

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 29 September 2004

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

CASE *Southernport Developments (Pty) Ltd v Transnet Limited*
(Case No 440 / 03)

Media Statement

On 29 September 2004 the SCA upheld an appeal by Southernport Developments (Pty) Ltd (formerly Tsogo Sun Ebhayi), holding that a contract it had concluded with Transnet to lease certain properties in Port Elizabeth, was enforceable.

On 7 December 1998, Tsogo Sun Ebhayi concluded a written agreement with the respondent (Transnet). That agreement, which was subject to a suspensive condition that Tsogo Sun Ebhayi be granted a casino licence in terms of the Eastern Cape Gambling Act, recorded that Tsogo Sun Ebhayi wished to develop certain casino, hotel and ancillary entertainment facilities at Humewood. On 10 February 2000, a second agreement, which the parties described as a bridging agreement, was concluded. It provided for the conclusion, in due course, of a definitive agreement. In terms of the second agreement, Tsogo Sun Ebhayi was granted an option to lease the properties identified in the first agreement or agreed portions thereof on terms and conditions to be negotiated between the parties in good faith. The second agreement provided further for the referral of any dispute to arbitration in the event of the parties being unable to reach agreement on any of those terms and conditions.

Following upon Transnet's refusal to negotiate with Tsogo Sun Ebhayi, the latter instituted an action in the High Court (Johannesburg) for an order that Transnet enter into good faith negotiations with it regarding the terms and conditions of an agreement of lease and further that any dispute between the parties be referred to arbitration in accordance with the second agreement. Transnet excepted to the claim, which exception was upheld in the high court. Before the SCA, Transnet argued that there was no agreement regarding the essential terms of a lease agreement and that in any event the second agreement was an unenforceable preliminary agreement.

The SCA held that the arbitration provision in the agreement rendered the second agreement sufficiently certain and enforceable. The exception should accordingly not have been upheld in the High Court and in the circumstances the appeal had to succeed.

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