

## Why contempt applications cannot be ignored

**The proprietor of a registered design and its licensees (the appellants) obtained a Supreme Court of Appeal order interdicting two firms from infringing the registered design (which relates to plug sockets). The sole shareholder and managing director of the two firms then caused a close corporation to be converted into a company of which he was also the sole shareholder and director. The company thereafter commenced selling plug sockets in South Africa, and applied for revocation of the design registration, which registration the Supreme Court of Appeal had found to be valid and infringed by the two firms.**

Spoor & Fisher, acting for the appellants, brought an application in the High Court to hold the company, its managing director/sole shareholder, and the two firms (the respondents) in contempt of the Supreme Court of Appeal order. The contempt application was brought on the basis that the plug sockets sold by the company differed only in immaterial respects from the plug sockets previously held by the Supreme Court of Appeal to infringe the registered design, that the two firms and the company were but its managing director and sole shareholder in different guises, and that the corporate veil between them should be pierced.

The company then brought an application to review the registration of the design, which registration had taken place some 12 years earlier, and applied to stay the contempt application pending the determination of the review application.

The High Court, as the court of first instance, stayed the contempt application without even hearing the merits of the contempt application. It held that the interests of justice indicated that the contempt application should be stayed, pending the outcome of the review application. It reasoned that if the contempt application were to be determined prior to the

review application, enforcement of a Supreme Court of Appeal order could be ordered in circumstances where the enforcer of the court order was not entitled to the court order in the first instance.

The High Court decision was taken on appeal by the appellants to the Supreme Court of Appeal. In its judgment, *Clipsal Australia v Gap Distributors* [2009] ZASCA 49, the Supreme Court of Appeal held that the outcome of the review application was irrelevant to the question of whether the respondents were acting in contempt of court. The order interdicting the two firms from infringing the registered design was final and had to be obeyed, even if it was wrong. Should the review application ultimately be successful, the interdict was valid, in place and had to be obeyed in the interim. This was a matter of public policy which required that there shall be obedience to orders of court, and people should not be allowed to take the law into their own hands.

The Supreme Court of Appeal found it inexplicable that the court of first instance could, on the basis that the judgment of the Supreme Court of Appeal could be wrong, have considered the outcome of the review application to be of any relevance to the contempt application.

The appeal succeeded with costs and the order of the court of the first instance was set aside and replaced with an order dismissing the application for a stay of the contempt application, pending the determination of the review application.

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