



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal

**DATE** 29 September 2016

**STATUS** Immediate

***Trinity Asset Management (Pty) Ltd v Grindstone Investments (Pty) Ltd***  
(1040/15) [2016] ZASCA 135 (29 September 2016)

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

This morning, in a majority judgment, the Supreme Court of Appeal (SCA) dismissed an appeal by Trinity Asset Management (Pty) Ltd, against a decision of the Western Cape Division of the High Court, Cape Town (Yekiso J), sitting as the court of first instance. The high court had held that the debt of Grindstone Investments may have been extinguished by prescription and, by reason thereof, dismissed the application by the appellant for a provisional order of liquidation of the respondent. The parties agreed that the central issue on appeal was whether the debt had, indeed, been extinguished by prescription.

The relevant clause, upon which the case turned, reads as follows:

'The Loan Capital shall be due and payable to the Lender within 30 days from the date of delivery of the Lender's written demand.

The point of contention was, accordingly, when the period of prescription had commenced to run. To answer this question, the court had to ascertain, inter alia, whether a creditor could by his own conduct or lack thereof delay the running of prescription, where no future date for a repayment of the debt was set and whether a term in a loan agreement which stated that the loan would be repayable on demand was, without reference to when it was made (and therefore became 'due'), was sufficient to delay the running of prescription.

The appellant argued that the high court erred by accepting that without having made the demand within the prescribed three year period the debt had probably been extinguished by prescription. The appellant submitted that the debt only became due in terms of section 11(d) of the Prescription Act 68 of 1969, once a demand was made. The respondent contended that prescription commenced to run at the earliest possible time in which such a demand could have been made – in other words, from the moment the money had been paid over to the respondent by the appellant.

The majority of the court held that if the relevant clause made demand a condition precedent then it had to be fulfilled strictly in the terms specified. As the appellant had given notice on 21 days only and not 30, as set out in the clause, the appellant had to fail on this basis alone.

The majority went on to find that it need not decide whether parties could, by agreement between themselves, make demand (in contrast to the actual lending of the money) a condition precedent before prescription could begin to run. The majority decided that, if the law did so permit the postponement of the running of prescription the parties' mutual intention to this effect would, at the very least, have had to be spelt out in clear and unmistakable terms. This was not the case in the matter before them and accordingly, they dismissed the appeal.

The minority in the SCA held that demand was a condition precedent for the debt to become payable and that demand was an essential requirement for the appellant's cause of action and, accordingly, the running of prescription did not commence until 30 days after the making of a written demand. The minority would have upheld the appeal.