



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 20 September 2012

Status: Immediate

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

Neutral citation: *Foize Africa v Foize Beheer BV* (752/2011) [2012] ZASCA 123 (20 September 2012)

The appellant instituted proceedings in the North Gauteng High Court, seeking an interim interdict against the respondents to afford it relief pending a final decision on an action it intended to bring against the respondents. The respondents are either Dutch companies or Dutch businessmen, and the appellant's action against them flowed from the terms of a written licensing agreement concluded in Johannesburg.

The written agreement contained a foreign jurisdiction and arbitration clause, and the high court dismissed the appellant's application for interim relief on the basis that those clauses ousted the jurisdiction of a South African court to adjudicate on the appellant's proposed action.

The Supreme Court of Appeal today set aside the high court's order. It held that only the first and third appellants could rely on the foreign jurisdiction and arbitration clauses, and that the high court had erred in not recognising that to be so: but that even in their cases the court had a discretion not to enforce those provisions. However on the papers as they stood, it had

been premature to decide whether or not to exercise such discretion, and that issue should stand over for decision by the trial court.

In addition the court held that there was no reason why an interim interdict could not be granted and enforced in this country, despite the respondents being *peregrini*. The court therefore set aside the high court's order and granted an interim interdict.

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