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

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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Van Heerden & Brummer Inc v Bath (356/2020) [2021] ZASCA 80 (11 June 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal with costs against a Gauteng Division of the High Court, Pretoria (the high court).

The issue before the SCA was whether the high court correctly found that the respondent's claim against the appellant had not become prescribed when the summons was served on 2 February 2017.

On 3 September 2012 and during the hearing of the divorce proceedings between the respondent and his ex-wife, Louw J found the antenuptial contract entered into between the parties to be void due to vagueness. The respondent's ex-wife had impugned the validity of the antenuptial contract on the grounds that it was void due to vagueness. Consequently, the parties' marriage was declared to be in community of property. The respondent appealed against this finding to the SCA but the SCA dismissed the appeal on 24 February 2014. Thereafter respondent instituted an action in the high court against the appellant for damages based on breach of mandate and professional negligence arising out of drafting an invalid antenuptial contract.

In defending the claim, the appellant raised a special plea of prescription contending that the respondent had been advised as long ago as August 2012 that if his ex-wife was successful in impugning the validity of the antenuptial contract, he would have a claim for damages against the appellant. This advice to the respondent was thereafter repeated on no less than three subsequent occasions. All of this was not in dispute. The special plea served before Van der Schyff J. The appellant argued that the respondent had acquired the necessary facts from which the debt arose as required by s 12(3) of the Prescription Act 68 of 1969 (the Act) at the earliest, on 6 August 2012, when the respondent's ex-wife impugned the validity of the antenuptial contract during the divorce proceedings. Furthermore, the appellant relied on several other dates subsequent to 6 August 2012 on which consultations were held with the respondent. During these consultations, the appellant contended, the judgment of Louw J, who to sue and the running of prescription of the respondent's claim, were discussed with the respondent. The last date relied upon by the appellant was 26 September 2012, when an email confirming the various discussions was sent to the respondent. Thus, the crux of the appellant's case is that, on each of the respective dates relied upon and in particular 26 September 2012 at the latest, prescription began to run against the respondent's claim.

The respondent on the other hand argued that the last set of facts necessary to institute his claim was the confirmation of the judgment of Louw J by the SCA, therefore, prescription began to run from 24 February 2014 (i.e. the date of the SCA judgment) and thus his claim had not become prescribed. The respondent's contention was upheld by Van der Schyff, who dismissed the special plea with costs.

In upholding the appeal, the SCA re-affirmed the principles restated in *McMillan v Bate Chubb* and found that each of the respective dates relied upon by the appellant were dispositive of the appeal. Further, that, at the latest, the respondent was on 26 September 2012, already in possession of the facts necessary to institute a claim against the appellant as provided for in s 12(3) of the Act. Therefore, the respondent's claim had already prescribed when summons was served on the appellant on 2 February 2017.

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