



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

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

**FROM** The Registrar, Supreme Court of Appeal

**DATE** 29 September 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.*

***Investec Bank Ltd v Erf 436 Elandspoord (Pty) Ltd (1029/2016) [2017] ZASCA 128 (29 September 2017)***

The SCA today dismissed an appeal against a judgment of the Gauteng Division of the High Court, Pretoria. The issue on appeal was whether the appellant's claim against the respondents had become prescribed prior to 21 January 2011 when the appellant's summons was served on the respondents. The appellant asserted that the claim had not become prescribed because it was secured by a mortgage bond registered in its favour by the first respondent over a notarial lease.

It was common cause between the parties that the subject of the mortgage bond, which was a notarial lease that the first respondent had concluded with a third party was cancelled prior to the service of the appellant's summons. Upon cancellation of the lease, the appellant's real right in terms of the mortgage bond was extinguished.

On 10 September 2002 the appellant addressed a letter of demand to the respondents relying on the cancellation of the lease as a breach of the loan agreement between the parties, giving the respondents seven days within which to pay the outstanding balance. The respondents failed to pay the amount due. The seven day period expired on 18 September 2002. The appellant instituted its action against the respondents on 18 January 2011 and the summons was served on 21 January 2011, some eight years after 18 September 2002.

It was argued on behalf of the appellant that s 11(a)(i) of the Prescription Act which inter alia provides that a debt secured by a mortgage bond is subject to a 30 year period of prescription can be interpreted to mean 'a debt that was at any time' secured by mortgage bond. And that if such a construction is adopted the fact that the debt in issue was no longer secured by mortgage bond once the lease was cancelled would not matter.

The SCA rejected this argument and held that once the security ceased to exist (as when the appellant's real right was extinguished upon cancellation of the lease) the loan agreement was no longer subject to a 30 year period of prescription but to a three year period of prescription as with any other debt in terms of s 11(d) of the Prescription Act.

In the result the appeal was dismissed with costs.

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