



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

29 March 2011

STATUS: Immediate

BBS Empangeni CC v Phoenix Industrial Park (Pty) Ltd (203/2011)

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

The Supreme Court of Appeal (the SCA) today dismissed an appeal with costs from the KwaZulu-Natal High Court, Durban finding that BBS Empangeni CC's claim from Phoenix Industrial Park for breach of contract over the sale of land in 1990 had become prescribed.

The appellant (BBS Empangeni) bought a land in an industrial township from the respondents (Phoenix Industrial Park) under a sale agreement. The sale was subject to two suspensive conditions one of them being the City Engineer's certification of compliance. BBS Empangeni refused to take transfer of property based on its concerns about the security features of the industrial township. Phoenix Industrial Park applied to the high court to order BBS Empangeni to pay the transfer costs and the balance of the purchase price against tender of transfer of the land. BBS Empangeni in response disputed the fulfilment of the suspensive condition for the sale of the land on the ground that the wrong official had signed the compliance certificate; hence, transfer of the land could not take place. Phoenix Industrial Park subsequently fulfilled the suspensive conditions of the sale and acting in the knowledge that BBS Empangeni was still unwilling to take transfer of the property sold the property to a third party. When BBS Empangeni discovered that the land had been sold, it instituted an action for damages for breach of contract against Phoenix Industrial Park. It alleged that the sale and transfer of the property was a breach of the agreement between the parties and a repudiation of it.

The central issue before the high court, which was also the issue on appeal, was whether BBS Empangeni's claim had become prescribed. The high court held that prescription had begun to run from the date the suspensive conditions of the sale

had been fulfilled, in 1994, and that the BBS Empangeni's claim had become prescribed three years later, long before the property was sold to a third party. The court also held that Phoenix Industrial Park had not wilfully concealed the fulfilment of the suspensive conditions and that BBS Empangeni would have discovered this fact had it exercised reasonable care. The SCA confirmed the high court's findings.