



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 16 September 2011

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

**THE ATTORNEYS FIDELITY FUND BOARD OF CONTROL V
METTLE PROPERTY FINANCE (PTY) LTD
(499/10) [2011] ZASCA 133 (16 September 2011)**

The Supreme Court of Appeal (the SCA) today set aside an order of the North Gauteng High Court (Pretoria), and replaced it with an order dismissing the action with costs.

The respondent, Mettle Property Finance (Mettle), had deposited sums of money into an attorney's trust account pursuant to three bridging finance transactions. In terms of an agreement between Mettle and the attorney, the latter undertook to make payments to Mettle from the proceeds of the registration of a bond and two property transfers, once the proceeds were received. When the funds did not materialise and the attorney was sequestered, Mettle sued the appellant, the Attorneys Fidelity Fund (the Fund), in terms of s 26(a) of the Attorneys Act 53 of 1979, claiming pecuniary loss suffered allegedly as a result of the attorney's theft of money entrusted to him by Mettle.

The issues on appeal were whether Mettle had succeeded in proving that the money in question had been entrusted to the attorney by or on behalf of Mettle and, if so, whether the attorney had stolen such money, both being requirements for a claim in terms of s 26(a).

The SCA analysed the so-called 'Master Agreement' between the parties and came to the conclusion that the attorney acted as the representative of the mortgagor or seller to whom bridging finance was provided. By paying the money to the attorney as such representative, Mettle was simply discharging its debt to the mortgagor or seller. The payment was unconditional and the moment the money was paid into the attorney's trust account in terms of the Master Agreement, Mettle's debt was discharged. The attorney was no more than a conduit for the money.

The SCA held that there was no entrustment of money by Mettle to the attorney. While Mettle might have a claim in contract or delict against the attorney, it did not have a claim against the Fund in terms of s 26(a) of the Act. Since there was no entrustment of the money by Mettle to the attorney, it was not necessary to decide whether the attorney was guilty of the theft of such money.

The appeal was upheld with costs.

-- ends --