



SUPREME COURT OF APPEAL SOUTH AFRICA

MEDIA SUMMARY – JUDGEMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 19 October 2020

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgement of the Supreme Court of Appeal.

SYBRAND SMIT & OTHERS

v

ORIGIZE 166 STRAND REAL ESTATE (PTY) LTD & OTHERS

The Supreme Court of Appeal today upheld an appeal against the dismissal by the high court of an application for a declaratory order that Mr Smit is entitled, in terms of a resolution adopted by Origize 166 Strand Real Estate (Pty) Ltd (Origize) on 21 July 2016, to:

1. Accept and sign on behalf of Origize, any written offer from any offeror; and
2. Sign on behalf of Origize, all documents required to give effect to such offer and to transfer to the offeror the real right of extension in respect of 33 units of the scheme known as Ocean View Villas, situated in Port Edward, KwaZulu-Natal, held under certificate of real right number SK1206/2017 (the real right).

The first and second respondents were ordered to pay the costs of the appeal, including the costs of two counsel.

Mr Smit, an attorney, and Mr Jacobs (the second respondent), an estate agent, were business associates. Mr Jacobs was the sole shareholder and director of Origize. It purchased the real right from the liquidators of CLA Projects (Pty) Ltd for R4.1 million with the intention to resell it quickly at a profit.

Mr Jacobs paid the deposit, but was unable to provide security for the remainder of the purchase price. He engaged Mr Smit to negotiate with the liquidators to avert the cancellation of the contract. An agreement was reached that Origize would pay a further R1 million, which would be non-refundable, immediately, and an extension would be granted in respect of the provision of security in respect of the balance of the purchase price.

Mr Smit undertook to advance the R1 million to, and to raise the balance of the purchase price on behalf of, Origize in exchange for a 50 percent share in the venture. Origize, for its part, provided Mr Smit with a power of attorney, as recorded in the resolution of 21 July 2016, as security for the money lent and advanced. The resolution authorised Mr Smit to deal with and to sell any immovable property of Origize, and ‘to receive and to make and give, as the case may be, the necessary contracts or acts and deeds of transfer’ relating to the immovable property.

Mr Smit paid the R1 million to the liquidators and raised the remainder of the purchase price by way of a loan. The real right was transferred to Origize but, the parties were unable to find a purchaser at a price satisfactory to Mr Jacobs. In time the units were vandalised with a concomitant diminution in value. When Mr Smit

insisted they sell Mr Jacobs purported to rescind the resolution of 21 July 2016, which Mr Smit contended he was not allowed to do.

The high court held that an authority given to another to act on one's behalf is revocable at any time. It therefor dismissed the application.

After hearing argument from both sides the SCA upheld the appeal finding that Mr Smit had established that the power of attorney had been given as security for money lent and advanced .In these circumstances it held that it was irrevocable for as long as the debt remained unpaid.