



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 29 September 2017
STATUS Immediate

***Loch Logan Waterfront v Bentel Associates International* [2017] ZASCA 135 (29 September 2017)**

In December 2014 the Free State Division of the High Court of South Africa (the high court) upheld a claim by an architect's firm for fees and disbursements incurred in the design of the Loch Logan Waterfront shopping centre in Bloemfontein. The high court granted absolution from the instance in respect of a counterclaim for damages brought by a company that had bought the shopping centre from its former owner, a trust. The high court found that the company was liable to pay the fees to the architect's firm.

The company and trust were granted leave to appeal against the refusal of its claim to the Supreme Court of Appeal, and the architects were granted leave to cross appeal on the grounds that the fees awarded had been miscalculated by the high court, that it had imposed the incorrect rate of interest payable, and that it was the trust that was liable to the architects and not the company.

The cross appeal was pursued and heard by the SCA in September 2017. The appeal, although noted, was not properly pursued. The record was not filed until July 2017, shortly before the date of set down of the cross appeal. This was despite numerous undertakings by the appellants' attorneys, given

to the architect's attorneys, over a period of two years to comply with agreed deadlines. At the last minute, and only when the SCA asked whether the appeal was being pursued, the trust and the company applied for condonation of the late filing of the record and for reinstatement of the appeal. The application was heard at the same time as the cross appeal.

The SCA refused the application for condonation and reinstatement. It held that the delay in filing the record was inexplicable and extreme. The appellants had made no effort to comply with the rules of the court, and any argument that there were good prospects of success on appeal faded into insignificance when considering the extreme and inexcusable delay on the part of the appellants and their attorneys.

The SCA upheld the cross appeal against the judgment of the high court, finding that it was the trust and not the company which had entered into the contract with the architects, and that the trust was accordingly liable for fees and disbursements; that the high court had miscalculated the amount to be awarded to the architects; and that the high court had wrongly held that the rate of interest payable was nine per cent when it should have been at the prescribed rate of interest – 15.5%.

The SCA ordered the trust to pay to the architects some R2.4 million, interest at the rate of 15.5% per annum, and the costs of the trial in the high court. It also ordered the trust to pay the costs in the application for condonation and reinstatement of the appeal, plus the costs of the cross appeal.