THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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SACTWU Investments Group (Pty) Ltd v Sekunjalo Independent Media (Pty) Ltd and Another (915/2024) [2026] ZASCA 39 (26 March 2026)

Today, the Supreme Court of Appeal (SCA) upheld an appeal, with costs, including the costs of three counsel, arising from an application in the Western Cape Division of the High Court, Cape Town (the high court).

This matter arises from an action brought for the recovery of R150 million lent to the first respondent, Sekunjalo Independent Media (Pty) Ltd (SIM), by SACTWU Investments Group (Pty) Ltd (SIG), concluded in 2013 (the loan agreement). The parties agreed that the maturity date of the loan agreement would be 14 August 2020 and that interest was to accrue on the loan amount due quarterly over the seven-year term of the loan. In the event that SIM had insufficient funds to pay any accrued interest, then such interest would be capitalised. SIG is the investment vehicle of the Southern African Clothing and Textile Union (SACTWU).

During 2017, SIG faced challenges from a capital perspective, and its dividend income proved insufficient to make the necessary investments in the clothing industry to preserve clothing businesses and prevent job losses. By 2017, no interest payments had been made by SIM. SIG then decided to exit the loan agreement. SIG held discussions with Dr Iqbal Surve of SIM about the exiting strategy. At that point, SIM was merging its electronic and technology businesses into Sagarmatha Technologies Limited (Sagarmatha), which would list on the Johannesburg Stock Exchange (JSE) and the New York Stock Exchange (NYSE). Dr Surve wrote to SIG on 23 October 2017 and made a formal proposal that the second respondent, Sekunjalo Investment Holdings (Pty) Ltd (SIH), was offering to acquire all the shares and loan claims that SIG has in and against SIM. The equity would be settled by the issue of shares in Sagarmatha before its listing on the JSE. That offer was accepted and led to the conclusion of the sale agreement. In terms of the sale agreement, the parties agreed that SIG's claim of no less than R275 644 627, and its eight ordinary shares in SIM, were sold for an aggregate purchase price of R334 164 627, plus any interest on the loan that accrued up to the effective date. The parties agreed that SIG may not dispose of the shares for a period of three months from the listing (the lock-in period).

On 22 November 2017, SIG's board of directors passed a written resolution authorising the sale agreement. On 1 December 2017, Mr Andre Kriel, one of the directors of SIG, signed the subordination agreement in respect of the loan agreement at Dr Surve's offices. Mr Takudzwa Hove signed the subordination agreement on behalf of SIM some days later. The Sagarmatha listing failed in April 2018, and consequently, SIG's loan was never transferred to Sagarmatha. The sale agreement became

ineffective. SIG subsequently sued for repayment of the loan, and SIM defended the action, primarily relying on the subordination agreement.

Before the high court, SIG disputed the validity of the subordination agreement. It contended that Mr Kriel lacked actual authority to conclude it, and it was found that the subordination agreement was validly concluded, SIG argued that it was unenforceable or voidable based on the doctrine of reasonable mistake or misrepresentation. SIG also relied on material representations that were made by Mr Hove to Mr Kriel, which, according to SIG, were made with the intention of inducing SIG to enter into the subordination agreement. SIM's defence turned entirely on the subordination agreement, namely, that by virtue of its terms, SIG was not entitled to demand or sue for repayment under the loan agreement until such time that SIM's auditors report in writing that its assets exceed its liabilities. SIM further contended that Mr Kriel derived actual authority from the resolution of the board of directors of SIG, passed on 22 November 2017. In the alternative, SIM argued that Mr Kriel had ostensible authority.

Having evaluated the arguments, the high court dismissed the claim with costs. The high court made multiple findings, inter alia, that the subordination agreement, which was to give effect to the transactions contemplated for the Sagarmatha listing, was in principle authorised by the November 2017 resolution; that SIG's claim of lack of authority is impermissibly based on hindsight; and that Mr Kriel, who had read the subordination agreement, could not rely on *iustus error* in avoiding it, since the error was solely his fault.

On appeal to the SCA, this Court considered the primary issue to be whether Mr Kriel had authority derived from the November 2017 resolution to enter into the subordination agreement, which it considered to be dispositive of the matter, therefore making it unnecessary to address issues such as misrepresentation or *iustus error* should it be found that Mr Kriel had neither actual nor ostensible authority. The other issue was whether the interest that was payable in terms of the loan agreement was subject to the *in duplum* rule by virtue of it having been capitalised.

Regarding Mr Kriel's authority, this Court indicated that SIG, as a juristic person, acts through its agents, and it is to the resolution taken by its board of directors that this Court should look for authority, because a director has no inherent authority to bind the company as he or she wishes. Examining the nature of the resolution, this Court stated that the resolution was not an 'open sesame' for any director of SIG to sign any agreement. The directors' authority was limited in that they were to do or cause 'all such things to be done, to sign and file all documents as may be reasonable and necessary, to give effect to and implement each and/or every resolution set out herein', that would give effect to the implementation of the sale agreement. The SCA held that the purpose of the resolution was to enable SIG to exit the loan agreement by authorising its directors to ensure that the sale agreement was given effect to. Of critical importance, this Court pointed out that neither the resolution nor the sale agreement made any reference to a subordination agreement. The subordination agreement was not discussed with or presented to SIG's directors until 1 December 2017, nine days after the resolution was passed. No director of SIG knew of the subordination agreement before it was signed. The SCA found that Mr Kriel lacked the authority to bind SIG to the subordination agreement as absent a written resolution from the board of SIG, authorising the signing of the subordination agreement by Mr Kriel, SIG cannot be bound by it.

In relation to the applicability of the *in duplum* rule, the SCA indicated that, considering the loan agreement, the capital amount was advanced on 12 August 2013 and the repayment date of the loan was 14 August 2020. SIM enjoyed non-payment of interest on the R150 million for seven years. In terms of the agreement interest was capitalised because the debtor failed to meet its obligations by not paying on the interest date. SIM was in arrears with payment of interest. It failed to pay when it was called upon to do so. The SCA further highlighted that the primary objective of the *in duplum* rule is to protect borrowers from the ongoing accumulation of excessive interest, particularly in circumstances where a lender may choose not to recover the interest immediately, thereby allowing interest to continue accruing unchecked. The SCA held that the fact that interest has been capitalised, whether by agreement or by practice, does not change the character of the debt, it remains arrear interest. The SCA found that the high court was correct in its decision that the interest accumulates only to the point of *duplum*. Even though the SCA had made its finding in this regard, at the hearing of the appeal the parties brought to the attention of the Court an agreement reached by them on 2 August 2023, wherein they settled the issue in relation to the interest that was payable in terms of the loan agreement.

As a result, the SCA upheld the appeal, with costs, including the costs of three counsel.

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