



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 26 January 2024

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*Remo Ventures & Others v Cecil van Zyl and Others* (Case no 1262/2022) [2024] ZASCA 09 (26 January 2024)

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Today the Supreme Court of Appeal (SCA) upheld an appeal from the Gauteng Division of the High Court, Pretoria (the high court). The SCA set aside the order of the high court and replaced it with one nullifying the arbitration contract entered into, including its proceedings, as well as the appointment of the first respondent in terms of the arbitration contract.

On 3 April 2017, the appellants and the second and third respondents (the respondents) concluded a written Sale of Shares Agreement (the SoS agreement). In terms of this SoS agreement, the purchase price of R50 million was payable in tranches, with the first tranche of R10 million being paid on 16 March 2017. The second tranche of R20 million was payable on the effective date, described as 21 June 2017. However, on 20 July 2017, after the agreement had already lapsed, the parties concluded a so-called 'Date Agreement', in terms of which the date for payment of the second tranche was extended to 26 July 2017. Payment of the second tranche was effected on 31 August 2017, and accepted by the respondents. Transfer of the shares was effected on the same day. The SoS agreement was subject to a number of conditions precedent which included that the purchaser was to cede a life insurance policy on his life to the sellers to the value of R15 million (fifteen million rand) on or before the effective date being 21 June 2017. The sale agreement provided that if any conditions precedent were not timeously fulfilled and was not waived, then the whole sale agreement shall be of no force or effect. Clause 22 of the SoS agreement, however, did provide for dispute resolution proceedings through arbitration under the rules of the Arbitration Foundation of South Africa (AFSA).

On the 21<sup>st</sup> of June 2021, the purchaser did not fulfil his obligations in terms of the contract. As a result, of this non-compliance, the suspensive condition came into existence and the SoS agreement became void. However, the parties disregarded this non-compliance and carried on as if the SoS agreement was still valid. On the 31<sup>st</sup> of July 2018 the respondents proceeded to demand payment of the third tranche of R10 million. On 20 February 2019, the parties concluded an arbitration agreement which was predicated and dependent upon the existence and validity of the SoS agreement. The parties entered into privately conducted and administered arbitration proceedings and appointed the third respondent as their own arbitrator. When the matter proceeded to the high court, the appellants pleaded that the SoS agreement was a nullity due to the fact that the suspensive condition was not fulfilled. As such, the arbitration agreement was also a nullity which, in turn, also made the decision of the arbitrator a nullity. The respondents' defence was that the arbitration clause was independent and not related to the SoS agreement.

The issue before the SCA was whether, despite the suspensive condition, the SoS agreement could be interpreted in such a manner as to allow for the existence of the arbitration agreement. This Court found that the arbitration agreement was void as the non-fulfilment of the suspensive condition deemed the SoS agreement to be non-existent. As such the respondents could not rely on any of the provisions that were contained in the lapsed contract; this was the express consequence of a suspensive condition. Because the SoS agreement did not survive the effective date by virtue of the suspensive condition, the arbitration agreement was a nullity.

In the result, the SCA upheld the appeal and replaced the order of the high court with one nullifying the arbitration contract entered into, including its proceedings, as well as the appointment of the first respondent in terms of the arbitration contract.

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