



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

Agile Capital Holdings (Pty) Ltd v 68 Mellville Road Properties (Pty) Ltd (918/2024) [2026] ZASCA 56 (21 April 2026)

The Supreme Court of Appeal (SCA) today dismissed an appeal against an order of the full court of the Gauteng Division of the High Court, which confirmed an order for payment of an adjusted purchase price payable for the purchase of property within a sectional title scheme. The SCA granted special leave to appeal.

The claim brought by 68 Mellville Road Properties (Pty) Ltd (Mellville Road) against Agile Capital Holdings (Pty) Ltd (Agile Capital) arose from Agile Capital's purchase of a section in a sectional title property scheme called Illovo Point. Mellville Road was the developer of Illovo Point. Agile Capital, along with nine other entities, was a shareholder in Mellville Road. Mellville Road purchased property and undertook the development of the Illovo Point scheme for the purposes of selling sections in the scheme to its shareholders. The purchase agreement by which a section was acquired provided that the shareholder purchaser would pay an initial estimated purchase consideration for its section. At the conclusion of the development, Mellville Road would determine the total base development costs of the project, and the purchase consideration would be adjusted in accordance with each shareholder's proportional contribution to the scheme. In the event of an underpayment, the shareholder would be liable for the difference. In the event of an overpayment, the difference would be credited to the shareholder's loan account in Mellville Road.

After the project's practical completion, a quantity surveyor determined the total base development costs. Mellville Road accordingly adjusted the purchase consideration payable by Agile Capital (and the other nine shareholders) and claimed payment of the difference from them. Ten separate actions were instituted. They were consolidated into a single trial before the Gauteng Division of the High Court, presided over by Adams J (the trial court). Similar grounds of opposition were raised against the claim. The respondents claimed that a quantity surveyor other than the one nominated in the purchase agreement had determined the base development costs. Accordingly, there was no determination under the purchase agreement. Furthermore, the determination was in dispute, so it was required to be submitted to the quantity surveyor as an expert. The trial court, therefore, lacked jurisdiction to decide the matter. In addition, it was alleged that the determination itself was not confirmed under oath and therefore constituted inadmissible hearsay evidence.

The trial court rejected the opposition. It found that the parties to the purchase agreement had not applied their minds to the nomination of a specific quantity surveyor. Therefore, equivalent performance was acceptable. It held that, as a matter of fact, there was no dispute regarding the determination that required expert determination. The dispute raised by Agile Capital concerned the allocation of specific costs as development costs. These related to what was referred to as 'rolled-up' interest costs that accrued because of a delay by a particular shareholder in taking transfer of its section. It was not disputed that these costs were incurred by Mellville Road and were payable as finance costs

accumulated during the development. Regarding the hearsay challenge, the trial court found that the determination had been made by the quantity surveyor and that the document evidencing it was presented by the defendant to Mellville Road's founding affidavit as having been received from the quantity surveyor. The truth of the content was not subject to challenge and therefore did not constitute hearsay evidence. The trial court accordingly ordered Agile Capital (and the other nine shareholders) to pay the amounts claimed. The trial court granted leave to appeal to the full court.

The full court dismissed the appeal, thereby confirming the trial court's orders. The full court agreed with the trial court's findings regarding the nature of the disputes raised by Agile Capital and that no expert determination was required. The full court, however, took the view that the document evidencing the determination constituted hearsay. It nevertheless applied section 3 of the Law of Evidence Amendment Act, 45 of 1988 (the Hearsay Act) and admitted the evidence.

The SCA granted special leave to appeal. The appeal was conducted by Agile Capital. The SCA found that Agile Capital's disputes did not challenge the substantive determination of the base development costs. The dispute was confined to the fact that it had been made by a quantity surveyor other than the one nominated in the purchase agreement. Agile Capital had made it plain in its answering affidavit that, once that question was resolved, it would, if necessary, raise a dispute regarding the determination itself. It never did so. In any event, the dispute it raised concerned the allocation of liability for the payment of the adjusted purchase price as between shareholders. Agile Capital's complaint was that another shareholder, Illovo Point Properties Pty Ltd, from whom Mellville Road had purchased the property for development, had delayed taking the transfer of its proportional section. It was therefore responsible for the additional accrued finance costs payable by Mellville Road in discharging the development bond. For this reason, Agile Capital should not be held liable for payment of the additional purchase consideration.

The SCA found that this dispute over the allocation of the adjusted purchase consideration fell within the terms of the shareholders' agreement and was to be resolved as between shareholders. It did not preclude Mellville Road's claim for payment of the adjusted purchase consideration.

Regarding the challenge based on the hearsay character of the evidence, the SCA found that the trial court correctly concluded that the document did not constitute hearsay. Accordingly, the approach adopted by the full court was incorrect. Nevertheless, the order issued by the full court was correct. Accordingly, the SCA dismissed the appeal with costs, including the costs of two counsel.

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