



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: 30 March 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.

La Lucia Sands Share Block Ltd v Flexi Holiday Club

Today the Supreme Court of Appeal (SCA) dismissed an appeal by the appellant and upheld an order of the KwaZulu-Natal High Court, Durban.

The appellant is a share block company as defined in the Share Blocks Control Act 59 of 1980. The first respondent is a voluntary association known as Flexi Holiday Club (the club), it operates a property time-sharing scheme. The second and third respondents had no material interest in this appeal and therefore are no longer relevant. The appellant owns an immovable property and holiday resort in KwaZulu-Natal where it operates a share block scheme. The club, at all material times, held shares in the appellant which shares were disposed of by the

appellant when the club failed to pay certain levies. Following the disposal of its shares, the club instituted action in the high court, Durban for the return of the shares. One of the principal defences raised by the appellant was that the club was formed for the purpose of gain, alternatively, subsequent to its formation, the club had pursued gain in contravention of the prohibition contained in s 30 of the Companies Act 61 of 1973 (the Act) and as a result had no lawful existence. The high court, ordered that the question whether the club was a lawful entity or not fell to be determined by way of a trial hearing. It consequently held that there was no merit in the appellant's contention and accordingly the club had the requisite *locus standi in judicio*.

The central issue before the SCA was whether the first respondent is to be afforded recognition in law, having regard to the provisions of ss 30 and 31 of the Act.

The SCA held that the club is a voluntary association and the purpose for which it was formed was found in its constitution. The SCA held further that the rights and powers of a voluntary association are limited by the terms of its constitution which confines its activities to what is expressly or impliedly contained therein. Clause 3 of the constitution of the club expressly provides that 'the objects of the club are to acquire holiday property for the use and enjoyment of its members'.

The SCA held that from the evidence it was clearly established that the club is purely a vehicle for the holding of holiday accommodation or stock which it makes available to its members; it was not the intention of the club to sell or dispose of properties in order to derive a profit or a gain.

Accordingly the club had not contravened the prohibition contained in s 30 of the Act and had the requisite *locus standi in judicio*. The appeal was accordingly dismissed,

