

LASCON PROPERTIES (PTY) LTD v WADEVILLE INVESTMENT CO (PTY) LTD & ANOTHER 1997

(4) SA 578 (W)

<p><b>Importance</b></p>	<p>This case is one of only a few interpreting Regulation 5.9.2 of the Regulations promulgated under the Mines and Works Act 27 of 1956. Similarly to <i>Rex v Marshall</i> [1951] 2 All SA 440 (A) it demonstrates the existence of litigation pertaining to acid mine drainage prior to the issue gaining prominence. The case is important for the court's interpretation of the duty to render water containing harmful or injurious matter in suspension or solution innocuous as involving strict liability, and establishing a ground for compensation where damage has occurred as a result of the release of acidic mine water independent of the Aquilian action. It was thus not necessary for the plaintiffs to allege and prove fault. (The court's reference to the duty being absolute is possibly wrong as an absolute liability would exclude wrongfulness in addition to fault and this was not explicitly discussed in the case.) While regulation 5.9.2 has of course since been repealed, the court's approach to interpretation, and its finding that the regulation was <i>prima facie</i> enacted for the benefit of landowners whose property is damaged through the release of acidic mine water, could be relevant to an interpretation of s 28(1) of the National Environmental Management Act 107 of 1998, section 19(1) of the National Water Act 36 of 1998 and s 38(1)(e) of the Mineral and Petroleum Resources Development act 28 of 2002.</p>
<p><b>Parties</b></p>	<p><b>Plaintiff:</b> Lascon Properties (Pty) Ltd  <b>First Defendant:</b> Wadeville Investment Co (Pty) Ltd  <b>Second Defendant:</b> Unnamed mining company that mined the mine dump on Wadeville Investment Company's land.</p>
<p><b>Facts</b></p>	<p>The plaintiff was the lessee of certain property. According to the written, notarially-registered lease, the plaintiff bore the risk of damage to the buildings on the leased property.</p> <p>The first defendant owned the property adjacent to that leased by the plaintiff. Sand dumps and slimes or tailings dams were at all material times situated on the land. The first defendant held a permit authorising it to retain possession of and treat the tailings, slimes, waste rock and other mineral residues situated on the land. The first defendant had permitted the second defendant to carry out these processes.</p> <p>Contrary to regulation 5.9.2 of the Regulations promulgated under the Mines and Works Act 27 of 1956 (and which had remained in force by virtue of s 68(2) of the Minerals Act 50 of 1991) the second defendant had allowed acidic water to escape from the property of the first defendant without having previously been rendered innocuous. This had caused (and continued to cause) damage to the leased property and the buildings thereon and the plaintiff had</p>

	<p>accordingly suffered damages.</p> <p>The defendants, however, excepted to the plaintiff's claim for damages on the basis that the plaintiff had failed to allege fault (intention or negligence) on the part of either or both of the defendants in permitting the polluted water to escape, which fault should have been directed at either the plaintiff itself or toward the duty imposed by Regulation 5.9.2.</p>
<b>Relief sought</b>	The defendants excepted to the plaintiff's particular claim on the basis that it disclosed no cause of action; i.e. the defendants applied for the plaintiff's case to be dismissed.
<b>Legal Issues &amp; Judgment</b>	<p><b>Issue 1:</b> Does the breach of a statutory duty (i.e. the duty contained in regulation 5.9.2) which causes damage give rise to a claim for damages independently of the <i>actio legis Aquiliae</i> or must it be brought within such action and accordingly satisfy the requirements of the Aquilian action? In other words, in claiming for damages arising from the breach of regulation 5.9.2 is it necessary that the plaintiff allege and prove fault?</p> <p><b>Judgment:</b> The defendants argued that merely prohibiting and act does not give rise to a claim for damages or compensation unless this is stated in express terms or by necessary implication by the legislature. All it does is establish the wrongfulness of the act (at 581G). The court, in deciding the issue, sided with the view of Professor McKerron who in <i>The Law of Delict</i> 7<sup>th</sup> edn held that the question whether breach of a statutory duty grounds an independent action for damages depends on whether the legislature intended to give such a right of action (at 582D – E). In this regard the whole Act and the circumstances, including the pre-existing law, in which it was enacted, must be taken into consideration. After an examination of the Mines and Works Act 27 of 1956, the court found that regulation 5.9.2 was <i>prima facie</i> enacted for the benefit of the owners of land which might be polluted as a result of the actions of a mining company. This being the purpose of the regulation, the Legislature would not have imposed the obligation without providing for persons who had been harmed by a breach thereof to claim compensation (at 583C – D). The court held that the regulation imposes a duty in absolute terms (and therefore grounds a cause of action for compensation independently of the Aquilian action – the need to allege and prove fault was therefore not required).</p>
<b>Outcome</b>	The defendants' exceptions to the plaintiff's particulars of claim were dismissed.
<b>Obiter</b>	None