



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case no: 2023-120525

(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED: Yes

Date: 21 November 2025

In the matter between:

VAN DEN HEEVER, THEODOR WILHELM N.O.

First Applicant

DU PLESSIS, JOHANNES HENDRIKUS N.O.

Second Applicant

KHAN, DEBORAH LYNN N.O.

Third Applicant

and

EVOLV OUTDOOR (PTY) LTD

First Respondent

THE MED OFFICE PARK (PTY) LTD

Second Respondent

JUDGMENT: LEAVE TO APPEAL

DU PLESSIS J

Introduction

[1] This is an application for leave to appeal by the first respondent, Evolv Outdoor Pty Limited (“Evolv”), against my judgment where I ordered Evolv to vacate property in respect of which Evolv claimed a lease right. The application for leave to appeal challenges the judgment, particularly on the grounds, which reduce to the question whether the lease agreement, concluded between Evolv and The Med Office Park Pty Ltd (“Med Office”), binds the liquidators and whether the doctrine of *huur gaat voor koop* or a similar principle apply in the circumstances.

The test for leave to appeal

[2] Section 17(1)(a) of the Superior Courts Act¹ provides the framework for leave to appeal:

“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that —

- (a)(i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;”

[3] The Supreme Court of Appeal in *MEC for Health, Eastern Cape v Mkhitha*² states the test, namely:

“[16] [...] Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

¹ Act 10 of 2013.

² [2016] ZASCA 176 paras 16-17.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.”

[4] In considering the test for reasonable prospects of success, a judge must consider the application dispassionately, based on the facts and the law. A mere possibility that another court may come to a different conclusion is not enough; rather, a sound rational basis is required before concluding that there are reasonable prospects of success.³

[5] As for "other compelling reason[s]", it should be remembered that appeals are primarily meant to be about obtaining different results, rather than second opinions. Accordingly, even where novelty or public importance is raised, the merits of the appeal remain relevant.⁴

[6] I now turn to apply these tests on the grounds that Evolv raised for leave to appeal.

Does the lease agreement between Evolv and Med Office bind the liquidators?

[7] Evolv's first contention is that the lease concluded between itself and Med Office bound the liquidators, notwithstanding that Med Office was not the true owner of the property at the time of conclusion. This raises the question of when a lease concluded by a non-owner can bind the true owner. In this respect, the law is settled, as set out in the judgment above. In short, a true owner that is not party to the lease cannot be bound unless the true owner has consented, has adopted or ratified the agreement after becoming aware of it, or the lease is subject to the principle of *huur gaat voor koop*.⁵

³ *Smith v S* [2011] ZASCA 15 para 7.

⁴ *Minister of Justice and Constitutional Development v Southern Africa Litigation Centre* 2016 (3) SA 317 (SCA) para 24.

⁵ This is discussed in paras 20 – 23, with authority in footnotes 9 – 15.

[8] Evolv concluded a lease with a non-owner, Med Office. Evolv, in the leave to appeal, emphasise that Med Office did not need any authority to let the premises, and that the court erred in placing emphasis on this. Even if one accepts that that part of the judgment was perhaps not framed in the most accurate language, it does not detract from the fact that the conclusion, based on the facts, made it clear that the true owner (in liquidation) did not consent to the lease once it became aware of the lease.⁶ This conclusion was based on the evidence that showed that when the liquidators became aware of the lease concluded between Evolv and the non-owner, Med Office, they expressly stated they were "reviewing" it and would communicate further with Evolv regarding whether to continue the lease.

[9] Evolv's contention is that the liquidators exercised their election to adopt the lease when they stated in correspondence that the "existing terms and conditions...remain in force" and demanded payment of rent into their trust account. Evolv argues this constituted an election to continue with the lease, and that the principle of election operates as an extension of *huur gaat voor koop*,⁷ thereby binding the true owner to the lease without requiring a new contract or formal ratification.

[10] I rejected this interpretation in my judgment. Read in context, the correspondence shows the liquidators expressly reserved their position, by referring to "reviewing existing leases", "by way of indulgence" and stating that they are not party to the leases and thus not bound by it. The phrase "until such time as our clients have made their election" made it clear that the liquidators had not yet decided. Furthermore, the correspondence shows persistent disagreement on material terms, precluding any finding of consensus on a new lease.

[11] On this ground, based on the facts and the legal position as set out in the judgment, there is I find that there is no reasonable prospect that another court would hold that the lease bound the true owner in the absence of consent or ratification, which consent or ratification did not occur on the facts.

⁶ Paragraph 23.

⁷ Relying on *Genna-Wae Properties (Pty) Ltd. v Medio Tronics (Natal) (Pty) Ltd.* [1995] ZASCA 42 paras 19 – 26.

Does the doctrine of huur gaat voor koop apply?

[12] The judgment in this matter explained that, in this case, there was no contractual transfer of property in the sense contemplated by *huur gaat voor koop*, namely, where property is sold pursuant to a contract of sale and ownership passes to the purchaser by registration. Instead, the title was corrected by court order pursuant to section 62 of the Deeds Registries Act.⁸

[13] The effect of this is that there was no contractual transfer from the true owner to Med Office (or vice versa), and accordingly *huur gaat voor koop* does not apply. The factual and legal matrix in *Genna-Wae*⁹ is fundamentally different from the present case, where there was no contractual transfer and the liquidators expressly reserved their position, which is why the dictum was not applied.

[14] My finding was based on settled case law. In my view, another court would reach the same conclusion on these facts.

Novel point in law

[15] Should leave to appeal nevertheless be granted because of the possible novelty of an extension of the *huur gaat voor koop* principle, based on equity? I think not. Even if such an extension were possible, the facts of this case do not support it. The liquidators expressly stated they were reviewing the leases provisionally and had not yet made their election. While Evolv finds itself in an unfortunate position, the equitable considerations do not constitute a compelling reason to grant leave in this case.

Conclusion

[16] The grounds of appeal do not establish that another court, acting reasonably, could arrive at a different conclusion, nor do they raise any other compelling reason for the appeal to be heard. The principles applied are settled, the findings are grounded in the evidence, and I find that the order is justified in law and fact.

⁸ Act 47 of 1937.

⁹ *Genna-Wae Properties (Pty) Ltd. v Medio Tronics (Natal) (Pty) Ltd.* [1995] ZASCA 42.

Order

[17] Accordingly, the following order is made:

1. The application for leave to appeal is dismissed, with costs, to be taxed on scale B.



WJ du Plessis
Judge of the High Court
Gauteng Division,
Johannesburg

Date of hearing:	20 November 2025
Date of judgment:	21 November 2025
For the appellant:	M Desai instructed by Van Veijeren Inc
For the respondent:	P Van der Berg SC instructed by Vanessa Fernihough & Associates