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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Dave Pretorius v Kenneth Bedwell (659/2020) [2022] ZASCA 4 (11 January 2022)

Today, the Supreme Court of Appeal (SCA) dismissed with costs an appeal brought by Dave Pretorius (the appellant) against the judgment of the full court of the Gauteng Division of the High Court, Johannesburg (the full court), upholding Kenneth Bedwell's (the respondent) appeal and substituting the trial court's order with one dismissing the appellant's special plea of prescription with costs.

The background of the matter was as follows. The respondent, Mr Kenneth Bedwell, was the owner of a holiday home in Oyster Bay in the Eastern Cape (the property). During 2007, he needed money to complete a guest house project he had started. In order to gain access to further funds, Mr Bedwell requested the appellant, Mr Dave Pretorius (who was his brother-in-law), to provide him with a loan against a tender of the property as security. In terms of a written agreement Mr Pretorius would purchase the property for an amount of R1 850 000. Mr Pretorius would obtain a loan from a bank in the amount of R1 650 000 against the registration of a mortgage bond over the property. Mr Pretorius paid the purchase price and the property was registered into his name on 18 October 2007. Soon thereafter the relationship between Mr Bedwell and Mr Pretorius deteriorated. On 8 April 2008, Mr Bedwell visited the property in the company of his friends. When Mr Pretorius learned that Mr Bedwell was at the property, he made a telephone call to Mr Bedwell and instructed him to leave the property forthwith. During 2009, Mr Pretorius sold the property to a third party. Mr Bedwell only learned of the sale on 8 July 2010.

On 11 October 2011, Mr Bedwell instituted action in the Gauteng Division of the High Court, Pretoria (the trial court) against Mr Pretorius for damages in the amount of R2 040 000. He based his claim on the repudiation of the contract by Mr Pretorius, in that he had sold the property and the furniture. Mr Pretorius defended the action and raised a special plea of prescription. He stated in his special plea that he had repudiated the contract on 8 April 2008 and since Mr Bedwell issued summons on 11 October 2011, the claim prescribed in terms of s 11 of the Prescription Act 68 of 1969. By agreement the special plea proceeded to trial as a separated issue. The trial court upheld the special plea and dismissed Mr Bedwell's claim with costs. Leave to appeal was refused. This Court granted Mr Bedwell leave to appeal to the full court. The full court overturned the trial court's decision and replaced it with an order dismissing the special plea of prescription with costs. In the SCA the issue on appeal was whether the order of the full court was correct.

The SCA found that the special plea of prescription had to fail for a variety of reasons. Firstly, in the absence of an allegation that the repudiation of 8 April 2008 had been accepted and the contract cancelled, the special plea did not disclose a defence in law. Secondly, in any event, the trial court did not make a credibility finding against Mr Bedwell and his evidence had to be accepted for purposes of determination of the appeal. On his evidence it was doubtful that what occurred on 8 April 2008 objectively amounted to a repudiation by Mr Pretorius, but even so, Mr Bedwell clearly did not accept such a repudiation on that date. It followed that Mr Pretorius did not prove that the running of prescription commenced on 8 April 2008 as alleged.

For these reasons the SCA held that Mr Pretorius' special plea did not disclose a defence in law and failed on the facts. The full court was thus correct in concluding that it had to be dismissed.

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