



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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From: The Registrar, Supreme Court of Appeal

Date: 31 March 2010

Status: Immediate

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**FEDBOND PARTICIPATION MORTGAGE BOND MANAGERS V INVESTEC
EMPLOYEE BENEFITS**

The Supreme Court of Appeal (SCA) today dismissed an appeal brought by Fedbond Participation Mortgage Bond Managers against an order of the South Gauteng High Court ordering it to make payment to Investec Employee Benefits Limited (IEB) of certain monies invested in Fedbond in terms of the Collective Investment Schemes Control Act 45 of 2002 (the CIS act).

Fedbond had resisted the IEB's efforts to withdraw its investments upon their maturity. Fedbond's primary contention was that IEB, who had under its initial name of Fedsure Life Assurance Limited, made the investments was not entitled to withdraw the investments because there was a common understanding underlying the investment agreement that the investments were for longer than the five year period stated in the agreement.

This argument was rejected by the high court on the basis that the terms of the disputed common understanding were inconsistent with the written terms of the written agreement and as extrinsic evidence was inadmissible to contradict terms of a contract reduced to writing; this argument could not be accepted. The SCA upheld this conclusion.

Fedbond had also argued that having withheld its consent to the withdrawal this also forestalled any attempts to the withdrawal. The SCA also rejected this argument holding that in terms of the CIS Act Fedbond, as the manager of the investment scheme, could only withhold consent to pay out moneys to the investor if it gives sufficient reasons for doing so. The SCA held that Fedbond's failure to respond to the notice of withdrawal amounted to withholding of consent without a reason which did not shield Fedbond from its obligation to respect the withdrawal notice.

The SCA also rejected Fedbond's argument that its relationship as manager, to an investor, arising in terms of the CIS Act was not that of debtor and creditor which meant that an investor could not approach a court demanding payment of its investment as was done in this case. The SCA reasoned that upon investments maturing the manager could not refuse to pay out unless it alleged default by a mortgagor who had taken out a loan linked to the investment.

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