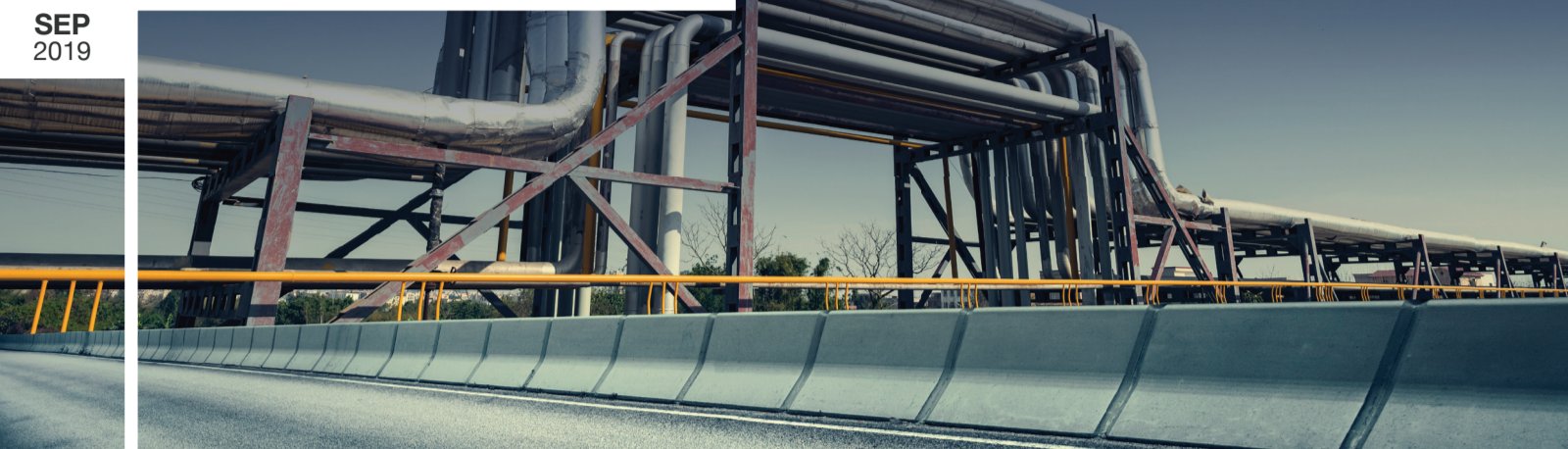


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DO NOT GET ON THE BAND-WAGON WITHOUT YOUR OWN TRUMPET: UNLAWFUL COMPETITION

In the case decided by the Supreme Court of Appeal, Pexmart CC and Others v H Mocke Construction (Pty) Ltd. 2019, the principles of unlawful competition were considered.

Mocke Construction, a pipelining construction company, specialised in steel pipe lining processes. Mocke Construction attained certain intellectual property rights and know-how regarding the pipe lining process via an exclusive license agreement entered into with an American entity. Mocke Construction employed Mr. Henn to assist and work on its steel pipe lining processes. During his course of employment, Mr. Henn got familiar with the process of lining steel pipes and the intellectual property rights, know-how and confidential information, developed over a long period of time, used and developed by Mocke Construction.

Mr. Henn's employment contract terminated with Mocke Construction and he immediately took up employment with Pexmart CC, whereafter Pexmart CC commenced lining steel pipes, using the intellectual property, know-how and confidential information acquired by Mr. Henn during his tenure with Mocke Construction.

The court considered the principles on which the 'liability for unlawful competition rests'. As a general rule, every person is entitled freely to carry on his trade or business in competition with his rivals, but the competition must remain within lawful bounds. It is unlawful to the extent that it interferes with another's rights as trader. The court concluded that there is no closed list of acts that constitutes unlawful competition, but, the unfair use of a competitor's fruits and labour and the misuse of confidential information in order to advance one's own business interest and activities at the expense of the competitor can constitute unlawful competition, as the court found it to be in this instance.

It is therefore important not to take trade secrets of your employer and use it to your own benefit, and to the expense of your prior employer, hence - do not get onto the band-wagon without your own fruits and labour.

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