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
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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

LEGATOR McKENNA INC	**FIRST APPELLANT**
M H G McKENNA	**SECOND APPELLANT**
And	
CLARE VERONICA SHEA	**FIRST RESPONDENT**
JAMIE ERSKINE	**SECOND RESPONDENT**
THE MASTER OF THE HIGH COURT (NATAL PROVINCIAL DIVISION)	**THIRD RESPONDENT**
THE REGISTRAR OF DEEDS (PIETERMARITZBURG)	**FOURTH RESPONDENT**
ABSA BANK LIMITED	**FIFTH RESPONDENT**

Today the SCA upheld the appellants' appeal against an order by the Durban High Court in favour of the first respondent. The appellants were, Legator McKenna Inc, an incorporated firm of attorneys and Mr Michael McKenna ('McKenna'), an attorney in that firm. On 8 March 2002 McKenna was appointed as *curator bonis* to the estate of the first respondent, Ms Clare Shea ('Shea'), by order of the Durban High Court. The reason for his appointment was that Shea had been found incapable of managing her own affairs as a result of brain injuries she sustained in a motor vehicle accident on. At the time, Shea was the registered owner of a house in Berea, Durban. On 22 April 2002 McKenna, in his capacity as *curator bonis,* sold the house to a married couple, Mr and Mrs Erskine ('the Erskines') for R540 000. . Pursuant to the sale, the house was subsequently transferred to the Erskines by registration in the Pietermaritzburg Deeds Office.

Shea then, contrary to medical expectations, recovered from the consequences of her brain injuries to the extent that she was declared capable of managing her own affairs. Subsequently she successfully instituted an action in the same court for the return of her house which led to the present appeal.

Broadly stated, her cause of action for the return of her house which was upheld by the Durban High Court, was that the contract of sale between McKenna and the Erskines, which gave rise to the transfer, was invalid in that it was concluded by McKenna before the Master had issued him with letters of curatorship in terms of s 72(1)(b) of the Administration of Estates Act 66 of 1965.

The Supreme Court of Appeal held, however, that an agreement of sale never came into existence in that on a proper construction of McKenna's purported acceptance of the offer to purchase by Erskines it was in fact not an acceptance but a counter-offer. Since this counter-offer had not been accepted by the Erskines, so the SCA held, the requirements of a valid agreement of sale had not been satisfied.

Despite the invalidity of the underlying agreement of sale, so the SCA further held, the transfer of Shea's house was, however, valid because McKenna had received his letters of curatorship in terms of s 72(1)(d) of the Act before he caused Shea's house to be transferred to the Erskines. The SCA furthermore confirmed a rule of our law, that where both parties to a purported or invalid agreement had performed in full, neither party can recover his or her performance where the legitimate and lawful purpose of their transaction, common to them both, has been achieved.

That, in short, is why the SCA did not agree with the High Court's finding that Ms Shea was entitled to claim the return of her house.