

SUPREME COURT OF APPEAL OF SOUTH AFRICA

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STATUS: Immediate

BP Southern Africa v Mahmood Investments (683/2008) [2009] ZASCA 153 (27 November 2009)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The SCA today upheld an appeal against a decision of the Durban High Court (sitting as a full court on appeal) that had itself upheld an appeal against an order for the eviction of a filling station owner and for retransfer of the property on which the filling station was erected.

BP had sold the property to Mahmood Investments in June 1999. On the same day the parties had entered into a supply agreement in terms of which BP would supply petrol and related products to Mahmood Investments and the latter undertook to sell only those products. BP also lent dispensing and other equipment to Mahmood Investments, which had in turn let the property to a third party, Argyle. Contrary to its own supply agreement with BP, Argyle supplied other products. Mahmood Investments had accordingly terminated the lease with Argyle in 2003.

But Mahmood Investments refused to resume running the filling station. BP accordingly removed its equipment from the property and terminated the supply agreement with Mahmood Investments. BP claimed that a provision in

the agreement of sale stating that the property 'shall not be used for any purpose other than for the purpose of conducting thereon the business of a garage, filling and/or service station' imposed a positive obligation to operate a filling station.

The court of first instance had found that the provision did impose an obligation to operate the filling station and that, when Mahmood Investments refused to comply, BP was entitled to evict it and claim retransfer. The SCA, interpreting the provision in context, and, having regard to the conclusion of the supply and loan agreements on the same day as the sale, also held that Mahmood Investments was obliged to operate the filling station. Its refusal to do so was a repudiation of the sale, and BP was entitled to an order for eviction and retransfer. The appeal against the order of the full court was thus upheld.