



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: 27 March 2025

Status: Immediate

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Doorware CC v Mercury Fittings CC (Case no 836/2023) [2025] ZASCA 25 (27 March 2025)

Today, the Supreme Court of Appeal (SCA) struck from the roll with costs an application for leave to appeal referred to it for reconsideration in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013.

The applicant, Doorware CC (Doorware), appealed a decision of the Gauteng Division of the High Court, Johannesburg (the high court), which made an order referring a dispute relating to the existence of an agreement between the parties to oral evidence. The high court also granted an interim interdict in favour of the respondent, Mercury Fittings CC (Mercury Fittings), in terms of which Doorware was interdicted from conducting business, opening offices and selling Quicksilver (QS) products in certain restricted areas. Mr Andrew Osborne-Young (Mr Osborne-Young) was the sole member of Mercury Fittings and Mr Martin Humphry (Mr Humphry) owned Doorware. During 2002, the parties decided to join forces to import, sell and distribute stainless-steel ironmongery and door controls called QS. They agreed that they would conduct their businesses independently from each other, and that they would not compete in certain geographical areas. To this end, they designated areas of operation for each of them.

Mr Osborne-Young passed away on 7 July 2021. Thereafter, his wife took over control of the business and appointed a CEO to assist in the running of Mercury Fittings. On 24 August 2021,

Mr. Humphry sent a proposed Memorandum of Understanding to Mercury Fittings, intending to outline a future relationship and merger of the QS brand, but it was never signed. In August 2022, Rebecca Humphry, CEO of Doorware, changed Mercury Fittings' account details with Massmart. In January 2023, Doorware opened an office in Cape Town, violating an oral agreement with Mercury Fittings, leading them to file an urgent application for an interdict. In opposing the application, Doorware denied the existence of an agreement, claiming it was merely a 'gentlemen's agreement' that ended with Mr. Osborne-Young's death. Doorware argued that there were factual disputes that could not be resolved on paper. The high court found factual disputes about the agreement's existence and referred the matter, including whether it is binding on heirs, to oral evidence, issuing the aforesaid interim order.

In the SCA, the first inquiry was thus whether there were exceptional circumstances that justified reconsideration of the decision refusing Doorware leave to appeal the interim interdict. The grounds for reconsideration were that the application raised a legal argument that had not been canvassed in the high court; and that it was in the interests of justice that leave to appeal be granted. Doorware's counsel submitted that the interim interdict was wrongly issued because it was contrary to Chapter 2 of the Competition Act 89 of 1998 (the Act), which is a function exclusively within the jurisdiction of the Competition Tribunal as contemplated in s 27(1)(c) of that Act. It was further submitted that the oral agreement entered into between the parties constituted a prohibited restrictive horizontal practice in terms of s 4(1)(b) of the Act.

The SCA found that the grounds raised by Doorware did not constitute exceptional circumstances. That s 65(2) requires a party who alleges that a conduct is prohibited in terms of the Act, to raise that issue and Doorware had failed to do so in the high court and had provided no explanation for its failure. The SCA highlighted that had Mercury Fittings been given notice, it could have dealt with the s 4(1) defence, further stating that litigation by ambush was not permissible. The SCA concluded that the parties were not in a horizontal relationship, which is defined as a relationship between competitors. It defined theirs as an agreement to offer the same goods at the same prices in different geographical areas of the country for reasons of practicality, convenience and efficiency. In striking the application off the roll, the SCA reasoned that it was not in the interests of justice that leave to appeal against the interim order be granted.