



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Surmon Fishing (Pty) Ltd v Compass Trawling (Pty)
(162/2008) [2008] ZASCA 142 (27 November 2008)

Media Statement

Today the Supreme Court of Appeal (SCA) dismissed an appeal by Surmon Fishing (Pty) Ltd (the first appellant), one of its directors – Sam Montsi (the second appellant) and Foodcorp (Pty) Ltd (the third appellant). The appeal had its genesis in the grant by the Minister of Environmental Affairs and Tourism, in terms of the Marine Living Resources Act 18 of 1998, of long term fishing rights, which authorised the catching of hake by deep sea trawling for commercial purposes. Given the capital intensive nature of deep sea trawling as well as the fact that significant numbers of permit holders had been granted rights to relatively small tonnages of fish, the Directorate of Marine and Coastal Management of the Department of Environment and Tourism actively encouraged holders of rights in the fishing industry to pool their resources to foster economic viability.

To that end, during 1999, various holders of hake rights concluded a joint venture agreement. To facilitate exploitation of their pooled resources, one of

the participants in the joint venture, Blue Continent Products (Pty) Ltd (the sixth respondent), purchased a vessel which it then sold to Compass Trawling (Pty) Ltd (the first respondent), a company in which the participants in the joint venture held shares. Initially, Compass Trawling and the Joint Venture operated as separate entities. During April 2003, however, a written agreement of assignment was concluded, in terms of which the rights and obligations of the Joint Venture was transferred to Compass Trawling with the consent of the participants of the Joint Venture.

During August 2007, a written offer was made by Foodcorp to Surmon to purchase its hake rights. In terms of the agreement, Surmon was obliged to and did in fact furnish Compass Trawling with details of the offer, which the latter became entitled to purchase on the same terms and conditions as reflected in the Foodcorp offer. A duly constituted meeting of the directors of Compass Trawling resolved to purchase Surmon's hake rights at the same price and on the same terms and conditions as contained in the Foodcorp offer.

The appellants launched an application in the Cape High Court contending that Compass Trawling's decision to purchase Surmon's hake rights lacked validity, inasmuch as the requirements of clause 7.10 of the General Terms and Conditions of the joint venture agreement had not been satisfied. Clause 7.10 provided that in relation to all financial matters, decisions of the management board and the executive committee of the Joint Venture required the support of more than 66.6% of those present and voting, for validity.

Two issues thus arose for determination in the court below: first, whether or not clause 7.10 was indeed applicable and, second, whether the requisite majority of more than 66.6% had been attained. The High Court assumed without deciding that the clause did indeed apply. According to it, on its ordinary grammatical meaning and as a mathematical fact, 66.66% recurring - being the number that had voted in favour of the resolution - was more than 66.6%. The SCA reasoned that while the High Court may well be correct linguistically, in ordinary parlance it would be most unusual to say that 66.6%

means something other than two-thirds. The SCA thus concluded that the narrow confines of a linguistic interpretation were clearly inapposite in this instance. On the main issue the SCA held that in terms of the assignment it was the rights and obligations of the Joint Venture – not its management – that came to be assigned to Compass Trawling. Clause 7.10, according to the SCA, appertained to the internal management of the Joint Venture. It followed that that voting regime could not simply be imposed upon the board of directors of Compass Trawling, a separate and distinct juristic entity. It followed that the appeal had to fail and it was dismissed with costs.

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