



**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 December 2018

**STATUS** Immediate

***Pexmart CC V H. Mocke Construction (Pty) Ltd [2018] ZASCA 175***

*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 (the SCA) today dismissed with costs the appeal by the appellants, upholding a decision by the Gauteng Division of the High Court, Pretoria, that they had unlawfully made use of the confidential information and trade secrets of the respondents in relation to a plastic pipe-lining process employed in the mining industry to limit corrosion within steel pipes.

In 2009, after conducting business through his own plastic pipe construction company and thereafter being employed by two other companies that were involved in the plastic lining of steel pipes, Mr Mocke, the second respondent, registered H. Mocke Construction (Pty) Ltd, the first respondent. He did this in order to solicit the business of a gold mining company in relation to a pipelining project. According to Mr Mocke he had always harboured the ambition to revolutionise the pipe-lining industry by rehabilitating old pipes through placing a plastic liner inside the steel pipe that would make it last for another 30 years. In this regard, Mr Mocke began discussions with Mr Don Gish, an American, who owned Polymeric Pipe Technology Corporation (Polymeric) which owned what is described as the Polymeric/Sureline Process (the Process) for plastic-lining steel pipes. The process used a specialised deformer machine invented by Mr Gish. The latter sold Mr Mocke the exclusive and irrevocable licence to the Process. In turn, Mr Mocke, with Mr Gish's consent, permitted Mocke Construction use of the intellectual property rights that flowed from the licence.

During February 2011, before the Process was refined, Mr Henn was offered and accepted employment with Mocke Construction. He became involved with the gold mining project referred to above, which had prompted Mr Mocke to search for and find an effective pipe-lining method. By that time Mr Henn and Mr Mocke had been friends for a number of years. During October 2013, Mr Henn's services with Mocke Construction were terminated. Mr Henn, almost immediately thereafter, took up employment with Pexmart CC, the first appellant. Mr Mocke and Mocke Construction contended that the appellants then became their competitors in the pipe-lining industry through the alleged unlawful actions of Mr Henn.

During the second half of 2014, Mr Mocke became aware that the gold-mining company referred to earlier was in advanced negotiations with the first appellant, for the completion of the plastic pipe-lining project, in respect of which the existing contractor had defaulted. According to Mr Mocke the tender by Pexmart CC was based on the use of the Process. The gold-mining company had opted to use Pexmart CC because its tender was cheaper. Mr Mocke and Mocke Construction were adamant that it was clear that the appellants had

reverse-engineered the Polymeric deforming machine and intended to market their services competitively, utilising Mr Mocke's trade secrets, intellectual property and licensed technology. The appellants refused to accede to the respondents' demand to cease using the deforming machine, intellectual property and licensed technology, which the latter insisted they were employing unlawfully.

The SCA held that the reasoning and conclusion of the court below in relation to whether the processes adopted by the appellants were dissimilar to those employed by the respondents, could not be faulted. It held further that Mr Henn's failure to testify was another factor that counted against the appellants, not only on the first aspect, but also in respect of the remaining issues presented for adjudication as he was at the centre of the dispute.

The SCA concluded that in determining whether there was protectable confidential information in respect of the process, its machine, intellectual property, techniques and on-site training, technology and the know-how associated therewith, the court below was correct in having regard to the claims made by Mr Mocke. Mr Mocke and Mr Gish's evidence on the confidential information and trade secrets developed over years and many hours of practical application referred to in extensive detail were, essentially, uncontroverted. The details of the Process were not within the public domain and were known only to those with whom Mr Gish and Mr Mocke chose to work, including their employees. It is clear that the information had economic value to Mr Gish and his licensees. The SCA stated further that this was not a case about reverse engineering it was about whether unlawful use was made by the appellants of the respondents' confidential information and trade secrets. It answered that question in the affirmative and dismissed the appeal.