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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EUGENE BERNHARD DE KLERK V STEVEN-LEE PROPERTIES (PTY) LTD

The Supreme Court of Appeal (SCA) today held, that clause 15.1 in two identical sale agreements concluded between the appellants and the first respondent in 2007, in respect of two properties situated within a development in the municipal jurisdiction of Vanderbijlpark, which in turn forms part of the Emfuleni Local Municipality, did not create a suspensive condition. At the heart of the dispute between the parties was the interpretation to be placed on clause 15.1 which read as follows: 'The developer (the first respondent) shall make the arrangements to the satisfaction of the appropriate local authority for the provision of essential services to the street border of the property.

Prior to the sale of the properties, the first respondent applied for the approval of the proposed township from both the municipality and Rand Water Board. Rand Water, approved the plans for the proposed sanitation system , subject to the proposed upgrading of existing pump stations and service lines by the municipality. On 16 February 2006, the municipality granted such consent, stating that all criteria with regard to the water and sanitation services to the development had been met. The township was proclaimed in March 2006. During March 2007, pursuant to the obligations arising from the sale

agreements, the immovable properties were registered in the names of the appellants. However, towards the end of 2009, a dispute arose between the municipality and Rand Water as a result of the municipality's pump stations, eight and ten, which dealt with the effluent waste of the development. Rand Water was of the opinion that the upgrade had not been adequate, and refused to approve further buildings until the municipality had upgraded their pump stations.

The Supreme Court of Appeal(SCA) held that whatever conditions there might have been no longer existed at the time of the transfer of the properties into the appellants' names. Clause 15.1 was not dependant on the happening of any uncertain future event, nor was there anything conditional in its formulation. It was simply a term which required the developer to do whatever it could to get the approval from the local authority, which was the local municipality, and not Rand Water which was a statutory public water authority. The first respondent had provided a letter from the local municipality that all criteria had been met in regards to water and sanitation services, and thus complied with its obligations as set out in clause 15.1.

The Supreme Court of Appeal further held that the tacit term that the appellants sought to rely on had not been formulated in precise or exact terms, and in the absence of an obligation on the part of the first respondent to ensure that Rand Water approve building plans , no such tacit term can be inferred in the sale agreements. The requirement by Rand Water , a statutory body, that the municipality upgrade its infrastructure, and any failure to do so by the municipality, cannot vest a claim for cancellation of the agreements. There was nothing more that the first respondent could do in terms of its obligations as per clause 15.1 of the sale agreements. The appeal against the order of the South Gauteng High Court was dismissed with costs.