



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: 21 September 2020

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.

Khan v Shaik (Case no. 641/2019) [2020] ZASCA 108 (21 September 2020)

Today the Supreme Court of Appeal (the SCA) dismissed the appeal of the appellant, Ms Zorah Banoo Khan against the respondent, Mr Salim Mohamed Shaik, arising from the decision of the Gauteng Division of the High Court, Johannesburg (the high court).

In the high court the appellant sought a declarator that she and the respondent were in a universal partnership and that, because they had parted company, a liquidator be appointed to value the fruits of the partnership and distribute the value in equal shares to the partners. The application was dismissed on the basis that her claim, if she had one, had prescribed. No finding was made that a universal partnership had actually come into being. The high court did, however, make three critical findings: (1) the claim had been instituted six years after the consortium between the parties had terminated; (2) the universal partnership had terminated when the consortium had ended; and (3) that because such a claim fell within ss 10(1) and 11(d) of the Prescription Act 68 of 1969, the claim had prescribed after an elapse of three years from the date upon which the consortium ended.

On appeal, the issue was whether or not a claim to divide the fruits of a universal partnership can prescribe in terms of the Prescription Act. The SCA held that the essence of the concept of a universal partnership is an agreement about joint effort and the pooling of risk and reward. Accordingly, the contract is the foundation of the universal partnership. A claim based on a contract is a personal not a real right, and a claim by one partner against the other to account for a share in a universal partnership, was therefore a claim to enforce a personal right which is a debt as contemplated by the Prescription Act.

The SCA held that the substance of a universal partnership is a pooling of risk and reward, although the commonplace rationale to engage in such may be rooted in a romantic relationship, the consortium is not the substratum of the legal relationship of a universal partnership. The date upon which prescription starts to run is a fact-specific determination. On the facts of this case the SCA held that the universal partnership terminated at the same time as the consortium and more than three years elapsed before a claim was instituted; therefore, the appellant's claim had prescribed. The appeal was accordingly dismissed.