



THE 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 29 September 2011
STATUS Immediate

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

***Laeveld Trust 2001 v Blue Fire Properties
(795/10) [2011] ZASCA 174 (29 September 2011)***

Media Statement

Today the Supreme Court of Appeal (SCA) delivered judgment dismissing the appeal by the appellants (Laeveld Trust 2001 and others) against an order of the North Gauteng High Court compelling them, inter alia, to make available certain documents to the respondent.

The parties had concluded a written agreement of sale in respect of certain commercial properties. In terms of this agreement the respondent was entitled to conduct a due diligence investigation during which period the respondent could request access to documentation and information it regarded as material to the purchase of the properties. It requested the documents, which documents were not made available by the appellants. The matter was referred to arbitration and in the arbitrator's award it was declared that the respondent was entitled to the documentation requested and the appellant was ordered to allow the respondent to inspect and make copies of these documents.

Following this the respondent requested further documentation which was refused by the appellant on the grounds that this documentation had not been in existence at the time of the conclusion of the agreement. The respondent approached the high court and it ordered the appellants to make the more recent documentation available, extended the period for due diligence and interdicted the appellants from disposing of the properties.

The SCA found that the appellants' breach of the contract had led to the delay in conducting the due diligence investigation. The consequence of their breach was that the due diligence period had to be extended. The respondents were entitled to documentation which would enable it to exercise its rights. The documents could only be those relevant to the exercise of its rights at the time the respondent was entitled to exercise it. The SCA held that in refusing to provide the documents requested, the appellants had again breached their obligation and that the due diligence period had to be extended.

The appellants further argued that the respondent was precluded from claiming the documents as the arbitrator's award had rendered its entitlement *res judicata*. The SCA held that as the relief sought related to different documents, the relief sought in the arbitration proceedings and in the high court was not the same and as a result the requirements for *res judicata* had not been met.

The appeal was dismissed with costs.

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