



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

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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

Krugel Heinsen Incorporated v Catherine Helen Thompson and Another (Case no 41/2022) [2023] ZASCA 38 (31 March 2023)

Today the Supreme Court of Appeal (SCA) handed down judgment and upheld with costs, an appeal against a decision of the full court of the Gauteng Division of the High Court, Pretoria.

The appeal originated from an agreement of compromise which went wrong in its implementation. The parties to the compromise were: Couples Investment CC (Couples), Catherine Thompson, sole member of Couples, and FirstRand Bank Limited (FirstRand) which was not party to this appeal.

Couples owed money to FirstRand, and its debt was secured by a mortgage bond over its immovable property. The property had to be sold, but the parties were uncertain as to the amount owed by Couples. A compromise was reached upon the basis that Krügel Heinsen, a firm of attorneys which was the appointed conveyancer, would keep R500 000 of the purchase price back, and release that amount, or any lesser amount found owing by Couples, to FirstRand once there was confirmation of the liquidation accounts of a company in the same stable as Couples. Those accounts would establish the amount still owed to FirstRand by Couples in its capacity as surety for its related company in liquidation. As a result of an error for which both the appellant and FirstRand were responsible, the money was released prematurely.

Couples claimed that the agreement of compromise had been repudiated, and purported to have consequently cancelled the agreement. Couples launched an application in the high court against both Krügel Heinsen and FirstRand, seeking declaratory orders endorsing its contentions that the agreement had been repudiated and consequently cancelled, and that both FirstRand and the appellant owed it the sum of R500 000. The primary order for payment was sought against Krügel Heinsen. The application was successfully opposed in the high court by both Krügel Heinsen and FirstRand.

Couples then obtained leave to appeal to the full court. Before the appeal was heard Couples withdrew its appeal against FirstRand, recording that it had settled with FirstRand. Krügel Heinsen asked that the terms of the settlement be disclosed to and considered by the full court in adjudicating the appeal. Couples opposed that application which was refused by the full court, which then granted judgment against Krügel Heinsen for payment of the sum R500 000, interest and costs.

On appeal to it, the SCA expressed concern about the manner in which the full court approached the issue as to whether the agreement had been repudiated. But the case was decided on another footing in the light of the grant of an application by Krügel Heinsen for the reception of further evidence on appeal, disclosing the terms of the settlement with FirstRand. In response to the erroneous premature release of the sum of R500 000 FirstRand had earlier paid a like amount into trust with its own attorneys to be held as security on the same terms as had been agreed in terms of the original compromise. Although Couples attempted to obscure it, in effect, in terms of the settlement Couples appropriated the R500 000 placed in trust by FirstRand, and used it as the price of its release from various obligations it

owed, or was claimed to owe, to FirstRand, Wesbank and the liquidators of its sister company. The SCA's judgment is critical of the conduct of Couples in failing to disclose the terms of the settlement.

In the result the appeal against the judgment of the full court was upheld on the basis that Couples had suffered no loss as a result of Krügel Heinsen's breach of its mandate.

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