

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA STATEMENT – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 28 March 2008

Status: Immediate

J J TALJAARD v T L BOTHA PROPERTIES

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 Supreme Court of Appeal (SCA) today (28 March 2008) held that an estate agent who has received remuneration for performing his or her mandate, but was not in possession of a fidelity fund certificate at the time, is not obliged to return the remuneration to the client.

Section 34A of the Estate Agents Affairs Act 112 of 1976 provides that ‘no estate agent shall be entitled to any remuneration or other payment in respect of or arising from the performance of any act [of an estate agent] unless at the time of

the performance of the act a valid fidelity fund certificate has been issued to ...
such estate agent'

In the present case the estate agent fully performed his mandate and received the agreed commission from his client. The client then sued the estate agent for return of the commission, relying on the terms of s 34A. The claim was dismissed in the magistrates' court, and again on appeal to the High court at Cape Town. Dismissing a further appeal the SCA held that section 34A was not enacted for the benefit of clients who have paid remuneration that became contractually due to an estate agent, but rather to penalize estate agents who act without fidelity certificates. That it created an apparent anomaly – that an agent may not claim his or her commission, but may retain the commission if it has been paid – was incidental to the purpose for which the section was enacted.