

BACKGROUND AND SUMMARY

Shane Symons and Johanna Symons (*"the Plaintiffs"*) are the trustees of the Symon Family Trust (*"the Trust"*), who sought to claim damages against the Rob Roy Investments CC t/a Assetsure (*"the Defendant"*), the Plaintiffs former financial adviser and investment broker. The Plaintiffs' claim is based on the premise that the Trust, acting on the advice of the Defendant, invested a total amount of R5 million into a property syndication, known as Sharemax Investments (Pty) Ltd (*"Sharemax"*), and the Trust lost the entire investment by consequence of Sharemax collapsing. Sharemax collapsed after the South African Reserve Bank instructed it to restructure its funding model, as it was unlawfully procuring deposits from the public. Sharemax was not able to change its funding model and as a result of same, the scheme collapsed.

The Plaintiffs' claim for damages was supported by their argument that the Defendant breached its contractual obligations in terms of the Agreement concluded between the parties (*"the Agreement"*). The Plaintiffs asserted that in terms of the Agreement, the Defendant undertook to advise the Trust regarding a range of low risk investments, however, the Defendant supposedly breached this obligation as it advised the Plaintiffs to invest in Sharemax, which investment carried a substantial risk as the funds were intended for investment in a syndicate property development. Further to the above, the Plaintiffs alleged that the Defendant breached its contractual obligations in terms of the agreement as the Defendant, *inter alia*, advised the Plaintiffs that the returns from their investment in Sharemax were guaranteed, which was not the case; failed to adequately investigate Sharemax or to properly understand their proposed business model; failed to exercise an independent judgment regarding the propriety of the Sharemax business; and failing to exercise the required level of skill and diligence which the Defendant had represented to the Plaintiffs, that it had supposedly possessed.

The Defendant argued, *inter alia*, that it was familiar with Sharemax and its investment opportunities, as the Defendant had attended numerous lectures and presentations about Sharemax, and even wrote an examination on it; it had provided the Plaintiffs with substantial material relating to the investment and as such, the Defendant was well-informed of the risks involved by investing in Sharemax; Sharemax had, at the time the investment was made, a reliable reputation, which the Defendant supported through expert evidence, however, there was disagreement amongst the expert witnesses with regard to the extent and materiality of the risks inherent in the scheme; and the agreement as signed by the Plaintiffs and the relevant prospectuses of Sharemax as possessed by the Plaintiffs, indicated very clearly that the investment was not guaranteed and that there was a high risk that the Plaintiffs may lose the investment, which was never disputed before the court.

The Court held that the Plaintiffs, particularly, Mr. Symons, was an experienced businessman in dealing with investments, such as Sharemax, and as such was deemed by the court to have enough knowledge of the risks involved with same.

The Court further held that Mr. Symons made the investment in Sharemax with his eyes open and well-informed of the risks involved as he took nearly two weeks to make a decision after he had met with the Defendant and had been given a prospectus and other documentation about the proposed investment.

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The Court held that the Plaintiffs did not establish liability on the part of the Defendant, as the risks identified in relation to Sharemax did not materialise and weren't the cause of the loss, as there was no causal link between the supposed breach by the Defendant of its contractual obligations and the Plaintiffs loss. As such, the claim was dismissed with costs.

VALUE

Dependant on the circumstances surrounding an investment made on your behalf by an investment broker, you will not always be able to hold the investment broker liable if you fail to make a profit from the investment, alternatively lose the entire investment. There must be a causal link between your loss and the actions of the investment broker for you to hold the investment broker liable.

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