



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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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.

Simcha Properties v San Marcus Properties

The Supreme Court of Appeal today dismissed an appeal by Simcha Properties 6 CC against the judgment of the South Gauteng High Court (Swart AJ) in which an order for specific performance of a contract of sale of land by San Marcus Properties (Pty) Ltd to Simcha Properties was granted. Simcha Properties had contended that the representative of San Marcus Properties who had concluded the contract of sale had not been properly authorised to do so. The contract had been concluded on 11 September 2007 but was subject to a suspensive condition which had been fulfilled only on 15 December. In the interim, on 14 December, an amendment to s 228 of the Companies Act 61 of 1973 had taken effect. This amendment stipulated that a company could not dispose of its assets or the greater part of its assets without such disposal being approved or ratified by a special resolution of shareholders. The land sold to Simcha Properties was the sole asset of San Marcus Properties, but no such special resolution had been passed approving or ratifying the sale. In the High Court, Swart AJ had held that the conclusion of the contract had, indeed been properly authorised by what was effectively a general resolution passed prior to 11 September 2007. He held, further, that the amendment to the Companies Act did not operate with retrospective effect and therefore that the new requirement of a special resolution did not affect the

validity of the authorisation conferred on the representative of San Marcus Properties to conclude the contract of sale. The SCA upheld the decision and findings of Swart AJ.