

Summary

The Appellant (Picardi Hotels Ltd) in this matter appealed against the judgment handed down with leave of the Durban High Court (the Court a quo). The Respondent (Thekwini Properties (Pty) Ltd) instituted action against the Appellant in the court a quo, claiming the payment of arrear rentals in terms of a lease agreement. In a special plea the Appellant alleged that the Respondent had denied itself of the power to sue it for rental by virtue of a cession in securitatem debiti (“as security for a debt”) executed by the Respondent in favour of a bank. The Respondent’s claim against the Appellant arose from the latter’s occupation of certain immovable properties owned by the Respondent which are situated at West and Gillespie Streets, Durban. When the Respondent acquired the properties, it entered into a number of related agreements with Investec Bank Ltd (“the bank”).

These included a loan agreement and a covering mortgage bond (“the bond”) that was registered over the properties on or about 18 July 1996. Clause 8 of the agreement dealt with cession of rentals and revenues in respect of the instance when the bank gives its consent to the letting of the mortgaged property, that the mortgagor will have to cede, transfer and assign the bank all the mortgagor’s rights, title and interest in all and to all rentals and other avenues of whatsoever nature which may accrue from the mortgaged property as additional security for the due payment of all amounts owing or claimable by the bank in respect of the bond with express right in favour of the bank irrevocably. In essence, the mortgagor has no locus standi and would have to “ask for permission from the bank” in respect of instituting legal proceedings against lessees for the recovery of unpaid rentals, to let the mortgaged property or to collect on behalf of the mortgagor.

It is settled law that, unless otherwise agreed, a cession in securitatem debiti results in the cedent being deprived of the right to recover the ceded debt, retaining only the bare dominium or ‘reversionary interest’ therein.

Held

The court a quo essentially held that clause 8 of the mortgage bond had the effect of suspending the operation of the cession pending the fulfilment of the conditions mentioned therein. Furthermore, it was held that as a result of neither of these conditions having been fulfilled, the cession had not come into effect and that the appellant was not deprived of its right to recover the

ceded debts. The SCA, held that this matter is essentially one of interpretation. It is important that the court ascertain the intention of the parties, which in first instance should be gathered from the language of the clause.

Secondly, the meaning conveyed by the words themselves must be given effect to unless this would give rise to absurdity or inconsistency with the rest of the bond. Lastly, the relevant provision must also be construed in accordance with sound commercial principles and good business sense, so that it receives a fair and sensible application.

Value

In terms of this case, it is clear that, while security cessions provide a convenient manner by which parties can obtain security, they can pose practical concerns for both the cessionary and the cedent.

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