SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

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STATUS: Immediate

Bonheur v Caribbean (116/10) [2011] ZASCA 19 (17 March 2011)

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

The Supreme Court of Appeal today dismissed an appeal against a decision

of the South Gauteng High Court which held that the appellants had no right

of pre-emption in respect of an undivided share of property in Morningside,

Johannesburg, and that a co-owner of the property was not entitled to prevent

the sale or mortgage of its undivided share of the property. It held also that

the appellants could not prohibit the alienation of the share.

The appellants had argued that it had a right of pre-emption in respect of the

share, arising from three agreements, to none of which they were party. The

high court held that, pursuant to s 2(1) of the Alienation of Land Act 68 of

1971, such a right could arise only from a written document signed by the

parties. This requirement had not been met and there was thus no right.

In the SCA the appellants conceded that there was no right flowing from any

agreement, but argued that there was a partnership between the parties

which required the consent of other partners to alienate their share. There

was no evidence that there was any such partnership and this was not a case

made out by the appellants in their application to the high court. The SCA

rejected this ground as well.

The appellants argued also that a co-owner cannot sell or mortgage a share

of the common property without the other co-owners' consent. That is not our

common law,	and the SCA	found that the	high court h	nad correctly	rejected this
argument as	well.				
