



SUPREME COURT OF APPEAL SOUTH AFRICA

MEDIA SUMMARY – JUDGEMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 14 March 2019

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgement of the Supreme Court of Appeal.

CENTRIQ INSURANCE COMPANY LIMITED

v

MARISA VOGEL OOSTHUIZEN & ANOTHER

The Supreme Court of Appeal (SCA) today dismissed an appeal by Centriq Insurance Company Ltd against a ruling of the Free State High Court holding liable to a financial advisor under a professional indemnity insurance policy. It held that Centriq could not rely on an exclusion in the policy that was at odds with its purpose, which was to indemnify a financial advisor for breach in connection with negligent financial advice.

The financial advisor, Mr Jose Francisco Castro, had advised a widow, Mrs Marisa Vogel Oosthuizen, to invest the proceeds of her deceased husband's policy in an amount of R2 million in Sharemax Investments (Pty) Ltd in a property development scheme known as

'The Villa Retail Parks Holding 2'. The villa was a yet to be completed shopping complex, a fact that he did not draw to Mrs Oosthuizen's attention.

The development failed following a Reserve Bank Investigation, which found that Sharemax was contravening the Banks Act 94 of 1990 by taking deposits illegally. Mrs Oosthuizen lost almost everything. She sued Mr Castro, who in turn claimed the indemnity from Centriq. The High Court found that Mr Castro had been negligent in advising to invest her money in Sharemax.

Centriq relied on an exclusion clause that excluded it from having to indemnify an insured member in respect of any third party claim arising from or contributed to by depreciation in value of any investments, or as a result of any representation as to the performance of any such investments.

The SCA confirmed the finding of the high court that the investment was not viable and that her complaint was neither that the investment had depreciated, nor performed inadequately, but rather that it was not a safe investment having regard to her needs. Centriq was ordered to pay the costs of the appeal.