



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 24 March 2011
Status: Immediate

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.

* * *

McDONALD v YOUNG

Today the Supreme Court of Appeal dismissed an appeal against an order of the Western Cape High Court refusing to declare that a joint venture agreement existed between the appellant and the respondent and holding that there was no legal duty on the respondent to support the appellant.

The parties had cohabited, as husband and wife, for approximately seven years before the relationship broke down. The appellant did not possess any meaningful assets and had a very limited income while, on the other hand, the respondent was a woman of considerable means. During the subsistence of the cohabitation the respondent acquired immovable property at her own expense. The appellant claimed

that he was entitled to a half-share of the property, alleging that the parties had concluded an express oral joint venture agreement in terms of which the respondent would contribute financially to the acquisition, completion and refurbishment of the property while he would contribute his time and expertise to oversee the development of the property. The appellant claimed, in the alternative, that the respondent was under a duty (by operation of law, or alternatively, by virtue of a tacit contract) to support him subsequent to their cohabitation.

The SCA held, in respect of the claim based on the alleged joint venture agreement, that the appellant's evidence was contrary to all reasonable probabilities and that, despite the fact that it was unchallenged, it counted for nothing. It held, therefore, that the appellant had not discharged the onus resting on him. It held, in respect of the alternative claim for maintenance, that there is no reciprocal duty of support on cohabitants. It held further that it could not infer a tacit contract from the proven facts, because such an inference would conflict with the appellant's evidence that the alleged joint venture agreement was intended to ensure that he gained financial independence.