



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

Date: 1 December 2010

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.

ORIENTAL PRODUCTS v PEGMA 178

The Supreme Court of Appeal dismissed with costs an appeal by Oriental Products (Pty) Ltd against an order of the KwaZulu-Natal High Court (Pietermaritzburg) dismissing its application.

Oriental Products (Pty) Ltd was the original owner of an immovable property described as Lot 117 Clansthal, situated in the Province of KwaZulu-Natal and 4047 square metres in extent (the Property). The property was then sold to Shield Homes (Pty) Ltd (the second respondent) by one Mr Qu (the third respondent in the appeal, a Chinese national who used to work for Mr Kuk, also a Chinese national, one of the directors and shareholder of Oriental Products (Pty) Ltd) who had no authority to sell nor to transfer it. It was found that the Special Power of Attorney which Mr Qu used was fraudulently obtained. Shield Homes, in turn sold the same property to Pegma 178

Investments Trading CC, (the first respondent). Oriental Products (Pty) Ltd approached the High Court to claim ownership of the property and that the Registrar of Deeds be directed to cancel the registration of transfer into the name of the first respondent and retransfer to it.

The SCA held that, due to the principle that no one can transfer more rights to another than he himself has, both transfers i.e. to the first purchaser and the second purchaser were void because Mr Qu was not the true owner and consequently the first purchaser could not effect transfer to the second purchaser, as it was also not the true owner.

The question arose whether Oriental Products (Pty) Ltd was entitled to the retransfer under the circumstances. The SCA held that it lost its right of ownership by operation of the principle of estoppel in terms of which an owner forfeits his right to vindicate where the person who acquires his property does so because by the negligence of the owner he has been misled into the belief that the person from whom he acquired it is entitled to dispose of it. The SCA further held that the two requirements for a valid reliance on estoppel in this case are misrepresentation and negligence. It found that Oriental Products (Pty) Ltd negligently misrepresented to the second purchaser and the world at large that the registration of transfer as it appeared in the Deeds Office was a true reflection of the state of affairs. Therefore the answer to the above question is that the true owner is barred from vindicating its ownership of the property, hence the appeal was dismissed.