



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY: JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 19 April 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case; it does not form part of the judgment of the Supreme Court of Appeal.

Nel & Others v Cilliers (197/2023) [2024] ZASCA 57 (19 April 2024)

Today the Supreme Court of Appeal (SCA) dismissed the main claim for specific performance in term of the second contract, referred to as D2, entered into between Mr Nel and Mr Cilliers. The court held that the concession at a pre-trial conference, by Mr Nel, that certain clauses in the second contract contravened the provisions of the National credit Act 35 of 2005 (the NCA), and that those provisions were not severable from the rest of the contract meant that Mr Nel could not obtain relief in terms of that contract.

Instead, the court granted the alternative relief, R5 million plus interest and costs of the action, claimed in terms of the first contract entered into between Mr Nel and Mr Cilliers. The court accepted that in 2006, Mr Cilliers was developing an upmarket golf estate through Legend Golf and Safari (Pty) Ltd in the Sterkrivier area in Mpumalanga when Mr Nel approached him and showed an interest in investing in the development. The negotiations led to Mr Nel acquiring 5% in the development company for R8 million. In 2007, when Mr Nel wanted to opt out of the development, Mr Cilliers persuaded him to leave his investment in the project for a further 3 years. Mr Cilliers was optimistic that the investment would yield good returns, he estimated that Mr Nel's shares would appreciate to R30 million in three years' time. He offered to purchase the shares from Mr Nel at his estimated price 3 years later. Mr Nel accepted that offer which formed the basis of their first contract.

The court held that the contemporaneous correspondence between the parties indicates that the agreement between them was primarily about the sale of shares. Mr Cilliers estimated that the shares would appreciate and made optimistic predictions. Their first agreement, D1, was drafted pursuant to that estimation. The intention was always that the amount should be paid

in monetary value. No 'charge, fee or interest' was payable by Mr Cilliers on the purchase price for the shares. Therefore, the first agreement did not fall foul of section 8 read with section 40 of the NCA as Mr Cilliers alleged.

The court held that the first agreement was neither a simulated agreement nor inchoate, therefore, Mr Nel succeeded in his alternative claimed based on a breach of their first contract.

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