

SUMMARY OF THE JUDGMENT

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>> PROPERTY LAW UPDATE

RE-ALLOCATING MUNICIPAL ACCOUNT PAYMENTS

PA Pearson (Pty) Ltd v Ethekwini Municipality and Others (13270/2012) [2015] ZAKZDHC 93 (2 December 2015)

Where A opens an account at the municipality for services at two premises from where it conducts its operations, each property leased from a different owner, may the local authority re-allocate payments made by A for electricity and utilities supplied at the one property to the account of the other property?

The Judgment can be viewed [here](#).

FACTS

Goodman was a Director of P A Pearson (Pty) Ltd (Pearson) and also the Managing Director of Microfinish Manufacturing (Pty) Ltd (Microfinish), as well as a director of an associate company, Helio Microfinish South Africa (Pty) Ltd (Helio).

Pearson owned a property in Pinetown which Microfinish occupied. Helio, on the other hand, occupied a property rented from Cherokee Rose 164 CC (Cherokee Rose).

Microfinish was the account holder for both these accounts with the Ethekwini Municipality (the municipality) for the supply of utilities and services such as electricity and water to both properties. (Microfinish thus had two different accounts with the municipality, for two different properties owned by two different owners, Pearson and Cherokee Rose.)

Microfinish ran into arrears with its municipal debts. Goodman requested the municipality not to let its landlord (Cherokee - in respect of the one property) know of this and undertook to settle the outstanding amounts. In October 2011, the total debt in respect of both the accounts held by Microfinish was in excess of R3 million, roughly R1,700,000.00 in respect of Pearson's property and R1,400,000.00 in respect of the property owned by Cherokee Rose. Microfinish was soon thereafter liquidated.

Goodman was informed by the municipality that it intended to invoke section 102(1)(b) of the Local Government: Municipal Systems Act No. 32 of 2000 (the Systems Act) and, in November 2011, the municipality credited payments made by Microfinish in respect of the Pearson property, to the indebtedness of Microfinish in respect of the property owned by Cherokee Rose. This extinguished Microfinish's indebtedness in respect of services rendered to the latter property. The debt owing by Microfinish in respect of the Pearson property remained due, and the municipality subsequently cut the supply of services and utilities to the Pearson property.

In March 2012, Pearson (as owner of the property) made payment to the municipality in the sum of R2,7 million which included the amount of R1,4 million that had been previously transferred by the municipality for payment of debts in respect of the Cherokee Rose property. This amount was paid under protest and Pearson approached the court for an order for repayment thereof together with interest.

The central dispute between the parties is the interpretation of section 102(1)(b) of the Systems Act, i.e. whether the section permits the re-allocation of payments made for electricity and utilities supplied, from one account to another account, of the same account holder.

Section 102 of the Municipality Systems Act states:

"(1) A municipality may –

- (a) consolidate any separate accounts of persons liable for payments to the municipality;*
- (b) credit a payment by such a person against any account of that person; and*
- (c) implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person."*

Pearson argued that:

- (i) the Systems Act cannot be read to authorise the municipality to manipulate the accounts of an account holder so that a charge on one property becomes payable by the owner of a different property;
- (ii) whilst section 118(3) of the Systems Act places a liability on the owner of the property to pay for an account on his property, there is no liability on Pearson (as tenant) to pay for services provided to Microfinish at the other property not owned by Pearson; and
- (iii) the consequences of the municipality's conduct was that Pearson paid for utilities supplied to a property owned by another party (Cherokee Rose) which amounts to an arbitrary deprivation of Pearson's property, in contravention of the constitution.

The municipality argued that:

- (i) section 102(1)(b) of the Systems Act empowers it to credit payments of an account holder and re-allocate those funds to any account held by the person who is liable to it for services rendered;
- (ii) its entitlement to credit a payment is not confined to a single transaction and it can re-allocate payments to another account as long as the account holder is the same; and
- (iii) it did not rely or use the provisions of section 118(3) and thus section 118(3) of the Systems Act was irrelevant in the present matter.

HELD:

Does section 102(1)(b) of the Systems Act empower the municipality to credit payments made by an individual account holder to any other account of that account holder held by the municipality?

- Section 102(1)(b) of the Systems Act must be interpreted so as to have regard to the language of the provision itself, read in its context and having regard to the purpose of the provisions and the background to the legislation, also whilst interpreting it in a way to promote the spirit, purport and objects of the Bill of Rights.
- Section 102 of the Act is located in chapter 9 of the Act which deals with credit control and debt collection.
- Having regard to the language of section 102 of the Act, it was clear that the subsection deals with the consolidation of any separate account of any persons liable towards the municipality. The effect of consolidation is that the various accounts of an individual are consolidated into a single account. The account holder is then presented with an account which has various components such as electricity, water and rates. The account holder is not permitted to pay part of the account but is required to pay the whole account subject to section 102(2) of the Act.
- Section 102(1)(b) entitles the municipality to credit a payment by a person against any account of that person. Consolidation is not necessary in order for the municipality to utilise section 102(1)(b) because, once consolidation has occurred, the account holder receives a single account. Section 102(1)(b) of the Act envisages a situation where a person has multiple accounts and the municipality takes a payment from one account and credits that payment to another account.
- The municipality's entitlement to credit a payment is not confined to a single transaction. The power to credit payments must be construed to persist once amounts have been paid into a particular account, at the instance of the person making payment. There is nothing in the language of the section to prevent amounts being re-allocated to another account. In fact the language expressly gives the power to credit amounts which must be held to mean the power to re-allocate, with the proviso that both the accounts must be accounts of that one person or account holder.
- The municipality is entitled to credit payments made to any account held by a customer to another account of the customer. It is common cause that that is what occurred in respect of the accounts of Microfinish when the municipality took funds paid in respect of one account and credited those funds to another account.

On a plain reading of section 102(1)(b), the municipality is entitled to credit payments in the manner in which it had done here.

Regarding the argument based on Section 118(3) and related constitutional arguments, this was not relevant as the municipality did not purport to exercise any right in terms of this section.

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