



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 November 2016
STATUS Immediate

Fluxmans v Levenson (523/15) [2016] ZASCA 183 (29 November 2016)

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 upheld an appeal by Fluxmans Incorporated against the judgment of the Gauteng Local Division of the High Court dismissing with costs the special plea of prescription.

The appeal originates from an application brought by the respondent against the appellant, his erstwhile attorneys for an order declaring a contingency fees agreement concluded on 1 February 2006 between them to be invalid, void and of no force and effect. The agreement was in relation to fees payable by the respondent to the appellant in respect of the respondent's claim against the Road Accident Fund following a motor vehicle accident in which he was injured. The respondent's claim was finalised in May 2008 and on 20 August 2008 the respondent issued him with a statement of account recording the fees it had charged him pursuant to the contingency fees agreement and the amount that was due to him. The contingency fees agreement did not comply with the provisions of the Contingency Fees Act (the Act).

More than five years later the respondent brought the application seeking the setting aside an order of the contingency fees agreement and that he be reimbursed for moneys that had been debited against his account with the appellant. The appellant opposed the application, contended that the claim had become prescribed and asked for the dismissal of the claim. In response the respondent alleged that he did not know that the contingency fees agreement he concluded with the appellant did not comply with the provisions of the Act and was invalid. He maintained that he only became aware of that fact in 2014 following a Constitutional Court judgment in the *Bobroff* matter.

The high court dismissed the special plea of prescription. It upheld the respondent's argument that he only acquired knowledge of the facts from which the debt arose when the Constitutional Court's judgment on contingency fees agreement was delivered in 2014.

On appeal the SCA held that the high court erred in finding that invalidity of the agreement is a fact and not a legal conclusion. It also held that the prescription period began to run on 20 August 2008 when the respondent acquired facts necessary to institute a claim and that the claim had become prescribed by the time that the respondent brought the application in July 2014.

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