



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: 8 March 2012  
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.*

**GUTSCHE FAMILY INVESTMENTS v METTLE EQUITY GROUP**

The Supreme Court of Appeal (SCA) today dismissed an appeal by the Gutsche Family Investments (Pty) Ltd and the trustees of the Lynch Trust (the appellants) against an order of the South Gauteng High Court, Johannesburg dismissing their application for review of an award by the arbitration appeal tribunal in favour of Mettle Equity Group (Pty) Ltd against them.

The appellants had referred a dispute between them and Mettle to arbitration. The dispute concerned the payment by Mettle to the appellants of the outstanding balance of the purchase price for the total shareholding in a company which the appellants had sold to Mettle. Mettle had paid a lesser amount than that which was due in terms of the sale agreement. In a letter accompanying the payment Mettle claimed to set off the remaining amount on the basis that that amount represented the loss it had suffered through the appellants' breach of several warranties in the agreement. In terms of a clause in the

agreement the appellants jointly and severally indemnified Mettle against any loss or damage which it might sustain or incur from the breach of any one or more of the warranties. Mettle filed a counterclaim. The arbitrator made an award in favour of the appellants for the full outstanding balance of the purchase price together with capitalised interest, and dismissed Mettle's counterclaim on the basis that it had not notified the appellants of any breaches of the agreement and had not afforded them the opportunity to remedy such breach within 30 days as required by the share sale agreement. Mettle appealed to the tribunal.

The tribunal, by a majority, upheld Mettle's appeal. It held that Mettle's claim was not precluded by lack of notice. It upheld part of Mettle's claim and remitted the rest to the arbitrator for adjudication after hearing further evidence. The appellants then applied to the high court in terms of section 33(1) of the Arbitration Act 42 of 1965 to have the tribunal's decision reviewed and set aside, which application the high court dismissed with costs on the attorney and own client scale.

Before the SCA the appellants argued that the tribunal had exceeded its powers by ignoring the dispute on the pleadings and the relief claimed in the notice of appeal, and that this resulted in an award which entirely negated their main claim against Mettle and thus deprived them of the opportunity to enforce that claim. In rejecting these arguments, the SCA held that the tribunal had decided all the issues presented to it and that it had granted the very relief sought from it on appeal. It further held that the appellants' fears of being deprived of their claim against Mettle were completely unwarranted. In arriving at this conclusion the SCA pointed out that the appellants' main claim was never challenged before the tribunal and that Mettle's counterclaim was the only claim the tribunal was asked to determine.