



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
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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.

KNOX D’ARCY AG v LAND AND AGRICULTURAL DEVELOPMENT BANK OF SA

The Supreme Court of Appeal (SCA) today dismissed an appeal by Knox D’Arcy AG and Knox D’Arcy Ltd (the appellants) against an order of the North Gauteng High Court, Pretoria dismissing their claim against the Land Bank for a cession of book debts worth R123 million and payment of all funds received from debtors in respect of those debts, alternatively payment of the sum of R123 million plus interest. By the time the matter came before the SCA, the Land Bank had recovered approximately R156 million from its debtors. The appellants’ claim, therefore, escalated to that amount.

The parties had entered into an agreement in terms of which the appellants would render certain services to the Land Bank. A dispute arose between the parties which resulted in Land Bank refusing to pay the balance owing for the services rendered by the appellants. The appellants then instituted proceedings against the Land Bank in which they sought

certain relief. However, these proceedings were abandoned after the parties entered into a written settlement agreement, which was subsequently made an order of court. In terms of clause 2.1 of the agreement the parties were required to identify loans owing by the Land Bank's customers, which met certain criteria. This was the debt to be ceded to the first appellant. There was disagreement between the parties regarding whether they had identified debt which met the criteria set out in clause 2.1, which resulted in the appellants instituting proceedings in the high court. The high court held that the parties had not identified the debt which met the criteria and dismissed the appellants' claim with costs. The appellants then appealed to the SCA.

Before the SCA counsel for the appellants conceded that the appellants had failed to establish that the parties had agreed on the identified debt as pleaded in their particulars of claim. Despite this concession, counsel argued that the Land Bank had frustrated the fulfilment of clause 2.1 and that the clause should be deemed to have been fulfilled. On this basis, counsel argued, the appellants were entitled to succeed. The appellants had not pleaded nor made out a case before the high court, however, that the Land Bank had frustrated the fulfilment of clause 2.1. The issue was raised for the first time before the SCA. In rejecting counsel's argument, the SCA held that it could not decide, on appeal, an issue that was neither raised nor fully ventilated before the high court. It then dismissed the appeal.