



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 November 2014

STATUS Immediate

X-Procure Software SA (PTY) LTD (882/2013)

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

Today the Supreme Court of Appeal (SCA) dismissed an appeal against the order obtained by the respondent in her favour in the high court, in terms of which the appellant was required to pay her R447 873, including interest thereupon and costs. The respondent had claimed specific performance in terms of a so-called 'outsource sales agreement' concluded between the parties.

Ultimately the appeal turned on the interpretation of the phrase 'solely by reason of the efforts of' the respondent, as contained in paragraph 2 of the agreement, the ambiguity thereof and, as a result, whether a strict application of the parol evidence rule was to be followed in this particular instance. While the appellant contended that the respondent was entitled to commission payable in terms of contracts concluded only by the recruitment of new customers as a result of the efforts of the respondent, her version was that she was entitled, in addition, to commission in respect of existing customers retained as such due to her sole efforts and in respect

of which there had been renewals or extensions of contracts with existing customers of the appellant.

The SCA contended that no fault could be found in the trial court's reasoning. The SCA decided that context and the need for a sensible and businesslike result required an interpretation that commission would be payable not only in respect of advertising agreements concluded between the appellant and its newly recruited customers, but also to renewals and extensions of agreements with existing customers.