



**THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA**

CASE NO: 102/06

Not Reportable

In the matter between:

SOUTH AFRICAN TOURISM

Appellant

and

PASIS (PTY) LTD

Respondent

Coram: STREICHER, BRAND JJA, THERON AJA

Heard: 10 NOVEMBER 2006

Delivered: 29 NOVEMBER 2006

Summary: Prescription – Special Plea- Plaintiff's claim not in respect of an obligation which had to be performed more than three years before service of the summons – Special plea dismissed

**Neutral citation: This case may be cited as SA Tourism v Pasis [2006] SCA 150
RSA**

JUDGMENT

THERON AJA

[1] The appellant is a state funded organisation which promotes tourism in and to South Africa. The respondent is the developer and owner of a comprehensive tourism and business information system available in both the printed and electronic media. On 31 January 2000 the parties concluded an agreement which was to endure for one year until 30 January 2001. In terms of the agreement the respondent undertook to make available to the appellant its information data base for use in promoting tourism to South Africa. Furthermore, in terms of the agreement, the appellant was obliged to have marketed and promoted the respondent's product range, which included a website and a printed publication called Xplore.

[2] On 27 January 2004 the respondent caused summons to be issued against the appellant out of the Pretoria High Court. In it the respondent alleges that the appellant breached the agreement by failing to market and promote its product range. The respondent further alleges that in consequence of such breach it sustained damages in the sum of R23 222 321,31.

[3] The summons was met with a special plea of prescription in which the appellant alleged that 'the plaintiff's claim fell due on or before 30 November 2000, by which date the plaintiff had knowledge, alternatively

could have had knowledge had it exercised reasonable care, of the facts giving rise to the claim’ and that ‘the summons was served upon the defendant on 27 January 2004, more than three years after the date on which the claim arose’.

[4] By agreement between the parties the special plea was determined without any recourse to evidence. After having heard argument the court below held that the appellant had not committed a breach of its contractual obligations by 30 November 2000 as ‘it was still open for the [appellant] to perform its obligations’ before the expiry of the contract period. That conclusion is under attack before us, with the leave of the court below.

[5] The appellant’s allegation that the respondent’s claim fell due on or before 30 November 2000 is based on the following averments:

‘19 Hence, by no later than the end of November 2000:

19.1 the defendant had failed to cooperate with the plaintiff in the establishment or development of the website;

19.2 the defendant had failed to cooperate with the plaintiff in the publication of Xplore;

19.3 the defendant had failed to procure the placement of advertisements through the influence of its tourism offices’

- 19.4 the defendant had taken no copies of Xplore to the London Travel Show;
- 19.5 the defendant had failed to either promote or market Xplore at the London Travel Show;
- 19.6 the defendant had taken no copies of Xplore for distribution in the South African market;
- 19.7 the defendant had neither marketed nor promoted the plaintiff's website;
- 19.8 the defendant had withheld its cooperation, thereby preventing the plaintiff from either fully or properly performing in terms of the agreement;
- 19.9 the defendant had failed to furnish its official endorsement to the plaintiff's product range.'

[6] The appellant therefore alleged that it is the respondent's case that the appellant had the specific obligations mentioned in paragraph 19 of the special plea and that those specific obligations were breached before the end of November 2000. However, that is not the case pleaded by the respondent. The respondent's case is that appellant was obliged to market and promote the respondent's product range and no specific obligations in regard to such

promotion and marketing are alleged. Whether it can be determined to what extent the appellant had to so market and promote the respondent's product range is not an issue before us and will have to be determined by another court. What is clear is that whatever had to be done, had to be done before 31 January 2001. The time during which the appellant had to market and promote in terms of the agreement therefore only expired at the end of January 2001. Not having alleged that the obligation to promote and advertise entailed an obligation which had to be performed before 27 January 2001 it cannot, on the pleadings as they stand, be found that the appellant breached its obligation more than three years before the summons was served on the respondent.

[7] In the circumstances, the conclusion of the trial court cannot be faulted and the appeal must fail. The appeal is refused, with costs.

LV THERON
Acting Judge of Appeal

CONCUR:
STREICHER JA
BRAND JA