



**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 1 October 2020

STATUS Immediate

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

Municipal Employees' Pension Fund and Others v Chrisal Investments (Pty) Ltd and Others (792/2019) [2020] ZASCA 116 (1 October 2020)

The SCA today upheld an appeal by the Municipal Employees' Pension Fund (the MEPF) against a judgment of the Gauteng Division of the High Court, Pretoria, granting an order at the instance of the group of companies controlled by the fourth respondent Adamax Property Projects Menlyn (Pty) Ltd (Adamax), for the liquidation of the properties on which stand three shopping centres in Menlyn, Pretoria.

The MEPF purchased a 55% interest in the shopping centre business conducted by the three subsidiaries of Adamax for a price of R550 million. The parties concluded a detailed co-ownership agreement with Adamax (the COA) encompassing the manner in which the business would be jointly conducted. A 55% share in each of the immovable properties on which the shopping centres were erected was transferred to the MEPF and a 55% interest in all the leases of premises in the centres was ceded and assigned to it as part of the delivery of the interest it had purchased in the business.

The parties having fallen out the Adamax companies claimed that they were entitled as a matter of law to require that the immovable properties be divided

between them and the MEPF and contended that this should be done by placing the shopping centres in the hands of a liquidator to be sold. The MEPF contended that this would undermine the foundations of their acquisition of a 55% share in the business of the shopping centres and the terms of the COA in regard to the circumstances in which the relationship between it and the Adamax parties could be terminated. The high court granted an order for the liquidation of the properties in accordance with the *actio communi dividundo*, the common law action for the dissolution of co-ownership.

The SCA held that there are two categories of co-ownership in our law. The first is free co-ownership, where any party to the co-ownership may demand that it be terminated and the co-owned assets divided among the co-owners, or sold and the proceeds divided in accordance with the co-owners' respective shares. The second is bound co-ownership, where the co-ownership has its source in another binding relationship between the parties and can only be dissolved when that relationship is dissolved. Examples of this are partnership, marriage in community of property, clubs and other unincorporated associations and the co-ownership of the common property in sectional title developments. The essential difference between the two is that in free co-ownership the co-ownership was the only relationship between the parties and any party can at any stage demand its dissolution, while in bound co-ownership the extrinsic relationship is the primary relationship and the co-ownership only incidental to or consequent upon that relationship. As a result the co-ownership can only be dissolved when the primary relationship is dissolved.

The SCA held that this was a case of bound co-ownership. The primary relationship between the parties was the sale of the letting enterprise by the Adamax parties to the MEPF and the COA that regulated in considerable detail their future joint business relationship. An income guarantee given to the MEPF for the first four years of the relationship was inconsistent with the notion that the relationship could be terminated at will by the Adamax parties. The nature of the relationship was governed by the COA to which the co-ownership of the immovable properties was subordinate. Accordingly, the court held that there was no right to demand division of the immovable

properties and that the appeal had to succeed and the high court order be set aside.