



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 for the benefit of the media and does not form part of the judgment.

***Hubbard v Cool Ideas 1186 CC
(580/12) [2012] ZASCA 71 (28 May 2013)***

Media Statement

The Supreme Court of Appeal (SCA) handed down judgment today in an appeal from the South Gauteng High Court, Johannesburg. The matter involved a dispute between a housing consumer and a home builder that the former had contracted to undertake certain building works. In particular, the issue before the court was whether a court could make an arbitration award handed down in favour of the home-builder, which compelled the housing consumer to pay the home builder for the work that it had rendered, an order of court.

As per the building contract between the parties, any dispute between the parties was to be referred to arbitration. The housing consumer, Ms Hubbard, complained about various aspects of the building work and claimed, what she asserted were the costs of the remedial work required to repair her house. Cool Ideas, the home builder, opposed that claim, and claimed payment of that portion of the contract sum that remained outstanding. The arbitrator found in favour of Cool Ideas and issued an award in its favour. Ms Hubbard failed to satisfy the arbitration award and as a consequence Cool Ideas applied to the South Gauteng High Court in terms of s 31 of the Arbitration Act 42 of 1965 for the award of the arbitrator to be made an order of court. That application was opposed by Ms Hubbard. The basis of her opposition was that Cool Ideas was not a registered home builder as it ought to have been in terms of the Housing Consumer Protection Measures Act 95 of 1998 (the Act), and was thus precluded by s 10 of that Act from, inter alia, receiving any consideration for such work from a housing consumer.

In the High Court, Victor J granted Cool Ideas' application and made the arbitration award an order of court. Leave to appeal that order was then obtained from the SCA by Ms Hubbard. The majority of the SCA (four judges) noted that sections 10(1) and (2) of the Act clearly disentitles an unregistered home builder from receiving any consideration for work done. The majority reasoned that to allow Cool Ideas' claim would be in conflict with a clear statutory prohibition. Accordingly, so the judges held, to make the arbitrator's award an order of court would mean that the court was placing its stamp of approval on an illegality, this is so regardless of where the equities may lie in that particular case. Put simply, according to the majority, where the legislature has ordained that certain conduct constitutes an illegality, a court is not empowered to simply disregard that. They accordingly upheld the appeal.

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