

THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA
MEDIA STATEMENT – CASE HEARING IN SUPREME COURT OF APPEAL

Farocean Marine (Pty) Ltd v Malacca Holdings Limited and another

Supreme Court of Appeal -223/03

Hearing date: 6 May 2004

Judgment date: 28 May 2004

Attachment to found or confirm jurisdiction – nature of prima facie case required against defendant in the alternative – joinder of further defendant in the alternative – section 5(1) of Act 105 of 1983 permitting such a joinder - discretion of court - order in para 19.

Media Summary of Judgment

FROM: The Registrar, Supreme Court of Appeal

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 in ***Farocean Marine (Pty) Ltd v Malacca Holdings Ltd and Romans*** has upheld the appeal of a Cape Town shipbuilder who seeks to attach the motor yacht ‘Summit One’ in order to confirm the jurisdiction of the Cape High Court in an action which the shipbuilder seeks to bring against a USA citizen and a company registered in the Cayman Islands. The Cape High Court had previously set aside the attachment which had originally been granted as a matter of urgency and without notice to the respondents.

he appellant commenced refurbishing the yacht in its Cape Town shipyard after the vessel had sailed from Malaysia late in 2000. A dispute arose and the appellant seeks payment for its work. Before it can sue the respondents, both of whom are foreigners, it is obliged to obtain an order attaching the property of the respondents. The court found that on the probabilities the yacht was owned by the Cayman Island company and that the attachment was justified to confirm the Cape Court’s jurisdiction over the company. It held further that the shipbuilder should be permitted to join as an alternative defendant the other respondent who was the sole shareholder of the company. The appeal involved the analysis and interpretation of section 5(1) of the Admiralty Jurisdiction Regulation Act which deals with the joinder of parties in admiralty proceedings.

