



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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From: The Registrar, Supreme Court of Appeal
Date: 30 September 2010
Status:

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 Supreme Court of Appeal today upheld an appeal from the Pretoria High Court against the grant of summary judgment in favour of the First Rand Bank Limited based on a loan agreement and mortgage bond. Immovable property mortgaged against the loan and owned by the appellants, Mr and Mrs Rossouw, had been declared executable in the summary judgment proceedings.

The issues in the appeal were whether (a) section 130(2) of the National Credit Act 34 of 2005 limits a credit provider's claim under a mortgage agreement to the proceeds realised upon execution of the mortgaged property, and (b) the bank had complied with the provisions of sections 129(1) and 130(1) of the Act by giving the Rossouws, as mortgagors, notice of their failure to maintain their repayments under the loan agreement.

The SCA rejected the Rossouw's argument that section 130(2), by its exclusion of mortgage agreements from those it lists, limits a credit provider's claim to the value of the mortgaged property. The SCA held that the scheme of the Act belies any implied or indirect intention by Parliament to tamper with parties' vested common law rights, such as a mortgagee's right to claim the balance of the debt after execution of the mortgaged property, under a credit agreement. The SCA concluded that section 130(2) has no application to mortgage agreements and that section 130(1) of the Act entitles a credit provider, the bank in this instance, to enforce the entire loan agreement.

Regarding the second issue, the SCA found that as the Act did not prescribe the mode of delivery of a notice issued in terms of section 129(1)(a) as contemplated in section 65(1) of the Act, such method of delivery had to be effected in a manner chosen by the consumer from the six ways provided in section 65(2) of the Act, namely in person at the credit provider's business premises or at any location chosen by the consumer at his expense, by ordinary mail, by fax, by e-mail or by printable web-page.

The SCA held that the bank had not established the manner in which it alleged it had delivered the notice to the Rossouws and, for that reason, it had not satisfied that requirements for the grant of summary judgment.

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