

BACKGROUND AND SUMMARY

The application involves the interpretation of a lease agreement (“the lease agreement”) between Merchant West (Pty) Ltd (“the Applicant”) and Cell C (Pty) Ltd (“the Respondent”). The lease agreement was made up of a Master Rental Agreement (“the MRA”) concluded on 19 December 2013, a side letter dated 4 December 2013 and two Equipment Schedules (“schedule 1” and “schedule 2”), concluded on 19 December 2013 and 24 December 2013 respectively.

The side letter, dated 4 December 2013, provided the respondent with the option to purchase the rented equipment, for an amount of R100, at the expiry of the initial rental period.

The MRA had a commencement date of 3 December 2013, a rental due date of 1 March 2014 and a minimum rental period of 12 quarters.

The MRA, as per clause 3.2, provided that the Agreement was to commence on the commencement date as stated in the Equipment Schedule (being 3 December 2013). The MRA further stated that the Agreement would terminate at the expiry of the Rental Period as set out in the Equipment Schedule.

The Respondent would be required to pay the Applicant, for the duration of the Agreement, the rental as set out in the Equipment Schedule together with VAT thereon. The first payment by the Respondent was due to be effected on the commencement date. Thereafter further payments would be due to be effected on or before the Rental Due Date.

The “Equipment Schedule”, contained in the MRA, made reference to “the *interregnum* term”. The *interregnum* term contained a provision providing that, in the event that the rental due date and commencement date do not fall on the same day, then the respondent would be required to rent the equipment from the applicant for the *interregnum* period falling between the commencement date and the rental due date. The *interregnum* rent would be payable on the commencement date and would be equivalent to one ninetieth of the quarterly rental multiplied by the number of days of the *interregnum* period.

The respondent had, on 5 December 2013, shortly after the commencement date, made the first payment (calculated according to the *interregnum* term). The respondent thereafter made a further 11 payments at the beginning of each quarter, as from 1 March 2014 until 1 September 2016. The respondents argued that they were now entitled to purchase the rented equipment for R100, as the rental had been paid for the full 12 quarters, commencing from 3 December 2013 and ending on 30 November 2016.

The applicants argued that, by virtue of the *interregnum* terms, the first payment that was made, between the commencement date and the rental due date, did not constitute a quarterly payment. The applicants rather considered the payment to be for the *interregnum* period. The applicants argued that the 12 quarterly payments commenced on 1 March 2014 and that there was a further payment of R3 078 402.89 due to be paid on 1 December 2016 in order for the respondents to fulfil their obligations to make payment for 12 quarters.

HELD

The court, referring to clause 3.2 of the MRA, stated that, as per the party's consensus, the agreement would terminate upon the expiry of the specified rental period. The agreement provided for a minimum rental period of 12 quarters, commencing on 3 December 2013 and terminating on 30 November 2016 (or, at the latest, 2 December 2016).

If the court had given effect to the applicant's contention, then the minimum rental period would have been extended for a further 3 months and terminate on 28 February 2017, thereby constituting almost 13 quarters, as opposed to the agreed 12 quarters.

The court stated that giving effect to the applicant's contention would lead to absurdity. The MRA contained an express provision to the effect that the agreement would terminate after 12 quarters. The court therefore rejected the applicant's contention that the agreement should constitute almost 13 quarters as this was not the intention of the parties when entering into the agreement.

The applicant, in responding to the court's submissions, argued that the contract period would still be for express 12 quarters and that the *interregnum* period would be in addition thereto. The court disagreed with the applicant, stating that the applicant's interpretation of the agreement would lead to an outcome whereby the *interregnum* rental would be treated as extraneous to the quarterly payments, the effect of which would be to ignore the express wording of clause 3.2, specifying that the rental period would be for 12 quarters commencing on the commencement date.

The court, in agreeing with counsel for the respondent, stated that the first payment made by the respondent constituted a quarterly payment, but was adjusted as the period involved was shorter than a quarter. This interpretation was held to be consistent with clause 4.1 of the agreement, which did not distinguish between the first rental payable on the commencement date and the subsequent rentals payable on the rental due date.

The applicant responded to the courts averments by arguing that it would lead to absurdity if the commencement date was a matter of days before the rental due date, thus shortening the minimum rental period to just over 11 quarters. The agreement made no provisions for a shortfall of the rental period of 12 quarters. The court suggested that a tacit term be inserted, to the effect that the rental period be extended in order to make up any shortfall, and that a proportionate rental be calculated and paid at the end of the contract to make up the full 12 quarterly payments. The court thus considered the issue of any shortfall as *de minimis*.

The court, in justifying its position, stated that it was required to give the language contained in the agreement its ordinary and grammatical meaning, unless doing so would lead to absurdity,

repugnancy or inconsistency with the rest of the agreement. Further, a sensible meaning would take preference over one which would leave insensible or unbusinesslike results which would defeat the purpose of the agreement.

VALUE

The case provides significant value on the interpretation of contractual terms and obligations. The case further highlights the importance the courts place on giving effect to the underlying purpose of the agreement.

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