



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 1 June 2015
STATUS Immediate

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

***Boost Sports Africa (Pty) Ltd v The South Africa Breweries (Pty) Ltd (20156/2014)
[2015] ZASCA 93 (1 June 2015)***

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) dismissed an appeal by Boost Sports Africa (Pty) Ltd (the plaintiff) and upheld an order of the Gauteng Division of the High Court, Pretoria, in terms of which the plaintiff was required to furnish security for the legal costs of the South African Breweries (Pty) Ltd (the defendant) in respect of an action instituted by the plaintiff against the defendant for breach of contract.

The issue before the SCA was whether an *incola* company can be compelled to furnish security for costs in light of the fact that the new Companies Act 71 of 2008 did not contain a similar provision to s 13 of the previous Companies Act 61 of 1973 that expressly catered for that.

The facts of the case are as follows. The plaintiff instituted an action in October 2011 against the defendant for breach of contract, alleging that the defendant had breached a confidentiality agreement and had used certain intellectual property belonging to the plaintiff when conducting an advertising event called 'be the coach' under its Carling Black Label trademark. The defendant opposed the action, and upon investigating the plaintiff discovered that it owned no immovable property, owned no significant tangible assets, and was not actively trading. Flowing from this, the defendant became concerned that the plaintiff would be unable to meet an adverse costs order should the action be dismissed. Accordingly, the defendant instituted an application in the court a quo, for an order that the plaintiff provide security for costs, which application was granted.

On appeal, the SCA held that although there was no corresponding provision to s 13 in the new Companies Act a court did have the inherent power to regulate its own proceedings and that an *incola* company, like an *incola* natural person, could accordingly be compelled to furnish security for costs, but only if the court was satisfied that the contemplated main action (or application) is vexatious or reckless or otherwise amounts to an abuse.

On the facts, the SCA found that the litigation was being funded by the shareholders of the plaintiff in a manner that suggested that they were trying to hide behind the corporate veil of the plaintiff. They were acting a manner where they would benefit fully if the litigation was successful, while attracting no risk in the event of the action being unsuccessful action . Accordingly, the SCA upheld the court a quo's order that the plaintiff furnish security for costs.

-- ends ---