



## 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** 6 December 2016  
**STATUS** Immediate

#### ***Basson v Hanna (37/16) [2016] ZASCA 198 (6 December 2016)***

*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.*

Today the SCA dismissed an appeal by Mr Christiaan Basson and Plot 31 Vaalbank CC against the judgment of the Gauteng Local Division of the High Court, Johannesburg (P C Cilliers AJ) awarding damages in lieu of specific performance in favour of Mr Tyrone Hanna.

The evidence revealed that Mr Basson sold a third of his member's interest in Plot 31 Vaalbank CC (the CC), in which he was a sole member, to Mr Hanna for R624 953 payable in monthly instalments of R8 229.32 over a period of 20 years. The assets of the CC included the immovable property. Mr Hanna complied with his obligations under the agreement including contributing a third of the CC's monthly expenses and operating costs.

Basson in breach of his contractual obligations told Mr Hanna that he was selling the property and that he considered the agreement he and Hanna concluded to be invalid and subsequently sold the subject matter of the contract to his brothers.

Mr Hanna regarded Mr Basson's conduct as constituting a repudiation of the agreement and he sued Mr Basson and the CC in the Gauteng Local Division for damages in lieu of specific performance. Mr Basson defended the action and asked for the dismissal of Mr Hanna's claim on the ground that the contract on which Mr Hanna sued was invalid, alternatively had been cancelled because of its repudiation by Mr Hanna, alternatively that our law does not recognise a claim for damages in lieu of specific performance. All of Mr Basson's defences were dismissed and damages were awarded in favour of Mr Hanna.

The SCA held that to say that a claim for damages as a surrogate for specific performance is not recognised in law, would deprive the creditor of the right, where it has elected to enforce the contract, to be put as much as possible, in the position that it would have been in, if the performance was made *in forma specifica*.

**---ends---**