



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGEMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Christopher Charles Hughes v Nicolas Gargassoulas and Others (1030/2022) [2024] ZASCA 46 (12 April 2024)

Today, the Supreme Court of Appeal, per Coppin AJA (Mothle and Molefe JJA concurring), handed down a judgment dismissing with costs an application for leave to appeal that had been referred to it in terms of s17(2)(d) of the Superior Courts Act, 10 of 2013 on the grounds that there were no prospects of success and no other compelling reason why an appeal in the matter should be allowed.

The Western Cape high court declared that an agreement in terms of which Mr Hughes, (the applicant) had sold his property in Hout Bay through the agency Pam Golding Properties (Pty) Ltd (Pam Golding to Mr Green had lapsed due to a non- fulfilment of a suspensive condition inserted for the benefit of Mr Green and in terms of which Mr Green could raise a loan with the bank in respect of the balance of the purchase price for the property within a stipulated time. The high court also ordered Pam Golding to repay the deposit (R1 Million) which Mr Green had paid to the first and second respondents to whom he had ceded his rights for such payment. Mr Hughes sought to retain the deposit as damages after Mr Green and the first and second respondents had vacated the property upon discovering that certain portions of the building on the property had no approved plans.

The SCA dismissed Mr Hughes argument that the high court had erred in finding that Mr Green did not waive his reliance on the suspensive condition. It held that considering the objective facts the high court's finding that Mr Hughes did not discharge the onus of proving that Mr Green had waived the benefit of the suspensive condition, could not be faulted.

The SCA also found that Mr Green, the conveyancer, and Mr Hughes seemed to be under the erroneous impression that the agreement was still valid and subject to the suspensive condition, whereas the agreement had lapsed when the condition had not been fulfilled by the due date stipulated in the agreement. The SCA held that in those circumstances as provided in the agreement Mr Green was entitled to the repayment of his deposit and that he could have ceded his rights to the deposit to the first and second respondents. And that an argument to the contrary had no reasonable prospect of succeeding.

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