



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 8 March 2019
STATUS Immediate

Cook v Morrison (1319/2017) [2019] ZASCA 08 (8 March 2019)

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 application for special leave to appeal against a judgment of the full court of the Gauteng Local Division, Johannesburg, of the High Court in which the latter court had dismissed an appeal from a judgment of a court of first instance in the same Division. The court of first instance, in an action where the present applicant was the plaintiff and the present respondents the defendants, had upheld the defendants' special plea of prescription and dismissed the plaintiff's action. The plaintiff's claims were for restitution of money he had paid and shares he had delivered to the first defendant in terms of a contract which, according to the plaintiff, he had lawfully cancelled because of the defendants' repudiation. There were alternative claims for damages or unjustified enrichment.

Before dealing with the merits of the application for special leave, the SCA clarified that where a refusal of special leave to appeal has been referred to

the 'court' for reconsideration in terms of s 17(2)(f) of the Superior Courts Act 10 of 2103, the matter must be dealt with by a court constituted in terms of s 13(1) of the Act, not by the two judges of appeal who initially refused the application for special leave.

In regard to the merits of the application for special leave, the SCA emphasised that, in addition to reasonable prospects of success, an applicant for special leave needs to establish special circumstances justifying a second appeal. On the plaintiff's primary pleaded case, he did not enjoy reasonable prospects of success. Contrary to his contention, the first defendant's alleged obligation to make restitution was a personal obligation constituting a 'debt' within the meaning of the Prescription Act 68 of 1969 and thus susceptible to prescription. Prescription began to run from the date on which the plaintiff allegedly cancelled the contract. On the plaintiff's primary case, he cancelled the contract more than three years before the date on which summons was served. The completion of prescription was not, as the plaintiff sought to argue, delayed by virtue of s 13(1)(d) of the Prescription Act, because the relationship between the parties was not one of partners but of co-shareholders in companies.

The plaintiff had pleaded, in the alternative, that the summons was the act by which he cancelled the contract. If this was the date from which prescription began to run, the alleged debts had not prescribed. Since the special plea was argued on the assumption that the plaintiff's pleaded allegations were correct, the SCA considered that the courts below had probably been justified in confining their attention to the plaintiff's primary case, since he had not abandoned it. At best the plaintiff's prospects of success in showing that the court below had erred by not having regard to the alternative case were modest. The plaintiff's application for special leave did not allege that he had not in fact cancelled the contract on the earlier date and put up facts to suggest that the alternative case was a real and plausible one as opposed to a mere theoretical possibility. There were thus no special circumstances justifying the grant of special leave.

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