



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 1 December 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 BODY CORPORATE OF SAVANNAH PARK v BRAINWAVE PROJECTS 1147 CC

The Supreme Court of Appeal (SCA) today held that the developer who reserves a right to extend a sectional title scheme under s 25(4) of the Sectional Titles Act 95 of 1986 (the Act), may not lease the land over which right was reserved.

The developer, Brainwave Projects 1147 CC, concluded a lease agreement with Vodacom (Pty) Ltd in September 2005. The agreement allowed Vodacom to erect a cellular telephone mast on a specified portion of the developer's property. In return, Vodacom paid a monthly rental amount to the developer since early in 2006, when the agreement took effect.

In November 2007, the developer established a sectional title scheme over the property which is situated in Pietermaritzburg. The scheme is known as Savannah Park. At the same time the Body Corporate of Savannah Park was also established. Its function is to administer the common property.

The developer then reserved the right to extend the scheme under s 25(4) of the Act in the belief that this reservation would enable it to continue to receive the rental income from the mast. The Body Corporate disputed that the developer was entitled to the rental income on the ground that the reserved right only gave the developer the right to erect for the buildings, not to derive any income from them, though a lease agreement.

The Supreme Court upheld the argument by the Body Corporate. It ruled that the developer had to pay over the income it had received from the lease agreement during the period of the existence of reserved right to the Body Corporate.