

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY

19 September 2014

STATUS: Immediate

Wishart v Justice P Blieden NO (659/13) [2014] ZASCA 120

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

Today the SCA dismissed an appeal against a decision of the KwaZulu-Natal High Court (Pietermaritzberg) which held that the appellants were not entitled to restrain an attorney and two counsel at the Johannesburg Bar from examining them in a liquidation inquiry under ss 417 and 418 of the former Companies Act 61 of 1973.

The basis for the application to the high court by the appellants was that the lawyers had formerly acted for companies in which they had interests or of which they were directors. They asked the high court to interdict the lawyers from acting against them. The high court held that since the appellants had not ever been clients of the lawyers themselves, and had not obtained any confidential information about them, there was no basis on which to restrain them from examining the appellants in the inquiry.

The SCA confirmed the finding that the facts did not warrant the development of the common law so as to recognize that where there is a perception of impropriety, in the absence of the misuse of confidential information, there is a right to restrain a lawyer from acting against a litigant. This court found that the administration of justice would be undermined if the actual client of the lawyers was not entitled to retain the services of lawyers who had advised it and chosen them as its legal representatives.

The SCA held that the lawyers had done nothing improper and that the litigation against them was without foundation and was vexatious.