



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

Robarts v Antoni NO & others
(327/2013) [2013] ZASCA 64 (19 May 2014)

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Today the Supreme Court of Appeal (SCA) delivered a judgment upholding the appeal by the appellant, Michael Robarts, against an order of the Western Cape High Court, Cape Town granting the respondents an order for specific performance.

The respondents sought certain height servitudes over property belonging to the appellant's late father's estate – the Robarts property. The respondents are trustees of the Stefan Antoni Family Trust, and are the registered owners of the trust's property (the Trust property) which adjoins the Robarts property. The dispute between the parties concerned these residential properties which are situated on the Atlantic Seaboard in Bantry Bay, Cape Town. The Robarts property is situated directly in front of the Trust Property and the concern of the respondents was that if the Robarts property was to be developed to its full potential, it may affect the sea views enjoyed by the Trust property.

In 2011, Robarts commenced development of the Robarts property, as a result of damage caused by a fire, in which his father died. The respondents were of the view that the developments breached various zoning scheme and title deed conditions attaching to the property but were amenable to supporting Robarts' departure applications to the local authority in exchange for certain height servitudes against the Robarts property, relocation from its roof of solar panels, DSTV dish and air-conditioner units and the use of 'clip lok' roofing with stones set in epoxy instead of the sheet metal roofing proposed in the development plans. The parties represented by their town planners met on 25

July 2012 with a view to settling and future rights regarding both properties. At the conclusion of the meeting they tasked Robarts' town planner, Mr Brümmer, to prepare a draft document recording the proceedings for subsequent approval. Neither party was happy with Mr Brümmer's product and they exchanged various amended drafts in a bid to capture what each contended was agreed upon at the meeting. On 2 August, Robarts extensively modified original draft and sent a signed copy of the revised document to the respondents. The respondents replied shortly that his draft did not accurately record the terms of the agreement reached at the meeting and attached a copy of their own draft setting out different terms.

Robarts did not accept the latter document and completed the development without paying any heed to the disputed items. On 2 November 2012, the trust concluded an agreement for the sale of its property, and sold the property subject to a condition that they register the servitudes agreed to by the appellant by 1 March 2013. Under pressure to have the height servitudes registered, the respondents signed Robarts' draft and returned it to him, with an entreaty for his help regarding registration of the servitudes. Robarts however refused to co-operate and took the view that by their counter-offer, the respondent's had rejected his offer of 2 August 2012, which was no longer open for acceptance. This prompted the respondents to launch proceedings in the court below.

The court below found that the parties had indeed concluded an oral agreement and all that remained was to reduce it into a formal written agreement which was achieved when the respondents signed the Robarts drafts even though it did not accurately record the terms of the oral agreement.

On appeal before the SCA the issue was whether (a) the parties concluded a binding oral agreement on 25 July 2012; and (b) s 2(1) of the Alienation of Land Act 68 of 1981 applies to the matter and requires the agreement which the trust seeks to enforce to be in writing. The SCA found that all indications pointed to the fact that the parties intended to be bound only by a written and signed agreement as contended for by Robarts and that this had to be the case in any event as s 2(1) of the Alienation of Land Act 68 of 1981 requires alienation of a land interest – ie the exchange by the parties of registration of real rights in the form of height servitudes, which would diminish the owner's dominium in the Robarts property, for the concessions sought by Robarts in respect of the Trust property – to be contained in a deed of alienation duly signed by the parties.

The SCA held that on the facts no firm agreement was reached on 25 July 2012 and furthermore that the respondents failed to prove the existence of a binding oral agreement on a balance of probabilities.

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