



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 15 September 2017
STATUS Immediate

Big Five Duty Free v ACSA [2017] ZASCA 110 (15 September 2017)

The Supreme Court of Appeal today upheld an appeal against a judgment of the Gauteng Division of the High Court, Pretoria, in which it had been held that an agreement of settlement, made an order of court by the full court of that division, was not binding on anyone other than the parties to the agreement. Airports Company South Africa, ACSA, had issued an invitation to bid for the leases in respect of duty-free shops in the country's three international airports. ACSA made the award to Big Five Duty Free.

An unsuccessful bidder, Flemingo, successfully sought an interdict to prevent the implementation of the award, and took it on review. ACSA and Big Five opposed the application for review. Other bidders did not participate in the proceedings. The review court set aside the award holding that it was unlawful. Big Five applied for leave to appeal that decision and was given leave by the SCA to appeal to a full court of the division.

ACSA abided the outcome of the appeal. Flemingo opposed it. But after argument before the full court had been heard, Flemingo and Big Five settled their dispute. Although it had been anticipated that ACSA would be a party to

the settlement agreement, the ACSA board was not able to meet before the appeal was to be heard. Before judgment was handed down, the parties to the appeal asked the full court to make their agreement an order of court, which it did. In the agreement, Flemingo abandoned the judgment of the review court and withdrew the review proceedings.

ACSA, however, considered that it was not bound by the settlement agreement as it was not a party to it, and refused to implement the award of the leases to Big Five, which thus sought an order in the same division that ACSA was bound to implement the award. ACSA and another unsuccessful bidder opposed the application. The division held that the judgment of the review court could not simply be abandoned by the party who had sought it.

The SCA upheld the appeal against that decision. The parties involved in the litigation before the high court that set aside the award had settled their dispute when it went on appeal to the full court of the division and ACSA had abided the outcome of that appeal. The agreement of settlement made an order of court by the full court had the effect that the judgment on review was set aside, and ACSA was thus bound by the award it had made previously.
