



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY

JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

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STATUS Immediate

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

Signature Real Estate (Pty) Ltd v Charles Edwards Properties and Others (415/2019) [2020] ZASCA 63 (10 June 2020).

Today, the Supreme Court of Appeal (the SCA) upheld an appeal brought by the appellant, *Signature Real Estate (Pty) Ltd* against a judgment of the Western Cape Division of the High Court, Cape Town.

The appeal concerned the application of s 34A of the Estate Agency Affairs Act 112 of 1976, which precludes an estate agent from claiming commission when, at the time the commission was earned, the estate agent had not been issued with a valid fidelity fund certificate by the regulatory statutory body, the Estate Agency Affairs Board (the Board). In the present case, *Signature Real Estate (Pty) Ltd* (*Signature*), an estate agency, was not in possession of a fidelity fund certificate in its name at the time the disputed commission between it and the third respondent, *Atlantic Seaboard Realty (Pty) Ltd* (*Atlantic*), was earned. *Signature* was in possession of a fidelity fund certificate which erroneously described it. However, *Signature* was entitled to be issued with the certificate, as it had complied with the requirements of the Act, and that the reason the certificate in its possession contained a misdescription was due to an error on the part of the Board. The Board conceded this.

The facts which gave rise to the litigation are the following. During April 2018, *Signature* and *Atlantic* jointly brokered a lease agreement in terms of which they were each to receive 50 per cent of the commission due in terms of that agreement. After the full amount of the commission was paid to *Atlantic*, it refused to pay *Signature* the latter's share of the commission, on the basis that *Signature* was not in possession of a valid fidelity fund certificate when the commission was earned. *Signature* launched an application in the Western Cape Division of the High Court, seeking, among others, payment of the commission. That court dismissed *Signature*'s application and concluded that the peremptory nature of s 34A rendered it irrelevant that *Signature* and its estate agents might well have been entitled to be issued with fidelity fund certificates as at 1 January 2018, as that would be contrary to the clear wording of s 34A. Consequently, the court a quo held that *Signature* was precluded by the provisions of s 34A from claiming commission. The high court's decision was in conflict with that of the

Gauteng Division of the High Court, Johannesburg, in *Crous International (Pty) Ltd v Printing Industries Federation of South Africa* [2016] ZAGPJHC 391; [2017] 1 All SA 146 (GJ), in which a contrary view was held.

The question on appeal was whether under the high court's application of s 34A to the facts of the case was correct. The SCA pointed out that the general object of the Act to control certain activities of estate agents in the public interest, must be borne in mind. The court cautioned against a too strict or literal application of the provisions of s 34A, so as not to be inconsistent with what the Act seeks to achieve. The court took into account that in this case, Signature had complied with all requirements of the Act for it to be issued with a fidelity fund certificate. But for the error on the part of the Board, Signature would have been issued with such a certificate for the period 1 January - 31 December 2018. So viewed, the purpose of the Act was served. The court also distinguished this case on the facts from the decision in *Brodsky Trading 224 CC v Cronimet Chrome Mining SA (Pty) Ltd and Others* [2016] ZASCA 175; 2017 (4) SA 610 (SCA). Accordingly, the Supreme Court of Appeal overturned the decision of the high court. However, the court cautioned against construing the findings in this case and in *Crous* as an invitation to laxity or to a liberal approach to the application of s 34A. The court further encouraged estate agents not adopt a supine attitude in the face of the Board's errors in issuing fidelity fund certificates, but do what is reasonably within their power to have the situation rectified.

In the circumstances, the Court (per Makgoka JA) with Navsa, Cachalia, Dambuzza and Schippers JJA concurring, upheld the appeal and made no order of costs in respect of the appeal as the respondents did not oppose the appeal.

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