



Supreme Court of Appeal 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 intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Breetzke and Others NNO v Alexander NO and others (232/2019) [2020]
ZASCA 97 (2 September 2020)

The SCA today upheld an appeal against a decision of the KwaZulu-Natal Division of the High Court, Pietermaritzburg upholding an exception to particulars of claim on the basis that they did not disclose a cause of action.

The case arose from the sale of a number of properties by the Sleepy Hollow Trust (the Trust) to Zinzingi, a company nominated by the first respondent, one of the trustees of the Trust. Within six months of transfer one of these properties was re-sold at a profit in excess of R19 million. The plaintiffs, representing another family trust, that was one of two beneficiaries of the Trust, claimed that in arranging the purchase of the properties the first respondent breached his fiduciary duties as trustee in that he was aware of, and did not disclose to his co-trustees, the fact that the party who purchased the one property from Zinzingi was a prospective

purchaser at the time when Zinzingi bought it. They claimed that the first respondent was obliged to account to the Trust's beneficiaries for their share of the secret profit earned in this way.

The exception related to the claim against Zinzingi. It was alleged that it had knowingly participated in the first respondent's alleged breach of his fiduciary duty. The high court held that this was insufficient to show that its conduct as a separate legal entity was wrongful in relation to the Sleepy Hollow Trust to which it did not owe any fiduciary duty. The SCA reversed this decision on the basis that conduct that aided, enabled or facilitated a breach of fiduciary duty by another was wrongful and gave rise to a claim for damages. The order of the high court was altered to one dismissing the exception with costs.