



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: 10 October 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Maria Luisa Palma Codevilla v Paula Jane Kennedy-Smith NO and Others (494/2023) [2024] ZASCA 136 (10 October 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment against an order granted by the Western Cape Division of the High Court, Cape Town (the high court) sitting as court of appeal. The SCA majority judgment upheld the appeal with costs, including the costs of one counsel.

This appeal concerned a dispute over the sale of immovable property. The property in question was sold by the first respondent (the seller), represented by a law firm, the second respondent. The purchasers were the third and fourth respondents, who are the daughter and son-in-law of the appellant, Maria Luisa Palma Codevilla. The appellant had financially assisted the purchasers in the transaction to purchase the property.

On 4 February 2020, the purchasers made an offer to purchase (OTP) the property for R5,150,000, subject to a suspensive condition that they had to secure a mortgage bond for R4,950,000 by 14 February 2020. This deadline was extended to 19 February 2020 through a first addendum. Despite efforts, the purchasers failed to provide the required bond or payment by the new deadline, causing the agreement to lapse.

On 20 February 2020, the parties signed a second addendum, amending the financial arrangements and providing a new deadline for the provision of a bank guarantee by 25 February 2020. However, in May 2020, the purchasers faced financial difficulties due to the COVID-19 pandemic and sought to cancel the sale. The appellant, having paid R1,950,000 on behalf of the purchasers, sought the return of this amount, arguing that the agreement had lapsed and was not revived by the second addendum.

The high court found that the parties had intended to revive the agreement and that the second addendum had that effect. It further held that the second addendum amounted to a 'fresh agreement' incorporating the terms of the OTP as amended by the first addendum. Leave to appeal was granted to a full court of the high court (the full court), which dismissed the appeal based on different grounds. The full court found that a new agreement was not concluded, but

that in terms of clause 7.2 of the OTP, the offer was validly extended for the 30-day period contained in the clause. Special leave to appeal was granted by this Court.

The central issue before the SCA was whether the second addendum, signed after the failure of the suspensive condition, effectively revived the original agreement or whether a new contract was required. The Court also considered whether the second addendum complied with the formalities required under the Alienation of Land Act 68 of 1981.

In a minority judgment, the Court found that the second addendum had the effect of reviving the original agreement. The minority judgment placed emphasis on the intention of the parties, noting that their conduct demonstrated a clear intention to continue with the sale, despite the lapse of the suspensive condition. The minority judgment further held that the second addendum reflected the parties' agreement to proceed with the sale on amended financial terms, thereby reviving the original contract in compliance with the Alienation of Land Act.

The majority judgment reached a different conclusion, and held that the second addendum could not revive the lapsed agreement. The Court confirmed that the suspensive condition in the original sale agreement had not been fulfilled by the deadline of 19 February 2020, which caused the contract to lapse. The Court further held that, according to settled legal principles, once an agreement lapses due to the non-fulfilment of a suspensive condition, any subsequent attempt to revive it is legally invalid unless a new agreement is concluded.

The majority thus held that the second addendum, which was signed after the failure of the suspensive condition, could not operate as a new agreement. The parties mistakenly believed that they could simply extend the time for fulfilling the suspensive condition without entering into a new contract. The SCA found that the second addendum did not create a new binding agreement, and thus the original sale agreement remained unenforceable.

The SCA majority upheld the appeal and held that the appellant was entitled to recover the monies she had paid on behalf of the purchasers, along with any accrued interest. The first and second respondents were ordered to pay the appellant's costs, including the costs of one counsel.

~~~~ends~~~~