



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Mosselbaai Boeredienste (Pty) Ltd v OKB Motors CC (Case no 1216/21) [2023] ZASCA 91 (09 June 2023)

Today, the Supreme Court of Appeal (SCA) upheld an appeal from the Free State Division of the High Court, Bloemfontein (high court). The order of the high court was replaced with one granting condonation for failure to comply with the provisions of the Uniform Rules of Court (rules) and reinstated the appeal. The matter was referred back to the high court for determination of the merits.

The appeal revolved around an interdealership agreement between the applicant and respondent (plaintiff and defendant in the court *a quo*) for the purchase of a motor vehicle. The motor vehicle was purchased and delivered, and the purchase price transferred. However, the purchase price was never received as the provided invoice was intercepted and altered by a third party who ultimately obtained receipt of the money. The proof of payment sent by the defendant was again intercepted by the same third party who altered the fraudulent payment details to the correct details, causing the defendant to believe that the payment was correctly made.

Proceedings commenced in the magistrates' court (court *a quo*), which dismissed the matter. It proceeded upon appeal to the high court. However, a party who wished to pursue an appeal to the high court should have, *inter alia*, complied with the rules regulating appeal proceedings. Having considered the matter, the high court dismissed the application for condonation and reinstatement of the appeal on the grounds that there were no reasonable prospects of success.

The plaintiff proceeded to apply for special leave to appeal to the SCA. Principally, the SCA maintained that where special leave is sought, the existence of reasonable prospects of success is insufficient – something more, by way of special circumstances was required. The principles underlying an application for condonation, in the context of a reinstatement of an appeal, has always been that the court had a discretion which should have been exercised judicially. As such, the appeal hinged on four considerations. The first was that the respondent, in the court *a quo*, raised the defence of estoppel with regards to the negligent misrepresentation of the banking details. A material contradiction relevant to this consideration was not considered by the court *a quo*. Second, the court *a quo* failed to consider whether the alleged negligence was the proximate cause of the payment having been electronically transferred by the defendant into the incorrect banking account. Third, the court *a quo* failed to consider

whether the damage or loss that was caused by the third party was reasonably foreseeable and fourth, it was unclear whether the debtor ought to have remained liable for payment until such payment had been credited to the creditors account.

After examining authority on the considerations at hand, the SCA determined that the plaintiff established reasonable prospects of success on appeal and that the matter should be heard by a full court on appeal. In the result, the order of the high court was replaced with one granting condonation for failure to comply with the provisions of the rules and reinstated the appeal.

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