



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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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.

ILLOVO OPPORTUNITIES PARTNERSHIP #61

v

ILLOVO JUNCTION PROPERTIES (PTY) LTD & ANOTHER

The Supreme Court of Appeal (SCA) today held that an owner or prospective buyer of land that is rezoned under a scheme for development for which the City of Johannesburg Metropolitan Municipality has levied a 'bulk services contribution', is only required to pay the amount of the contribution when it exercises the new use rights envisaged in the rezoning scheme, and not at the time the City notifies it that the contribution is payable.

The ruling follows a dispute between two parties Illovo Opportunities Partnership#61 and Illovo Junction Properties (Pty) Ltd over which of the two entities was responsible for the payment of the contribution. Illovo Junction (the

seller) had sold a property with rezoned rights in Illovo, Johannesburg, to Illovo Opportunities (Pty) Ltd (the buyer) in 2009 for R35,5 million. The rezoning, which now permits offices, residential buildings and shops to be developed on the property came into effect after the sale. The City levied a contribution of R8 749 758.04 to fund the cost of engineering services, parks and open spaces for the property and notified the seller of the cost on 5 January 2010 that the amount was payable. On 19 January 2010 the property was transferred to the buyer, which now wants to develop the property.

The City has not demanded payment from either party yet. The dispute between the parties is over whether the seller is liable for the payment of the contribution because it received the notice from the City claiming the payment or whether the buyer will become liable when it elects to develop the property.

The SCA held that on a proper interpretation of ss 48 and 63 of the Town-Planning and Townships Ordinance 15 of 1986 the owner or prospective buyer is only liable to pay the contribution when it exercises its right to develop the property. The seller was therefore not liable for the payment merely by virtue of having received the notice levying the contribution from the City and the buyer shall become liable when it chooses to develop the property.