



## 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** 24 March 2016  
**STATUS** Immediate

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

***Brookstein v Brookstein (20808/14) [2016] ZASCA 40***

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#### **MEDIA STATEMENT**

Today, the Supreme Court of Appeal (SCA) dismissed the appeal by Mr Charles Brookstein (the appellant) and upheld the order by the Gauteng Local Division of the High Court, Johannesburg (the high court).

The appeal arose from a claim for delictual damages instituted by the appellant's ex-wife, Mrs Brookstein in the sum of R83,9 million on the basis that the appellant falsely or negligently misrepresented the extent of his accrual at the time that they settled their divorce, or that he had done so fraudulently.

In the high court, the parties signed an agreement which was made an order of court, to refer the dispute to private arbitration so that the dispute could be arbitrated in terms of the Arbitration Act 42 of 1965 (the Arbitration Act).

They proceeded in arbitration and the arbitrator found that Mrs Brookstein had not established misrepresentation, and accordingly refused her delictual claim. Dissatisfied with this, she lodged an appeal with the appeal tribunal. The appeal tribunal found in her favour and awarded her damages, being the difference between the true value of the accrual and the amount she agreed to in terms of the settlement agreement.

Mr Brookstein was unhappy with this outcome, and launched an application to have the appeal award reviewed and set aside in the high court. In the review application, the appellant contended that the delictual claim arises from the proprietary consequences of his marriage with the respondent, and

because of this, they were precluded from referring the matter to arbitration. According to him, the delict fell within the definition of a matter which relates to a matrimonial cause or matter incidental to such cause, as stated in s 2 of the Arbitration Act. He also challenged the appeal tribunal's finding that the value of the share of the accrual should be determined from the date of dissolution of the marriage.

Before the SCA, the question was whether the respondent's delictual claim for damages is a 'matrimonial cause or matter incidental to such cause', as contemplated in s 2 of the Arbitration Act, and therefore incapable of referral to arbitration and secondly, whether the arbitrators erred in assessing the extent of an accrual in a matrimonial dispute, as at the date of the dissolution of the marriage and not at the date of *litis contestatio*.

The SCA found that after the settlement agreement was signed dissolving their marriage and the settlement agreement was made an order of court, there was no longer any matrimonial cause to speak of and neither was there anything incidental to such cause, because all the matrimonial issues were disposed of when the court granted the order incorporating the settlement.

The SCA also found that the date at which the accrual of the value of a spouse married in terms of the Matrimonial Property Act 88 of 1984 (the MPA) is to be determined, is the date of dissolution of the marriage either by death or divorce and not at *litis contestatio*. The court reasoned that the relevant provisions of the MPA which deal with accrual make this clear and opined that *litis contestatio* is a merely procedural step. This finding by the SCA settles the conflicting decisions of various divisions of the high court, regarding the correct date for determination of the value of the accrual.

Having dismissed the appeal, the SCA referred the matter back to the appeal tribunal, as the award contained errors which need to be corrected.

**-- ends ---**