

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 27 February 2015

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

***Stupel & Berman Incorporated v Rodel Financial Services (Pty) Ltd
(1075/2013) [2015] ZASCA 1 (27 February 2015).***

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) furnished its reasons for upholding the appeal by the appellant and setting aside an order of the South Gauteng High Court, Johannesburg.

The issue before the SCA was whether the appellant was obliged to withdraw or revoke the undertaking upon which the respondent's claim rested.

The respondent instituted action in the court a quo against the appellant, as first defendant and one of its directors, Mr Berman, as second defendant, for payment of the amount of R1 763 489 together with interest and costs. The respondent's claim against the appellant was upheld in the court a quo whilst the second defendant was absolved from the instance.

The appellant was appointed to act as conveyancer in the registration of transfer of an immovable property in Norwood, Johannesburg. The property was sold at an auction by Amber Falcon Properties 3 (Pty) Ltd (Amber Falcon) to Cross Atlantic Properties 186 (Pty) Ltd (Cross Atlantic) for a purchase price of R7.2 million. While awaiting that transfer, Amber Falcon obtained bridging finance loans from the respondent in terms of two discounting agreements. Both these agreements consisted of two parts: a schedule and a document entitled 'Terms and Conditions'. Both schedules contained a section entitled 'Undertaking by Conveyancer', which was signed on behalf of the appellant as conveyancer. In terms of the undertaking the appellant undertook to pay the net proceeds of the sale to the respondent upon transfer of the property. However, after Amber Falcon had received the money it borrowed from the respondent in terms of the discounting agreement, it proceeded to instruct the appellant to withdraw the undertakings provided to the respondent, which the appellant then did.

The court a quo held that the appellant was in the position of an *adjectus solitionus causa* (*adjectus*) in which capacity it could not withdraw the undertaking. By contrast, the SCA held, however, that the appellant was not acting in the capacity of an *adjectus*, but as an agent.

The SCA held further that once it was accepted that the appellant gave the undertakings in the capacity of an agent on the instructions of a principal, the law of agency provided that, as a general rule, those instructions could be terminated. It held further that Amber Falcon could withdraw the appellant's mandate and therefore the latter had no option but to act upon those instructions.