



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
Date: 20 MARCH 2008
Status: Immediate

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NEDCOR BANK LIMITED v SDR INVESTMENT HOLDINGS CO (PTY) LTD AND OTHER

The Supreme Court of Appeal today upheld an appeal by Nedcor Bank Ltd. It rescinded a ruling by the Cape High Court in the award of R20 million damages to the owners of Zorgvliet wine farms in the district of Stellenbosch.

The three premium wine farms, known as the Zorgvliet farms were mortgaged to Nedcor Bank Ltd. The farms' owners made a number of efforts over a two year period to repay their indebtedness to the bank in the sum of R13 million through sale of one or more of the farms. They failed to find any buyers.

Nedcor agreed to extend the deadline for repayment of the debt in terms of an agreement reached with the farm owners. Zorgvliet's owners were given until 6 December 2001 to sell one or more of the farms, failing which Nedcor would take over efforts to sell the farms at a price agreed by the owners. In terms of the agreement, if the debt was not settled by 14 January 2002, Nedcor would be entitled to arrange a public auction and sell one or more of the farms at its discretion. The deadline came and went and the debt remained unpaid.

In February 2002, Nedcor arranged a public auction which was held on 12 March 2002. The highest bid for all 3 farms was R31 million which Nedcor accepted the same afternoon.

The owners of Zorgvliet challenged the sale in the Cape High Court on the basis that Nedcor should have accepted a private offer rather than proceed with the public auction. They also contended that Nedcor should have proceeded with the sale on a farm by farm basis, until the outstanding debt was covered. They argued that Nedcor did not act in good faith, did not display the skills commensurate with a large banking organisation and were not fair-minded. The Cape High Court found in their favour and awarded them R20 million in damages.

Nedcor appealed that decision. After careful deliberation, the Supreme Court of Appeal found that Nedcor acted in terms of the explicit agreement and the facts did not illustrate a lack of bona fides, skill, diligence or fair mindedness. The Appeal was upheld.

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