



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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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.

Singh & others v The Companies and Intellectual Property Commission & others (822/2018) [2019] ZASCA 69 (30 May 2019)

Today the Supreme Court of Appeal (SCA) handed down judgment in which it dismissed an appeal, from Gauteng Local Division of the High Court, Pretoria, with costs on an attorney and client scale.

The appeal concerned the question whether the Companies Intellectual Property Commission (the Commission) has jurisdiction to investigate a complaint lodged by Mr Ralston Smith regarding whether the removal of Smith as a director of Lahleni (Pty) Ltd had been effected fraudulently. Smith argued that the first appellant, Mr Ramesh Singh or persons associated with him, fraudulently filed documents with the Commission which reflected that Smith had resigned as a director, the documents purporting to show that Smith had resigned were dated 2 October 2012. The Commission, on 23 February 2016, recommended that the complaint be investigated. This was despite the fact that the complaint was lodged more than three years after the alleged fraudulent act occurred.

One of the main question before the SCA was whether the complaint was time bared. Section 219(1) of the Companies Act 71 of 2008 (the Act) provides that a complaint may not be initiated or made to the Commission more than three years after the act or omission that is the cause of the complaint or in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased. The SCA held that the Commission has an obligation to maintain an accurate register of companies, such an obligation is not frozen in

time. If it were it would compel the Commission to work knowingly with inaccurate information, even in a case where the record was tainted by fraudulent activity, the Commission has to maintain accurate records and thus effect necessary corrections to ensure accuracy. When s 219(1) of the Act employs the words 'the act or omission' the purpose thereof is to impose an obligation not to misrepresent the accuracy of the records or to omit to ensure that they are corrected. The failure to cure the inaccuracy or to draw it to the attention of the Commission constitutes a discrete act which is not frozen in time. For this reason the complaint is not time bared.

The SCA then considered the submission by Singh to the effect that if the Commission's investigation was allowed to continue, it would lead to a preview of the evidence to be presented at the upcoming trial in the high court regarding the exact same issues as they was pending litigation in the high court. The SCA held that when a party is required to appear in different fora, each of which have jurisdiction in respect of the subject matter the manner in which that party deals with the process in each forum is a matter of choice, which holds particular consequences attendant on the choice so made. The Commission's powers to investigate a complaint regarding the accuracy of a company record must enjoy primacy over private litigation involving companies and cannot be put on hold for such a reason.

The SCA further rejected the argument submitted by Singh's council that the Commission did not act rationally.

The appeal was dismissed with costs on an attorney and client scale. The first and second respondents were granted costs only in respect of the opposition to the application to admit further evidence, also on an attorney and client scale.