



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Stopforth Swanepoel & Brewis Incorporated v Royal Anthem Investments 129 (Pty) Ltd and Others**

**CCT 63/14**

**Date of judgment: 2 October 2014**

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#### **MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

Today the Constitutional Court handed down judgment in an application for leave to appeal against an order of the Supreme Court of Appeal. This order had been granted against the applicant, Stopforth Swanepoel & Brewis Incorporated (attorneys), without providing them notice or an opportunity to be heard.

The matter concerns the attempted purchase by the second and third respondents, Yuen Fan Lau (Ms Lau) and Shun Cheng Liang (Mr Liang), of immovable property from the first respondent, Royal Anthem Investments 129 (Pty) Ltd (Royal). The attorneys acted as conveyancers for the transaction. Ms Lau and Mr Liang initially sued Royal and the attorneys to recover funds they had paid to Royal for the sale and transfer, but which remained held in trust by the attorneys. Ms Lau and Mr Liang subsequently withdrew the action against the attorneys and proceeded against Royal only. The High Court ordered Royal to repay the funds plus interest. Royal then appealed to the Supreme Court of Appeal. Although the attorneys were not cited as a party on appeal, the Court nevertheless amended the order of the High Court, ordering the attorneys to repay the funds plus interest. The interest to be paid was calculated at a rate higher than that which applied to the interest-bearing trust account holding the funds.

After a failed attempt at having the order reconsidered by the Supreme Court of Appeal, the attorneys appealed to the Constitutional Court. They contended that because the Supreme Court of Appeal granted the order in proceedings to which they were not a party, their right to access to courts under section 34 of the Constitution had been

violated. The attorneys also maintained that they were prejudiced by the excess interest the order required them to pay.

The Constitutional Court held that the dispute before the Supreme Court of Appeal did not extend to the attorneys' liability. It was undisputed that the attorneys kept the funds in trust on Royal's instructions. The attorneys were not party to the appeal and did not have an opportunity to place evidence before that Court. Therefore, the Constitutional Court held that the order of the Supreme Court of Appeal violated the notions of procedural and substantive fairness.

Based on the attorneys' undertaking that they were in the process of releasing the funds to Ms Lau and Mr Liang, the Constitutional Court upheld the appeal and set aside the Supreme Court of Appeal's order, concluding that Royal – rather than the attorneys – must pay the excess interest to the respondents.