



THE 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: 28 February 2024

Status: Immediate

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Alice Mary Parry v Rosalene Sybil Dunn-Blatch and Others (394/2022) [2024] ZASCA 19 (28 February 2024)

Today the Supreme Court of Appeal (SCA) dismissed an application for special leave to appeal with costs. The application emanated from the full court of the Gauteng Division of the High Court, Johannesburg (the full court) and was launched by the applicant, Ms Alice Mary Parry (Parry).

The first respondent, Ms Rosalene Sybil Dunn-Blatch (Dunn-Blatch) and Parry were friends and, in 1996, they set up and registered two companies, a private company (the third respondent) known as TRADSA (Pty) Ltd (TRADSA) and a non-profit company (the second respondent) known as International Trade Institute of South Africa (ITRISA), which was set up for purposes of offering distance learning programmes, training courses, workshops and project-based consultancy in the field of international trade. Both Parry and Dunn-Blatch were directors in ITRISA and directors with equal shareholding in TRADSA. TRADSA was the vehicle with which Parry and Dunn-Blatch were to hold their intellectual property rights as co-authors of the educational course materials (literary works) to be used by ITRISA. Pursuant to the registration of these companies, both Parry and Dunn-Blatch assisted in the management of ITRISA and were thus in its employ and received salaries. A portion of their salaries was meant to compensate them for the intellectual property which they owned through TRADSA.

On 31 May 2012, Parry resigned as a director of ITRISA in order to pursue other interests but remained as a director and co-shareholder of TRADSA. On 10 June 2015, Parry and Dunn-Blatch deposed to an affidavit in terms of s 26(12)(a) of the Copyright Act 98 of 1978 (the license agreement) with a view of formalising the relationship between ITRISA and TRADSA in respect of the use of the intellectual property. When concluding this agreement, they acted in their personal capacities and as the sole co-directors of TRADSA. Due to Parry's insistence on TRADSA's entitlement to receive compensation from ITRISA for the utilization of TRADSA's intellectual property, a dispute arose which prompted Parry to approach the Gauteng Division of the High Court, Johannesburg (the high court) for relief which was premised on s 163 of the Companies Act 71 of 2008 (the Companies Act). In her affidavit, Parry asserted that Dunn-Blatch had, in her running of the business affairs of ITRISA, engaged in oppressive or unfairly prejudicial acts that disregarded the interests of TRADSA insofar as TRADSA was being deprived of compensation due to it by ITRISA for the latter's use of TRADSA's intellectual property. In opposition of Parry's application, Dunn-Blatch raised several grounds of opposition, the essence of which was that the jurisdictional requirements of s 163 had not been met.

In the high court, Parry was granted relief in terms of ss 163(1)(a), 163(1)(b) of the Companies Act and, in terms of s 163(2)(h), that court varied the terms of the licence agreement. The high court, however, referred the question of the royalty rate that is to be paid by ITRISA to TRADSA, to trial. The respondents were aggrieved by that decision and sought leave to appeal. The full court criticised the high court for having effectively concluded a new licence agreement for the parties by including new terms therein. It held that the licence agreement was an exclusive licence agreement between TRADSA and ITRISA and was evidently royalty free. It held that, insofar as any cause of action might exist, such cause of action would vest in TRADSA and not in Parry. The full court stated that the fact that Dunn-Blatch was a director and shareholder of TRADSA, did not overcome the fact that the proper applicant in the claim in respect of a wrong alleged to be done to TRADSA, was *prima facie* TRADSA itself.

The principal issue before the SCA, tied to whether there are special circumstances that merit a further appeal and whether Parry has any reasonable prospects of success, was whether Parry made out a case, on the facts she presented in her founding affidavit, entitling her to relief in terms of s 163 of the Companies Act.

The SCA, in reaching a conclusion, reasoned that the conclusion of the licence agreement, on both the parties' versions, was triggered by a possible sale of the business of ITRISA to a third party, stating that it was now odd that Parry would, for three years from her resignation in 2012, complain about the non-payment of compensation for intellectual property and yet omit to see to the inclusion of this critical royalties' clause in the licence agreement that she signed without any objection. The SCA continued to point out that it must be accepted that, insofar as Parry chose to sign the licence agreement in its current form, she acquiesced in the non-inclusion of a royalties' clause and that it was telling that in her founding affidavit, she concedes that it can be inferred from the agreement that no consideration is payable to TRADSA for the use of its literary works. In the circumstances, Parry could not contend for the varying of the agreement that she voluntarily signed on the basis that it was oppressive or unfairly prejudicial or unfairly disregards her interests.

Holding that the court's jurisdiction to grant the relief envisaged in s 163 only arises once all specified criteria set out in s 163(1) of the Companies Act have been satisfied, the SCA held that Parry had not established that the impugned conduct falls within that envisaged in s 163(1)(a), (b), or (c) and that the full court correctly upheld the appeal.

In the result, the SCA held that the application for special leave to appeal did not present any exceptional circumstances that warranted the hearing of a further appeal and therefore, had no prospects of success.

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