



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 3 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.

***UTi South Africa (Pty) Ltd v Triple Option Trading (20157/2014) [2015] ZASCA 101
(3 June 2015)***

MEDIA STATEMENT

Today, the Supreme Court of Appeal (SCA) delivered a judgment upholding an appeal by UTi South Africa (Pty) Ltd (the appellant) and dismissing a cross-appeal by Triple Option Trading 29 CC (the respondent) against the judgment of the Gauteng Division of the High Court, Johannesburg. Consequently, both a special plea of prescription and a special plea of jurisdiction, which had been raised by the respondent, were dismissed.

The issues before the court were (i) whether the appellant's amendment to its particulars of claim had introduced a new cause of action, which had prescribed by the time that the amendment was effected; and (ii) whether the magistrate's court had jurisdiction to hear the matter in light of an ouster clause in one of the contracts alleged to be relevant to the dispute.

The facts of the matter were as follows. The appellant sued the respondent in the Germiston Magistrate's Court for the outstanding balance in respect of certain services rendered during the period January 2005 to May 2006. Annexed to the appellant's initial pleadings were invoices reflecting such services, as well as a number of other documents and agreements. Some of the averments in the particulars of claim were confusing and when further particulars were requested and supplied, it was revealed that certain of the annexed agreements had not been concluded between the respondent and the appellant, but instead were between the respondent and a third party, Pyramid Freight (Pty) Ltd (Pyramid Freight). Expanding on this, the appellant's further particulars also included additional averments relating to how it had acquired the business of Pyramid Freight in August 2004 and had taken cession of all of Pyramid Freight's contractual rights.

Following this, the appellant amended its particulars of claim in July 2009 to reflect that its cause of action arose from the cession from Pyramid Freight, rather than from an agreement between the respondent and itself directly. In response, the respondent raised two special pleas. The first special plea was that the appellant's claim had prescribed, as the amendment introduced a new cause of action and was only effected in July 2009, while the services rendered by Pyramid Freight had been concluded in May 2006 (ie more than three years before). The second special plea was that the standard terms and conditions of Pyramid Freight included a clause which provided that only a high court would have jurisdiction to hear matters relating to that agreement, and thus the magistrate's court had no jurisdiction to decide upon the appellant's claim.

The magistrate's court upheld both special pleas, while the court a quo dismissed the special plea of jurisdiction, and only upheld the special plea of prescription.

On appeal to the SCA, it was found that the appellant's amendment of its particulars of claim was in error. The cession of rights from Pyramid Freight only related to contracts concluded prior to August 2004, while the debts of the respondent arose only from January 2005 onwards. The initial particulars of claim and the invoices annexed thereto, properly construed, correctly reflected the true cause of action – services rendered by the appellant at the direct request of the respondent. The amendment did not introduce a new cause of action; it merely replaced irrelevant and confused averments with more irrelevant averments. Accordingly, prescription was interrupted by service of the summons and initial particulars of claim, and the SCA upheld the appeal and dismissed the special plea of prescription.

With regards to the special plea of jurisdiction, the SCA found that the standard terms and conditions of Pyramid Freight were once again irrelevant to the matter, as the cause of action did not arise from that agreement. Accordingly, there simply was no applicable ouster clause, and so the SCA confirmed that the special plea of jurisdiction had been correctly dismissed by the court a quo.

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