



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

15 September 2010

STATUS: Immediate

**CADAC (PTY) LTD v WEBER STEPHEN PRODUCTS COMPANY &
OTHERS**

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

The Supreme Court of Appeal (SCA) upheld an appeal against an order of the South Gauteng High Court (Johannesburg) and dismissed a counter-application.

The respondents accused the appellant of trademark infringement, which the appellant denied. The respondents then alleged that the appellant was guilty of counterfeiting and threatened to lay a charge under the Counterfeit Goods Act 37 of 1997 (The Act). In spite of the appellant's refutation, the respondents proceeded to lay a complaint, without notice to the appellant, in terms of s 3 of the Act which led to a warrant being obtained and executed during the Christmas season, and goods being seized from dealers, causing the appellant some loss as a result.

The appellant applied to the high court on an urgent basis for the setting aside of the warrant. It also applied for a declaration that the goods seized were not counterfeit and for an inquiry into damages and for costs.

The high court held that the warrant had been obtained irregularly and set it aside with costs and ordered the return of the goods seized. The inquiry into damages stemmed from the provisions of s 17(1) of the Act, which must be read with s 10(1) (c). The court postponed this prayer *sine die*.

The first issue for the SCA to decide was whether the proceedings launched by the appellant for an inquiry into damages were competent, because, the respondents argued, it is not at all permissible to bring an illiquid claim by means of motion proceedings. The SCA held that the procedure was permissible as the appellant in fact did not seek to have its illiquid claim decided by means of motion proceedings, but merely sought directions as to how to proceed with the quantification of its claim for damages. The SCA could not see any objection as to why a plaintiff who wishes to have the issue of liability decided before embarking on quantification, may not claim a declaratory order to the effect that the defendant is liable, and pray for an order that the quantification stand over for later adjudication. Additionally s 10 of the Act provides that an order for damages may be ordered against a complainant 'in any civil or criminal proceedings relating to counterfeit goods'. The appellant's application to set aside the warrant was such a proceeding within the meaning of the section, which does not require separate proceedings for determination of quantum. In the absence of rules regulating these quantification proceedings a court has to prescribe an appropriate procedure.

The second issue before the court was whether the appellant's claim was premature, as the respondents submitted that at the time that the main application was launched the right to damages had not yet accrued. The SCA held that the appellant's claim was not premature, as the notice of motion was a process whereby proceedings were instituted as a step in the enforcement of a claim for payment of a debt. This meant that the running of prescription was interrupted in terms of s 15(1) of the Prescription Act 68 of 1969.

This led to the respondents raising a third issue, namely, that since the appellant did not prosecute its claim to a final judgment the claim became prescribed, as in terms of s 15(2) of the Prescription Act 'the running of prescription shall not be deemed to have been interrupted, if the creditor does not successfully prosecute his claim under the process in question to final judgment'. The SCA held that the failure to prosecute did not in the circumstances of this case lead to the extinction of the claim by prescription and that the debtor, to a certain extent, has a say in the running of prescription by enforcing the rules of the court.

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