



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
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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.

DEMETRIADES v PERIVOLIOTIS

The Supreme Court of Appeal (SCA) today upheld an appeal by Mr Demetriades (the appellant) against an order of the full court of the North Gauteng High Court, Pretoria dismissing the *exceptio non adimpleti contractus* raised by the appellant and finding that the appellant was obliged to pay the balance of the purchase price for the shares in a company which Mr Perivoliotis (the respondent) had sold to the appellant

The respondent had instituted proceedings against the appellant before Seriti J claiming payment of the balance of the purchase price for the shares. In his plea the appellant denied that he was obliged to pay because the respondent had failed to perform his part of the agreement by not delivering certain documents to the appellant or his nominee as required by the agreement. Such failure, the appellant said, amounted to a repudiation of the agreement, which he had accepted. The appellant pleaded that as a consequence he had cancelled the agreement. The issue before Seriti J was whether the agreement was one to which the principle of reciprocity applied. Seriti J answered the question in the affirmative

and dismissed the respondent's claim. On appeal to it by the respondent the full court held that reciprocal obligations were not created between the parties. It upheld the appeal. The appellant then appealed to the SCA.

Before the SCA the respondent conceded that the agreement created reciprocal obligations between the parties. Despite this concession, counsel for the respondent raised a new point. He argued that the appellant was liable to pay the amount claimed because the respondent had tendered performance and the appellant had refused to accept the tender, and that the appellant had failed to attend a meeting at the respondent's attorney's office where the appellant would have been given the documents. The SCA held that the new point was without merit and fell to be rejected. It stated that the agreement came to an end upon the acceptance by the appellant of the respondent's repudiation, and that the tender was withdrawn by the respondent in his amended particulars of claim where all reference to the tender was deleted. It stated further that it was not possible for the respondent to place reliance on a tender that was withdrawn or to seek to put the clock back prior to the cancellation of the agreement. The SCA upheld the appeal with costs, including the costs of two counsel.