



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: Friday 1 June 2007
Status: Immediate

The Supreme Court of Appeal delivered judgment on 1 June 2007 in the matter of *M Constantaras v BCE Foodservice Equipment (Pty) Ltd* (208/06).

The appeal involved s 23 of the Close Corporations Act which requires a corporation to include on its cheques (and certain other categories of documents) details of its correct name, description and registration number. It imposes personal liability on the signatory of a cheque on behalf of a corporation which does not contain such details, if the corporation does not pay the amount of the cheque to the holder.

The appellant signed such a cheque. The respondent sued him relying on the statutorily-created liability. The appellant pleaded that he and the respondent were both aware that he was signing on behalf of the corporation and that both intended that the cheque should reflect the name of the corporation and the prescribed details but had mistakenly overlooked their absence at the time of signing and receiving the cheque. The appellant claimed rectification of the cheque to reflect the correct details. The respondent successfully excepted to the plea as disclosing no defence to the claim.

On appeal the SCA held that the claim was brought under the statute the terms of s 23 are peremptory and require strict compliance by the corporation and its signatories; such liability arises independently of the knowledge of the holder of the cheque and is unaffected by such knowledge. Rectification is relevant to an action on the cheque or in contract but does not provides a defence to a claim under the statute. The appeal was accordingly dismissed.

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