



REPUBLIC OF SOUTH AFRICA

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 17 March 2009
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

**Bantry Construction Services v Raydin Investments
(128 /08) [2009] ZASCA 10 (17 March 2009)**

Media Statement

Today the Supreme Court of Appeal ('SCA') dismissed an appeal by Bantry Construction Services (Pty) Ltd ('Bantry') against a judgment of the Johannesburg High Court (per Goldstein J). During March 2004, Bantry had entered into a principal building agreement with Raydin Investments (Pty) Ltd ('Raydin') in terms whereof it was employed by the latter to erect a new factory and offices for it on premises situated in Linbro Park Johannesburg. After completion of the work and the issuance of the architect's final certificate, cracks developed in the plaster work and floor toppings of the new buildings. Raydin alleged that the cracks were related to poor construction. That was disputed by Bantry. The matter was accordingly referred to arbitration. Victor Booth, an engineer, cited as the second respondent in the court below, but who took no part in the proceedings, was appointed arbitrator by the chairperson of the Association of Arbitrators in terms of Clause 40 of the Agreement. In his award the arbitrator found for Raydin and ordered Bantry to pay damages in the sum of R124 900.00 plus 50% of the arbitration costs plus VAT, plus interest. As the award remained unsatisfied, Raydin approached the High Court, (Johannesburg) for the arbitrator's award to be made an order of court in terms of Section 31(1) of the Arbitration Act. Bantry opposed the application. The SCA held that Bantry had fundamentally misconceived the nature of its relief. According to the SCA, it ill-behaved Bantry to adopt the passive attitude that it did. It ought instead to have taken the initiative and applied to court to have the award set aside within six weeks of the publication of the award or alternatively to have launched a proper counter-application for such an order. Given the fact that Bantry alleged irregularities on the part of the arbitrator during the course of the arbitration proceedings, it was for it to have invoked the statutory review provisions of Section 33(1) of the Act. Had that been done, according to the SCA, then the arbitrator could have entered the fray and defended himself against the allegations levelled by Bantry, instead of it falling to Raydin to do so on his behalf. The SCA accordingly held that Goldstein J could not be faulted and in the result the appeal was dismissed.

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