

# SUMMARY OF THE JUDGMENT

## THE CPA AND LEASES: MUST NOTICE TO REMEDY BREACH MENTION THE 20 DAY PERIOD IN WHICH TO DO SO?

### Transcend Residential Property Fund Limited v Mati and Others (14639/2017) [2018] ZAWCHC 40 (20 March 2018)

*This matter dealt with exactly this question and held firstly, that a co-occupant is a 'consumer' and could invoke the provisions of the Consumer Protection Act (CPA). The landlord had sent a notice to the tenant after he had breached the terms of the agreement by failing to make prompt payment of the rental. The landlord's subsequent letter of demand granted the tenant 7 days in which to rectify the breach. When the breach was not remedied, the landlord cancelled the lease, exactly 20 business days after hand-delivering the letter of demand. The question then arose whether this constituted compliance with the provisions of the CPA, which requires of a landlord to afford a tenant 20 days within which to remedy a breach, before a lease may validly be cancelled. The court answered in the affirmative.*

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

### FACTS

In terms of a lease agreement entered into in March 2017 with Transcend Residential Property Fund Limited (TRPF), Mati leased premises in a block of flats in Parklands from TRPF. Onu was indicated on the agreement as a person entitled to occupy the leased premises together with Mati. As such, both Mati and Onu were 'occupiers' as defined in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ('the PIE Act'). It appeared that Mati never took occupation and that Onu was the only one occupying the flat during the lease.

The pertinent provisions of the lease agreement were that:

- the lease commenced on 1 March 2017 and terminated on 29 February 2018 ('the initial period');
- the monthly rental was payable in advance without deduction or set-off on the first day of each month. Mati was also liable for the costs of electricity, water, sewage and other related charges in respect of the premises monthly on demand;
- in the event of Mati failing to pay any amount due to TRPF on due date during the initial period, and remaining in default for 20 business days after dispatch of a written notice calling upon her to remedy such breach, TRPF was entitled forthwith to cancel the lease and claim all arrear rentals and/or any other damages from her and claim repossession of the premises.

By May 2017, Mati was in arrears with the rentals and related charges and on 9 May 2017, TRPF caused a letter of demand to be delivered by hand. It was pushed under the door of the premises from where Onu retrieved it. The letter required Mati to pay the arrears "within 7 (seven) days of date hereof. Kindly fax/email proof of payment to the writer hereof". It stated further: "Failure to effect payment as aforesaid will result in a summons being issued against you without further notification and could, in certain circumstances, result in the cancellation of any lease that may be in force."

Onu made a payment of only part of the outstanding amount on 23 May 2017 as he disputed certain charges and did not pay those. There was no proof that details of this payment was emailed or faxed to TRPF within the stipulated time period. The payment was made after the 7 day period stipulated in TRPF's letter of demand, but was within the 20 business days provided for in the CPA (despite the latter period not being mentioned in the letter).

Onu alleged that by making this payment within 20 business days from receipt of demand, he had paid 'almost all of the outstanding money that was owing'. It was clear however that Mati and/or Onu failed to make payment of the full amount, despite the written demand therefor.

As a result of the failure to bring the arrears up to date within the requisite 20 day period, TRPF cancelled the agreement on 6 June 2017, exactly 20 business days after demand and demanded that Onu vacate the premises.

Onu argued that the cancellation was not valid because, in terms of s14(2)(a)(ii) of the CPA, TRPF was obliged to notify and grant him (as consumer), upon breach of the lease agreement, 20 days within which to rectify such breach, before cancelling the agreement. Onu claimed that, in contravention of these provisions, TRPF only allowed him a seven day period within which to do so. Following from this, Onu alleged that the agreement was not properly cancelled for want of proper notice in compliance with the requisite 'statutory and contractual requirements.'

At the time of the present hearing, neither Mati nor Onu had paid any further rental amounts in terms of the agreement.

**HELD:**

***Was Onu a 'consumer' in terms of the CPA?***

- In s1 of the CPA, the relevant definition of a 'consumer' in respect of any particular goods or services, is:

'(a) ....

*(b) a person who has entered into a transaction with a supplier in the ordinary course of the supplier's business, ...;*

*(c) if the context so required or permits, a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services.'*

- The relevant definition of 'transaction' in terms of s1 is:

*'(a) in respect of a person acting in the ordinary course of business-*

*(i) ...*

*(ii) ...*

*(iii) the performance by, or at the direction of, that person of any services for or at the direction of a consumer for consideration;'*

- It was contended that paragraph (c) of the definition of consumer is qualified by the words 'if the context so requires or permits' and that in the context of this case, Onu, who was described in terms of the agreement as an 'occupant', was clearly intended to be a beneficiary in terms of the agreement, and that it was envisaged by both parties, TRPF and Mati, that he would be a beneficiary of services, and therefore falls within the definition of 'consumer' in terms of the CPA.
- This reasoning must succeed if regard is had to the proper interpretation of the CPA. This shows that the CPA has as aim to protect a broad spectrum of consumers with the purpose to promote and advance the social and economic welfare of consumers, in particular vulnerable consumers in South Africa. The definition of 'consumer' in s1 is a person to whom goods or services are marketed in the ordinary course of a supplier's business, or who has entered into a transaction with a supplier in the ordinary course of a supplier's business. The definition includes a person who is a user of the goods or a recipient or beneficiary of the particular service irrespective of whether that person was a party to a transaction concerning the supply of the goods or services. The important features to note are that there must be a transaction to which a consumer is party, or the goods are used by another person consequent on that transaction.
- Onu was therefore also covered by the protection of the CPA and could, if necessary, invoke the provisions thereof.

***Was the cancellation invalid because it did not specify that he had 20 days within which to remedy this breach?***

- Proceeding from the premise that Onu was a consumer, and was accordingly entitled to 20 business days' notice in terms of s14 of the CPA, the next question which arose for determination was whether he *de facto* received such notice, notwithstanding the erroneous reference in the letter of demand to seven days within which he was required to remedy his breach.
- In this regard, Onu argued that the agreement was never validly cancelled, because TRPF failed to inform Mati - and by implication Onu - of the right to remedy the breach within 20 days.
- Such an argument however reads too much into what is required in terms of the CPA. There is no requirement, express or implied, that the consumer must be expressly notified of the fact that he has 20 business days to remedy his defect. The fact of the matter is that the letter of cancellation was only delivered after the full 20 business days had elapsed, and he therefore had the full statutorily prescribed period within to remedy his defect. It is common cause that neither he nor Mati made payment of the full amount due and owing to TRPF within the 20 day period. TRPF was therefore entitled, in terms of s14 of the CPA, to cancel the agreement, and the cancellation was accordingly valid.

It followed that from the date of cancellation, neither Mati nor Onu, had any right in law to remain in occupation and Onu was therefore an unlawful occupier as envisaged in the PIE Act. TRPF was entitled to an order evicting him from the premises, after the provisions of the PIE Act had been met.

(This summary does not deal with the Court's further considerations regarding the PIE Act. Suffice it to mention that after taking into consideration the circumstances of Onu, the Court ordered that a period of six weeks should suffice for Onu to secure alternative accommodation, granting an order accordingly.)

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