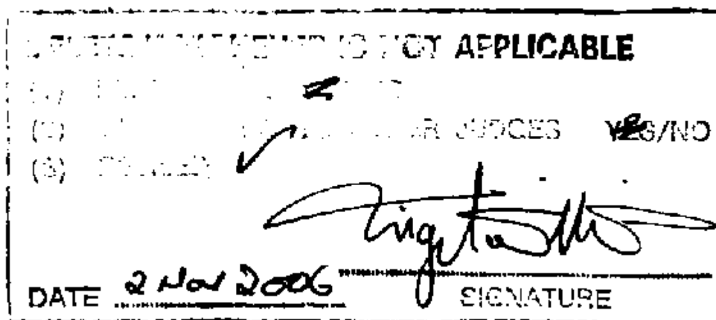
LOM SOLUTIONS\MvD

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG CASE NO: 33333\07

5 2006.08.17



10 In the matter between

NORMAN INGLEDEW	Plaintiff
and	
DIMETYS THEODOSIOUS	1st Defendant
CAPRICE WILSON	2nd Defendant

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JUDGMENT

WILLIS J: I have before me two separate applications for leave to appeal by the first and second defendants against the judgments 20 which I gave in the same matter on the 22 May 2006 and 13 June 2006 respectively.

The earlier judgment was given by reason of the fact that a separation of issues had earlier been ordered. By agreement between counsel for the parties and myself, the two separate 25 applications were argued together today and I shall deliver one judgment in respect of both matters.

In sofar as the first judgment is concerned, which dealt with the validity of the agreement concluded between the plaintiff and the first defendant, in my view there are no reasonable prospects of a 30 success in an appeal. I wish to emphasise that much of the debate

and to a large extent the issues that were dealt with in that earlier judgment, became academic as the trial progressed. The reason for this is that once the first defendant himself testified, it became clear that he throughout, right up until the time that the Supreme Court of
5 Appeal dismissed his petition in the case in which he claimed that he had validly cancelled the agreement, was of the view that a valid and binding agreement had indeed been entered into between himself and the plaintiff.

In the law of contract it is trite that one cannot adiate and
10 repudiate at the same time on the same contract. One cannot blow hot and cold. One cannot, in the colloquial expression "have one's cake and eat it at the same time".

Insofar as the second judgment is concerned on the questions of fact, I do not believe that there is any reasonable prospect that
15 another court will come to a different conclusion concerning the so-called 'wesenlike feite'. Insofar as questions of law are concerned it is my view that certainly since the cases of *Krauze v Van Wyk en Andere* 1986 (1) SA 158 (A) and *Wahloo Sand (Bpk) v Trustees Hambly Parker Trust* 2002 (2) SA 776 (SCA) the law has been clear.
20 It is that law which I applied in this matter.

Accordingly I do not see that there is a reasonable prospect that another court would disturb my judgment on questions of law.

Insofar as my application of the law to the facts is concerned, I do not believe that there is a reasonable prospect that another
25 court will find that I failed to exercise my discretion judicially or that I was influenced by wrong principles, or a misdirection of the facts (certainly insofar as the 'wesenlike feite' are concerned), or that another court would find that the decision which I made could not reasonably have been made by court properly directing itself to all
30 the relevant facts and principles.

Accordingly it seems to me that there are no reasonable prospects of success in regard to an appeal on either of the judgments.

The following order is made:

5 The applications for leave to appeal in respect of both the judgment which I gave on the 22 May 2006 and 13 June 2006 in this matter, are dismissed with costs, which costs are to include the costs of two counsel.