



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: 4 July 2025

Status: Immediate

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Van den Berg Water (Pty) Ltd t/a Oasis Water Lynnwood and Others v Oasis Water (Pty) Ltd and Another (Case no 989/2023); Van Schalkwyk Water CC t/a Oasis Water Kimberley and Another v Oasis Water (Pty) Ltd (Case no 988/2023); Oasis Water (Pty) Ltd and Another v Wynand Albertus Bester and Another (Case no 1120/2023) [2025] ZASCA 98 (4 July 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment in three consolidated appeals concerning the enforceability of post-termination provisions in standardised franchise agreements concluded between Oasis Water (Pty) Ltd (Oasis) and its former franchisees. This appeal is against the orders granted by the Gauteng Division of the High Court, Pretoria (case no 989/2023), the Northern Cape Division of the High Court, Kimberley (case no 988/2023) and North-West Division of the High Court, Mahikeng (case no 1120/2023).

Oasis supplies and produces bottled, filtered and purified water through a process of reverse osmosis and ozone treatment. It asserted that this process involves a confidential and secret combination of selected filters combined with ozone treatment of the water, which results in clear water that is refreshing and free from chlorine and odours. In 2018 and 2019 respectively, Oasis concluded written franchise agreements with the first appellants, Van den Berg Water (Pty) Ltd t/a Oasis Water Lynnwood (Van den Berg Water) and Van Schalkwyk Water CC t/a Oasis Water Kimberley (Van Schalkwyk Water), to operate retail outlets which sell and distribute water and related products under the name of Oasis or Oasis Water. In 2018 Oasis also concluded franchise agreements with Mr Wynand Albertus Bester and Mrs Janet Bester (the Besters), also former franchisees (the respondents in case no 1120/2023). Van den Berg Water, Van Schalkwyk Water and the Besters are collectively referred to as 'the franchisees'.

Each franchise agreement incorporated Clause 20.3, which required that upon termination of the agreement for any reason, the franchisee must, inter alia, return all printed materials, signage and the water purification system and equipment, and cease using Oasis' business system and intellectual property. In February 2023, the franchisees' attorneys, acting for a cohort of approximately 54 franchisees sent a letter alleging repudiation and material breach by Oasis, which the franchisees had accepted (the cancellation letter). Oasis denied those

allegations and contended that the cancellation letter was itself a repudiation of the franchise agreement. Therefore, both sides regarded their agreement as terminated. The franchisees started a new business under the name of 'Manzi Water' but continued to trade from the same premises, serving the same customers. Oasis contended that they merely rebranded their stores from Oasis Water to Manzi Water; and that they retained Oasis printed materials, signage, equipment, know-how and confidential information.

In March 2023 Oasis launched urgent applications in the Pretoria, Kimberley and Mahikeng High Courts for interim interdicts enforcing Clause 20.3; the restraint of trade provisions of the franchise agreement; and to restrain the franchisees from competing with Oasis and passing off their products as being those of Oasis, pending a final order for essentially the same relief. The franchisees opposed the applications on the ground, inter alia, that they had lawfully terminated their franchise agreements; that Oasis failed to comply with the Consumer Protection Act 68 of 2008 (CPA) and the regulations made under it; that the applications were launched against the franchisees because they were the instigators of some 54 franchisees (representing 25% of Oasis water outlets) who had also terminated their franchise agreements; that the franchisees do not have any trade secrets, confidential information or other intellectual property of commercial value; and that the sale of purified water by the franchisees under the Manzi brand, does not constitute unlawful competition.

The Pretoria and Kimberley High Courts granted most of the interim interdicts sought by Oasis. The Mahikeng High Court granted an order directing the Besters to return printed materials and signage, and to change the appearance of their premises to prevent it from being mistaken as an 'Oasis' franchised business. It dismissed the application for the remaining relief.

In the SCA Oasis conceded that the order enforcing the restraint of trade provisions and certain interdicts, such as handing over control of the franchised businesses, which no longer exist, would have no practical effect. The remaining issues included Oasis' entitlement to the orders directing the franchisees to return materials belonging to Oasis; to return and remove Oasis signage; to return the water purification system; to cease using Oasis' business system and intellectual property; and to refrain from competing unlawfully with Oasis, and passing off their products and services as being those of Oasis.

The SCA held that Oasis was entitled to these orders, save for those relating to the return of the purification system, unlawful competition and passing off. The Court found that Clause 20.3 imposed on franchisees the obligation, upon termination, to return Oasis branded manuals and signage and to cease using the business system and intellectual property of Oasis. Further, on the franchisees' own version they had obtained know-how and confidential information of Oasis, as a result of the franchise. They failed to comply with their undertaking to remove Oasis trademarks and signage and refrain from using its know-how and confidential information. The SCA set aside the interdict to compel the return of the purification system, because this was property acquired by the franchisees in terms of the agreement, and Oasis had not tendered payment for it. The Court found that Clause 20.3 of the agreement, which grants Oasis the right to obtain the water purification system and its components free of charge, on termination of the agreement, was a violation of the CPA. Section 48(1) of the CPA provides that a supplier must not conclude an agreement to supply goods or services on terms that are unfair, unreasonable or unjust. The SCA held that the interdict concerning unlawful competition and passing off would have no practical effect, because Oasis accepted that the franchisees had been trading as Manzi Water since February 2023. In addition, Oasis failed to establish passing off – the name, get-up or trademark used by the franchisees was not likely to confuse the public into believing that their goods and services emanate from Oasis – and its water purification system was not unique.

Consequently, the appeal by the franchisees in the Van den Berg, Van Schalkwyk and Bester applications, succeeded in part. The orders that they return printed materials and signage to Oasis, and that they cease using its business system and intellectual property, were confirmed. In the Van den Berg and Van Schalkwyk applications, the franchisees were directed to pay 50% of costs on the contractually agreed scale as between attorney and client. In the Bester application, each party was ordered to pay their own costs. Save as aforesaid, the appeals were dismissed, with no order as to costs. The cross-appeal by Oasis in the Bester application succeeded in part, namely it was granted an order that the franchisee cease using the business system and intellectual property of Oasis. Save as aforesaid, the cross-appeal was dismissed with no order as to costs.

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