



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 28 March 2013
Status: Immediate

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.

Irwing 514 CC v Mngani Property 4 (Pty) Ltd

The Supreme Court of Appeal (SCA) today upheld with costs the appeal of Irwing 514 CC and set aside the order of the South Gauteng High Court, Johannesburg. The appeal relates to an agreement between the parties for the purchase and sale of a shopping centre, in Westonaria, Gauteng.

The appellant cancelled the agreement as a result of the respondent defaulting on payments. The respondent, Mngani Property 4 (Pty) Ltd, disputed that cancellation arguing that it was premature and thereupon itself cancelled the agreement.

The respondent applied to the high court to have the appellant's cancellation declared invalid and its own valid as well as a claim for the refund of moneys already paid. The appellant opposed and counterclaimed for damages.

The high court declared the appellant's cancellation of the agreement valid and that of the

respondent invalid. It postponed judgment in respect of the claim for the refund pending the outcome of the appellant's counterclaim which it referred to trial. The high court further ordered the appellant to pay R5.3 million, being the amount respondent had already paid to the appellant prior to the cancellation, into the trust account of an attorney with direction to the attorneys as to how to deal with that money. The appellant appealed against this part of the order while the respondent cross-appealed against the order declaring the appellant's cancellation valid.

The SCA set aside the order, confirmed the validity of appellant's cancellation of the agreement, that the respondent's cancellation was therefore invalid and that judgment in respect of the refund be postponed pending the outcome of the counterclaim which was referred to trial. The cross-appeal was accordingly dismissed with costs.