

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA STATEMENT – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 13 March 2007
Status: Immediate

DREAM SUPREME PROPERTIES 11CC v NEDCOR BANK LIMITED & OTHERS

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.

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The appellant applied for leave to appeal against the dismissal of its application to the Cape High Court for the setting aside of an attachment and the sale in execution of a property which, to the knowledge of the judgment creditor, the first respondent, had been purchased by appellant from the judgment debtor (the registered owner of the property) prior to the attachment and the sale in execution.

The appellant, by purchasing the property, acquired a personal right to transfer of the property against performance by it of its obligations in terms of the agreement of sale. The first respondent on the other hand by, having the property attached acquired a real right to the property entitling it to sell the property in execution. In terms of the doctrine of notice a real right acquired with knowledge of an existing personal may have to yield to the personal right.

The SCA held that knowledge on the part of the first respondent of the prior sale of the property to the appellant did not affect the validity of the subsequent attachment and sale in execution.