



**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: 20 September 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.

CITY OF JOHANNESBURG v CANTINA TEQUILA

The Supreme Court of Appeal (SCA) today held that the primary use rights in the Sandton Town Planning Scheme do not permit Cantina Tequila and Bowlweb Investments cc (the respondents) to conduct the business of a restaurant and a bar on their hotel property in Sandton. The SCA upheld an appeal by the City of Johannesburg against an order of the South Gauteng High Court, Johannesburg, dismissing its application to interdict the respondents from conducting the business.

The property was zoned ‘Special’ in terms of the scheme, which meant that it may be used only for the special purposes identified in the scheme. These were referred to as ‘primary rights’ or more appropriately as ‘primary use rights’. Certain other rights, which may be exercised with the consent of the municipality, were referred to as consent rights. The annexure to the scheme identified the primary use rights and consent rights that were applicable to the property. These included, amongst other things, hotels but excluded a

restaurant or a bar. In dismissing the application the high court reasoned that it would lead to absurdity and anomaly to interpret the primary use rights to exclude a restaurant or bar because this would mean that a hotel would not be able to have, as an ancillary use, a restaurant or a bar.

The SCA held that the language of the clause containing the primary use rights was plain and unambiguous. It permitted only identified primary use rights, not any other uses. The SCA stated that by concluding that a restaurant and a bar should be added to the lawmaker's list of permissible uses so as to avoid absurdity and anomaly, the high court had improperly substituted its will for that of the lawmaker. It then made the finding referred to above. The SCA also dismissed the respondents' alternative argument that the municipality had consented to Cantina Tequila conducting a restaurant business on the property as having no factual basis. It further ordered the respondents to demolish the corrugated iron structure which they had erected at the entrance to and enclosing the patio of the restaurant without the municipality's consent.