



## 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** 23 March 2011  
**STATUS** Immediate

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

***Meridian Bay Restaurant v Mitchell NO  
(686/09) [2011] ZASCA 30 (23 March 2011)***

#### **Media Statement**

Today the Supreme Court of Appeal (SCA) dismissed an appeal by Meridian Bay Restaurant (Pty) Ltd and two other appellants against a judgment of the Western Cape High Court that certain disputed sections in the Harbour's Edge Sectional Title Scheme in Gordon's Bay revert to the Body Corporate of such scheme as common property for the benefit of the owners of the remaining sections of the scheme.

During 2000 Wimbledon Lodge (Pty) Ltd, the registered owner of a unit in the sectional title scheme known applied to the Cape High Court for an order that a *curator ad litem* be appointed to represent the interests of the body corporate. The case advanced in that application was that a fraud had been perpetrated on Wimbledon Lodge and the other registered owners of units in the sectional title scheme by the developer, who so the accusation went, had secretly appropriated a large part of the common property of the scheme for the benefit of two corporate entities which he controlled. That application failed before the high court but succeeded on appeal to the SCA. The developer's estate has since been sequestrated and the two corporate entities that he controlled wound up. The liquidators appointed to the insolvent estates of the developer and his two corporate entities thereafter caused the disputed sections to be sold to, amongst others, Meridian Bay.

Following his appointment as *curator ad litem*, the respondent, a Senior Advocate at the Cape Bar caused summons to be issued against, amongst others, the liquidators and Meridian Bay. He sought an order that the disposed sections in the sectional title scheme revert to the body corporate as common property and that the sectional title plan and deeds be rectified accordingly. The thrust of the curator's case was that at the time of opening the sectional title register the developer had lodged sectional title plans at odds with the prior deeds of sale concluded with the purchasers. He thus converted portions into units that could be misappropriated. The cause of the conversion of the common property and its disappearance from the sectional plan was the unilateral fraudulent act of the developer.

Applying the doctrine of notice, the SCA held that someone who acquires an asset with notice of a prior personal right to it, which his predecessor in title had granted to another, may be held bound to give effect thereto. Thus a purchaser who knows that property has been sold to another, may in spite of having obtained transfer or delivery, be forced to hand it over to the prior purchaser. In such a situation, according to the SCA, the prior purchaser may claim directly from the second purchaser. The court held that the only requirement for the operation of the doctrine is actual knowledge on the part of the second purchaser of the prior personal right of the first purchaser. In this case it was common cause that Meridian Bay had knowledge of the personal right of the prior purchaser. Given the sequestration of the developer, if Meridian Bay and the developer are restored to the positions they occupied prior to the transfer of the disputed sections to the former, the prior purchasers will have to stand in line with the other creditors in the insolvent estate of the developer and his two companies. It may also result in a windfall for the creditors in those insolvent estates to which they would not be entitled. The SCA accordingly held that the curator should be permitted to recover the disputed sections directly from Meridian Bay. The court consequently dismissed the appeal with costs.

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