



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 6 April 2022
Status: Immediate

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.

WK Construction (Pty) Ltd v Moores Rowland and Others [2022] ZASCA 44

Today the Supreme Court of Appeal dismissed with costs an appeal against the judgment of Phillips AJ in the KwaZulu-Natal Division of the High Court, Durban, upholding a special plea of prescription. The respondents (Mazars) were auditors of the appellant (WK Construction) at all material times. The financial director of WK Construction perpetrated a fraud on it over a number of years for which audits had been conducted by Mazars. Although the fraud was conducted by irregular postings in various ledger accounts without corresponding journal entries, Mazars did not detect these. In an action, WK Construction alleged that the failure of Mazars to do so was as a result of a breach of the auditing contract and that, as a consequence, WK Construction had suffered damages of some R54 million. The action was met with a special plea of prescription. The crisp issue was whether WK Construction had knowledge of the facts of the debt prior to 23 August 2013 since action was instituted on 23 August 2016. Only the evidence of the person employed as the financial manager at the time, and who reported to the financial director, was led in support of the special plea.

On appeal, WK Construction submitted initially that it was unaware of the fraud of its

financial director at the relevant date since it had only a suspicion of the fraud. It was conceded in argument that this point could not succeed. It was then contended that, prescription only begins to run when it is established that the debtor who caused the primary loss cannot repay it. This argument found no favour with the court. As its main further point, WK Construction contended that because Mazars had not led expert evidence of the duties of an auditor and that Mazars had fallen short of these duties, the special plea should have been dismissed.

The Supreme Court of Appeal discussed the test to be applied at the stage of a special plea of prescription. It applied the judgment in *Truter and Another v Deyse* 2006 (4) SA 168 (SCA) to the effect that ‘. . . time begins to run against the creditor when it has the minimum facts that are necessary to institute action. The running of prescription is not postponed until a creditor becomes aware of the full extent of its legal rights, nor until the creditor has evidence that would enable it to prove a case “comfortably”’. *Truter* further held that expert evidence was not necessary in order to establish negligence as contended for by WK Construction since ‘an expert opinion that a conclusion of negligence can be drawn from a particular set of facts is not itself a *fact*, but rather *evidence* . . . the presence or absence of negligence is not a fact; it is a conclusion of law to be drawn by the court’. The Supreme Court of Appeal then went on to follow the approach of the Constitutional Court in the matter of *Links v Department of Health, Northern Province* 2016 (4) SA 414 to the effect that what was required was ‘knowledge of facts that would have led [it] to think that possibly there had been negligence and that this had caused’ the loss sued for. It was not necessary to have expert advice or evidence to that effect. This test was satisfied in the present matter by 22 August 2013. Prescription accordingly commenced to run prior to 23 August 2013. As a consequence, the appeal was dismissed with costs.