



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: 27 May 2011

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.

KRUGER v PROPERTY LAWYER

The Supreme Court of Appeal today upheld an appeal by a firm of practising attorneys, who had furnished a written letter of undertaking to the respondent, a provider of bridging finance to sellers of immovable property. Bridging finance was made available to the appellant's clients pending transfer of certain properties in which the appellant was engaged, albeit not as the conveyancer, as attorney on behalf of the vendors. The undertaking of the appellant is addressed to the respondent and contains an irrevocable undertaking to pay an amount of R 500 000 on registration of the properties sold in the name of the purchaser. The Supreme Court of Appeal held that the undertaking had to be interpreted in the context of the bridging loan made to the appellant's clients. The purpose of the undertaking was that the appellant would make payment to the respondent of the money lent and other charges from the proceeds received from the sale of the properties. This was clear from the terms of the bridging request. The appellant's confirmation at the end of the bridging request in so many words reads that, because all the

conditions for registration and payment of the costs have been met, 'no reason exists why registration triggering the payment of the guarantee/undertaking should not take place on the said expected date'. It is only by virtue of his control over the proceeds of the sales that effect to the entire transaction could have been given. The seller in respect of some of the properties was liquidated and only a portion of the price of the other property was received by the appellant. The latter amount, less than the amount stipulated in the undertaking, was paid over to the respondent. The Supreme Court of Appeal held that the appellant had discharged its obligations under the undertaking and found that the respondent was not entitled to claim the balance from the appellant. The appeal from the North Gauteng High Court (Pretoria) was therefore upheld with costs.