THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case No: 1063/2013

In the matter between:

Claudio Ferrari **First Appellant**

Sietse Remco Walma van der Molen **Second Appellant**

Budget Sheetmetal (Pty) Limited **Third Appellant**

and

Quintin Gordon Thomas Gunner **Respondent**

Neutral Citation*: Ferrari v Gunner (1063/2013) [2015] ZASCA 5 (9 March 2015)*

Coram: Lewis, Cachalia, Majiedt and Pillay JJA and Meyer AJA

Heard: 20 February 2015

Delivered: 9 March 2015

Summary: Defences of undue influence and fraudulent misrepresentation, raised in application to compel specific performance of a contract, not proved by respondents in motion proceedings in the high court: court able to determine matters on application; no reason to interfere with high court's exercise of a discretion to grant specific performance.

ORDER

On appeal from: High Court, Gauteng Local Division, Johannesburg (Monama J sitting as court of first instance)

The appeal is dismissed with the costs, including those of two counsel.

JUDGMENT

Lewis JA (Cachalia, Majiedt and Pillay JJA and Meyer AJA concurring)

[1] Quintin Gunner, the respondent in this matter, entered into an agreement with Claudio Ferrari and Sietse van der Molen, the first and second appellants, for the purchase of 20 per cent of the member's interest in a close corporation, subsequently converted into a company, Budget Sheetmetal (Pty) Ltd (I shall refer to both the close corporation and the company as Budget), the third appellant. They also concluded an association agreement. Both contracts were signed on 23 July 2012. Gunner was employed as a design director by Budget and he commenced working for it on 1 September 2012.

[2] Gunner paid the full purchase price of R4.67 million for the member's interest in tranches, the last on 22 November 2012. In February 2013 the close corporation was converted to a company. On 6 March 2013, before a shareholder's agreement could be signed, Ferrari and his sister, Ketti, who was Van der Molen's wife, advised Gunner that they did not want to be bound by the agreements. When Gunner applied to the South Gauteng High Court for an order directing the implementation of the agreements, the appellants raised two substantive defences: that the agreements had been induced by the undue influence of Gunner's wife, an attorney, Maria

D'Amico; and that she had fraudulently misrepresented the meaning of a clause in the sale agreement, thus rendering the agreement void. D'Amico had provided the funding for the purchase price.

[3] The Gauteng Local Division of the High Court (Monama J) rejected these defences and granted an order of specific performance: Ferrari and Van der Molen were directed to sign the documents necessary to appoint Gunner as a director of Budget; to transfer 20 per cent of the issued shares in Budget to Gunner and to appoint him as a signatory to Budget's bank accounts.

[4] The appeal lies against this order with the high court's leave. At issue on appeal are whether the disputes of fact arising from the respective parties' affidavits should have been decided in motion proceedings; whether the alleged misrepresentation made by D'Amico rendered the agreement invalid; and whether the alleged undue influence exercised by her had the same effect. The appellants did not argue at the hearing before this court that the elements for actionable undue influence had been met, but persisted with the general argument that D'Amico had exercised considerable influence over them, which had coloured the entire transaction. The appellants also contend that, even if the contracts are enforceable, the order of specific performance made by the high court was inappropriate since Budget is a family-owned company and the relationship between the parties had broken down.

The factual history

[5] I shall set out the broad factual matrix before turning to the issues on appeal. Ferrari and Van der Molen, prior to 2012, each owned a 50 per cent interest in Budget when it was a close corporation. Their wives, Sigrid Ferrari and Ketti van der Molen, worked in the business of Budget. I shall refer to the Ferraris and the Van der Molens collectively as 'the family', to Mrs Ferrari as Sigrid and to Mrs Van der Molen as Ketti.

[6] For some 15 years, Maria D'Amico, Gunner's 'common law wife', had acted as the attorney for Budget and for the family members in both business and personal matters. Over the course of time they had all become friends and met on a social basis. Gunner, an industrial designer, had over the years done work for and with Budget.

[7] At a social event in 2012, Van der Molen and Ketti advised Gunner and D'Amico that they wanted to discuss business with him. They sent him an invitation to meet on 4 July 2012. He went to the premises of Budget, and met Ferrari, Van der Molen and Ketti. He was advised that Ferrari and Van der Molen each wished to sell 10 per cent of his member's interest in Budget – a total of 20 per cent. They had tried previously to sell an interest to an employee, but he had not been able to raise the finance for the purchase price they were asking. They were not willing, they said, to sell to just anyone, but were interested in selling to him as his skill and design expertise would add to the business. Gunner expressed interest, and a number of meetings were held subsequently to negotiate the transactions contemplated, attended by Gunner, D'Amico, Ferrari and Ketti.

[8] D'Amico prepared various draft sale and association agreements. The drafts were amended by Ferrari. The appellants contend that D'Amico was acting as attorney for all parties at these meetings and when preparing agreements. Gunner alleges that she was acting for him alone, and produced evidence to this effect, to which I shall revert. The agreements were signed and concluded (as were various addenda) on 23 July 2012.

[9] They were then immediately implemented and over a seven-month period Ferrari and Van der Molen signed the forms necessary to appoint Gunner as a 20 per cent member in Budget; Gunner paid the full purchase price, as I have said, and started work as design director. The interest was not, however, transferred to him as it was agreed to delay transfer until the close corporation was converted to a company. Ferrari undertook to appoint Gunner as a director when that occurred.

And, in anticipation of conversion, Gunner nominated a family trust (the Qmaro Investment Trust) to take transfer of the shares. Shareholding through a trust is argued by the appellants to be at the centre of the dispute and I shall discuss it in more detail later. It should be noted at this stage, however, that Ferrari and Van der Molen also established trusts for the purpose of holding shares in Budget. Ketti advised D'Amico of the names of the trusts for the family shareholding to be inserted in the shareholders' agreement that she was drafting.

[10] When the conversion took place in February 2013, the parties to the sale agreement had to settle the terms of the Memorandum of Incorporation (MOI) for the company. On 27 February 2013 D'Amico sent a draft shareholders' agreement to the appellants and the following day sent an email to Ferrari and Ketti with comments on the MOI, suggesting amendments requiring special or unanimous resolutions for various matters.

[11] A meeting was scheduled to discuss the MOI and the shareholders' agreement on 6 March 2013. But at the meeting, Ferrari and Ketti told Gunner and D'Amico that the family did not wish to proceed with the implementation of the sale agreement and would not appoint him as a director. The reason they advanced at that stage for withdrawing from the agreements was that, as they saw it, Gunner would enjoy certain rights as a minority shareholder under the Companies Act 71 of 2008 and the family would have to give up control of the business, which they did not want to do. They proposed that the investment made by Gunner be converted to a loan to the company that would be repaid over a period. Gunner rejected the proposal. He offered, however, to take transfer of the 20 per cent shareholding himself and to transfer the shares to a trust at a later stage.

[12] Ferrari sent a written offer to Gunner and D'Amico on 11 March 2013 formalizing the proposal that the purchase price paid be converted to a loan, repayable over a period, suggesting two alternative methods of implementing this. Gunner replied rejecting the proposal and requested that he be appointed as a

director of Budget; that the 20 per cent shareholding be transferred to him and that he be appointed as a signatory to Budget's bank accounts. D'Amico followed this up with a formal letter of demand. She advised that, should Ferrari and Van der Molen not comply within five days, Gunner would approach the high court as a matter of urgency to seek an order compelling implementation of the agreements.

[13] In March 2013, Ferrari asserted, he became aware of incidents of misconduct on the part of Gunner. He allegedly was abusive to employees of Budget and required work to be done without following the business's procedures. On 18 March Ferrari decided to suspend him, and to arrange for a disciplinary enquiry into the complaints of misconduct. An independent chairperson was appointed and an enquiry held. The chairperson recommended that Gunner be dismissed and so he was in April 2013.

[14] The family approached a firm of attorneys, Hoosen Wadiwala, for advice on the agreements and a lengthy letter was addressed to D'Amico on 18 March 2013 by Mr H A Wadiwala. The gravamen of the letter was that she had acted improperly in representing both Gunner and the appellants in negotiating the transaction and that she had breached her fiduciary duties by acting in her own interests rather than those of the appellants. He also alleged that she had exerted undue influence over them which resulted in their reposing trust in her to act in their best interests: she had acted in 'an unscrupulous and unprofessional manner in order to prevail upon [the appellants] to enter into the agreements drafted by you'.

[15] Wadiwala alleged further that D'Amico had intentionally failed to disclose certain facts – that she had 'harboured the intention to insist on the interposition of trusts as shareholders in [Budget] (principally in order to render yourself the beneficial shareholder in direct contradiction to the Mandate)'.

The application

[16] Gunner's application to the high court was drafted in response, at least to some extent, to what he perceived to be the nature of the defences that the appellants would raise. He asked for performance of the obligations that arose from the two agreements. And, no doubt anticipating the defence that D'Amico had had a conflict of interest and had represented both him and the appellants in the negotiations and in drafting the agreements, he quoted from a transcript of a recording of the meeting held on 6 July 2012 where D'Amico had made it clear to Ferrari and Ketti that she was acting for Gunner and not for the appellants. He attached the transcript of the recording to his founding affidavit.

[17] The significance of the recording, admittedly made by Gunner without advising Ferrari and Ketti, who represented the appellants at the meeting, that he was doing so, is that D'Amico made it clear at the beginning of the meeting, that she was representing Gunner. The appellants were not her clients for the meeting she said. Although some attempt was made in the papers and at the appeal hearing to argue that she became the appellants' attorney as well after the meeting and for the remainder of the negotiations, this suggestion is plainly bizarre. Allegations that she was conflicted must thus be rejected. Moreover, she made it quite plain that the family should feel free to consult another attorney for advice.

[18] The defences raised in the appellants' answering affidavit, deposed to by Ferrari, were nonetheless that the agreements were voidable at their instance because of the undue influence exerted by D'Amico during the course of the negotiations and when the agreements were drafted; and because she had misrepresented to them the meaning of a clause in the sale agreement. The family, he said, had accepted her advice uncritically because of their long-standing attorney-client relationship. Gunner, he said, was complicit in her conduct.

Undue influence

[19] As I have said, in argument in this court, the appellants' counsel did not rely on the defence of undue influence. I shall accordingly deal with it only briefly. The elements of the defence were plainly not met. The party claiming to have been unduly influenced must show not only that the other had an influence over him or her, but also that it rendered his or her will weak and pliable and induced him or her to enter into a transaction, to his or her prejudice, that would not otherwise have been entered into. (See *Preller v Jordaan* 1956 (1) SA 483 (A) and *Patel v Grobbelaar* 1974 (1) SA 532 (A).) Moreover, it was not alleged that Gunner himself, as the party to the agreements, had exercised undue influence over the family: at most he had been present when that influence was said to have been exerted.

[20] The family members were all astute and experienced business people, and their wills had hardly been rendered weak and pliable. On the contrary, they broke off negotiations at one stage because of discomfort about a draft D'Amico had prepared which reflected the purchaser of the member's interest not as Gunner but as trustees – Gunner and D'Amico for a family trust, Quadri. The use of a trust, where D'Amico might have control, played a great role in the negotiations, and formed the basis of the defence based on fraudulent misrepresentation.

The fraudulent misrepresentation: dispute of fact?

[21] The fraudulent misrepresentation allegedly made by D'Amico related to the meaning of a clause in the sale agreement. Clause 3.7 read:

'It is the intention of the Corporation to convert to a proprietary limited company subsequent to the effective date, where the shareholders shall be 40% each to Claudio and Sietse and 20% to the Purchaser. *The parties may reflect their shareholding in trusts.* The Sellers and their spouses and the Purchaser shall become directors of such company, namely there shall be 5 directors appointed.'

[22] The sentence emphasized is the cause of complaint. D'Amico, the appellants contended, had misrepresented to them that the clause meant that there had to be unanimous consent of all shareholders for any one of them to hold their shares in a trust. The misrepresentation had been material and had induced them into entering into the contract. They would not have done so if they had known that Gunner could unilaterally determine that his shareholding would be held in a trust. They did not want anyone other than Gunner (in particular they did not want D'Amico) involved in a family business.

[23] The case for fraudulent misrepresentation was put thus in Ferrari's answering affidavit:

'Maria explained clause 3.7 in the draft Sale Agreement to us as follows. She said that there were significant benefits associated with holding shares in trusts. We needed to educate ourselves on the issue of trusts and the benefits thereof and decide for ourselves whether we agreed that this was a good idea. If we, including the Applicant, should decide in future that we wanted to use trusts to own our shares, the Sale Agreement should be flexible enough to accommodate this without having to be amended. Therefore, the wording of clause 3.7 was included in the draft agreement. Any decision that shareholders would be entitled to transfer their shareholding to a trust would only be taken by unanimous agreement of all shareholders, and if approved, all shareholders could then hold their shares using a trust. Maria repeatedly stated that we had nothing to worry about, as we had an eighty percent majority, and nothing could be done without our agreement.

We now realize that the clause provides that each shareholder has the right unilaterally to transfer his shares to a trust. None of us realized this when we signed the Sale Agreement. If we had realized we would not have signed. This was the very issue that had caused negotiations to fail previously, and we had never changed our mind on this point.'

[24] D'Amico's ulterior motives for drafting the agreement as she did are the bedrock on which the appellants rest their case. She wanted control, they said. The family, on the other hand, only wanted Gunner involved in their business. Ferrari went on to say:

'It now appears that the advice given by Maria regarding trusts and the conversion to a company was given primarily in order to further her own aims and to return us to the initial position of having the Applicant's shareholding held in a trust. . . .'

[25] In order to understand the background to this assertion more fully I shall turn to Gunner's replying affidavit in which he referred to another recording of a meeting at which the family had allegedly walked away from the proposed transaction because of the interposition of a trust. I shall then consider whether the appellants proved that the fraudulent misrepresentation had been made at all.

[26] In response to the allegation of fraudulent misrepresentation, raised for the first time by the appellants in Ferrari's answering affidavit, Gunner said that between 6 July 2012, when the proposed agreements were first discussed, and 16 July 2012 when Ferrari and Ketti explained why they were withdrawing from the negotiations, and to which Ferrari alluded in the passage quoted above, there were several meetings and discussions between the parties. And D'Amico produced several drafts of the proposed agreements. In the first draft of the sale agreement she had inserted, as purchasers, herself and Gunner in their capacities as trustees of the Quadri Trust. The family had no objection to that when she asked for comments. On 15 July 2012, Gunner said, he, D'Amico, Ferrari and Ketti had met to discuss that draft and she had made manuscript notes on the draft to reflect the changes they wished to make. None were made in respect of the identity of the purchaser.

[27] But on 16 July 2012 Ferrari and Ketti advised Gunner and D'Amico that the family did not wish to proceed with the sale of a member's interest. They did not wish to have any encumbrance, they said. Ferrari said expressly that the trust was not the problem. The real problem was that they did not want to have to resort to a majority vote in the future. Thus while 'it was not easy to walk away from four and a half million basically cash' they had decided to do so. They said that while they wanted Gunner in the business, they did not want him to need to consult on any decision to be made. The implication, of course, was that they did not want him to have to refer

back to D'Amico. Yet when D'Amico asked: 'Is there still a deal, but you just don't want to deal with the trust? Or is there no deal and the trust is one of the problems?' Ferrari responded: 'Yes. I would put it down that way.' When pressed on the issue by D'Amico, he agreed that the family's biggest concern was bringing a third party into the business. Nonetheless he and Ketti indicated that they might resume negotiations in the future.

[28] Two days later Ferrari sent an email to Gunner and D'Amico saying they wanted to resume negotiations. Subsequently other drafts of the sale and association agreements were prepared. After consulting a lawyer who specialized in trust work (who had formerly been D'Amico's candidate attorney, and to whom she referred the family to create their trusts), Gunner decided not to put the shareholding in the family trust but in a business trust. As it had not been formed yet, D'Amico changed the identity of the purchaser to Gunner and inserted the contentious clause 3.7. She sent this draft to Ferrari and Ketti as an attachment to an email on the evening of 19 July 2012.

[29] On 20 July 2012 Ferrari sent back the draft with various queries and comments. Clause 3.7, which was obviously a new provision, was shown in red on D'Amico's new draft, as a new insertion that was tracked, but Ferrari did not comment on it. Eventually, at a meeting on 23 July 2012, the agreements were signed after handwritten corrections were made at Ketti's instance.

[30] I return to the alleged fraudulent misrepresentation about the meaning of clause 3.7. When was it made? Where? Was Gunner present? Did he know that D'Amico was being untruthful? Was he complicit? And if so, how does that square with their allegations that D'Amico wanted control herself, and was thus not acting in Gunner's interests? The appellants do not say.

[31] It is trite that a person claiming to have been misled by a fraudulent misrepresentation, and who wishes to treat the contract concluded as void, must aver and establish that a misrepresentation as to an existing fact has been made, that the representation was false and that the party making it knew it was false, that it was material in that it induced the contract in question, and that had he known the true facts he would not have entered into the contract. The appellants' case as set out in the two paragraphs of their answering affidavit to which I have referred do not begin to make out a case of fraud against D'Amico, much less against Gunner.

[32] Despite this they argued that the matter was not one that should have been determined in motion proceedings: that there were serious disputes of fact that could be tested only where there was oral evidence led, and the parties to the contracts cross-examined. However, in my view, the only dispute of fact is whether D'Amico made any misrepresentation at all. As I have said, its existence and effect were raised for the first time by the appellants in the Ferrari answering affidavit. The high court, argued the appellants, should have applied the rule in Plascon-Evans that where a factual dispute emerges in application proceedings, the court must accept the version of the respondent on affidavit unless it raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting it on the papers alone. Bare and uncreditworthy denials will not be considered. (*NDPP v Zuma* 2009 (2) SA 277 (SCA) para 26.)

[33] But in this matter, the appellants alleged the fraudulent misrepresentation as to the meaning of clause 3.7 in the sale agreement only in the Ferrari answering affidavit: Gunner did not merely deny it. He gave a lengthy and plausible response, described above. There is no reason to reject his version.

[34] In any event, there are various aspects of the appellants' version that lead to the conclusion that it is far-fetched and fictitious. First, it is unlikely that Ferrari and Ketti, very experienced business people, would have let clause 3.7 stand had they objected to Gunner acquiring the shareholding in a trust. The issue of a trust had

been raised previously: it was discussed at the meeting of 16 July 2012. Ferrari expressly said that it was not the trust that had made them decide to withdraw from negotiations. Indeed after that meeting and after negotiations had resumed the family consulted the trust lawyer and established their own trusts.

[35] Second, when advised that Gunner wished to register his shares in a trust the appellants did not demur, let alone object. On 29 August 2012 D'Amico wrote an email to Ferrari and Ketti asking whether Budget had been converted to a company yet. She said: 'Once the CC has been converted then your auditors must issue share certificates to Claudio and Sietse *(or their trusts if you are going down that road)* stating that they each own 40% shares in Budget Sheet an a share certificate (showing 20%) to Quintin but in the name of The Qmaro Investment Trust . . . , which is the new trust that we have registered.' (my emphasis.) There was no objection to this.

[36] Ferrari attempted to explain the absence of objection in his anwering affidavit by saying that they thought this was a request to consider holding shares in a trust, and not the communication of a decision. '[W]e remained of the view that a transfer to trusts could only happen by *majority* vote as contemplated in the Association Agreement.' (My emphasis, to show that on one version of the appellant, a majority vote was required and on another a unanimous vote.)

[37] But the email was not couched as a request. And another email sent by D'Amico the following day, advising Ferrari that it was not wise to register the member's interest in Budget when it was still a close corporation in Gunner's name (for tax reasons), with another reference to a trust, also elicited no objection. And several months later, on 22 February 2013, when D'Amico asked for the names of the trusts in which the family's shares would be registered, Ketti responded naming two trusts and giving their registration numbers. Other correspondence about registration of shareholding in trusts as late as 1 March 2013 also gave rise to no objection.

[38] Thirdly, when the family consulted Wadiwala and he wrote in response to D'Amico's letter of demand, no mention was made of the alleged fraudulent misrepresentation as to the meaning of clause 3.7. The defence was raised for the first time in the answering affidavit. And finally, if there was any truth in the allegation that D'Amico had misrepresented the meaning of clause 3.7, and if the appellants had really thought that unanimous consent was required for any of Ferrari, Van der Molen or Gunner to hold their shares in trusts, then the proper remedy was for them to apply to rectify the agreement to state that – to reflect their continuing common intention.

[39] Thus the inevitable conclusion is that the defence was an afterthought – a construct to escape legal liability. The appellants did not establish that any misrepresentation, let alone a fraudulent one, was ever made to them by D'Amico. Accordingly it is not necessary to consider whether Gunner was complicit in the making of the misrepresentation, or any other requirement for actionable misrepresentation.

[40] I conclude, therefore, that the agreements signed by the parties were not vitiated by either undue influence or fraudulent misrepresentation, and the appellants are bound by them. The remaining question is whether the order for specific performance was appropriate.

Specific Performance

[41] An order of specific performance is the primary remedy available to an aggrieved party where the other is guilty of breach of contract. That said, in various cases where hardship or inequity would result from the enforcement of the contract our courts have, in the exercise of their discretion, refused to grant specific performance. (See *Haynes v Kingwilliamstown Municipality* 1951 (2) SA 371 (A).) Generally, an award of damages is sought in the alternative and where specific performance is not ordered damages will constitute appropriate relief.

[42] The appellants argued that the order was inappropriate in this matter. There was a complete breakdown of the relationship of trust that is necessary for the parties to work together in a family business. That trust has been broken, they contend, because of D'Amico's conduct and attempt to assume some control in what was a small company in which the family has worked together closely for many years. That breakdown of trust was exacerbated, the appellants argued, when Gunner secretly recorded the two meetings in July – and possibly others too. Although Gunner explained that he had recorded the meetings so that he could capture financial information accurately, he did not explain why he had not disclosed the fact that he was recording the meetings upfront.

[43] It was clear that Gunner could not work in the business, the appellants argued, because of his misconduct towards staff: he had been found guilty of being abusive and not following business procedures. An order to transfer shares to him and to appoint him as a director would cause hardship to the other shareholders and directors.

[44] Gunner contended, on the other hand, that the misconduct complaints had been made only when the family wished to oust him from the business. They were trumped up and did not warrant dismissal. He did not ask for reinstatement as an employee, and would have only a minority vote.

[45] The high court held, when considering how the parties might co-operate in the future, that as a minority shareholder, and one of five directors, Gunner would not be able to frustrate the business of Budget, and would be constrained to exercise his fiduciary duties. It also found that the appellants' reasons to resile from the agreement were flimsy. It held that Gunner had complied with his obligations and as a stakeholder would advance the interest of Budget.

[46] This court will interfere with the exercise of the high court's discretion in granting specific performance only if it was capricious; or an unbiased mind has not

been brought to bear on it; or has not acted for substantial reasons: *Ex parte Neethling* 1951 (4) SA 331 (A) and *Benson v SA Mutual Life Assurance Society* 1986 (1) SA 776 (A) at 781H-J. In this matter the high court considered the argument that specific performance would cause hardship to the family and Budget. But, said Monama J, their allegations of undue influence and the reasons for resiling that they manufactured were flimsy. In the circumstances, he considered that he ought not to refuse an order of specific performance in the exercise of his discretion.

[47] I see no ground on which to interfere with the high court's exercise of its discretion. It was exercised judicially and after careful consideration, was not biased and was for substantial reason. As Gunner argued on appeal, the parties are experienced business people. He is willing to perform his obligations, and indeed has paid a large sum for the shares in Budget. In *Diner v Dublin* 1962 (4) SA 36 (N) Milne JP ordered the transfer of shares to the plaintiff, and that he be appointed as a director. The parties were, said the court, hard-headed businessmen, and the defendant, having received payment for the shares, would be able to manage 'very well' with the plaintiff as a minority shareholder despite the exchange of hard words between them.

Milne JP, in the course of considering whether an order of specific performance would cause hardship to the defendant said (at 40F-H):

'I have come to the conclusion, after having seen each of the parties in the witness box over a number of days and, having regard to the history of the matter in relation to the character of the parties, that to order specific performance would not be to impose any such hardship on the defendant as would make it an improper exercise of discretion to grant the decree. The plaintiff, after all that has happened, asks for the decree. He is the one who will be the minority shareholder with all the consequences that that entails. In spite of those consequences he still asks for a decree after all that has happened and after all that the defendant has said and done, even though the defendant will have the controlling interest in the companies . . . .'

[48] The same must be said of the parties in this case. Gunner has performed, and in turn asks for specific performance despite all that has been said and done. I can see no justification for interfering in the exercise of the discretion by the high court.

[49] Accordingly the appeal is dismissed with costs including those of two counsel.

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CH Lewis

Judge of Appeal

APPEARANCES

For Appellant:	CE Watt-Pringle SC, AJ Lamplough
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