

Power to terminate services for unpaid rates

Body Corporate Croftdene Mall v eThekweni Municipality (16977/2009) [2010] ZAKZDHC 20 (1 May 2010)

In 1999, eThekweni municipality allocated two account numbers to the Croftdene Mall (the applicant) and a company by the name of Croftas Holdings (Pty) Ltd, which underwent liquidation the same year. During the period of liquidation, some of the units in the mall were sold out under sectional titles. It later became unclear as to who was liable – between the liquidators, the applicant and the municipality – for electricity and water user charges, interests and penalties, some of which dated as far back as 31 January 1997. However, in October 2006, the municipality had already consolidated the two accounts.

In October 2009, the municipality terminated services to the communal areas of the mall due to non-payment of the outstanding debts. The Croftdene Mall sued the municipality, seeking an order prohibiting it from disconnecting or otherwise interrupting the mall's supply of water and electricity. The Croftdene Mall argued that the municipality had acted unlawfully by terminating the water and electricity supply. Relying on section 102 of the Municipal Systems Act, the mall stated that the municipality should not have consolidated the

accounts as there was a dispute in respect of the outstanding debt. The municipality, in turn, contended that as a corporate body, the Croftdene Mall was legally liable to pay for services and rates offered to it. As such the municipality submitted that no dispute had existed between the parties when it consolidated the accounts in 2006. Importantly, the Court confirmed the important principle found in section 102(2) that a 'dispute' must relate to 'specific amounts in respect of specified categories' owed to the municipality.

The Court agreed with the municipality that no such dispute had existed between the parties when they consolidated the accounts in October 2006, and the occurrence of a later dispute did not affect the earlier consolidation. The Court also agreed that Croftdene Mall had assumed responsibility for services and rates for common areas. The Court further noted that the Croftdene Mall was responsible for the current situation, as it had failed to recover the amount due to the municipality from the liquidators during the liquidation.

The Court concluded that the Croftdene Mall had failed to make a case in terms of section 102(2) and thus its case failed.

This case shows the readiness with which courts protect municipal revenue and the methods of ensuring payment for services.



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