



## 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** 24 March 2016  
**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.*

#### ***Fisher v Natal Rubber Compounders (Pty) Ltd (20640/14) [2016] ZASCA 33 (24 March 2016)***

The Supreme Court of Appeal (SCA) today handed down judgment relating to whether consequent to the cession of a claim after the close of pleadings, the amendment of pleadings and substitution of parties amounts to the institution of fresh proceedings having the effect of lapsing the interruption of prescription under ss 15(2) and (6) of the Prescription Act 68 of 1969 (the Act) where such interruption was effected through the service of the original summons.

On 10 November 2010 George Beaton trading as Meranti and Board (Meranti) sued Mr Bernard Fisher (Fisher) in the court a quo for the sum of R1 077 377 in respect of goods sold and delivered to a company (Strongwood Manufacturing (Pty) Ltd (now in liquidation)) for which Fisher had stood surety. The summons was served on Fisher on 18 November 2010 and he filed his plea on 7 January 2011 and pleadings were subsequently closed.

On 22 October 2013, Meranti ceded all of its rights in relation to its claim in the case to the Natal Rubber Company's (NRC). The cession was subject to the condition, which was fulfilled, that NRC would apply for its substitution in the stead of Meranti as the plaintiff and that it would thereafter prosecute the case until its final determination.

On 9 December 2013 Meranti, had in accordance to the cession condition, served a notice to amend the summons and particulars of claim by substituting NRC as the plaintiff. Fisher did not oppose the amendment, which was thus effected. Nonetheless, on 22 January 2014, when he amended his plea in response to the amended particulars of claim, Fisher raised a special plea contending that upon cession to NRC after its substitution as the plaintiff, Meranti's interruption of prescription against him had lapsed and that the claim had been extinguished by prescription in terms of ss 15(2) and (6) of the Act.

On appeal, it was argued on behalf of Fisher that the effect of the cession was to substitute NRC for Meranti as creditor and that when the order for substitution was made Meranti ceased to pursue the claim and NRC pursued it in its own name and in its own right. Effectively this was a fresh action commenced by the notice of amendment. As Meranti did not prosecute its claim to final judgment the interruption of prescription effected by the service of summons fell away. By the time NRC was

substituted for Meranti more than three years had elapsed since the claim arose. Accordingly the claim had prescribed.

The counter-argument on behalf of NRC was that prescription was properly interrupted in terms of s 15(2) of the Act by service of the original summons by Meranti. The substitution of NRC for Meranti was purely procedural and after substitution NRC continued to pursue the same claim under the same process. Its substitution did not involve the commencement of a fresh action but the continuation of existing in respect of the same debt proceedings, and accordingly that prescription was interrupted by service of the summons and the claim had not prescribed.

The SCA held that that subject to the need for the cessionary to be substituted as plaintiff, a right of action may be ceded after the close of pleadings and that where the cession of a claim takes place thereafter, the cessionary cedes his or her interest not in the claim but in the result of the litigation.

The SCA held that cession alone does not transfer the right to prosecute the action to the cessionary, instead that right only accrues to the cessionary when it is substituted for the cedent as plaintiff. The subject matter of pending litigation can be ceded freely and fully until the close of pleadings. Such a right may be ceded subject to the single limitation that the cessionary is not entitled subsequently to pursue concurrent litigation in its own name. The court held that the cession would not divest the cedent of its locus standi nor vest the cessionary with it unless the court on application permits the substitution of the parties. And such an application will not succeed if the substitution will prejudice the debtor. On substitution, the cessionary could pursue the action in its own name.

The SCA further held that it followed in the case that since the underlying debt had not been altered, that the cessionary was entitled to proceed with the claim. NRC as the cessionary had stepped into the shoes of the cedent (Meranti) and the right of the cedent to pursue the claim had fallen away. What was bestowed on NRC by the cession was a claim in respect of which the running of prescription had been interrupted by the service of the original summons. The SCA found that the original interruption of prescription by the timeous service of the summons had not been affected in any way by the cession or subsequent amendment as the amendment was a mere procedural step followed to effect the substitution of the plaintiff.

The SCA accordingly dismissed the appeal with costs including the costs of two counsel.

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