



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: 25 March 2013

Status: Immediate

FIRST RAND BANK v BRERA

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.

The Supreme Court of Appeal today dismissed an appeal against the judgment and order of Nicholls J in the Johannesburg High Court that the appellant (First Rand Bank Limited) pay a certain amount to the respondent Brera Investments CC in terms of a payment guarantee issued to the latter. The respondent had on 1 November 2007 entered into a Joint Building Contracts Committee N/S Subcontract Agreement with Spirit of Africa Developments (Pty) Ltd (the 'contractor') for the supply of materials and fittings and the installation of the electrical reticulation of residential units forming part of the Windmill Park Extension 12 development in Boksburg. On 3 October 2007 First Rand issued a payment guarantee to the

respondent for the amount of R12 997 972,36 including VAT. A guarantee of this nature must be paid according to its terms and liability under it is not affected by the relationship between other parties to the transactions that gave rise to its issue, particularly not with the question whether the sub-contractor performed in terms of his contract with the contractor. In this case the contractor in breach of its obligations under the guarantee, failed to issue a payment certificate within seven days of a demand for it. A payment certificate was issued only later, after the period of seven days, and for a much smaller amount. The Supreme Court of Appeal confirmed the judgment of the court below and found for the respondent. In terms of the guarantee First Rand undertook to pay 'upon receipt of the documents identified in 3.1 and 3.2' of the guarantee. As it was common cause that the demands referred to in clauses 3.1 and 3.2 were made and that at the time the payment guarantee was called up the payment certificate had not been issued, the 'trigger event' on which liability was based had occurred. The Supreme Court of Appeal confirmed this approach and dismissed the appeal.