



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: 21 November 2012
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.

Khula Enterprise Finance Ltd v Geldenhuys

Today the Supreme Court of Appeal (SCA) upheld an appeal by the appellant and set aside an order of the North Gauteng High Court, Pretoria.

The appellant sued the respondents based on deeds of suretyship, which the respondents admitted having signed, for amounts owed to it. The respondents stood surety for the principal debtor in respect of certain loan agreements which the principal debtor and the appellant had concluded. The first respondent was sued on the first and second loan agreements for various amounts totaling R2 877 088.84 and the second respondent was sued on the second loan agreement for R789 700.74.

The respondents pleaded certain defences, two of which the SCA found necessary to determine. The respondents raised firstly that the appellant's action in respect of the second loan agreement was instituted prematurely and therefore unenforceable and second that the conduct of the appellant prejudiced the respondents as sureties and as a result of which they ought to be released as sureties.

With regard to the first defence, the SCA held that that the evidence adduced at the trial clearly established that the principal debtor had, at least, fallen into arrears with its repayments in respect of the first loan agreement. Accordingly, the legal proceedings instituted against the respondents to recover the full outstanding balance were not instituted prematurely.

Moreover the SCA held that the respondents' contention based on clause 14.1 of the agreements, which required the appellant to give the principal debtor written notice affording the latter 14 days to remedy a breach of the agreement before it could sue for the full outstanding balance did not avail the respondents as clause 14.1 was overridden by the cross-default acceleration terms of clause 15 which operates in respect of multiple agreements.

The SCA held further that the respondents defence founded on prejudice is without merit and had to fail. The SCA stated that there can be no question that had the respondents established prejudice they would have been entitled to be discharged from their contractual obligation as sureties, which from the evidence was not the case. The respondents were therefore jointly and severally liable for the debts of the principal debtor.