



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Case number: 323/06

In the matter between

MERRY HILL (PTY) LTD

APPELLANT

and

HENDRIK JOHANNES ENGELBRECHT

RESPONDENT

From: The Registrar, Supreme Court of Appeal
Date: 2007-05-24
Status: Immediate

In a judgment today, the SCA has eased the notice obligations resting on sellers in instalment-sale agreements of land who wish to take action against defaulting purchasers. This appeal turned on the interpretation of s 19(2)(c) of the Alienation of Land Act 68 of 1981. Section 19 provides that a seller in terms of an agreement of sale of residential land by instalments is not entitled to claim acceleration of the payment of the instalments or to cancel the agreement, unless he or she has by written notice demanded rectification of the breach by the purchaser within a period of 30 days. Section 19(2)(c) then provides that the actual notice

must include an indication of the steps the seller intends to take if the alleged breach of contract is not rectified within the notice period.

The dispute between the parties arose from an agreement of sale in terms whereof Merry Hill – an East London-based company – sold two residential erven in Cintsa, East London, to Mr Engelbrecht on instalments. When Engelbrecht failed to pay some of these instalments, Merry Hill purported to cancel the sale and then resold the erven. Engelbrecht refused to accept the validity of the cancellation on the narrow basis that Merry Hill's preceding notice of demand did not comply with the Act. As a result he approached the Eastern Cape High Court for an order interdicting Merry Hill from transferring the erven to the subsequent purchasers. The High Court upheld Engelbrecht's contentions regarding the invalidity of Merry Hill's purported cancellation. Accordingly it granted the interdict sought with costs.

Merry Hill's notice of demand, which led to the central dispute, informed Engelbrecht that if he should fail to rectify his breach by paying the arrear instalment, Merry Hill intended to claim the full balance of the purchase price, or, alternatively cancellation of the agreement. Relying on two earlier decisions of the High Court that were given about 20 years ago, Engelbrecht contended that the statute requires a seller to

state in the notice exactly which of the alternative steps he or she intends to take upon expiry of the 30 day period. Consequently, Engelbrecht argued, a notice which stated these steps in the alternative did not comply with the provisions of the section. In upholding Engelbrecht's objection to Merry Hill's notice of demand, the High Court endorsed the reasoning of the two earlier cases.

The SCA rejected Engelbrecht's interpretation of s 19(2)(c) as too burdensome on the seller. On the contrary, it held that s 19(2)(c) does not prevent a seller from reserving his or her election between alternative remedies until after the 30 day notice period. Consequently, that a demand which indicates an intention to exercise one of the alternative remedies which would become available to the seller after the 30 day notice period, conforms with what the section prescribes and that Merry Hill's cancellation was therefore valid. As a result, the appeal was upheld with costs and the interdict granted by the High Court set aside.