



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Africast v Pangbourne Properties (359/13) [2014] ZASCA (2014)

The Supreme Court of Appeal handed down judgment today in an appeal from the South Gauteng High Court, Johannesburg. The respondent (Pangbourne) is a public company listed on the Johannesburg Stock Exchange, with its principal business being acquisition and letting of commercial and industrial premises. The appellant (Africast) is a company within a group that undertakes property investment and development. Between 2006 and 2007 the parties negotiated the development of commercial property in Sunninghill, Johannesburg, which they designated ‘The District’. Their representatives agreed on the terms of a contract for the building of commercial premises by Africast; for the letting of those premises to tenants and for the cession of the rights under the leases to Pangbourne, which was obliged to pay the purchase price for the improved properties to Africast only on transfer of the properties and cession of the leases.

The agreement between the parties contained a suspensive condition to the effect that Pangbourne give written notice of the approval by its board of directors within seven working days of the conclusion of the contract. It is common cause that Pangbourne, some 18 months after the signing of the agreement, decided that the particular suspensive condition contained in the agreement between the parties had not been fulfilled within the stipulated period, and

that it was accordingly not bound by the contract. It refused to furnish bank guarantees in respect of the fulfilment of its payment obligation to Africast. At that stage the buildings had been constructed in accordance with the contract, and Pangbourne's employees had been involved on a regular basis with the whole development.

Africast regarded Pangbourne's decision as a repudiation of the contract: it accordingly cancelled and sued for damages for breach of contract. Having separated the determination of the merits and the quantum in this matter, the high court, in pronouncing on the merits, held that the condition had not been fulfilled timeously; that Pangbourne was not bound by the contract and that Africast was accordingly not entitled to damages.

Africast appeals that finding with the leave of the high court. The issue before this court was therefore whether the contract had indeed lapsed because of the non-fulfilment of the suspensive condition, and in particular the interpretation and application of the term 'conclusion' in the agreement.

Before this court, Africast contended that the contract was concluded only when the Pangbourne board approved the contract on 20 April 2007. The condition was thus fulfilled within seven business days. Conversely, Pangbourne argued that the contract was concluded on 11 April 2007 when the contract was signed by representatives of Pangbourne and Africast. Accordingly, it contended, the condition had not been fulfilled timeously and the contract had lapsed before 25 April when written notification of the board approval was sent to Africast.

In holding that the signatories of the agreement on behalf of Pangbourne were authorised to do so in terms of Pangbourne's internal arrangements, this court noted that, upon such signature, an inchoate agreement came into being pending the fulfilment of the suspensive condition. This occurred on 11 April 2007. It follows that, by 25 April, the contractual relationship between the parties lapsed due to non-fulfilment of the suspensive condition. As a result thereof, no contract came into existence and thus neither party was bound to the agreement.

In the result the appeal is dismissed with costs.