

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
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

***Du Plessis v Prophitius and Another
(204/08) [2009] ZASCA 79 (3 June 2009)***

Media Statement

Today the Supreme Court of Appeal ('SCA') dismissed an appeal by Andries du Plessis against a judgment of Nicholson J in the Durban High Court.

Briefly stated, the facts giving rise to the litigation are: On 22 January 2004, Robert and Betsy Campbell, in their capacity as trustees on behalf of the Campbell Children's Trust, concluded a written purchase and sale agreement with Whitkel Properties CC in respect of a vacant stand situated on the south coast of Kwa-Zulu Natal for the purchase price of R45 000. Later that year they concluded a purchase and sale agreement with the unsuspecting respondents, Richard and Anna Prophitius, in respect of the same property for the sum of R195 000.

During September 2004, Whitkel concluded a purchase and sale agreement in respect of the property with the appellant. On 15 February 2005, the property was transferred to and registered in the names of the respondents by the Registrar of Deeds, Pietermaritzburg. On 5 May 2005, there was a simultaneous transfer from the Trust to Whitkel and in turn from Whitkel to the appellant.

As there was a dispute as to ownership of the property, the applicants approached the High Court for an order that they be declared the rightful owners of the property. The appellant opposed that application and counter-applied for the same relief. The respondents succeeded before Nicholson J.

On appeal, it was contended on behalf of the appellants that the Trust had no intention to transfer ownership of the property to the respondents, but intended rather to defraud them. The SCA held that all the facts pointed firmly to an intention on the part of the Trust to successfully cause transfer of the property to be registered into the names of the respondents. As to the fraud - according to the SCA, if fraud was the motive, then the trust's ultimate goal would have been the securing of payment of the higher purchase price offered by the respondents. That in turn was dependent upon the successful registration and transfer of the property into the names of the respondents. Were the property not to have been transferred, the fraudulent purpose would not have been achieved. It followed that the trust must have held a genuine intention to pass ownership to the respondents. In those circumstances, the appeal had to fail.

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