THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

1 December 2011

STATUS: Immediate

DIGGERS DEVELOPMENT V CITY OF MATLOSANA (80/2011)

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 (SCA) today dismissed an appeal against a judgment of the North Gauteng High Court, Pretoria, dismissing the appellant's application with costs.

The appellant, Diggers Development is an owner of immovable property and a shopping centre and had sought an order reviewing and setting aside the first respondent's council resolution and an order declaring the deed of sale, which contained suspensive conditions, concluded by the City of Matlosana, the first respondent and Isago @ N12 (Pty) LTD, the second respondent invalid and unenforceable. The court below dismissed the application and held that there was no basis for declaring either the resolution of council or the agreement of sale invalid.

The appellant in this court challenged the manner in which the first respondent complied with s 78(18) of the Township Ordinance arguing that such compliance had been compromised because the sale agreement had been signed prior to compliance with the applicable statutory provisions including ss 14 and 33 of the Local Government: Municipal Finance Management Act (the MFMA).

The SCA held that it was clear from s 79(18)(b) that the said section was triggered once the council 'wishes' to exercise any power referred to in s 79(18)(*a*) and it had a duty to publish the notices at that stage to enable persons to object. This court further held that no final decision to alienate land was taken before the notice of intention to do so was advertised and when the council of the first respondent decided to do so, there had been compliance with the requirements of the section.

The SCA considered the principle in *Corondimas v Badat* 1946 AD 548, where the court stated that 'when a contract of sale is subject to a true suspensive condition, there exists no contract of sale unless and until the condition is fulfilled'. (the *Corondimas* principle). This

court held that the legislature must be deemed to have been aware of the numerous cases since *Corondimas* but had elected not to amend the definition of 'sale' in the Ordinance. In the result, the court had to draw an inference and conclude that the legislature intends 'sale' in the Ordinance not to include a sale subject to a suspensive condition. This court accordingly held that, on a proper application of the *Corondimas* principle, there was no contract of sale until the suspensive conditions had been fulfilled. It therefore held that the council's intention to exercise the power to alienate was only formulated on 5 February 2009 when it took the resolution sought to be impugned by the appellant and the contract came into existence on that day. The SCA thus held that there was proper compliance with the provisions s 79(18)(*b*) of the Ordinance and there was no basis to interfere with the findings of the court below.

Regarding the challenge with regard to non-compliance with s 33 of the MFMA, the SCA held that the financial obligations referred to in that section could only be imposed after the suspensive conditions had been fulfilled and that the appellant had made out no case with regard to s 33.

Similarly with regard to compliance with s 14 of the MFMA, the SCA held that a fair and transparent process had indeed been followed by the first respondent and it had complied with the provisions of this section.

The SCA accordingly dismissed the appeal and ordered the appellant to pay the costs of the respondents.

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