



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: 15 April 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

68 Wolmarans Street Johannesburg (Pty) Ltd and Others v Tufh Limited (1263/2022) [2024] ZASCA 48 (15 April 2024)

Today, the Supreme Court of Appeal (SCA), per Seegobin AJA (Gorven, Weiner and Kgoele JJA and Baartman AJA concurring) handed down a judgment dismissing an application for special leave to appeal against a judgment and order of the Gauteng Division of the High Court, Johannesburg.

The matter involved a written loan agreement concluded between the first applicant and the respondent in terms of which the respondent lent and advanced to the first applicant monies for the purpose of purchasing and refurbishing a block of residential units in Hillbrow, Johannesburg. A material term of the agreement was that the first applicant, in addition to paying the monthly instalment due to the respondent in terms of the agreement, was also obliged to pay the City of Johannesburg (CoJ), its account in respect of all municipal charges relating to property taxes, water, electricity and other services rendered to the property, and to provide the respondent with proof of such payment.

The first applicant breached the loan agreement by failing to pay any and all amounts due to the CoJ for a period in excess of 7 years, thus placing the respondent's security in and to the property at risk. This entitled the respondent to accelerate and declare all amounts in terms of the loan agreement to be due, owing and payable.

The first applicant's primary contention before this Court was that the enforcement of the provision in the loan agreement to accelerate payment and execute against the first applicant's immovable property based on its failure to pay municipal charges was unconscionable and contrary to public policy.

Based on the application of the legal *maxim pacta sunt servanda* and other established legal principles as outlined in various authorities of the SCA and the Constitutional Court, the SCA found that the respondent's conduct in enforcing the terms of the loan agreement as aforesaid, was neither unconscionable nor contrary to public policy.

In all the circumstances, the SCA found that the applicants failed to show that there would be any reasonable prospects of success in any appeal or that there were any special circumstances justifying the granting of special leave to appeal.

The application was accordingly dismissed with costs.

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