



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: 04 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

Savannah Country Estate Homeowners Association v Zero Plus Trading 194 (Pty) Ltd and Others (773/2022) [2024] ZASCA 40 (04 April 2024)

Today the Supreme Court of Appeal (SCA) struck a matter from the roll with costs.

In 2013, the applicant, Savannah Country Estate Homeowners Association (Savannah), as plaintiff, instituted action in the Gauteng Division of the High Court, Pretoria (the high court) against 14 defendants. Only Savannah and three respondents, cited as the first, second and third defendants in the high court, participated in the special application for leave to appeal. The first respondent is Zero Plus Trading 194 (Pty) Ltd (Zero Plus); the second respondent is Mario Brown Pretorius, a businessperson and Zero Plus' chief executive officer (Mr Pretorius); and the third respondent is the University of Pretoria (the University).

In its particulars of claim, Savannah alleged that during 2005 or 2006, Zero Plus caused a secure estate, the Savannah Country Estate, to be established. In 2007, Zero Plus caused the property known as Erf 445 Savannah Country Estate Extension 5 Township (Erf 445) to be transferred to Savannah. On 24 April 2007 Savannah, unlawfully represented by Mr Pretorius, sold Erf 445 to Zero Plus. Savannah alleged that the sale of Erf 445 to Zero Plus was unlawful and in conflict with the provisions of s 228 of the Companies Act 61 of 1973, in that, at the time of the sale, Savannah had 280 members, but none of them received notification when the decision was taken to sell Erf 445 to Zero Plus.

Zero Plus and the Mr Pretorius delivered special pleas and a plea over. They pleaded that Erf 445 was transferred to Zero Plus on 9 July 2007, whereafter it was improved by the development of 106 sectional title units. Their third special plea, which is relevant in these proceedings, provided that Zero Plus was no longer the owner of any of the common property or of most of the sectional title units which formed part of Erf 445 and accordingly, it was an impossibility for Zero Plus to comply with the relief sought in the particulars of claim. The University pleaded that during November 2007 it had purchased 32 sectional title units from Zero Plus and accordingly, it was impossible for Zero Plus to restore the 32 sectional units. In its replication Savannah alleged that the defence of impossibility of performance cannot succeed because Mr Pretorius, when he concluded the sale agreement with Zero Plus, unlawfully represented Savannah, thereby rendering the sale agreement between Savannah and Zero Plus unlawful and invalid.

The high court upheld the special plea and the defence of impossibility of performance and found that, in terms of s 13 of the Sectional Titles Act 95 of 1986, the legal effect of the registration of the sectional plan was that Erf 445 and the buildings thereon were deemed to be divided into sections and common property in accordance with the sectional plan, resulting in the land being moved out of the township register and into a sectional title register. The high court dismissed the action on the basis that it was unable to find that the sale of Erf 445 to Zero Plus was unlawful and therefore null and void.

On appeal to the full court of the Gauteng Division of the High Court, Pretoria (the full court), it found that, upon the establishment of the township on which the sectional title scheme was developed, the property was removed from the farm register in the deeds office and entered into the township register, resulting in the farm ceasing to exist. It found that, since Zero Plus was no longer the owner of the property, it was impossible for Zero Plus to comply with the relief sought by Savannah. The full court further found that the grounds of the appeal were misguided and that, based on the common cause facts and the application of legal principles to those facts, the appeal had to be dismissed.

The crisp issue before the SCA was whether Savannah had made out a case for special leave to be granted to it, in order to appeal against the order and judgment of the full court.

The SCA, in coming to a conclusion, pointed out that, in its notice of motion, Savannah described the application before the SCA as one for leave to appeal (as opposed to special leave to appeal) against the order and judgment of the full court, further stating that there was no reference to 'special leave' to appeal under either the heading of 'prospect of success' or 'interests of justice' in Savannah's founding affidavit. In this regard, the SCA held that Savannah had thus failed, in its founding affidavit, to show any additional factor or criterion, relevant for the consideration of the application for special leave to appeal.

Considering the concession by Savannah's counsel regarding the founding affidavit not demonstrating the considerations sought for special leave to appeal, Savannah indicated that it would have to apply, before the SCA, for the postponement of the application for special leave to appeal and to appeal to remedy its notice of motion and supplement its affidavit to seek special leave to appeal.

The SCA, in coming to a conclusion regarding the intended application for postponement, held that on the pleadings, Savannah had not made out any case against the University for the relief sought in the prayers in the particulars of claim and even if the relief sought in those prayers were granted, it would not affect the University since no relief was sought against it in those prayers. Savannah accordingly had no prospects of success on appeal against the University, let alone showing any special circumstances required for it to succeed.

The SCA further held that, since the sale of Erf 445 from Savannah to Zero Plus, the registrar of deeds had registered the sectional plan and had opened a sectional title register in respect of Erf 445, which entitled Zero Plus to sell units. Currently, Savannah had not sought to assail any of those approvals, therefore, as things stood on the pleadings, Savannah could hardly obtain the relief that it sought.

In the result, the SCA held that, on the current pleadings, it was evident that Savannah had no prospects of success on appeal and since there were no prospects of success on appeal, a postponement of the application for leave to appeal (to convert it into an application for special leave to appeal) would serve no purpose. The matter was accordingly struck from the roll with costs.

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