



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 22 September 2017
STATUS Immediate

***Yarona Healthcare Network (Pty) Ltd v Medshield Medical Scheme
(1108/2016) [2017] ZASCA 116***

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 (SCA) today dismissed an appeal against a judgment of the Gauteng Division of the High Court, Pretoria, in which that court had granted judgment in favour of Medshield for payment by Yarona Healthcare Network (Yarona) of R6 110 237 plus costs.

Medshield's claim was based on unjustified enrichment, more specifically the *condictio indebiti*. Medshield alleged that over the period August 2007 to July 2009 it had made payments to Yarona totalling R6 110 237 in the genuine and reasonable but mistaken belief that they were owing whereas they were not. It was common cause that there had been discussions about a contract between Medshield and Yarona for the provision of services by the latter to the former but that no contract was ever concluded.

The first issue before the SCA was whether Medshield's mistakes in making the payments were excusable, which is ordinarily a requirement of the *condictio indebiti*. The SCA held that in all but one instance Medshield's mistakes had been inexcusably slack. Medshield argued in the alternative that the requirement of excusability should be relaxed in the case of medical schemes. The SCA upheld this argument. Excusability is a policy-based element of the *condictio indebiti*. In the case of medical schemes, which are closely regulated by statute and whose members are usually a vulnerable class, the scheme and thus its members should not be prejudiced by the slack conduct of the representatives whose fiduciary duty it is to administer the scheme in the members' best interests.

The second issue was whether Medshield had established that it was impoverished to the extent of R6 110 237. Yarona argued that Medshield had benefited from services provided by Yarona, that such benefits reduced Medshield's impoverishment, and that Medshield's claim should fail because it had failed to prove the value of the benefits and thus the extent of its impoverishment. The SCA rejected this argument, finding that when each mistaken payment was made Medshield was impoverished by the amount in question. If Yarona considered that Medshield was enriched by services supplied by Yarona, it was for Yarona to allege and prove the value of such benefit, which it could have done by instituting its own *condictio indebiti* by way of counterclaim.

The final issue was whether Medshield's claim in respect of the mistaken payments made prior to June 2008 had prescribed. The SCA found that Yarona had failed to establish that by June 2008 Medshield's board had knowledge of the mistaken payments or could by exercising reasonable care have acquired such knowledge.

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