



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 30 September 2022
Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Van Wyk Van Heerden Attorneys

v

Gore NO and Another

Today the Supreme Court of Appeal upheld an appeal from the Western Cape Division of the High Court, Cape Town (per Magona AJ). Three deposits had been made into the trust account of the appellants (the attorneys). One Bruce Philp and a close corporation under his control, BRP Livestock CC, were indebted to the Utexx Trust (Utexx). At the instance of Utexx, BRP had been liquidated and Philp was facing a sequestration application. In order to discharge the debt of BRP and save Philp from sequestration, Philp arranged for a relative to purchase the claims of Utexx against BRP and Philp. Utexx insisted that payment should emanate from the trust account of the attorneys. The deposits came from the account of Brandstock Exchange (Pty) Ltd (Brandstock), a company in which Philp was the sole director. The attorneys were unaware of the existence of Brandstock which was also not indebted to Utexx. Soon after the deposits were made, Brandstock was liquidated.

The first deposit had been on-paid by the attorneys to Utexx pursuant to the agreement for the sale of its claims. The second and third deposits had been utilised

to pay the fees of an advocate and the fees and other disbursements of the attorneys for work done for BRP and Philp. The liquidators sought to recover the deposits into the trust account of the attorneys on the basis of s 26(1)(b) of the Insolvency Act 24 of 1936 as being dispositions without value of Brandstock to the attorneys. The contention of the liquidators was that all three of the dispositions had been made to the attorneys and they were recoverable from them. The high court upheld the claim of the liquidators and ordered the attorneys to pay back the aggregate of the three deposits.

The Supreme Court of Appeal held that, in order for those dispositions to be set aside, the person in question had to have benefited from the disposition. Since the attorneys did not benefit from the first deposit, having simply given effect to their client's instruction to on-pay them to Utexx, it did not fall within the purview of s 26(1)(b) and the amount deposited into the trust account could not be recovered from them. However, regarding the second and third deposits, the attorneys had benefited by utilising them to settle amount due to them by Philp and BRP. That meant that the attorneys attracted an onus under the section to show that, at the time the dispositions were made, the assets of Brandstock exceeded its liabilities. Since they had not proved that to be the case, the Supreme Court of Appeal upheld the appeal in respect of the first deposit and dismissed it as regards the second and third deposits.