



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: Wednesday 28 November 2007

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

Cecil Nurse (Pty) Ltd v Nkola [2007] SCA 154 (RSA)

The Supreme Court of Appeal today allowed an appeal against a judgment of the Port Elizabeth High Court upholding Mr Nkola's appeal against a judgment of the Magistrate's Court, East London. In that judgment the magistrate granted Cecil Nurse's claim against Mr Nkola for payment of a debt arising from a suretyship agreement entered into by the parties in respect of sale of office furniture and equipment sold by Cecil Nurse to FMMC Holdings (PTY) Ltd, a company in which Mr Nkola is a sole director and shareholder.

A suretyship document sent to Mr Nkola by Cecil Nurse together with a credit application form for completion was returned to the latter duly executed. Mr Nkola alleged that it was mistakenly sent by his assistant in his absence as he was still negotiating limiting his liability as surety with Mr Bergh, Cecil Nurse's managing director. According to him, Mr Bergh agreed to limit his liability to the value of showroom stock for which the credit facility was established and which was subsequently paid in full. He relied on

an amended document which was identical to the suretyship agreement presented to Cecil Nurse save for two differences relating to the extent of his liability. Cecil Nurse disputed the alleged amendment which it argued did not, in any event, comply with a stipulation in the suretyship agreement that alterations to its terms would be binding on the parties only if agreed to in writing by the creditor.

The issue in the appeal was which of two suretyship documents determined Mr Nkola's obligations to Cecil Nurse.

The SCA held that once the signed suretyship agreement was received by Cecil Nurse and creating in its mind an impression that Mr Nkola intended to be bound by its terms, a contract came into being. The SCA further held that the amended document constituted no more than a proposed amendment to this agreement which Mr Nkola had to prove had been sanctioned by Cecil Nurse. The SCA concluded that even on Mr Nkola's flawed version he had failed to prove the amended document in the absence of written consent thereto by Cecil Nurse.