



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: 20 May 2025

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

Set Square Developments (Pty) Ltd v Power Guarantees (Pty) Ltd and Another and a related matter (099/2023 and 150/24) [2025] ZASCA 64 (20 May 2025)

Today, the Supreme Court of Appeal (SCA) upheld an appeal under case number 099/23 (first appeal) and dismissed another under case number 150/24 (second appeal). In the first appeal, the employer appealed a portion of the judgment of the Gauteng Division of the High Court, Pretoria (the high court) which dismissed its claim for payment under two performance guarantees issued by the first respondent, the guarantor. In the second appeal, the guarantor contested the part of the order that upheld the employer's monetary claim regarding one of the performance guarantees.

The appeals raised three issues: whether the terms of the on-demand guarantees precluded inquiry into disputes between the employer and contractor; whether the underlying construction contracts existed and were linked to the guarantees; and whether the guarantor's defences of fraud and unconscionability were valid.

The employer undertook a large development project and awarded portions of it to a contractor, securing three on-demand guarantees from the guarantor. After the contractor's alleged repudiation and default, the employer terminated the contracts and demanded payment under the guarantees. The guarantor refused to pay, and the employer sought relief in the high court, which upheld one claim and dismissed the others.

The SCA focused on the interpretation of the guarantees, finding that the employer had met the terms by including the necessary statements and documents in the demand. The Court reaffirmed that on-demand guarantees require no proof of underlying liability, only a valid demand based on the specified event.

Regarding the guarantor's argument that the guarantees were void due to non-existent contracts, the SCA found no dispute over the validity of the contracts. It held that the parties had fulfilled obligations under the contracts and that the employer's demands were valid and timely. Therefore, the guarantor was obligated to pay.

On the fraud defence, the SCA found no evidence of intent to mislead. It also dismissed the unconscionability defence, noting it was not properly pleaded or supported by facts.

The SCA, as a result, upheld the employer's appeal and dismissed the guarantor's appeal.

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