



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
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STATUS Immediate

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

*Industrial Development Corporation of South Africa Ltd v PFE International Inc (BVI) (910/10)
[2011] ZASCA 245 (1 December 2011)*

Media Statement

Today the Supreme Court of Appeal (SCA) upheld an appeal by the appellant, the Industrial Development Corporation of South Africa Ltd (IDC) against a decision of the KwaZulu-Natal High Court (Durban) that it furnish certain documents and records to the respondents.

The first and second respondents, PFE International Inc (BVI) (PFE) and PFE International Inc (Liberia), respectively, are companies in the PFE Group that carried on various businesses including the manufacture of carpets. Prior to 14 September 2001, the IDC owned approximately 98 per cent of the shares in South African Fibre Yarns Rugs Ltd (SAFYR). On 14 September 2001, an agreement was concluded in terms of which PFE acquired 45 per cent of the issued share capital of SAFYR from the IDC. Pursuant to this agreement, the fourth and fifth respondents (Mehdy Zarrebini and Mehran Zarrebini, respectively), were appointed as directors of SAFYR. The agreement was subsequently terminated and the fourth and fifth respondents resigned as directors of SAFYR. PFE (BVI) re-transferred its shares in SAFYR to the IDC. While the fourth and fifth respondents were still directors of SAFYR, PFE acquired shares in the third respondent, Van Dyck Carpets (Pty) Ltd (Van Dyck).

SAFYR subsequently instituted proceedings in the KwaZulu-Natal High Court (Durban), contending that the fourth and fifth respondents had breached the fiduciary duties they owed SAFYR, as directors, in failing to afford to SAFYR the opportunity to purchase the shares in Van Dyck when those shares were offered to the fourth and fifth respondents. SAFYR sought an order that the respondents 'disgorge' the shares in Van Dyck to SAFYR. These proceedings were referred to trial and after the exchange and close of pleadings, SAFYR requested further particulars for trial.

The respondents subsequently instituted proceedings against the IDC, in terms of Promotion of Access to Information Act 2 of 2000 (PAIA), for access to IDC's records.

The issue on appeal centered on the interpretation of s 7(1)(c) and in particular, whether it excludes the respondents' request for records from the application PAIA on the basis that the Uniform Rules provide for the production of or access to such records.

The SCA confirmed the principle established in *Unitas Hospital v Van Wyk & another* 2006 (4) SA 436 (SCA) that PAIA was not intended to have an impact on court procedure. The court held that s 7(1) preserves the operation of the Rules of Court in relation to pending litigation and that the case fell within the exclusion of the application of PAIA by s 7(1), as the Uniform Rules provide for the production of or access to the records sought by the respondents.

The appeal was upheld, with costs, and the order of the court below was set aside.

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