



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

31 May 2011

STATUS: Immediate

ABSA BANK LIMITED AND KERNSIG 18 (PTY) LTD (386/2010)

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 today upheld an appeal against a judgment of the full court of the Western Cape High Court, Cape Town in terms of which the full court of the Western Cape ruled that the six covering mortgage bonds registered in favour of Absa over the immovable property of Kernsig, namely Karoovlakte farm should be cancelled as the loan agreement underlying the covering mortgage bonds are invalid and of no force and effect as it contravened s 38 of the Companies Act 61 of 1973.

On appeal the SCA held that the argument that the loan agreement between Kernsig and Absa contravened section 38 of the Companies Act was raised for the first time on appeal before the full court which was incorrect. It was never raised before the court of first instance. That was not the case that Absa was called upon to meet.

The SCA further held that the court of first instance, after holding that the loan agreement was entered into between Kernsig and Absa, was correct to hold that there are no basis to cancel the six covering bonds registered over Karoovlakte farm in favour of Absa.

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