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: 15 December 2022

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.

Plattekloof RMS Boerdery (Pty) Ltd v Dahlia Investment Holdings (Pty) Ltd (667/2021) [2022] ZASCA 182 (15 December 2022)

Today the Supreme Court of Appeal (the SCA) handed down judgment in an appeal from the Western Cape Division of the High Court, Cape Town (the high court). It varied the high court's order only to the extent that the dismissal of the application was set aside and directed that the respondent was to deliver to the appellant a written offer to purchase the leased property in question, based on Clause 10 of the lease concluded by the parties on 13 April 2018 (the lease).

This appeal concerned a right of pre-emption in respect of two portions of a farm that the respondent, Dahlia Investment Holdings (Pty) Ltd had granted to the appellant, Plattekloof RMS Boerdery (Pty) Ltd. The farm consisted of eight separate portions, two of which were leased out to the appellant for a period of five years in terms of the lease. On 7 April 2020, the respondent sold all eight portions of the farm to Swellendam Plase (Pty) Ltd for a global purchase of R17 million (the Swellendam Plase offer). The deed of sale recorded that the farm was sold subject to the lease. The appellant subsequently sought specific performance of his right to pre-emption in respect of the two leased properties.

The SCA was required to determine whether the appellant's right to pre-emption would only be activated if the respondent received an offer regarding only the two portions concerned. The SCA determined that this could not be the case. The SCA thus held that the Swellendam Plase offer 'triggered' the appellant's right of pre-emption. As to the appellant's remedy, the SCA held that clause 10 of the lease, such being the clause setting out the right of pre-emption, determined that

the appellant had no more than the right of first refusal to purchase the two portions and the respondent was, in turn, obliged to have made an offer to the appellant to purchase the two portions of the farm. Thus, the respondent was contractually obliged to determine, in good faith, what portion of the Swellendam Plase offer pertained to the two portions, and make a subsequent offer to the appellant.

Swellendam Plase sought to purchase the entire farm and the fixed price of R17 million was stated without differentiating between the six portions and the two leased portions; the eight portions were sold as an indivisible transaction. The appellant contended that the Swellendam Plase offer was made by adding R4 million for the two portions to R13 million for the six portions to arrive at the amount of R17 million. This disputed contention was based on a weighing of probabilities, which could not be entertained in motion proceedings.

Accordingly, the SCA determined that the main relief sought, being that the respondent be directed to make an offer of R4 million must fail. The appellant had a right to a bona fide offer on the basis of that part of the R17 million that pertained to the two portions. The SCA was particularly displeased with the fact that the respondent had the opportunity to tender an offer since 2020, but failed to do so.

In the result, the SCA ordered the respondent to comply with the provisions of Clause 10 of the lease agreement.

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