

## Internal Publication: Schlesinger v Schlesinger 1979 (4) SA 342 (W)

### Case Name:

*Schlesinger v Schlesinger 1979 (4) SA 342 (W)*

### Area of Law:

Civil Procedure *Ex Parte* Applications

### Brief Facts/Summary:

An order was obtained *ex parte* by one Ms Rita Rose in the Witwatersrand Local Division. No notice of the application was given to Mr Schlesinger who was affected by the order. He launched an urgent application for an order to stay the uplifting of the above order on the basis, *inter alia*, that the Respondent had failed to disclose material facts to the Court in her application.

### The Law:

The Court held that:

- (1) in *ex-parte* applications all material facts must be disclosed which *might* influence a Court in coming to a decision;
- (2) the non-disclosure or suppression of facts need not be wilful or *mala fide* to incur the penalty of rescission; and
- (3) the Court, apprised of the true facts, has a discretion to set aside the former order or to preserve it.

In light of the above, the court held that the enquiry was two-fold:

- (1) Firstly the court should enquire into whether there has been such a serious non-disclosure or misstatement of material facts, as would entitle a Court of law to set aside the original order; and
- (2) Secondly, whether a Court should do so in the instant case, if this found to be so.

Further to the above, it was held that unless there are **very cogent practical reasons** why an order should not be rescinded, the **Court will always frown on an order obtained *ex parte* on incomplete information and will set it aside** even if relief could be obtained on a subsequent application by the same applicant.

### Conclusion:

The order of the Witwatersrand Local Division was set aside on the ground of non-disclosure of material facts in the original application.

### Importance/Significance:

Sets out the test regarding material non-disclosure of facts in *ex parte* applications.