



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 21 September 2018

STATUS Immediate

Buffalo City v Nurcha Development Finance (378/2017) [2018] ZASCA 122 (21 September 2018)

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 SCA today dismissed an appeal against a decision of the Eastern Cape Division of the High Court (East London Circuit) in which that court held that Buffalo City Metropolitan Municipality had entered into a contract with a low-cost housing finance company, Nurcha, a subsidiary of the National Urban Housing and Reconstruction Agency. The City had appointed a contractor to build low cost housing within its jurisdiction. Nurcha lent funds to the contractor to finance the project after issuing an irrevocable instruction to the City to pay all progress payments into a designated bank account managed by a sister company, Tusk.

The payment instruction, signed for by an official of the City, was signed and dated some time before the construction contract was concluded, but after the contractor had won a tender award. The SCA held that the City had, by its unequivocal conduct in accepting the instruction, entering into the construction contract and making payment into the designated bank account

over a period of five months, concluded a tacit contract with Nurcha. When it paid into a different bank account it was in breach of the contract, and was liable for damages.
