

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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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.

SAYED HOOSEN MIA v VERIMARK HOLDINGS (PTY) LTD

In a judgment delivered today the Supreme Court of Appeal upheld an appeal against a judgment of the Johannesburg High Court awarding damages of R2 248 964.49 to Verimark consequent upon the failure of an agreement of purchase and sale of immovable property due to the non-fulfilment of a suspensive condition.

On 2 July 2002 the parties entered into an agreement in terms of which the appellant, Mr Mia, purchased from Verimark, an immovable property situated in Sandton on which Verimark's office premises were situated. The purchase price was R13,5 million payable against transfer and had to be secured by the provision of a suitable, unconditional and irrevocable guarantee within seven days of the conclusion of the agreement. The contract contained a suspensive condition making it subject to the guarantee being obtained within seven days failing which it would be deemed to be of no force and effect. The guarantee was not furnished by 10 July 2002 and as a result the agreement fell away.

Verimark claimed damages in terms of a clause in the agreement dealing with the consequences of non-fulfilment of the suspensive condition. It had succeeded in selling the property at an enhanced price nearly a year later and accordingly it had not suffered a loss on resale. Instead it claimed as special damages the costs of preparing the agreement and the costs it had incurred in continuing to occupy for a further period both the office premises and a warehouse that it had intended to consolidate with its offices in a new building. The Court held that there was no evidence that Mr Mia was aware of Verimark's plans so that the damages claimed were not foreseeable or recoverable. In the result the only damages that Verimark was entitled to were the

costs of preparing the agreement, which had been paid prior to the appeal. Accordingly the judgment of the Johannesburg High Court was set aside subject to an appropriate order of costs.