SUPREME COURT OF APPEAL SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 24 November 2017

STATUS Immediate

HMI Healthcare Corporation (Pty) Limited v Medshield Medical Scheme & others (1213/2016) [2017] ZASCA

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

Today, the Supreme Court of Appeal dismissed HMI Healthcare Corporation (Pty) Ltd's (the appellant) claim against the judgment of the full court of the Gauteng Division, Pretoria (the full court) in favour of the respondents. This appeal concerned whether the first respondent, Medshield Medical Scheme, is an affected party in terms of Rule 42(1)*(a)* of the Uniform Rules of Court and whether the rescission judgment of the court a quo is appealable.

The appellant is the sole shareholder of Calabash Health Solutions (Pty) Ltd (in liquidation) (Calabash). Calabash was incorporated during 1999 and commenced business as a provider of capitation services to medical schemes in 2005. In October 2006 it concluded a written capitation agreement with Medshield. The agreement commenced operating with retrospective effect from 1 January 2006 and was to endure for a period of three years until 31 December 2008. During its subsistence several disputes arose between the parties, consequently the agreement came to be terminated before its expiry during the middle of 2008. Calabash was liquidated by way of a creditors' voluntary liquidation pursuant to a special resolution dated 13 July 2009. During April 2011, Medshield proved claims against Calabash and it thereafter caused summons to be issued against Calabash for payment of the sum of R40 622 109.00.

On 12 December 2012 the appellant applied *ex parte* to the North Gauteng High Court, Pretoria for an order authorising it, as the sole member of Calabash, to defend an action instituted by Medshield against Calabash. On 18 December 2012, Van Der Merwe DJP granted the ex *parte* order. Thereafter, Medshield sought to rescind the *ex parte* order on the grounds that it was erroneously sought and granted in its absence. In addition, Medshield sought an order that steps taken by the appellant pursuant to the *ex parte* order, be set aside and an order that the appellant is precluded in the future from defending or instituting any claims on behalf of Calabash against Medshield.

In the court of first instance, Tlhapi J found that Medshield had a substantial interest in the *ex parte* application and that the order was erroneously sought in its absence. The learned judge therefore rescinded the *ex parte* order.

Subsequently, the appellant sought and was granted leave to appeal to a full court. The full court (per Tuchten J (Tolmay J concurring) and Makgoka J dissenting) found that notice should have been given to Medshield as it was an affected party as contemplated in Rule 42(1)*(a)*. The appeal was therefore dismissed and the further appeal by the appellant is with the special leave of the SCA.

On appeal to the SCA, the court stated that Medshield was indeed an affected party and that the *ex parte* order was granted in its absence, despite it having a direct and substantial interest in the relief sought. The court therefore found that that the *ex parte* order could not stand and was correctly rescinded by Tlhapi J.

On the issue of whether the rescission order is appealable, the SCA found that by rescinding the *ex parte* order, the way is paved for the parties' respective versions to be fully ventilated and deliberated upon by a court, thereby ensuring a resolution of the real issues between the parties. To find that the rescission order is appealable will therefore effectively unnecessarily delay the resolution of the true issues between the parties. The interests of justice therefore do not favour such an order being appealable.

As a result, the appeal was accordingly dismissed with costs.