

Delayed gratification - suspension of an eviction order

In the matter of AJP Properties CC v Sello 2018 (1) SA 535 (GJ) the High Court confirmed its powers to suspend the effect of an eviction order. This entails a landlord being in possession of an eviction order but being unable to enforce same for a period as determined by the Court.

In this matter the tenant owned and operated a pharmacy in a shopping complex. The fixed term of the lease agreement expired and thereafter continued on a month-to-month basis. The landlord, after a number of years, provided the tenant with a one months' notice of termination of the lease agreement, requiring the tenant to vacate the leased premises. However, the tenant was unable to source alternative premises and therefore failed to vacate the leased premises which prompted the landlord to launch an urgent application for the eviction of the tenant.

During proceedings, the court confirmed the ordinary commercial-law principle that a lease requiring payment of rental on a monthly basis is terminable by either party on a calendar months' notice. Therefore, the landlord was able to lawfully terminate the lease agreement and seek the eviction of the tenant. However, the tenant contended that the Court had an inherent discretion to suspend the period of eviction; a contention which the Court confirmed.

The Court therefore had to consider whether it could rationally, in the circumstances, suspend the effect of an eviction order and, if so, determine the period for which the eviction order could not be enforced. In ascertaining whether the stay of eviction should be granted, the court took into consideration the following:

- a) the unequal bargaining position between the parties when negotiating the lease agreement;
- b) the fact that the tenant was not in fact in arrears with regard to his rental obligations;
- c) the landlord's failure to advise the tenant that it had, a number of months prior

to providing the notice of termination, entered into negotiations with an alternative tenant;

d) the tenant had not been afforded a fair opportunity to relocate;

e) that termination of the lease should not, in cases where the tenant has complied with its rental obligations, result in the demise of the tenant's business; and

f) a number of staff faced retrenchment if the tenant's business went under.

If it was not apparent from the above, the court granted the stay of the eviction. The Court reasoned, on the facts of the matter, that a reasonable period for the stay to operate would be 3 months. This matter serves to caution that a landlord should play open cards with its tenant as regards to seeking an alternative tenant for the leased premises, so that such tenants are afforded a reasonable opportunity to relocate to suitable premises.

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