



## THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

### **Factaprops v The Land Bank (353/2016) [2017] ZASCA 45 (30 March 2017)**

**From:** The Registrar, Supreme Court of Appeal

**Date:** 30 March 2017

**Status:** Immediate

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

Today, the Supreme Court of Appeal (SCA) dismissed an appeal by Factaprops 1052 CC (the 1<sup>st</sup> appellant) and Ismail Ebrahim Darsot (the 2<sup>nd</sup> appellant) against a judgment of the Gauteng Division, Pretoria.

The issue on appeal concerned the period of prescription applicable to a debt secured by a special notarial bond for the purpose of s11 of the Prescription Act 68 of 1969.

In May 1999, the Land Bank concluded a written loan agreement with Factaprops for a sum of R250 000. As part of the loan agreement, payment of all sums of money owed to the Land Bank was secured by the registration of a special notarial bond over a number of specified movable assets owned by Factaprops, in favour of the Land Bank. As an additional form of security, Mr Darsot bound himself as surety and co-principal debtor in *solidum* to the Land Bank for repayment of all sums of money owed to the Land Bank by Factaprops. Factaprops defaulted in its payment.

On 14 October 2010, the Land Bank issued summons against Factaprops and Mr Darsot suing them jointly and severally, the one paying the other to be absolved, for payment of all sums of money owed to the Land Bank. In defending the action, and apart from pleading over on the merits of the Land Bank's claim, the appellants delivered a special plea in which they alleged that the Land Bank's claim for payment of the loan had become prescribed in terms of s 11(d), alternatively, in terms of s 11 (c) of the Prescription Act. The Land Bank then delivered a replication in which it argued that its claim was for the payment of a debt which was secured by a special notarial bond and that the applicable prescription period is thirty years.

The High Court held that the Land Bank's claim had not prescribed and it accordingly dismissed the appellants' special plea. In its reasoning, the High court concluded that the phrase 'mortgage bond', as set out in s11 (a)(i) of the Prescription Act, is wide enough to include reference to a special notarial bond.

On appeal it was argued by the appellants that the phrase 'mortgage bond' must be interpreted restrictively. And that so interpreted, contended the appellants, it does not include a special notarial bond. The SCA rejected the construction contended for by the appellants. It held that if regard is had to the language of s 11 (a) (i), its context and the purpose of the Prescription Act, it was clear that the Legislature intended the phrase 'mortgage bond' to have a wider meaning so as to include a special notarial bond.

The SCA held therefore, that the period of prescription in respect of a debt secured by a special notarial bond is thirty years and it accordingly dismissed the appeal with costs.

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