



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 1 June 2017
STATUS Immediate

Primat Construction v Nelson Mandela Bay Metropolitan Municipality
(1075/2016) [2017] ZASCA 73 (1 June 2017)

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.

The Supreme Court of Appeal today upheld an appeal against a judgment of the full court of the Eastern Cape Division of the High Court, Grahamstown, which dealt with the principles applicable to repudiation of a contract and the election to accept it by the aggrieved party. The full court held that where a party repudiates a contract, manifesting an unequivocal intention not to be bound by it, and the aggrieved party elects not to accept the repudiation, and tries to enforce performance, the election may not be changed unless the defaulting party commits an additional act manifesting the repudiation. It reversed the trial court's finding that Primat Construction, the appellant, was entitled to change its election when the Nelson Mandela Metropolitan Municipality persisted in its repudiation of a construction contract, and to claim cancellation and damages for breach of contract.

The SCA considered that the full court had introduced a new requirement into the law governing repudiation of contract – that before an aggrieved party could change its election to enforce the contract, and elect instead, after the defaulting party persisted in repudiating, to claim cancellation and damages, a new act of repudiation had to be committed.

The SCA held that the requirement was not one previously recognized, and was not warranted. If the defaulting party continued with its failure to perform and the aggrieved party reasonably perceived that it intended no longer to be bound, it was entitled to change its election and cancel the contract and claim damages, as the trial court had found. It thus upheld the appeal against the decision of the full court.