



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: 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

**EXDEV (PTY) LTD & ANOTHER
V
PEKUDEI INVESTMENTS (PTY) LTD**

In June 2005 the appellants and the respondent concluded a written agreement of sale in terms of which the appellants undertook to sell an office unit in a building they were developing to the respondent at an agreed prior price of R2,178m. In the same document the first appellant granted the respondent an option to purchase a further 140 m² of the property when the new building was completed.

Despite this agreement, the appellants refused to sell and transfer an office unit in the new building to the respondent. This led to the respondent instituting action in which it contended that the sale been breached by the causing it to suffer damages. The appellants pleaded that the sale of the office unit was invalid and unenforceable. To this the respondent took exception. The exception was upheld. The appellants' appealed to the SCA contending that the sale was invalid as it did not comply s 2(1) of the Alienation of Land Act 68 of 1981.

The appellants argued, firstly, that the option and the sale were a unitary of contract and that the option price was too vague to be enforceable thereby rendering the sale unenforceable. The SCA concluded, however, that the option and the sale were two separate and distinct contracts.

Although the appellants argued that the *res vendita* of the sale had not been adequately described, the court concluded that it was a sale in which seller was to determine the shape and precise location of the unit in the new building,

subject to the parties' agreement in regard to the size of the property. The court therefore concluded that requirements of s 2(1) had been met; that the sale was indeed valid; and that the exception had therefore been correctly upheld.

The appeal was dismissed with costs.