



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: 23 May 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*

LEKUP PROP CO NO 4 (PTY) LTD v J C WRIGHT

The SCA today upheld an appeal by a property developer (the appellant) that had sold an undivided piece of land to a purchaser (the respondent). The agreement was subject to a condition that unless the sub-division was approved and registered by a specific date, the agreement would lapse.

The condition was not fulfilled. The purchaser argued, and the court below found, that the developer had not applied for the sub-division. The court below accordingly held that the condition must be deemed to have been fulfilled against the developer, and ordered the developer to do all that is necessary to transfer the property sold, to the purchaser.

The SCA set the order aside because the purchaser had not shown that the developer had acted with the intention of frustrating the contract. The reason the developer had not applied for sub-division was the uncertainty prevailing at the time as to the proceedings to be followed – a problem that was only resolved five years later by the Constitutional Court. Nor, the SCA held, could the purchaser enforce the agreement, because it had lapsed. The purchaser's remedy was to claim damages for breach of contract – which he had not done.

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