

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 30 September 2008

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

AFFIRMATIVE PORTFOLIOS CC

v

TRANSNET LTD t/a METRORAIL

MEDIA STATEMENT

The Supreme Court of Appeal (SCA) today dismissed an appeal by Affirmative Portfolios CC against a judgment of the Durban High Court dismissing its claim against Transnet Ltd. The SCA also upheld Affirmative Portfolios' appeal in respect of Transnet's counterclaim.

The essential basis of the claim against Transnet was that it had underpaid Affirmative Portfolios the sum of R883 660.87 in respect of services which the latter had rendered. The SCA held that by virtue of the parole evidence rule no reliance could be placed on the agreement contended for and the appeal thus had to fail.

Transnet's counterclaim was for repayment of R515 317.45. The claim was brought on the basis that the amounts in question were paid in error and that Affirmative Portfolios had been unjustifiably enriched at Transnet's expense. The evidence showed that in effecting payment Transnet's officials had been

grossly negligent and that Affirmative Portfolios had been minimally enriched. Consequently the appeal in respect of the counterclaim was upheld.