



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: 15 April 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

McMillan v Bate Chubb & Dickson Incorporated (299/2020) [2021] ZASCA 45 (15 April 2021)

The Supreme Court of Appeal (SCA) today dismissed with costs an appeal brought by Mr Bruce Gordon McMillan (Mr McMillan) against Bate Chubb & Dickson Incorporated and upheld the decision of the Eastern Cape Division of the High Court, East London (the high court).

The issue before the SCA was whether, as at the time of service of the summons on 13 October 2017, in respect of an action instituted by Mr McMillan against the respondent, a law firm, for damages for breach of an oral mandate, the appellant's claim had become prescribed.

During or about November 1998, and at East London, the appellant and the respondent entered into an oral agreement in terms of which the appellant gave the respondent an oral mandate to prepare an antenuptial contract for the purposes of regulating the financial affairs of the intended marriage between the appellant and one Rosemary Lois Jannaway, the appellant's former wife. On 13 October 2017, the appellant instituted action in the high court against the respondent for damages for breach of the oral mandate. The appellant alleged that the respondent failed to prepare the antenuptial contract in accordance with their instructions. He averred that the respondent in fact drew up an antenuptial contract, which was, in a later divorce action, declared to be void ab initio. The respondent alleged that prescription started running on 9 or 12 May 2014, when the respondent advised the appellant to consult a different attorney, as he had a potential claim against the respondent, and not on 18 October 2016, when the divorce court declared that the antenuptial contract was invalid, as contended by the appellant. The respondent claimed that the three-year prescription period ended on 12 May 2017. On that premise, by the time the summons was served on the respondent, his claim had prescribed.

The SCA held that the appellant's claim had become prescribed. This conclusion was based on the finding that he acquired knowledge of all the material facts on which to institute his claim against the respondent on 9 or 12 May 2014. Consequently, prescription began to run on 9 or 12 May 2014 when the appellant was informed that there was a problem with the antenuptial contract, which arose from the perceived conflict between the provisions of clause 4 and clause 5. The SCA held further that it may have been that the appellant had not appreciated the legal consequences flowing from the facts, but his failure to do so did not

delay the date prescription commenced to run. Similarly, the respondent's failure to concede liability did not delay the date prescription began to run. The SCA found that, in the light of the conclusion on the prescription point, which was dispositive of the appeal, it was unnecessary to consider further issues raised in the separation order.

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