



## 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** 3 September 2015

**STATUS** Immediate

***Novartis v Maphil [2015] ZASCA 111***

***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 today upheld a judgment of the Gauteng Local Division which held that the parties had concluded a partly written and partly oral agreement to market the name and logo of the Sandoz Specialty Division of Novartis South Africa (Pty) Ltd, the appellant, a company that manufactured and supplied medicines, on medical devices supplied to hospitals by Maphil Trading (Pty) Ltd, previously Hiline Medical (Pty) Ltd. The agreement had been reached after regulations were passed pursuant to amendments to the Medicines and Related Substances Act 101 of 1965, in 2004, as a result of which Novartis needed to find new marketing strategies

Representatives of the division had approached Hiline and proposed that they place the Sandoz name and logo on the outer packaging of devices used by health professionals in hospitals. Hiline was interested in the marketing arrangement for a fee, but wanted a commitment from Novartis before reducing prices in a tender it was about to make to a hospital. The representatives signed a written document, termed a 'marketing agreement',

offering a fee of some R3.5 million per year, which they presented to Hiline in October 2004. The marketing activities to be undertaken by Hiline were to be finalized by 30 November 2004.

In November 2004 the representatives met in Cape Town, and agreed orally upon the marketing activities. That agreement was confirmed in a series of emails exchanged on 30 November 2004. The local division held that there was a binding contract between the parties, and that when Novartis, in March 2005, refused to pay what was claimed, alleging that there was no binding contract, it repudiated the contract, entitling Hiline to claim damages.

On appeal, Novartis argued that the terms of the written document precluded a later oral agreement, and that an interpretation of that document itself required the court to conclude that no contract had been concluded. It argued also that the representatives of the division had no authority to conclude a contract on behalf of Novartis. The SCA rejected both arguments, holding that the question before it was whether a contract had been concluded at all, and that the principles of interpretation advanced by Novartis were incorrect. The SCA held that the contract had indeed been entered into. It also found that the representatives had actual authority to conclude the contract, and dismissed the appeal.