Two days later, the respondent made payment of arrears in the amount of R25 000. The applicant averred that the payment in question 'did not extinguish the arrear' nor did the applicant, on receipt of the payment, waive its right to cancel the agreement. In its replying affidavit, it intimated that the arrears were in the order of R11 515.52. It explained that the respondent pays rental 'when he feels like it and the rental remains in arrears due to the inconsistent manner [in which] the respondent has been paying its rental from 1 December 2024'.

[6] The respondent remains in occupation of the leased premises. However, in the interim, the applicant attempted to conclude a new lease in respect of the same premises with a certain Real Beds, Kimberley (Lewis). The occupation of the said premises by Lewis was supposed to have been on 1 August 2025. The applicant stated that it wished to provide Lewis with a beneficial occupation, prior to the commencement of the new lease, but could not do so because the respondent refused to vacate the property. The applicant further contended that the application is urgent because, through the respondent's refusal to vacate the property, the applicant is denied its use and enjoyment of the property. Put differently, it is prevented from generating an income to advance the purpose for which the property was intended.

[7] Mr Muhammad Shavaiz Ali, the sole director of the respondent, deposed to the answering affidavit. He is a businessman who generates income by selling cellphones, cellphone accessories, and related gadgets. The respondent's answering affidavit is one day late. The delay is negligible and is condoned. The respondent devoted much

time in oral argument and in its heads of argument contending that the applicant did not make out a case for urgency.

[8] It is trite that there are varying degrees of urgency. The property is intended to generate an income, and it is alleged that it is currently not generating any. This would warrant some expedited approach. I am of the view that the issues raised are semi-urgent and should be treated in that manner. The respondent also took issue that the founding affidavit was not properly attested to by a commissioner of oaths and therefore not properly before Court because it does not state where it was signed. This argument must immediately be rejected because the founding affidavit was attested on 1 July 2025, it bears the full names of the commissioner of oaths, his address and that he is a sergeant in the South African Police Service, Rondebosch.

[9] With regard to the merits of the application the respondent states that, upon the conclusion of the lease, it intended to open a franchise roast business and to sell fast foods. It paid the deposit of R61 200 but could not conduct that form of business. It then requested Mr Bordiss to change the nature of the business to that of trading in cellphones and related accessories. Mr Bordiss accepted the variation. It therefore commenced selling cellphones on the basis of that approval.

[10] The respondent's main gripe with the application appears to be twofold. First, it contended that the cancellation of the lease was premature as the applicant failed to provide it with the notice of breach and to afford it a reasonable opportunity to remedy the default, which caused considerable hardships. In light of this, it was contended for the respondent that it was not obliged to accept 'the unlawful termination of the lease'.

[11] Secondly, the respondent argued that there was some lack of good faith on the part of the applicant in seeking to cancel the lease and evict it from the property. In amplification, the respondent intimated that Mr Bordiss accepted an offer dated 15 April 2025 from Lewis, which expressed interest to take beneficial occupation of the property from 1 August 2025. For this reason, the respondent aver that the applicant acted *mala*

fide and never had any intention to afford it an opportunity to remedy the breach. It was submitted for the respondent that the applicant unilaterally terminated the lease in order to enter into a new lease agreement with Lewis. On the basis of the aforegoing, the respondent argued, the application falls to be dismissed with costs on a punitive scale.

[12] On the respondent's own version, it did not pay the rent as agreed and fell into arrears. The respondent's submission that there was some period of two weeks during which it could not trade and therefore seeks the rental to be adjusted cannot avail it. The respondent also sought to imply that a rental discount was granted to it without any substantiation. The applicant denies that the respondent ever approached it to consider reducing the agreed rental. The terms of the lease are clear. Clause 22.5 specifically records:

'No relaxation or indulgence which the landlord may show to the tenant shall in any way prejudice its rights under this lease. In particular, no acceptance by the landlord of rent or other amounts payable in terms of this lease after due date (whether on one or more occasions) nor any act or omission by the landlord including, without limitation, the rendering of accounts after due date, shall preclude or stop the landlord from exercising any rights enjoyed by it hereunder.'

[13] The manner in which the respondent carried out its obligations in terms of the lease is problematic. For instance, in terms of clause 17.4:

'The tenant shall not make or cause to be made any alteration, additions, or improvements to the exterior or interior of the leased premises or install or cause to be installed in addition to those referred to in 17.1 above any trade fixture, floor covering, interior lighting, interior plumbing or other interior fixtures, shades awnings without first obtaining the landlord's prior *written* consent which consent shall not be unreasonably withheld'.

In terms of clause 17.1, it is required of the tenant to submit the plans and specifications, prepared by a professional designer or shopfitter, of the tenant's proposed fixturing and fitting of the property to the landlord. Where the plan and specifications are not approved by the landlord, the tenant should submit amendments which should conform to the landlord's requirements.

[14] The applicant disputes that it verbally agreed to the variation of the lease thereby permitting the respondent to conduct the business of selling cellphones, related accessories and other gadgets or partitioning the property. That may well be. However, the lease has a non-variation clause which precludes alteration of its terms unless reduced to writing and signed by the parties or on their behalf. The respondent did not produce anything in writing concerning the agreement to partition the premises or to change the nature of the business to that of trading in cellphones, cellphone accessories and other gadgets.

[15] Clause 22 of the lease is relevant to the argument on the purported premature termination of the lease. It stipulates in part:

'DEFAULT OF THE TENANT:

22.1 Should the TENANT:

22.1.1. Fail to pay any rent or any other amount falling due in terms of this lease on the due date, or

22.1.2. Fail to submit timeously or falsify any report required to be furnished to the LANDLORD in terms of the lease, or

22.1.3. Commit any act of insolvency, or

22.1.4. Breach any of the conditions of this lease and thereafter again breach any other conditions of this lease (whether the same condition or not) within a period of 12 (twelve) months after the earlier breach, whether or not the LANDLORD has given the TENANT notice calling upon it to remedy such breaches, or

22.1.5. Consequently breach any of the conditions of this lease in such a manner as to justify the LANDLORD in holding that the TENANT'S conduct is inconsistent with the intention or ability of the TENANT to carry out the conditions of this lease, whether or not the LANDLORD has given the TENANT notice calling upon it to remedy such breaches, or

22.1.6. Notwithstanding Clause 22.1.4 above commit any breach other than referred to in Clause 22.1.1 above and fail to remedy that breach within a period of 7 (seven) days after the LANDLORD has given the TENANT written notice calling upon it to do so (provided that should the breach be one which is not reasonably capable of being remedied within the said period of 7 (seven) days then the TENANT shall be allowed such additional period as is reasonable therefore), then and in such events the LANDLORD shall have the right, but shall not be obliged, (and without prejudice to any other rights or remedies the LANDLORD may have against the TENANT including the right to claim arrears or damages):

a) to forthwith terminate and cancel this lease at an end without any notice thereof being required, resume possession of the leased premises and eject the TENANT from the leased premises, or

b) to vary this lease by making it terminable by one month's written notice given by the LANDLORD at any time, or

c) in the case of any breach or breaches under Clauses 22.1.4, 22.1.5 or 22.1.6 above, to remedy such breach itself and immediately recover the total costs incurred by the LANDLORD in so doing from the TENANT.'

[16] The respondent's deponent conceded that the respondent has been in arrears during February 2025 due to its financial constraints and delays in finalising the franchise deal. He further confirmed having received an email, on behalf of the respondent, which recorded that the agent was under pressure from the landlord to have the respondent evicted from the property due to its default in the payment of the rental. These are the events of the breach specified in the agreement which would entitle the applicant to cancel the lease in terms of clause 22. Had the respondent kept to the payment of the rental as agreed, the applicant's acceptance of the offer from Lewis would have been frowned upon. However, the acceptance of that offer cannot be said to have been insincere or tainted by *mala fides* in the circumstances where the respondent has been in default.

[17] A reading of clause 22.1.6(a) exempts the landlord from giving notice to remedy the breach to the tenant in the event that the tenant defaults in the payment of rental. To remove any doubt on whether notice of breach ought to have been issued, clause 22.1.6 expressly exempts providing notice for a breach referred to in clause 22.1.1, which is ‘any default with regard to the payment of the rental’. The respondent’s default falls squarely within that category. This should put paid to any suggestion that the respondent ought to have been afforded an opportunity to remedy its breach.

[18] If no period has been agreed upon in respect of a notice of termination, reasonable notice must be given.[1] The applicant argued that the seven-day notice to vacate the property was sufficient and reasonable. G Bradfield and K Lehmann state:
‘What constitutes reasonable notice depends on the circumstances of each case, but certain guidelines have emerged over the years. The notice must as a general rule expire at the end of a period for which rent is payable and must afford the lessor a reasonable time to relet the premises or the lessee a reasonable time to find other premises. In this regard the following periods have been accepted as reasonable: a week in the case of a weekly lease, a month in the case of a monthly lease and three months in the case of a yearly lease. Under common law both landlords and tenants are entitled to terminate a periodic lease on reasonable notice without “let or hindrance”. The right is absolute, and the motive for the termination is irrelevant.’[2]

[19] I am unpersuaded that the seven days’ notice given to the respondent to vacate the property was sufficient. Considering the period within which the lease would remain in existence (five years) and the period in which the respondent has been in occupation of the premises (some eight months), to my mind, a period of 30 days within which the respondent ought to have been allowed to vacate the property would have been adequate and reasonable. I propose to make an order to that effect. Save in respect of the deficient notice of termination, the applicant was justified to terminate the lease in the circumstances of this case. As a result, I am of the view that a proper case has been

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[1] G Bradfield and K Lehmann *Principles of the Law of Sale & Lease* 3 ed (2013) at 185.
[2] *Ibid* at 185-186.

made out for the eviction of the respondent from the property. It follows that the application must succeed.

[20] Costs on an attorney and client's scale are provided for in clause 22.3 of the agreement. In the result:

Order

1. The cancellation of the memorandum of the agreement of lease dated 1 November 2024 entered into between the applicant, Velasker Property Investment (Pty) Ltd, and the respondent, The Glow Enterprise (Pty) Ltd t/a Roast Kimberley, is confirmed.
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4. The respondent is to pay the costs of the application on the scale as between attorney and client.

M V PHATSHOANE
DEPUTY JUDGE PRESIDENT
NORTHERN CAPE DIVISION

Appearances

For the applicant:	JP Van Den Berg
Instructed by:	PPM Attorneys, Bellville
	Duncan & Rothman Inc, Kimberley
For the respondent:	M Froneman
Instructed by:	PGMO Attorneys, Kimberley.