



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

**S A BREWERIES LTD AND SHOPRITE HOLDINGS LTD CASE**  
**NO 476/06**

***From: The Registrar, Supreme Court of Appeal***  
***Date: 14 September 2007***  
***Status: Immediate***

***Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal***

The Supreme Court of Appeal today upheld an appeal by S A Breweries Ltd against a judgment of the Cape High Court which had ruled that the determination by an expert of certain accounting disputes between SAB and Shoprite Holdings Ltd was invalid for lack of certainty.

The appeal was a sequel to an agreement between SAB and Shoprite concluded as long ago as 31 October 1997 in terms of which SAB sold its total interest in OK Bazaars (1929) Ltd to Shoprite for the sum of R1. The agreement made provision for the

preparation of closing date accounts in respect of OK Bazaars as at 31 October 1997 and recorded that the balance sheet forming part of the closing date accounts would reflect that the ordinary shareholders' funds of OK together with SAB's claims against OK which were ceded to Shoprite would amount to R540 000 000. The agreement provided that in the event of the ordinary shareholders' funds and the ceded claims being less than this amount SAB would be obliged to fund the shortfall by way of a cash loan which would form part of the claims being acquired by Shoprite.

During the preparation of the closing date accounts disagreements as to a range of adjustments and provisions arose between the parties and these were referred for determination to Mr Edwin Oblowitz, a senior partner of Arthur Anderson who were then the auditors of Pick 'n Pay. In terms of the agreement Oblowitz was to determine the disputes as an expert and not as an arbitrator and his decision was to be final and binding.

The determination proved to be a disappointment for Shoprite. It had claimed adjustments and provisions to the value of R280 000 000 but those accepted were limited to R57 000 000 together with a contingent liability of R13 000 000.

Shoprite instituted proceedings in the Cape High Court contending that the expert had breached his mandate by failing properly to determine certain of the disputes between the parties. These related to the calculation of the amount payable by SAB in respect of unreconciled trade creditors and to an adjustment of the general ledger in respect of fixed assets.

As to the issue of trade creditors, the SCA held that the expert had provided answers to the specific questions put to him and that Shoprite had failed to make use of a provision in the agreement which entitled it to put follow-up questions to the expert. It was held that in these circumstances Shoprite could not be heard to complain that the expert had failed to fulfil his mandate or that his determination lacked certainty. As to the issue of fixed assets, the SCA held that the expert's determination was directed at persons with expertise in accountancy and that although the result was not what Shoprite would have wanted, the determination would have been clear to such persons, who would have known what was required of them in order to make the necessary adjustments to the closing date accounts.

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