



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Associated Portfolio Solutions (Pty) Ltd & Another v Basson & Others
(554/2019) [2020] ZASCA 64 (12 June 2020)

From: The Registrar, Supreme Court of Appeal

Date: 12 June 2020

Status: Immediate

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

Today the Supreme Court of Appeal (SCA) upheld an appeal by two appellants, Associated Portfolio Solutions Pty Ltd and Pentagon Financial Solutions (Pretoria) Pty Ltd against the first respondent Pieter Willem Basson. During May 2017 the two companies, being financial services providers, dismissed the first respondent, Pieter Basson from his position as an employee and director in both companies, following a disciplinary process in terms of which he was found guilty of misconduct involving acts of dishonesty which impacted on his integrity. They then debarred him as their representative and key individual under the Financial Advisory and Intermediary Services Act of 2002 (The FAIS Act).

Basson then successfully challenged his debarment in the Western Cape High Court, Cape Town. The high court found that the appellant should not have relied on the outcome of the disciplinary process in debarring Basson; they should have held another inquiry in which there would have been another inquiry into the transgressions which formed the basis of his debarment. That court also found that the debarment process was vitiated by bias as Basson's co-directors in the appellant companies, who took the decisions to debar him, had prejudged the issues, were driven by ulterior motive as they were locked in a dispute with Basson about the value of his shares in the companies, and had testified against him in the disciplinary hearing,

In upholding the appeal against the judgment of the high court, the SCA held that the facts established in a disciplinary hearing may be taken into account in a debarment process. In this case Basson had been afforded opportunity to, and did make representations prior to the debarment meeting. Further, in terms of section 14(1) of the FAIS Act the appellants, as financial services providers must debar a representative who does not meet the requirement of a 'fit and proper' person as prescribed in the Act. Once Basson was found guilty of acts of dishonesty which impacted on his integrity, the appellants had a duty to debar him. The Registrar of the Financial Services Board had no basis, in the circumstances, to debar Basson.

The SCA also dismissed an appeal by the appellants against the dismissal of their counter-application by the high court. In that counter-application the applicants had sought a declaratory order that Basson

would only be eligible for re-appointment 12 months from the date of his debarment. The SCA held that although subsequent to his debarment Basson had been erroneously appointed by another financial services provider, that appointment had since been withdrawn and that issue had become academic.