THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case No: 237/2024

In the matter between:

A V THERON & SWANEPOEL INCORPORATED	**FIRST APPELLANT**
MATTHYS SWANEPOEL	**SECOND APPELLANT**

and

NEIL SEAN KNOTT	**RESPONDENT**

Neutral citation: *A V Theron & Swanepoel Incorporated and Another v Knott* (237/2024) [2025] ZASCA 84 (10 June 2025)

Coram: MOCUMIE, KATHREE-SETILOANE and SMITH JJA and DAWOOD and HENNEY AJJA

Heard: 9 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website, and released to SAFLII. The date and time for hand down is deemed to be 10 June 2025 at 11h00.

Summary: Law of Contract – breach of contract – negligence – whether the respondent suffered damages as a result of appellants admitted breach of mandate – if so, whether the breach was the proximate cause of a bargain in monetary terms.

ORDER

On appeal from: Free State Division of the High Court, Bloemfontein (Baloyi-Mere AJ and Reinders ADJP sitting as court of appeal):

1 The appeal is upheld with costs.

2 The order of the trial court is set aside and replaced with the following order: 'The plaintiff's claim is dismissed with costs.'

JUDGMENT

Henney AJA (Mocumie, Kathree-Setiloane and Smith JJA and Dawood AJA concurring)

Introduction

[1] This is an appeal against the judgment and order of the Free State Division of the High Court, Bloemfontein (per Rheinders ADJP and Mere AJ), (the high court). The appeal is with the special leave of this Court.

[2] The first appellant is a firm of attorneys practicing under the name and style of AV Theron & Swanepoel Incorporated (AV Attorneys). The second appellant, Mr Matthys Swanepoel (Mr Swanepoel) is a practicing attorney and director of AV Attorneys, I refer to them collectively as the appellants, where the context so requires. The respondent, Mr Neil Sean Knott (Mr Knott), was a client of AV Attorneys, having engaged in the latter to provide legal advice regarding the sale of his immovable and movable property.

[3] The appeal has its origins in a civil action which Mr Knott instituted in the Sasolburg Magistrates' Court (the trial court) in June 2016. Mr Knott's claim for

contractual damages in the sum of R250 000 was based, amongst others, on the averment that he had lost out on a bargain as a consequence of receiving erroneous legal advice from the appellants. The trial court found in his favour but awarded him damages in the sum of R150 000 only.

[4] Aggrieved, the appellants appealed to the high court. Mr Knott cross-appealed against the damages award, contending that he had proved damages in the sum of R250 000. On 19 October 2023, the high court dismissed the appeal as well as the counter-appeal and ordered each party to pay their own costs. An application by the appellants for leave to appeal to this Court was dismissed by the high court. Mr Knott did not pursue his counter appeal in this Court.

[5] The core issue for determination in this appeal is whether Mr Knott sold the same property to Trymore (Pty) Ltd (Trymore), which he had intended to sell to Blue Dot (Pty) Ltd (Blue Dot) at a higher purchase price. If so, whether Mr Knott had lost out on a bargain he would have made in monetary terms had the sale with Blue Dot not fallen through as a result of the erroneous legal advice provided by Mr Swanepoel.

Factual Background

[6] In April 2014, Mr Knott engaged the appellants to provide him with professional services relating to the sale of his immovable property being, unit 38 situated at Portion 9 Voorspoed NR 316, Metsimaholo Local Authority, District of Parys, Province of the Free State, in the scheme known as Riverside Beach Club (the immovable property).

[7] It is common cause that Mr Knott orally mandated the appellants to provide, among others, the following services:

(a) expert advice in respect of the sale and transfer of his immovable property to Blue Dot;
(b) to draw up the offer to purchase, which upon acceptance by both parties would constitute a valid deed of sale; and
(c) to attend to all the necessary legal formalities to ensure the effective sale and transfer of the property to Blue Dot.

The appellants accepted the mandate.

[8] It is further common cause that Mr Knott's immovable property encroached on land owned by the body corporate of the Riverside Beach Club (the Club), and that he was required to obtain the consent of 70% of the other owners to formalise an extension of the floor area of his unit onto the body corporate's property. The sale to Blue Dot would have included that extension. Mr Swanepoel, however, erroneously advised Mr Knott that he required the consent of all the owners. This was conceded before this Court. The deed of sale which Mr Knott and Blue Dot signed on 8 April 2014, was thus concluded on the erroneous understanding of Mr Knott. The sale also included certain movables that were specified therein. The parties simultaneously concluded a separate agreement in respect of the sale of certain movable items. The purchase price of the immovable property was R700 000. The agreement in respect of the movable property specified certain items of furniture which were sold for R500 000 and a boat and trailer which were valued at R100 000.

[9] The deed of sale also included a suspensive condition that required Mr Knott to obtain the consent of all the owners of the Club, to purchase a portion of the common property and to extend the floor area of his unit, within 30 days of signing the agreement. It is common cause that Mr Knott could not obtain the required consent of all the owners and that, on 8 May 2014, the sale fell through because he could not comply with the suspensive condition.

[10] Mr Knott eventually sold the immovable property to Trymore on 21 September 2015. In terms of this agreement the immovable property, as well as 34 items of movable property, were sold for R1 050 000. The movables were not separately valued and priced as was the case in the Blue Dot sale agreement, although they were mentioned separately in paragraph A9 of the agreement under the heading 'ITEMS INCLUDED'.

[11] Mr Knott discovered that he was only required to obtain consent from 70% of the owners after the Blue Dot deal had already fallen through and he had already sold the property at a lower purchase price to Trymore. He asserted that he was under pressure to sell at a reduced price having been under the erroneous impression that in order to sell the property, he would have had to overcome the formidable threshold

of obtaining the consent of all the other owners. Consequently, so he asserted, he lost out on a bargain with Blue Dot.

[12] On 31 October 2015, after the sale of the immovable property and the movables was concluded with Trymore, a Special General Meeting of the owners of the Club was held. Mr Knott and Mr Swanepoel attended the meeting. At this meeting, Mr Knott learned for the first time that contrary to the advice that was given by Mr Swanepoel, an owner need not obtain the consent of all the owners of the Club to extend the area of their unit onto the common property.

[13] Based on this knowledge, Mr Knott asserted that he had suffered a loss of R250 000, being the difference between the purchase prices of the cancelled sale to Blue Dot and the subsequent sale to Trymore. According to Mr Knott, the sole and proximate cause of his loss was the erroneous and negligent advice given to him by Mr Swanepoel.

The Appellants Submissions

[14] The appellants submit that if proper regard is had to the probabilities, particularly concerning the specific movables included in the Trymore sale agreement and the market value thereof, it must lead to the conclusion that the credibility findings made by the trial court are inconsistent and consequently untenable.

[15] They further submit that whilst the trial court, on a balance of probabilities, found on Mr Knott's version that the boat formed part of the Trymore sale agreement was suspicious, it inexplicably failed to extend the same suspicion to his explanation regarding the remainder of the movables, which he conceded were not listed in the Trymore sale agreement.

[16] Despite Mr Knott's pleaded case that the same property, which he intended to sell to Blue Dot was sold to Trymore for R250 000 less, the trial court found that the boat and trailer were not part of the property that was sold to Trymore. The trial court therefore deducted an amount of R100 000, being the value of the boat and trailer that Mr Knott would have sold to Blue Dot, from the R250 000 he claimed.

[17] Furthermore, despite the evidence presented in the trial court that the Trymore sale agreement only included certain movables which amounted to at least 53 items less than what Mr Knott intended to include in the Blue Dot sale agreement, both the trial court and the high court only deducted the R100 000, which was the price attributed to the boat.

[18] According to the appellants, it is illogical to exclude only the costs of the boat and not account for the value of the other items of movables that formed part of the intended sale to Blue Dot. The appellants submitted that once the high court determined that the property sold in both agreements were substantially different, it should have held that Mr Knott failed to prove his pleaded claim on the basis that the two agreements involved identical property.

[19] They contended that the trial court, as well as the high court, were required to undertake a 'like-for-like' analysis of the property sold in the two agreements. However, both courts ignored at least 53 other movable items not included in the Trymore sale agreement, and failed to deduct the value thereof from the damages claimed by Mr Knott. According to the appellants, if this fact is taken into consideration, then it is unclear from the high court's judgment on what basis it found the reasoning of the trial court unassailable.

The Respondent's Submissions

[20] Mr Knott submits that the wrong advice given by the appellants was the *sine qua non* for the Blue Dot sale agreement falling through. However, he does not dispute that the two agreements were different because the boat was not included in the Trymore sale agreement. He, nonetheless, submits that what is common to the two agreements is the immovable property.

[21] He contends that as far as the movables are concerned, in the Blue Dot sale agreement, a fixed sum is given for the furniture in the amount of R500 000, whereas, in the Trymore sale agreement, only some of the movables are listed. In respect of the Trymore sale agreement, Mr Knott submits that it is specifically stated under

clause 12.1 that '[t]he [property] is sold with all fixtures and fittings of a permanent nature situated on it at the date of this offer unless specifically excluded'.

[22] Mr Knott conceded that although a number of items were deleted, the property and movable assets had to be sold together. According to him, in the Trymore sale agreement, the immovable property and the movables were included, and the agreement was structured in the same way as the Blue Dot sale agreement, even though the boat and certain items of movable property were not listed in the Trymore sale agreement. He remained adamant that the property he sold to Trymore was the same as that which he intended to sell to Blue Dot. According to him, had the correct advice been given to him he would not have been under pressure to sell the immovable property, including the movables, at a loss of R250 000.

[23] During the hearing of the appeal, counsel for Mr Knott confirmed Mr Knott's case as set out in the heads of argument, but submitted that, if regard is had to Mr Knott's evidence that at the time when he agreed to sell the property to Trymore, there was an agreement only to sell the immovable property. In this regard, Mr Knott testified as follows during the trial:

'He heard that I [wanted] to sell. Also, [I] really needed to sell. I had to get out and he looked at the old offer to purchase and then said that he will, (*sic*) he knows that we have got to register the area through a surveyor, and he will take, he will take over the responsibility, but he wanted to reduce the selling price. I was in a corner, and it made me an offer of R1, 050,000 which I accepted.'

[24] Counsel for Mr Knott submitted that both the trial court and the high court overlooked this evidence, which showed the circumstances under which the price of the immovable property was reduced by R250 000. This, she argued, is direct evidence as to how Mr Knott suffered the damages he claims. According to her, this evidence clearly shows that reference was only made to the immovable property that was sold at a reduced price. No mention is made of the movable property. She conceded that this aspect did not form part of Mr Knott's pleaded case.

Analysis

[25] Mr Knott's case and evidence is simply that he sold the same property that he intended to sell to Blue Dot to Trymore for R250 000 less. What Mr Knott seeks through his claim for damages is to be placed in the position he would have been, had it not been for the erroneous advice he received from Mr Swanepoel. It was that advice, Mr Knott contended, that led to him being unable to fulfil the suspensive condition in the Blue Dot sale agreement. In this regard, the following was said in *Holmdene Brickworks (Pty) Ltd v Roberts Construction Co Ltd*:[1]

'The fundamental rule in regard to the award of damages for breach of contract is that the sufferer should be placed in the position he would have occupied had the contract been properly performed, so far as this can be done by the payment of money and without undue hardship to the defaulting party. . .'[2]

[26] Mr Knott's claim for damages is based on a simple mathematical formula. He contends that but for the erroneous legal advice, the sale to Blue Dot would not have fallen through and he would not have been under pressure to sell to Trymore at a reduced price. His damages should therefore be calculated as being the difference between the purchase price for the immovable property he would have received from Blue Dot and the price at which he sold it to Trymore – thus the difference between R1 300 000 and R1 050 000, which amounts to R250 000.

[27] The insurmountable hurdle that Mr Knott faces is that the Trymore agreement unambiguously sets out the purchase price of the 'property', as (defined as the immovable property of the abovementioned description) R1 050 000. The agreement makes no mention of a purchase price for the movable property.

[28] Furthermore, clause 2.4.1 of that agreement expressly states that '[t]his Deed of Sale constitutes the sole and entire agreement between the parties and no warranties, representations, guarantees or other terms of whatever nature not contained or recorded in this agreement shall be of any force or effect'. Clause 24.2 provides that any variation of the agreement shall only be effective and binding if it is reduced to writing and signed by the parties or their representatives. Mr Knott was therefore precluded, by virtue of the integration rule, from introducing by way of parole

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[1] *Holmdene Brickworks (Pty) Ltd v Roberts Construction Co Ltd* [1977] 4 All SA 94 (A).
[2] Ibid at 108.

evidence, clauses into the agreement which are fundamentally irreconcilable with the express and unambiguous terms of the agreement.

[29] In addition, the Alienation of Land Act 68 of 1981 provides that in order to be valid, the sale of immovable property must be in writing. It is trite that apart from a description of the property, the purchase price is one of the *essentialia* of a contract of sale. On Mr Knott's argument, the agreement does not stipulate a purchase price in respect of the immovable property thereby rendering the agreement void and unenforceable. This proposition is simply untenable.

[30] Apart from the fact that it is one of the established canons of construction that, if possible, agreements must be construed so as to render them valid, the Trymore agreement, on a reasonable and contextual construction, provides for a purchase price for the immovable property as defined. The clear and unambiguous wording of the relevant clauses simply do not brook the interpretation contended for by Mr Knott. While there is nothing that prevents contracting parties from including movables in a deed of sale for immovable property, the contract remains valid despite the fact that no price is allocated to the movable items. In *Brink v Wiid*,[3] it was stated that a properly signed written contract of sale of land together with movable assets for a lump-sum price is valid even though no specific portion is allocated to the land.[4] Mr Knott's problem is that no value was stipulated in respect of the movables included in the Trymore sale.

[31] However, the fact that the Trymore agreement does not stipulate a purchase price for the movables and does not mention the boat, is fatal for Mr Knott's calculation of his damages on the abovementioned mathematical formula. That formula was also erroneously employed by both the trial court and the high court. It means, in effect, that not only did he not suffer any damages, but he in fact made a profit.

[32] Therefore, both the trial court and the high court erred in finding that Mr Knott suffered damages in the amount of R250 000 less R100 000 for the boat, being the

[3] *Brink v Wiid* [1986] 1 All SA 509 (A); 1968 (1) SA 536 (A).
[4] See also G B Bradfield and R H Christie *Christie's Law of Contract in South Africa* 8th ed (2022) at 158(j).

amount of R150 000. Significantly, in this regard, Mr Knott conceded that the agreements between Blue Dot and Trymore were not the same. The ineluctable conclusion that must be drawn is that Mr Knott has failed to prove that the two agreements were identical, in respect of both the movable and immovable property.

[33] In *Taggart v Green*,[5] the court considered a case where the two agreements were not the same. It held as follows:

'In general, the rule is that if the seller resells on the same market within a reasonable time and he gets less for the resale, he is entitled to the difference between the first and the second prices.'

The court however also stated that '[i]f the two sales are not comparable, there would be no logic in an exact comparison. It would be a matter of apples and pears'. In *Sandlundlu (Pty) Ltd v Shepstone & Wylie Inc*,[6] this Court stated:

'A plaintiff who enforces a contractual claim arising from a breach of a contract needs to prove, on a balance of probability, that the breach was the cause of his loss.'

[34] On consideration of the facts of this case, Mr Knott has failed to prove, on a balance of probabilities, that he suffered any loss. The loss he suffered cannot be determined by a mere mathematical calculation between the difference in price of the first and second agreements, without having regard to the content, substance and the terms of the two agreements. As stated earlier, they differ in material respects. The two sale agreements are not comparable. As was held in *Hoffmann and Carvalho v Minister of Agriculture* [7] and referred to in *Taggart v Green*,[8] '[the] measure of damages is the difference between the contract price and the market value at the time of delivery'.[9] No such evidence was presented by Mr Knott in the trial court, both in respect of the immovable and the movable property.

[35] It follows that Mr Knott has failed to prove that the appellants' breach has caused him to suffer any damages. The appeal must therefore succeed.

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[5] *Taggart v Green* 1991 (4) SA 121 (W) at 127G-J.
[6] *Sandlundlu (Pty) Ltd v Shepstone & Wylie Inc* [2010] ZASCA 173; [2010] 3 All SA (SCA) para 13.
[7] *Hoffmann and Carvalho v Minister of Agriculture* 1947 (2) SA 855 (T) at 860.
[8] Ibid at 127H.
[9] Ibid.

[36] In the result, I make the following order:

1 The appeal is upheld with costs.

2 The order of the trial court is set aside and replaced with the following:

‘The plaintiff’s claim is dismissed with costs.’

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R C A HENNEY

ACTING JUDGE OF APPEAL

Appearances

For the appellants:	L Matsiela
Instructed by:	Eversheds Sutherland South Africa, Johannesburg
	Symington De Kok, Bloemfontein
For the respondent:	K Pama-Sihunu (Heads of argument drafted by S Shalom Cohen)
Instructed by:	Dempster McKinnon Inc, Fourways
	Bezuidenhout Inc., Bloemfontein.