Dispute Resolution

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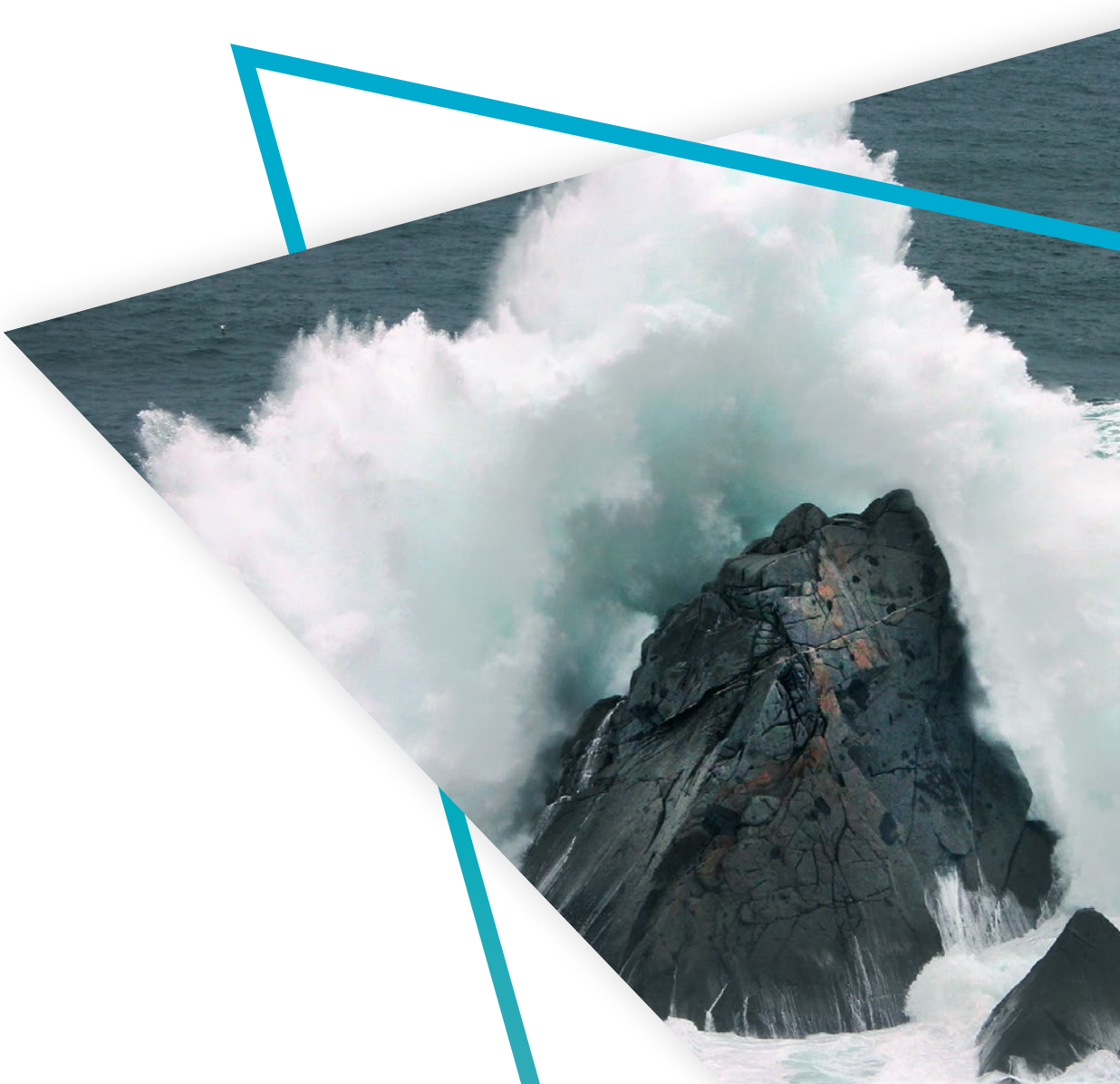

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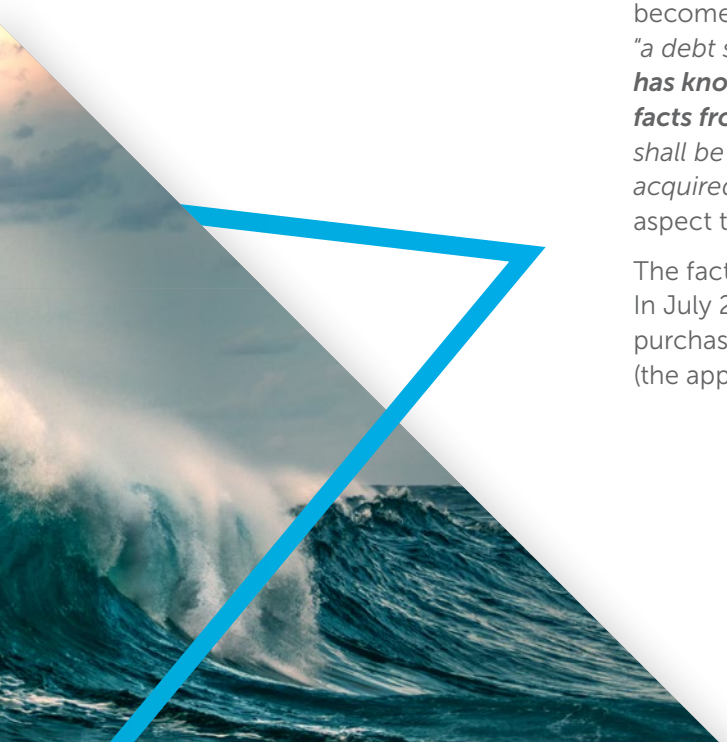

Whether it relates to the meaning of a debt or the running of prescription, it seems that every year, the courts are obliged to publish judgments dealing with one or the other.

Stemmet and Another v Mokhethi and Another (681/2022) [2023] ZASCA 127 is no different. In this matter, the Supreme Court of Appeal (SCA) delivered a judgment on the running of prescription; in particular, what constituted the minimum facts necessary for prescription to have started running.

According to the Prescription Act 68 of 1969 (Act), the running of prescription occurs as soon as the debt is due. If a debtor wilfully prevents a creditor from coming to know of the existence of the debt, the running of prescription shall not commence until the creditor becomes aware of the existence of the debt. Furthermore, *"a debt shall not be deemed to be due until the* ***creditor has knowledge of the identity of the debtor and of the facts from which the debt arises****: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care"*. It is this latter aspect that the SCA was concerned with.

The facts of the matter can be summarised as follows: In July 2013, Mr and Mrs Mokhethi (the respondents) purchased immovable property from Mr and Mrs Stemmet (the appellants). A few months after taking occupation, the respondents noticed latent and undisclosed defects on the property. In June 2014, the respondents lodged an insurance claim with Absa, which, as part of its financing of the property had insurance cover over it. On 12 August 2014, Absa declined the claim on the basis that *"the defects were old and gradual, had been previously patched, and were caused by the expansion and retraction of the clay upon which the property was built"*.

Three years later, in July 2017, the respondents issued summons against the appellants in the Magistrate's Court for delictual damages. The respondents' claim was that the appellants induced them to purchase the property through their fraudulent non-disclosure of the defects or the fraudulent concealment of the defects. The respondents alleged that they would not have purchased the property had they been aware of the defects.

The appellants raised a special plea of prescription. They claimed that the respondents were aware of the defects by June 2014, by which time, the running of prescription had commenced. According to the appellants, the respondents should have instituted their claim before June 2017. By instituting their claim in July 2017, they had failed to do this, and as such their claim had prescribed. The respondents were of the view that prescription started running when they received Absa's letter in August 2014, and as such by instituting their claim in July 2017, their claim had not prescribed.

Another judgment on prescription?

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In its judgment, the Magistrate's Court held that the respondents could only have acquired the minimum facts to interrupt prescription on 12 August 2014. This was the date on which Absa declined their claim and provided the reason for its decision. It accordingly dismissed the special plea of prescription. It granted judgment in favour of the respondents.

Before the High Court

Aggrieved by the judgment of the Magistrate's Court, the appellants appealed to the High Court. The matter was ultimately heard by a Full Court (before three High Court judges). The issue before the Full Court was whether the special plea of prescription had been correctly dismissed by the Magistrate's Court. The majority agreed with the Magistrate's Court, finding that the respondents only acquired knowledge of the basis of their cause of action, for the purposes of prescription, when they received the letter from Absa on 12 August 2014. Alternatively, they only acquired such knowledge when the experts informed them of their opinion on the cause of the damage to the property on 30 September 2014. The Full Court found further that, in June 2014, the respondents could not have known whether their debtor was the appellants, the insurer, or a builder.

The appellants appealed the judgment of the High Court to the SCA. The issues before the SCA were much the same as before the Full Court. However, the SCA decided the matter differently. In upholding the appeal by the appellants, the SCA held that there was no doubt that the respondents knew the identity of the debtor when they became aware of the defects on the property and further, that the respondents had acquired the minimum knowledge necessary to institute action against the appellants when the latent defects started to manifest, and it had become clear that the respondents had concealed the defects.

Why is this judgment important to note? Quite simply, it is another reminder to disputing parties that prescription is no joke. There is a reason why courts deliver so many judgments on this issue. A special plea of prescription has the potential to derail any legitimate claim. Because of this, disputing parties should not let their disputes simmer for years without taking action to interrupt or delay the running of prescription.

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