THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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***CSARS v Respublica (Pty) Ltd* (1025/2017) [2018] ZASCA 109 (11 September 2018)**

Today the Supreme Court of Appeal (SCA) handed down a unanimous judgment upholding an appeal against the judgment and order of the Gauteng Division of the High Court, Pretoria. The matter concerned the proper characterisation, for value-added tax (VAT) purposes, of the supply of a building and related goods and services to an educational institution under a written agreement, more particularly, whether that supply amounted to the supply of 'commercial accommodation' as defined in s 1 of the Value-Added Tax Act 89 of 1991 (the Act).

The respondent (Respublica) concluded a lease agreement with Tshwane University of Technology (TUT) in respect of immovable property owned by it within the Tshwane Metropolitan Municipality. The lease agreement provided that TUT could lease the property to its students as well as use it to accommodate holiday groups during university vacations. Respublica's performance under the lease agreement was a taxable supply for purposes of the Act, with VAT chargeable at 14% of the value of the supply, unless one of the exemptions, exceptions, deductions or adjustments contained in the Act applied. Respublica contended that the provisions of s 10(10) of the Act applied and that it was only obliged to charge VAT on 60% of the total consideration received from TUT under the agreement.

Section 10(10) finds application where a vendor supplies 'commercial accommodation'. Section 1 of the Act defines 'commercial accommodation', inter alia, as 'lodging or board and lodging . . .'. The question was therefore whether Respublica could be said to have provided lodging to TUT. After drawing a distinction between a 'lodger' and a tenant under a conventional agreement of lease, the court held that the relationship between TUT and Respublica bore little resemblance to conventional arrangements for the provision of board and lodging.

Respublica further contended that its supply to TUT met the definition of commercial

accommodation, because the accommodation supplied by it was used by the students, who are in truth the ‘lodgers’. The court held that the relevant contractual rights and obligations are those as between Respublica and TUT, not TUT and its students. It accordingly upheld the appeal.