



**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:** 13 September 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***

*Herold Gie & Broadhead Inc v Harris N O and Others (602/2023) [2024] ZASCA 125*  
*(13 September 2024)*

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Today the Supreme Court of Appeal (SCA) upheld with costs an appeal against an order granted by the Western Cape Division of the High Court, in terms of which it found that a group of retired persons (the purchasers) had a valid claim in terms s 6(4) of the Housing Development Schemes for Retired Persons Act 65 of 1988, for refund of the purchase prices for life rights (also known as housing interests), which they had bought from a developer, the St Leger Trust.

The life rights related to housing suites in the St Leger Retirement Hotel, Muizenberg, Cape Town. All the purchasers were retired persons as contemplated in the HDSA. On payment of the purchase prices into the trust account of Herold Gie & Broadhead Inc attorneys (HGB), the purchasers took occupation of their units during the period June 2009 to November 2011. During June and July 2009, the purchasers authorised HGB, in writing, to pay to the developer all the moneys that had been entrusted to them as the purchase prices in respect of the life rights. HGB released the funds to the trust accordingly.

In October 2014, the purchasers cancelled their life rights agreements and each demanded a refund of their purchase price. They alleged that they had not been furnished with the certificates of compliance as per the provisions of s 6(1) of the HDSA and certain provisions of the National Building Regulations Standards Act 103 of 1977.

On 17 February 2016, the developer was placed under provisional sequestration, and an order of final sequestration was granted on 9 March 2016. The purchasers lodged their claims for refund of the purchase prices with the trustees of the developer's insolvent estate. They received concurrent dividends.

In 2017 the purchasers instituted court proceedings in the high court, against HGB claiming refund of the purchase prices. For their entitlement to repayment of these moneys they relied on s 6(4) of the HDSA. That section entitles a purchaser of a housing interest in a development scheme, to refund of purchase price paid into a practitioner's trust account in terms of s 6(3)(a) of the HDSA, where the developer becomes insolvent. Part of the basis of the purchasers' claim was that HGB released the funds before the certificates of occupation required under s 6(1) of the HDSA were issued and handed to them. HGB pleaded, amongst other things, that the purchasers' claims had prescribed and that s 6(4) of the HDSA was not a proper basis for their claims when the funds were no longer in their trust account, and had been released the funds to the developer

The high court found that the argument made by HGB, that the purchasers could not rely on s 6(4) in the circumstances, was inconsistent with the purpose for which s 6 of HDSA was enacted - the protection of elderly persons against 'possible exploitation or misfortune by a developer'.

On appeal the SCA reversed this finding, holding that s 6(4) could not sustain the purchasers' claim for refund. It held that the purpose of the section was to protect the purchasers from a creditorum concursus if and when the developer became insolvent, by authorising the practitioner in whose trust account the purchase price was paid, to release the funds to the purchaser. Where the purchase price has been released to the developer the basis of a purchaser's claim for refund cannot be s 6(4) of the HDSA. The SCA held that on a proper interpretation, s 6(4) is not an open-ended statutory foundation for claims of repayment by purchasers of purchase price moneys entrusted to practitioners under the HDSA. The application of the section is limited to instance where a developer becomes insolvent while the purchase price is still being kept in the practitioner's trust account.

The SCA ordered that the case revert to the high court for determination of the rest of the issues arising from the pleadings.

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