THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

28 September 2011

STATUS: Immediate

PHODICLINICS (PTY) LTD V PINEHAVEN PRIVATE HOSPITAL (PTY) LTD (594/2010) [2011] ZASCA 163 (28 SEPTEMBER 2011)

Please note that the media summary is intended 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 (the SCA) today upheld an appeal with costs from the South Gauteng High Court, Johannesburg.

The appellant, Phodiclinics, and the respondents, Pinehaven Private Hospital, Community Hospital Group and Community Investment Holdings, had applied to the Head of Department (HoD) of the Gauteng Health Department for the establishment of a private hospital. The application of the respondents was approved but that of the appellant was rejected. The MEC for Health set aside the decision of the HoD and requested a reconsideration of both applications.

The high court reviewed and set aside the decision of the MEC. The issue before the SCA was the proper construction of regulations 7 and 55 of the Regulations Governing Private Hospitals and Unattached Operating Theatres.

The high court held on the first ground of review that it was incompetent for the appellant to appeal against the decision approving the respondents' application as the application of the appellant and respondents were separate. The SCA stated that the narrow construction placed by the high court to the provisions in regulation 55 is not supportable. The SCA held that the interpretation of the high court was not consistent with the right to a fair hearing. On review of the evidence, the SCA held that the HoD gave one composite decision on both applications of the appellant and respondents and the appellant was entitled to appeal against the decision.

The high court also held on the second ground of review of the appellant that necessity is the sole criterion for determining whether approval should be granted under regulation 7 and necessity is determined by reference to a particular site or premises. The SCA held that the high court was correct in identifying necessity as the sole criterion for determining the application but erred in concluding that necessity is determined by reference to a particular site.

The high court held on the third ground of review that approval can only be granted in respect of an application that identifies a particular site. The SCA set aside this decision and held that the acquisition of a site only arose in the registration process and the interpretation favoured by the high court did not make any commercial sense since a site can only be specified after it is bought and it would make no sense to buy a site when there may not be an approval.

The high court held on the last ground for review that the appeal by the appellant had not been lodged in accordance with regulation 56. The SCA held that there is nothing in the regulations that indicates an appeal must be lodged with the affected party and the duty to ensure the respondents was afforded a fair hearing rested on the MEC.

The SCA held that since the respondents had not succeeded on any of the grounds of review, the order of substitution granted by the high court which reinstated the initial approval of the application of the respondents was only to be granted in exceptional cases which had not been shown in this case and had to be set aside.