

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

29 May 2009

STATUS: Immediate

Du Plessis & Smith NNO v Goldco Motor & Cycle Supplies (372/2008)
[2009] ZASCA x (29 May 2009)

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

The Supreme Court of Appeal today dismissed an appeal against the order of the Free State High Court that an option for the purchase of premises as a sectional title unit was deemed to have been exercised.

The appellants, trustees of a trust that owns immovable property in Welkom, had erected a building and built shop premises in it to Goldco's specifications. Goldco hired the premises, and in terms of the agreement of lease, the trust gave Goldco an option to purchase the premises within two years of the commencement of the lease, at a stipulated price, which would escalate over time. The grant of the option was made subject to the condition that a sectional title register be opened. The option clause provided also that the option be exercised by the signing of a contract of sale, to be drafted by the trust's attorney, by the trust and Goldco.

Goldco had intimated to the attorney that it wished to exercise the option within the stipulated time period. The attorney had failed to draw up the contract within the two-year time period, despite Goldco's requests. The high court found that the trust had deliberately frustrated the exercise of the option. It thus ordered the trust to ensure that the contract envisaged in the option clause be drafted and signed.

On appeal, the majority of the SCA found that the trust had deliberately frustrated the exercise of the option in the mode prescribed, and that the option was thus deemed to have been exercised. Since the essential terms of a contract of sale of land were set out in the option clause the sale was held to be immediately enforceable and the court ordered the trust to take steps to transfer the premises to Goldco.
