



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

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

From: The Registrar, Supreme Court of Appeal
Date: 2 October 2017
Status: Immediate

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.

BONDEV MIDRAND (PTY) LTD

v

PULING PULING

AND

BONDEV MIDRAND (PTY) LTD

v

PETRUS KGOSI RAMOKGOPA

The appellant in both these matters, Bondev Midrand (Pty) Limited, is a property developer. In both cases it had unsuccessfully sought an order in the High Court in Pretoria, obliging the respondents to re-transfer immovable property that it had earlier sold to them. It sought this relief on the basis of a condition registered against the title deed which obliged the respondents to

erect dwelling on their property within a prescribed period and that, in the event of them failing to do so, entitling but not obliging the appellant to claim re-transfer of the property against tender of the original purchase price.

In both cases the respondent failed to erect a dwelling on its property within the prescribed period. And in both cases, more than three years had elapsed from the date upon which they had been obliged to do so, before the appellant claimed re-transfer. The respondents thus both alleged that the appellant's claim had prescribed. In both cases, this plea was upheld.

In the Supreme Court of Appeal the appellant contended that the condition registered against the title deeds conferred a real right upon it and that its right to claim re-transfer was therefore not capable of prescribing within three years. In support of this conclusion, it relied upon the decision of the Supreme Court of Appeal in *Cape Explosive Works Ltd v Denel (Pty) Ltd* 2001 (3) SA 569 (SCA). In that case the court had held that two conditions, one of which appeared to be a personal right while the other reflected a real right, were so closely bound up with each other that both should be regarded as constituting, together, a real right. Relying upon this it was argued that the condition that respondents build a dwelling within the prescribed period created an encumbrance upon the property, and therefore a real right, and that this was so intimately bound up with the respondents' right to claim re-transfer of the property, that the condition that was registered should be interpreted as creating a real right not subject to a three year prescriptive period.

The Supreme Court of Appeal concluded that the second clause of the condition was akin to providing the appellant with an option to purchase,

essentially a personal right, and that the restriction created by clause 1 to build a dwelling would not be terminated should the appellant in its discretion decide not to seek re-transfer. It therefore concluded that the two clauses read together do not constitute a composite whole restricting the respondents' use of property. In these circumstances the second clause created no more than a personal right which was capable of prescribing.

It therefore held that in each case the appellant's claim had prescribed, and dismissed the appeal.