



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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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.

GROUP FIVE v MINISTER WATER AFFAIRS

The Supreme Court of Appeal today dismissed an appeal by Group Five Construction (Pty) Ltd against a judgment of the North Gauteng High Court (Pretoria) upholding a special plea of prescription.

Group Five had claimed certain additional moneys against the Minister of Water Affairs and Forestry due in terms of a contract for the construction of the Injaka Dam for the Sabie River Government Water Scheme. Four of the claims arose from claims submitted by Group Five in terms of clause 51 of the contract, which entitled Group Five to claim additional payment or compensation in prescribed circumstances.

The Minister raised a special plea of prescription which was upheld by the Court below. The validity of the special plea depended in the main on an interpretation of the rather complicated contract which had to be read with two amendments agreed to between the parties. These amendments affected clause 61 of the main contract and provided for a new dispute resolution mechanism by using a dispute review board in lieu of mediation pursuant to the rejection by the engineer of claims submitted.

The terms of the new dispute resolution mechanism were that the board had to make a recommendation to the parties. These became final and binding on the parties if accepted in writing. However, if not, either party was entitled to refer the unresolved matter to court. Otherwise the decision of the engineer was to become final and binding.

Group Five contended that the claims were due at the completion of the construction, whereas the Minister was of the view that the claims were due upon notice by either party referring the dispute to court. Section 12(1) of the Prescription Act 68 of 1969 provides that prescription commences 'to run as soon as the debt is due'. It is common cause that if Group Five's causes of action were ripe and complete when the notices were given these claims had clearly become prescribed.

This court fully associated itself with the detailed judgment of the court below and did not deem it necessary to add or subtract to the said judgment.