

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT
OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 27 March 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

I A J DE VILLIERS v D L C MCKAY NO & ANOTHER

The appellant, Mr de Villiers, entered into a written contract in terms of which he purchased from the respondent, the West Coast Trust (WCT) its interest in the Sixteen Mile Beach Development Trust (the Development Trust) for R1 million. It was anticipated that the Development Trust would develop a township on land owned by it, but it was subsequently sequestrated. The WCT recovered from the trustees some R2.8 million owing to the WCT. It refused to pay this amount to De Villiers because of an undertaking, given by De Villiers before the written contract was concluded, that he would transfer certain erven in the

development to the WCT's nominee. The undertaking had become impossible of performance because of the sequestration of the Development Trust. The Cape High Court held that all of the obligations between the parties were discharged and that they had to return what they had received from each other. The SCA overruled this decision and held that because of written agreement provided that it contained all the terms of the agreement between the parties, the WCT could not rely on the undertaking and it was accordingly obliged to hand over to De Villiers the dividend it had obtained from the trustees of the Development Trust.

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