

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 31 March 2006

Status: Immediate

COLIN STEINBERG v TERENCE LAZARD

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

In a judgment delivered today, the Supreme Court of Appeal (the SCA) has dismissed an appeal by Mr Colin Steinberg against the judgment of the Johannesburg High Court in which he was ordered to pay a sum of R1 075 000 to Mr Terence Lazard.

On 6 June 2001 the parties entered into a written agreement of sale in terms of which Steinberg sold to Lazard his members' interest in a close corporation which owned a portion of Erf 11, Sandhurst, Sandton. The other portion belonged to another close corporation in which Steinberg held the members' interest. The parties also undertook to build residential houses on each plot and complete them on 30 June 2002.

The contract contained a penalty clause to the effect that should either party fail to complete its house by the agreed date, it will pay the innocent

one a penalty of R50 000 per month for the duration of the delay. Steinberg completed the house on 15 June 2004 and Lazard sued him for the penalty amount. On appeal Steinberg argued that Lazard had not shown that he had suffered any prejudice as a result of the breach. The SCA held that the onus was on Steinberg (as the debtor) to prove that the penalty exceeded the prejudice suffered by Lazard or that he suffered no prejudice at all. Since Steinberg had failed to establish such proof the appeal was dismissed.