REPUBLIC OF SOUTH AFRICA

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

APPEAL CASE No: A3064/18

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED.

.....
SIGNATURE

4/11/2019
DATE

In the matter between:

IQBAL MEER SHARMA — Appellant
(respondent in the cross-appeal)
(defendant *a quo*)

and

SEAN HIRSCHOWITZ — First Respondent
(first appellant in the cross-appeal)
(first plaintiff *a quo*)

KERRY ANN HIRSCHOWITZ — Second Respondent
(second appellant in the cross-appeal)
(second plaintiff *a quo*)

Summary - Interpretation of section 5(5) of the Rental Housing Act 50 of 1999 – the word '*deemed* ' construed to mean *prima facie* or rebuttable - the aim, scope and object of the legislative enactment considered – oral agreement recognised - the mischief the legislature intended addressing being the resolution of disputes which arise in oral or tacit lease agreements – the section providing an evidentiary tool only.

JUDGMENT

THE COURT

Introduction

[1] This is an appeal and a cross-appeal against a judgment and order handed down on 17 May 2018 by the Magistrate's Court for the district of Johannesburg North, Randburg. The appeal lies against parts of an order made in an action instituted by the respondents for, amongst other relief, damages for holding over. The respondents noted a cross appeal.

[2] The appellant leased certain immovable property used for residential purposes from the respondents for the period 1 March 2012 to 27 February 2013. This lease was governed by a written lease agreement and the rental payable was R30 000 per month.

[3] On expiry of this lease agreement a written renewal lease agreement was concluded between the parties for the period 1 March 2013 to 27 February 2014 the terms of which were identical (the renewal lease agreement) save that the monthly rental payable from 1 October 2013 until 28 February 2014 was R 32 400.

[4] On expiry of the renewal lease agreement no further written lease agreement was concluded. However, the parties orally agreed on a rental of R34 500 per month

('the oral agreement') and the appellant paid this amount for the period 1 March 2014 to 31 October 2014.

[5] The respondents gave notice to the appellant to vacate the immovable property effective 31 October 2014.

[6] The appellant did not vacate the property but continued to make rental payments for the months of November and December 2014 in the amount of R34 500 per month.

[7] Appellant did not make any payment for the months of January and February 2014 and only vacated the property on 26 February 2015.

[8] The respondents sued in the court *a quo* for the confirmation of the cancellation of the lease agreement and payment in the amount of R111 000. The respondents also claimed payment of water and electricity consumption charges.

[9] The appellant defended the action and counterclaimed for payment of R40 000 together with interest, being appellant's rental deposit plus the accrued interest.

[10] At the hearing of the matter in the court *a quo*, both respondents testified in support of their case and closed their case without calling further witnesses. The appellant closed his case without leading any evidence.

[11] The learned Magistrate granted judgment in favour of the respondents against the appellant for payment of R91 000 plus interest at the rate of 9% per annum calculated from 31 October 2014 to date of final payment; confirmed that the lease agreement between the parties was lawfully terminated on 31 October 2014, confirmed the rent interdict appearing on the face of the summons to the value of R91 000; and costs on the attorney client scale. The magistrate dismissed the appellant's counterclaim. The appeal and cross-appeal lie against this judgment.

[12] The appellant argued on appeal that the magistrate erred:

(a) In finding that the respondents discharged the onus of proving, on a balance of probabilities that they were entitled to holding over damages in the sum of R40 000 per month for the period November 2014 up to and including February 2015.

(b) In dismissing the appellant's counterclaim for a refund of the deposit, alternatively, not allocating the deposit amount together with accrued interest in the sum of R48 428 to the alleged indebtedness when it was common cause between the parties that the respondents had been holding the deposit and had on their version, in fact allocated the deposit to the alleged damages they had suffered.

(c) In failing to set-off an admitted overcharge.

(d) In finding that the parties had concluded an oral agreement which was valid, binding and effectual on the basis that the learned Magistrate did not have any regard to the provisions of section 5(5) of the Rental Housing Act of 1999.

(e) In upholding the oral agreement of lease and in doing so found that the respondents were entitled to claim rental in the sum of R34 500 per month for the period March to 31 October 2014.

(f) In finding that the appellant was liable to pay the respondent's costs as between attorney and client.

[13] There is a cross-appeal by the respondents against the dismissal of two claims which the respondents had preferred against the appellant.

[14] The first one is a claim for utilities for the months of November 2014, December 2014, January 2015 and February 2015 which the appellant failed to pay. The magistrate dismissed the claim on the basis that the respondents had failed to prove the quantum of such utilities and accordingly concluded that they were not entitled to payment of such utilities in the amount of R11 873.

[15] The second claim is for the costs of repairs to the premises in the amount of R18 605 which the magistrate dismissed on the basis that the respondents had adduced no evidence to prove the reasonableness of the costs of repairs.

[16] The respondents argued that the magistrate erred in finding that the claim was for damages instead of finding that the claim was contractual, based on express terms of the lease agreements entitling them to deduct from the deposit or to recover from the appellant, the actual cost of the repairs undertaken.

Damages for Holding Over

[17] The appellant was found by the court a quo to have held over the property for the period November 2014 to 26 February 2015 (i.e. for the period after the cancellation of the oral lease). The appellant paid R34 500 for each of the months of November 2014 and December 2014.

[18] It is trite that a claim for holding over is founded on a breach of the contractual obligation to give vacant possession on termination as required by the relevant clause in the lease agreement or as an incidence of the common law, *see Sandown Park (Pty) Ltd v Hunter Your Wine and Spirit Merchant (Pty) Ltd* 1985 (1) SA 248. It is based on damages suffered by reason of the lessee's continued occupation despite lawful cancellation. A claim requires damages to be determined by reference to the

amount which the landlord could obtain if he had been able to re-let but for this continued occupation of the property by the erstwhile tenant.

[19] The amount claimable is not rental but damages which according to settled law is the market rental value of the premises, see *Sandown Park* (supra) at 256 and accepted in *Hyprop Investments Ltd and another v NCS Carriers and Forwarding CC and another,* 2013 (3) ALL SA 449 (GSJ).

[20] The general rule is that the right to claim damages is established and must be assessed as at the date of breach, see *Hunter v Shapiro* 1955 (3) SA 28 D and *Sandown Park* (*supra*) at 257 D.

[21] It is only in the absence of evidence to the contrary that the rental value of the premises is assumed to be the rental paid under the lease, see the judgement of the full Court in *Hyprop (supra)* at paragraphs 64-66.

[22] In *casu*, the appellant was found to have held over at the property for the period November 2014 to 26 February 2015. The appellant does not dispute this on appeal. The amount of such damages is, however, disputed.

[23] In the court *a quo* the first respondent testified that he had asked one Mr Frank Mbaya to market the property and the latter had engaged in certain email correspondence with the respondents that he was likely to secure a tenant at a monthly rental of R45 000.

[24] Mr Mbaya was not called to testify. The learned Magistrate rejected that evidence, however, in the absence of any other evidence he accepted the only evidence before him of the rental amount being the R40 000 received by the respondents during April 2018 for such month's rental, some three and a half years

after the holding over period. This goes against the general rule that the right to claim (and the quantum) must be assessed at the time of the breach.

[25] As stated above in par [21], it is only in the absence of evidence to the contrary that the rental value of the premises is assumed to be the rental paid under the lease. The rental provided for in the agreement, accordingly, is no more than evidential material available as to what the market related rental for that period was.

[26] It was contended on behalf of the appellant that, because it was common cause that the parties had reached agreement in early 2014 that the appellant would make payment of rental in the amount of R34 500 per month, which amount was paid for the periods March 2014 to December 2014, this amount was the only admissible and accurate evidence before the court as to the market rental at the relevant time.

[27] We agree with this submission. This accords with the principle accepted by the Full Court in Hyprop, as noted above in par. [21].

[28] The total holding over damages for the period January and February 2015 ought thus to have been R69 000 (R34 500 x 2) and not R91 000 as found by the magistrate (this was calculated with reference to the shortfall of R5 500 for the months of November and December 2014 as R34 500 per month was paid, plus R40 000 per month for the months of January and February 2015, thus (R5 500 x 2) plus R80 000).

Set-off of the deposit and interest

[29] It is common cause that the appellant paid a rental deposit in the amount of R40 000 at the commencement of the lease.

[30] The aforesaid amount had accrued interest and the total amount was R48 164 as at the time that evidence was received in the court a quo.

[31] In terms of clause 6 of the lease agreement, any amounts for which the lessee may be liable under the lease for damages, unpaid rental, cost of repair and the like, might be deducted from the deposit.

[32] The first respondent contended in the court a quo that he had set-off the deposit against repairs. However, the learned Magistrate did not find any entitlement as to repairs.

[33] It is trite that set-off comes into operation when two parties are mutually indebted to each other and both debts are liquidated and fully due. The one debt extinguishes the other *pro tanto* as effectually as if payment had been made *Schierhout v Union Government* 1926 AD 286.

[34] Set-off is equivalent to payment (*Joint Municipal Pension Fund) Transvaal v Pretoria Municipal Pension Fund,* 1969 (2) SA 78 (T) at 85 and it consequently operates *ipso facto* and *ipso jure*, or automatically (*Schierhout v Union Government* supra at 289 – 90), as a discharge total or partial of the debts in question.

[35] Set-off must be pleaded by the party that wishes to take advantage of it, so that the court may give effect to it, *Mahomed v Nagdee* 1952 (1) SA 410 (A) at 416.

[36] In *casu*, set-off was pleaded by the appellant. The respondents applied set-off in respect of repairs. By dismissing the claim for repairs the learned Magistrate ought to have applied set-off against the unpaid rental amount found to be owing by the appellant. No reasons were given in the judgment for failing to apply set-off.

[37] We come to the inescapable conclusion that R48 164 in respect of the rental deposit and interest ought to be set-off against an amount found to be owing by the appellant to the respondents.

Failure to set-off admitted overcharge

[38] It was contended on behalf of the appellant that the learned Magistrate erred in not finding that the respondents, having conceded that they had overcharged the appellant rental for the months of March to September 2013 in the sum of R16 800 (R32 400 (incorrect monthly rental) – R30 000 (correct monthly rental) = R 2 400 x 7 months = R 16 800), should have been set off such against the alleged indebtness.

[39] This argument was based on the admission by the first respondent that he had made an error in relation to the rental payable for the months of March 2013 to September 2013 (Inclusive). In a schedule he had recorded rental for the period to be R32 400 instead of R30 000.

[40] The first respondent furthermore conceded that there had been an overcharge for seven months, in the amount of R2 400 per month equating to R16 800.

[41] Even though the rental as per the schedule was recorded as R32 400 instead of R30 000, the appellant paid only R30 000 per month and there cannot be an overcharge.

Section 5(5) of the Rental Housing Act 50 of 1999 (the Act)

[42] During the period 1 March 2014 to 31 October 2014, there was no written agreement in place between the parties. The parties are *ad idem* that, for this period, they had orally agreed, and the appellant had factually paid, rental in the amount of R34 500 per month. However, by virtue of the application of section 5(5) of the Act, the appellant argues that the parties' agreement on this amount runs contrary to section 5(5) of the Act because the increased rental agreed to (an increase in the amount of R2 100 per month from the amount of R32 400 paid under the renewed lease agreement), was not provided for in a further written agreement and such

amount being R16 800 (R2 100 x 8) falls to be set off against any amount found to be owing by the appellant to the respondents.

[43] Section 5(5) of the Act reads:

> "(5) If on the expiration of the lease the tenant remains in the dwelling with the express or tacit consent of the landlord, the parties are deemed, in the absence of a further written lease, to have entered into a periodic lease, on the same terms and conditions as the expired lease, except that at least one month's written notice must be given of the intention by either party to terminate the lease." (our emphasis).

[44] The approach to deeming provisions was quite recently considered in the Supreme Court of Appeal in *Eastern Cape Parks and Tourism Agency v Medbury (Pty) Ltd t/a Crown River Safari*, 2018 (4) SA 206 (SCA). The principles which have crystalised over the years were succinctly summarised :

> "[29] At the outset it is necessary to have regard to how deeming provisions in legislation have been dealt with in case law and by commentators. Bennion *Statutory Interpretation* (1997) 3 ed says the following about deeming provisions at 735:
>
> > 'Deeming provisions in Acts *often* deem things to be what they are not. In construing a deeming provision it is necessary to bear in mind the legislative purpose.' [My Emphasis]
>
> The first sentence of the quote is demonstrated by the facts in *Mouton v Boland Bank Ltd* 2001 (3) SA 877 (SCA) ([2001] 3 All SA 485). In that case the court was dealing with a deeming provision contained in the Close Corporations Act 69 of 1984, relating to the reregistration of a close corporation. The deeming provision there in question read as follows:
>
> > 'The Registrar shall give notice of the restoration of the registration of a corporation in the *Gazette*, and as from the date of such notice *the corporation shall continue to exist and be deemed to have continued in existence as from the date of deregistration as if it were not deregistered.*' [Emphasis added.]

That provision deemed something to be what in fact was not so, namely, that the close corporation was never deregistered.

[30] An exposition of types of deeming provisions and how they should be construed is to be found in the decision of this court in *S v Rosenthal* 1980 (1) SA 65 (A). Trollip JA said the following at 75G – H:

> 'The words shall be deemed ('word geag' in the signed, Afrikaans text) are a familiar and useful expression often used in legislation in order to predicate that a certain subject-matter, eg a person, thing, situation, or matter, shall be regarded or accepted for the purposes of the statute in question as being of a particular, specified kind whether or not the subject-matter is ordinarily of that kind. The expression has no technical connotation. Its precise meaning, and especially its effect, must be ascertained from its context and the ordinary canons of construction.'

[31] The court in *Rosenthal* went on to explain:

> 'Some of the usual meanings and effect [deeming provisions] can have are the following. That which is deemed shall be regarded or accepted (i) as being exhaustive of the subject-matter in question and thus excluding what would or might otherwise have been included therein but for the deeming, or (ii) in contradistinction thereto, as being merely supplementary, ie, extending and not curtailing what the subject-matter includes, or (iii) as being conclusive or irrebuttable, or (iv) contrarily thereto, as being merely *prima facie* or rebuttable. I should add that, in the absence of any indication in the statute to the contrary, a deeming that is exhaustive is also usually conclusive, and one which is merely *prima facie* or rebuttable is likely to be supplementary and not exhaustive.'

[32] Trollip JA considered the deeming provision in issue in *Chotabhai* to be an example of an exhaustive deeming provision. In that case 'certain classes of Asiatics' were deemed lawfully resident for the purposes of the statute there in question and the court held that the deeming provision intended to exhaust the list of those who were to be included in that expression.

[33] The court in *Rosenthal*, at 76B – 77A, had regard to *R v Haffejee and Another* 1945 AD 345, in which a war measure empowered a price controller to calculate and determine the cost, percentage of gross profit, price or factor of any goods. The controller's determination could be '*prima facie* proved' by the production of a statement in writing, purporting to have been issued by or on the authority of the controller, setting forth the determined cost, price, etc. Such cost, price, etc, in terms of the relevant provision was 'deemed' to be the true cost, price,

etc. At 352 – 353 Watermeyer CJ, in considering the meaning and effect of deeming provisions, with reference to English case law, said the following:

> 'It is difficult to extract any principle from these cases, except the well-known one that the Court must examine the aim, scope and object of the legislative enactment in order to determine the sense of its provisions. Applying that principle to the present case, it seems that Regulation 14 was clearly a provision to *facilitate proof of matters* which might otherwise be difficult to prove in a Court of Law. It is an encroachment, and presumably a necessary one, on the rules of evidence, but I am not prepared to hold that the legislator intended to make the Controller's certificate *conclusive evidence* against an accused person. If it were conclusive, then an accused person would be precluded from establishing his innocence in a case in which the Controller's determination is in fact wrong, even if the error is merely due to a mathematical mistake. This is an unreasonable result which would follow from holding that the Controller's certificate is conclusive, and it is one which should be avoided if the words of Regulation 14 can be given a reasonable meaning which does not lead to such a result. (See the remarks of Lord Cairns in the case of *Hill v East & West India Dock Co* 9 AC at p 456.) In the present case there is no difficulty in construing the words to mean that the Controller's certificate must be accepted as correct, unless the contrary is proved by the accused and that, in my judgment, is the meaning of the regulation.' [Emphasis added.]"

[45] The provision being interpreted was s 2(1)(a) of the Game Theft Act, 105 of 1991. The supreme court of appeal considered the context in which the deeming provision appeared, being the right of ownership over game on ones land, and found that the word '*deemed*' ought not to be interpreted to deprive owners who had taken the necessary measures to sufficiently enclose game on land. The deeming provision ought therefore to be interpreted to allow countervailing evidence that the land was sufficiently enclosed.

[46] The long title of the Act in question reflects the twin overall objectives of laying down general principles governing conflict resolution in the rental housing sector; and

providing for the facilitation of sound relations between tenants and landlords and for this purpose to lay down general requirements relating to leases. In the preamble, these objectives are echoed; the Act recognising that there is a need to balance the rights of tenants and landlords and to create mechanisms to protect both tenants and landlords against unfair practices and exploitation – addressing the need to introduce mechanisms through which conflicts between tenants and landlords can be resolved speedily at minimum cost to the parties. A balancing of the interests between lessees and lessors is thus envisioned by the Act.

[47] Section 5(1) of the Act provides that '*A lease between a tenant and a landlord, subject to subsection (2), need not be in writing or be subject to the provisions of the Formalities in Respect of Leases of Land act, 1969 (Act 18 of 1969)*'. Section 1 of the latter Act provides that '*...no lease of land shall be invalid merely by reason of the fact that such lease is not in writing*'

[48] We could find only one authority dealing with the interpretation of section 5(5) of the Act, which decision does not interpret that portion of the section with which this court is seized, but rather interprets the latter part, dealing with the notice period. In para [18] of *Luanga v Perthpark Properties Ltd*, 2019 (3) SA 214 (WCC) Davis AJ and Paper J note that :

> 'The provisions of s 5(5) of the Act with regard to termination of a periodic lease are peremptory: It is clear from the wording of section 5(5) that the provisions of the lease cannot override the notice requirements laid down in that subsection. Therefore, the lessor could not rely on the notice provisions in clause 9 [of the lease], which requires 20 business days' notice, to justify a departure from the notice requirements laid down in s 5(5) of the Rental Act.'

[49] It is unclear from the judgment how the learned judges arrive at the conclusion that the terms are peremptory and in the absence of reasons for this finding, we are unable to assess this conclusion. The facts of this matter are distinguishable. In the *Luanga* matter there was no further or tacit agreement concluded after the expiry of the lease agreement, whereas in this case, it is common cause that a further oral agreement had been concluded, and an increased rental had been agreed upon and implemented.

[50] The respondents argued that section 5(5) had application only where no agreement whatsoever had been concluded after the expiry of the lease agreement. We do not consider it necessary to decide this issue as we hold the view that the crisp legal issue is how the use of the deeming provision is to be construed.

[51] The legislature did not intend to preclude the conclusion of further lease agreements after the expiration of the lease agreement or to prohibit increased rentals after expiry of initial leases. So much is clear from the exclusion of written agreements from section 5(5). The mischief the legislature intends addressing is quite clearly the resolution of disputes which quite often arise in oral or tacit lease agreements about the nature of the terms of the renewed lease. Thus the common situation where the terms of a renewed lease are open to dispute is addressed. Absent writing, the renewed lease is deemed to be the same as the previous one. This is a perfectly sensible statutory provision designed to provide a rule of thumb to resolve commonly encountered disputes.

[52] The interpretation contended for by the appellant – namely that an oral lease bona fide and genuinely entered into and indeed common cause between landlord and tenant - would nullify the oral agreement simply because it was oral, despite both parties having accepted that it was concluded and implemented. The interpretation

contended for would also nullify section 5(1) of the Act as, the oral agreement concluded and expressly authorised by section 5(1) would be, if the interpretation urged upon us were accepted, considered invalid by virtue of the application of section 5(5).

[53] In our view the proper construction to be given to the word 'deemed' in this subsection is that it provides *prima facie* proof in the absence of a written agreement. To bolster this conclusion: if the oral agreement had been concluded when the parties first contracted, section 5(5) would have held no bar to the oral agreement's enforcement. It would have been considered valid. Simply because it has come later in time, it is to be considered invalid? In our view, such a construction does not accord with the objects of the Act.

[54] Section 5(5) of the Act contemplates a situation where the parties' relationship is not being governed by a written agreement and is therefore '*...clearly a provision to facilitate proof of matters which might otherwise be difficult to prove in a Court of Law*', see *R v Haffejee and another*, 1945 AD 345 at 353. It falls within the category contemplated by Watermeyer CJ where the word '*deemed* ' shall be regarded or accepted as being merely *prima facie* or rebuttable.

[55] Section 5(5) only applies in the absence of a written lease agreement. It serves as an evidentiary tool and countervailing evidence is thus permissible. This is not like the re-registration of a deregistered close corporation where the section deems facts to be what they are not.

[56] It being common cause that the oral agreement was concluded and indeed implemented it follows that the deeming provision has been rebutted, albeit by the common cause oral instead of any written agreement, and therefore the rental due

under the oral agreement was an enforceable obligation. Thus the amount of R16 800 does not stand to be set off or deducted as against any amounts owed to the respondents.

Cross-appeal - Utilities

[57] In terms of the lease agreements, the appellant was liable to make payment of water and electricity charges and he remained liable for all charges in relation to the consumption of water and electricity at the premises until the date of vacation.

[58] A recordal of all amounts paid and owing by the appellant in respect of utilities were part of a schedule in the trial bundle.

[59] The schedule made reference to water and electricity charges for the months of November 2014 to February 2015 that were not paid by the appellant.

[60] It was contended on behalf of the respondents that because the appellant did not dispute the amounts in the summary of the payment history and also in the absence of evidence to the contrary, the amounts contained in the summary of unpaid utilities are *prima facie* proof of the amounts owing by the appellant.

[61] The total amount in the summary for the periods November 2014 to February 2015 was R11 873.

[62] The learned Magistrate found that the respondents, despite including municipal accounts in the trial bundle, had not adduced evidence to substantiate or justify the payment of such utility accounts. The learned Magistrate accordingly dismissed the claim for utilities.

[63] The onus clearly rested on the respondents to prove their entitlement to the payment for the consumption of the utilities. They failed to lead evidence in respect of the accounts.

[64] The court *a quo* was correct in finding that the mere fact that the municipal invoices were included in the trial bundle did not constitute evidence. This is particularly so as no agreement in respect of the status of the documents in the trial bundle had been concluded.

[65] Accordingly, this ground of cross-appeal is dismissed.

Repair Costs

[66] It was contented on behalf of the respondents that the lease agreement made provision for the respondents to effect repair work and to recover the costs incurred in respect thereof, from the appellant.

[67] The respondents relied on clause 7.4.2 of the lease agreement which provides as follows:

> "should the lessee fail to maintain the premises in the manner specified in this clause, the lessor shall be entitled to carry out necessary maintenance work at their discretion and to recover the full cost thereof from the lessee."

[68] The respondents sought payment in the amount of R18 605 (eighteen thousand six-hundred and five Rand) in respect of repairs allegedly effected to the property after the appellant had vacated same. The work required to be carried out, according to the first respondent was in relation to the pool, garden, patching and repair work, internal cleaning and rubble removal.

[69] The court *a quo* correctly noted that no evidence as to the reasonableness of the amounts claimed had been presented. The Magistrate went on to state that it was a requirement in terms of clause 7.5 of the lease agreement, that an inspection of the property take place by the respondents within seven days of termination of occupation, for purposes of notifying the appellant in writing of damages or defects to the property. A failure to do so constituted an acknowledgment on their part that the property was in a good and proper state of repair and condition.

[70] The learned Magistrate correctly recognised that no such inspection was done after the appellant had vacated the property. As a result of this failure too, the court a quo was correct in dismissing the respondents claim for damages in respect of repairs to the property.

[71] There is however a further reason why this counterclaim should not succeed. There was no prayer for this relief. The learned Magistrate made no error in this respect as it was not before him. Accordingly this ground of the cross appeal is dismissed.

Conclusion

[73] We accordingly conclude that the court *a quo* ought to have granted judgment in the amount of R20 836 computed and calculated as follows:-

Holding over damages for	
January and February 2015	69 000
Less deposit and interest	(48 164)
	20 836

Order

[74] We therefore make the following order:

1. The appeal is upheld with costs.
2. The cross appeal is dismissed with costs.
3. The judgment of the court *a quo* dated 17 May 2018 is set aside and replaced with the following:

'Judgment is granted against the defendant:

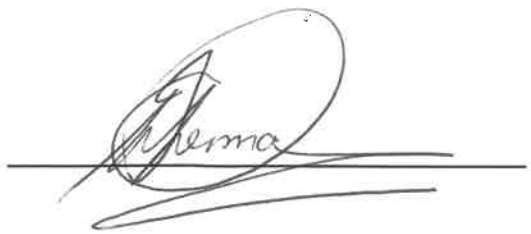
1 in the amount of R20 836 (twenty thousand eight-hundred and thirty-six Rands);

2 interest on R20 836 at 9% per annum calculated from 28 February 2015;

3 the termination of the lease agreement on 31 October 2014 is confirmed;

4 The rent interdict appearing on the face of the summons to the value of R20 836 is confirmed;

5 Costs of suit.'



I. OPPERMAN
Judge of the High Court of South Africa
Gauteng Local Division, Johannesburg

I agree

HE MKHAWANE
Acting Judge of the High Court of South Africa
Gauteng Local Division, Johannesburg

Counsel for the appellant: Adv S. Freese
Instructed by: Shaheed Dollie Incorporated
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Instructed by: Schindlers Attorneys
Date of hearing: 5 August 2019
Further heads of argument: 12 & 19 August 2019
Date of Judgment: 4 November 2019