



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 23 October 2023

Case No. A2022-039678

In the matter between:

COMPEG SERVICES (PTY) LTD

Appellant

and

SHARON PARK LIFESTYLE ESTATE (NPC)

Respondent

JUDGMENT

WILSON J:

1 The appellant, Compeg Services (Pty) Ltd ('Compeg'), was contracted by the respondent, Sharon Park Lifestyle Estate (NPC) ('Sharon Park'), to manage a housing estate near Springs. On 27 March 2019, a year into the lifetime of the agreement, Sharon Park purported to cancel it. Compeg disputed Sharon Park's right to cancel, but Sharon Park simply stopped paying the fees due to Compeg under the agreement.

- 2 Aggrieved, Compeg complained to the Community Schemes Ombud Service ('CSOS'). It asked for an order declaring that Sharon Park's cancellation of the agreement was invalid, and an award to compensate Compeg for the damages it said it had suffered as a result of the invalid termination.
- 3 The CSOS Adjudicator held that Sharon Park's cancellation of the agreement was indeed invalid, and declared as much. The Adjudicator refused, however, to make an award of damages, because, so the Adjudicator held, that claim was beyond the jurisdiction granted to them under section 39 of the Community Schemes Ombud Service Act 9 of 2011 ('the Act'). Section 39 of the Act limits an Adjudicator's jurisdiction to matters on which the particular orders enumerated in section 39 can be made.
- 4 It seems to me that Compeg's claim for damages was, on its face, the kind of claim that could have been resolved by an order under 39 (1) (e) of the Act, which provides for an order "for the payment or re-payment of a contribution or any other amount". But that is of no moment. Neither party has sought to challenge the Adjudicator's ruling on jurisdiction.
- 5 Compeg in fact accepted that ruling, and chose instead to proceed in the Regional Court on a claim for contractual damages arising from the invalid termination of its agreement with Sharon Park. Sharon Park responded by raising a special plea: that the question of Compeg's entitlement to damages was *res judicata*, the Adjudicator having refused the claim on the basis that they lacked jurisdiction to grant it.
- 6 The Magistrate upheld the special plea and dismissed Compeg's claim for damages. Compeg now appeals to us against that order.

7 *Res judicata*, a Latin phrase which means, literally, “a thing judged” is a plea designed to protect a party against repeated claims against it on the same cause of action. Once a party has defeated or been found liable for a claim, neither they nor their opponent may, short of an appeal, relitigate the claim, even if they seek to do so in a different forum. The requirements of the plea are that there must have been a judgment on the merits of the claim between the same parties involving the same cause of action (see *Ascendis Animal Health (Pty) Ltd v Merck Sharp Dohme Corporation* 2020 (1) SA 327 (CC), paragraph 71). Issue estoppel, which is a species of *res judicata*, permits the plea to be raised where a point of fact has already been determined and it would be unjust to permit the point to be relitigated, even though different parties seek to raise the point in new proceedings (see *Prinsloo NO v Goldex 15 (Pty) Ltd* 2014 (5) SA 297 (SCA), paragraphs 23 to 24).

8 As is clear from the common cause facts in this appeal, neither doctrine applies here. This is for the simple reason that there has never been a decision “on the merits” of Compeg’s claim for damages. The Adjudicator did not reach the merits of that claim because they decided that they had no jurisdiction to do so.

9 It follows that the Magistrate was wrong to sustain Sharon Park’s special plea, and the judgment of the court below cannot stand.

10 By the time the matter reached us, Compeg’s appeal had lapsed for non-prosecution. Mr. du Ploy, who appeared for Compeg before us, ultimately accepted that, given the unimpressive explanation that Compeg proffered for

its failure to prosecute the appeal, the question of whether the appeal should be reinstated depended solely on its merits (see *Junkeeparsad v Solomon* [2021] ZAGPJHC 48 (7 May 2021), paragraph 7 and the cases cited therein). As should be abundantly clear by now, those merits are very strong indeed. The appeal must be reinstated.

11 For all these reasons, I make the following order –

1. The appeal is reinstated, with the appellant paying the costs of the application for reinstatement.
2. The appeal is upheld, with costs.
3. The judgment of the Regional Court is set aside and replaced with an order dismissing the respondent's special plea with costs.
4. The matter is remitted to the Regional Court for further proceedings consistent with this judgment.

S D J WILSON
Judge of the High Court

I agree and it is so ordered.

A CRUTCHFIELD

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 23 October 2023.

HEARD ON: 17 October 2023

DECIDED ON: 23 October 2023

For the Appellant: AJJ du Ploy
Instructed by Joshua Apfel Attorneys

For the Respondent: R Tsalong
Instructed by NF Maleka Attorneys