



CONSTITUTIONAL COURT OF SOUTH AFRICA

**Country Cloud Trading CC v MEC, Department of Infrastructure Development,
Gauteng**

CCT 185/13

**Date of hearing: 20 May 2014
Date of judgment: 3 October 2014**

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today the Constitutional Court handed down judgment dismissing an appeal against a judgment of the Supreme Court of Appeal. The matter concerns a delictual claim for damages arising from pure economic loss.

In May 2006 the respondent, the Department of Infrastructure Development in Gauteng (as represented by the MEC), awarded a joint venture of four contractors a tender to build the Zola Clinic in Soweto. In March 2008, before the completion of the clinic, three of the contractors withdrew, leaving iLima Projects (Pty) Ltd (iLima) the only contractor. The Head of the Department decided that the construction of the clinic was urgent and therefore awarded the contract for completing the clinic (the completion contract) to iLima without putting the contract out to tender again.

To begin construction, iLima needed immediate financial assistance and thus sought a loan for R12 million from the applicant, Country Cloud Trading CC (Country Cloud). It was agreed that iLima would repay the loan amount plus R8.5 million in profit to Country Cloud. Country Cloud also obtained an undertaking from Tau Pride (Pty) Ltd (Tau Pride), the Department's managing agent for the project, that the loan amount would be paid directly to Country Cloud when project funds from the Department were made available. However, the Department cancelled the completion contract in September 2008 before any payment was made. Thereafter, iLima went into liquidation, rendering it unable to repay its debt to Country Cloud.

Before the High Court, Country Cloud claimed R20.5 million from the Department in delictual damages. The Department opposed the claim on the basis that it was not liable in delict and that the completion contract was awarded contrary to the prescribed procurement process. The High Court found that the contract was not properly awarded to iLima and dismissed Country Cloud's claim. On appeal, the Supreme Court of Appeal found that the contract was validly awarded. However, it concluded that the Department's act of cancellation was not wrongful – an essential requirement for a delictual claim – and dismissed Country Cloud's appeal.

The Constitutional Court granted Country Cloud leave to appeal but dismissed the appeal. In a unanimous judgment written by Khampepe J, the Court concluded that the Department's cancellation of the completion contract was not wrongful and did not fall into the recognised category of intentional interference with contractual relations, as Country Cloud argued. The Court also rejected Country Cloud's contention that recognising its claim was necessary to promote state accountability. Instead, the Court held that policy considerations militated against the claim because Country Cloud had an alternate means of recovering its loss and the substantial risk of loss it faced was highly foreseeable and inextricably linked to the promise of a large financial reward. Finally, there was also the threat that imposing delictual liability would upset existing contractual relations between Country Cloud and Tau Pride.