



## **MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

### **BRAYTON CARLSWALD (PTY) LTD & ANOTHER V GORDON DONALD BREWS**

From: The Registrar, Supreme Court of Appeal

Date: 30 May 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.***

The Supreme Court of Appeal (SCA) today dismissed an appeal by the appellants.

This issue on appeal was whether, as a matter of law, it is competent to effect cession of a claim after the underlying obligation has been extinguished by payment.

Judgment was granted in the court a quo, in favour of Firstrand Bank Limited t/a Origin (the bank) against Brayton Carlswald (Pty) Ltd (the first defendant in that matter and the first appellant in this appeal) and Mr Jonathan Paul Brews (the second defendant) (hereinafter referred to as the defendants) for payment of R 3 227 582,44. In order to avoid a sale of execution of the immovable properties, the defendants approached the respondent, Mr Gordon Donald Brews with a request that he pay the indebtedness to the bank. On 26 April 2005, the respondent and the defendants concluded a loan agreement in terms of which the respondent agreed to pay the full debt due to the bank. On 29 August 2008, the bank in writing, ceded its rights to the judgment and any additional claims against the defendants to the respondent.

The SCA held that the cession was not a 'mere formality' as found by the court a quo. The deed of cession was a juristic act in terms of which the cession was executed. Whatever happened prior to the execution of the cession was of an obligatory nature and a duty to cede arose on account of a promise made by the bank. That duty was fulfilled by the execution of the deed of cession and there was nothing to cede because the debt had been extinguished by payment.

The SCA held further that the parties elected to reduce their agreement to writing and are bound by such election and the resultant agreement.