



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: 1 December 2021

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 der Merwe v Bonnievale Piggery (Pty) Ltd (749/2020) [2021] ZASCA 162 (1 December 2021)

Today the Supreme Court of Appeal (SCA) dismissed an appeal by the appellant with costs, including the costs of senior counsel.

The appellant, Mr Edwin van der Merwe (the plaintiff), is a former seller of pork products. The respondent, Bonnievale Piggery (Pty) Ltd (the defendant), keeps and rears pigs for slaughter. In 2005 the parties entered into a business relationship which included contracts for the sale of pork products concluded on the basis of periodically agreed prices, an exclusive supply agreement and a sole distributorship agreement. Their business relationship and the interlinked contracts were of indefinite duration, terminable at the instance of either party. In terms of the sales agreement the parties agreed that the plaintiff would sell pork products to the defendant at reasonable, market-related wholesale prices that would follow market fluctuations. Under the supply agreement the plaintiff agreed to supply pork products exclusively to the defendant. In terms of the sole distributorship agreement the defendant would be the sole distributor of the plaintiff's products under his own brand to customers in the Western Cape.

In 2013 the plaintiff instituted action against the defendant for payment of R1 196 868,84, for pork products supplied. The defendant admitted receipt of these products and that he was liable to pay for them, but alleged that he had a counterclaim against the plaintiff for some R12,5 million for breach of contract, alternatively unlawful competition. The Western Cape Division of the High Court, Cape Town (the high court), dismissed the plaintiff's claim and upheld the defendant's counterclaim. The court made an order that the defendant had successfully established liability by the plaintiff and was entitled to claim such damages as may be proved in due course. The plaintiff was granted leave to appeal to a full bench of the high court.

The full court held that the business relationship between the parties had come to an end in July 2012 when they could not agree on a price for pork products, and that the appellant's counterclaim based on breach of contract and unlawful competition could not be sustained on the evidence. The full court set aside the trial court's order and granted judgment against the appellant in favour of the respondent for payment of the sum of R1 196 868,84, together with interest and costs. It dismissed the claim in reconvention with costs. The defendant was granted leave to appeal to the SCA.

The SCA held that plaintiff had proved its claim and that the defendant had not proved his counterclaim based on breach of contract or unlawful competition. It held that the full court was correct in concluding

that the parties' business relationship had come to an end in July 2012 when they could not agree on the price of pork products. The defendant did not prove his counterclaim for breach of contract. In seeking to conclude a new agreement with the plaintiff in September 2012, he had accepted that their business relationship ended in July 2012. The defendant also failed to prove his claim for unlawful competition. He presented no evidence to show that the plaintiff had interfered in the contractual relationships between him and his customers. The appeal was accordingly dismissed.

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