



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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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.

HANO TRADING CC v J R 209 INVESTMENTS (PTY) LTD

The Supreme Court of Appeal (SCA) today held that failure by Hano Trading CC (the appellant) to give J R 209 Investments (Pty) Ltd (the respondent) written notice of its breach of the sale agreement between them as required by clause 14 thereof, prevented the appellant from relying on the breaches on which it had purported to rely to cancel the agreement. It dismissed an appeal against an order of the North Gauteng High Court, Pretoria declaring the agreement valid and binding upon the parties.

The parties had entered into an agreement in terms of which the appellant sold land to the respondent for the amount of R7.5 million. In terms of the agreement, the respondent was required to pay a non-refundable deposit of R2 million. The respondent had already paid R1.25 million which the appellant had already used. In terms of the agreement, the remaining balance of the deposit, namely R750 000, was payable in cash or bank cheque or bank transfer on 12 June 2009. The respondent failed to pay the balance on the stipulated

date. The appellant then purported to give written notice to the respondent as required by clause 14. However, this notice was despatched to a wrong party and a wrong address. The appellant then purportedly cancelled the agreement, which prompted the respondent to seek an order in the high court declaring the agreement valid and binding between the parties. After the three sets of affidavits had been filed, the appellant filed further affidavits without seeking leave of the court to do so. The high court disallowed the further affidavits and granted the order sought. The SCA further held that the high court had correctly disallowed the further affidavits and that deviation from the Court Rule 6(5)(e) can only occur in the discretion of the court on application.

In dismissing the appeal, the SCA held that the high court was correct in making the order that it had made. In any event, the SCA held, the purported notice entirely failed to indicate, and call on the respondent to remedy, any particular breach complained of. It therefore failed to comply with the requirements of clause 14.