



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 27 May 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.

Sim Roads Investments CC v Morgan Air Cargo (Pty) Ltd (024/10) [2011] ZASCA 081 (27 May 2011)

In a judgment delivered on 27 May 2011, the Supreme Court of Appeal (SCA) dismissed an appeal against a judgment of the North Gauteng High Court.

The appellant, the owner of an immovable property had instructed Venditor Auctioneers to sell the property on its behalf by auction sale. According to the Title Deed the property was zoned agricultural. However acting on instructions received from one Morgan (the appellant's sole director) Sabine, an employee of Venditor Auctioneers advertised the property as a commercial property. Relying on the advertisements, the respondent purchased the property as a commercial property for R2 million at an auction held on 17 May 2006.

After the appellant had discovered that the property was zoned agricultural and not commercial, neither the appellant nor its agents took any steps to correct this patent misrepresentation regarding a material attribute of the merx. The SCA held that the appellant had a duty to correct the misrepresentation created by false advertisements. The SCA further held that by failing to correct the misrepresentation the appellant acted fraudulently. Furthermore, the SCA held that the respondent was induced by the fraudulent misrepresentation which was material to purchase the property.

The SCA held that in the circumstances the respondent was legally entitled to rescind the agreement and to claim refund of the money he had paid as a deposit and auctioneer's commission in respect of the agreement. The appeal was dismissed with costs.