



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 23 March 2018
STATUS Immediate

Brompton Court Body Corporate v Khumalo (398/2017) [2018] ZASCA 27 (23 March 2018)

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.

On 21 December 2012 the appellant, the body corporate of the Brompton Court sectional title scheme, obtained an arbitration award in its favour against the respondent, Ms C F Khumalo. The respondent owned a unit in the scheme. The arbitration award represented the outstanding balance owed by the respondent to the appellant in respect of levies, electricity charges and interest. During March 2014 the appellant approached the Gauteng Division of the High Court, Johannesburg (the high court) for an order making the arbitration award an order of court in terms of s 31 of the Arbitration Act 42 of 1965. The respondent opposed the application on the basis that the debt in question had prescribed in terms of the Prescription Act 68 of 1969. The high court upheld the defence of prescription and dismissed the appellant's application with costs.

On appeal to the Supreme Court of Appeal (SCA), the appellant sought to have the decision of the high court overturned on the ground that the arbitration award created a new debt and that a three year prescriptive period commenced to run only on the date of the award. As the application was made within three years thereafter, so it was contended, the respondent's reliance on prescription was misplaced. The SCA held, however, that the arbitration award did not create a new debt. It also held that the claim to have the arbitration award made an order of court, was not a 'debt' for purposes of the Prescription Act. The SCA therefore held that the appellant could not succeed on this point.

The SCA concluded that the high court erred in approaching the matter as if s 13(1)(f) of the Prescription Act provided for a one year period of prescription in respect of an arbitration award. The SCA reasoned as follows: Applied to the facts of this case, s 13(1)(f) provides that if the relevant period of prescription in respect of a debt would, but for the provisions of this sub-section, have been completed before or on or within one year of the date of the award, the completion of the period of prescription in respect of such debt would be delayed for one year after 21 December 2011. As the arbitration award was based on a variety of separate debts, the respondent had to prove that one or more of these separate debts would have prescribed before or on or within a year of the arbitration award. The respondent made no attempt to satisfy this onus and therefore the defence of prescription had to fail.

Therefore the SCA today upheld the appeal with costs and substituted the order of the high court with an order making the arbitration award an order of that court, with costs.