



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

Date: 25 January 2022

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

Cornerstone Logistics (Pty) Ltd and Another v Zacpak Cape Town Depot (Pty) Ltd
(Case no 879/2020) [2022] ZASCA 12 (25 January 2022)

Today the Supreme Court of Appeal dismissed an appeal by the appellant from the Western Cape Division of the High Court, Cape Town, (the high court) with costs.

On 20 September 2017, the first appellant, Cornerstone Logistics (Pty) Ltd, duly represented by the second appellant, Preston Aitken, submitted an application to the respondent, Zacpak Cape Town Depot (Pty) Ltd for credit facilities in respect of warehousing services. The respondent provided a quotation for the services and the second appellant had signed the credit application form as surety and co-principle debtor, thereby renouncing the benefits of excussion and division. The application was approved with a stipulated credit limit of R30 000.00 and 30 days payment. Upon default, payment may be exacted from the second appellant in his personal capacity as surety.

Sometime between August 2017 and November 2018, the first appellant instructed the respondent to store various consignments of alcohol in its customs warehouse. The respondent subsequently released the goods to Bridge Shipping, a road carrier, who was supposed to export the goods to Mozambique. However, the goods were impermissibly diverted and ended up being utilised for home consumption in the Republic. The South African Revenue Service (SARS) sent a letter to the respondent demanding payment of duties, value-added tax and other related charges totalling 37 416 153.27. The respondent lodged an internal appeal, which was dismissed. Thereafter, it launched proceedings in the high court for an order setting the letter

of demand. In the interim, proceedings were launched to enforce the indemnity and surety clauses against the first and second appellants.

The high court upheld the respondent's claim – the first appellant was held liable on the basis of indemnity and the second appellant on the basis of suretyship, and ordered to pay what was required to SARS. This Court granted leave to appeal the order.

This Court found that the respondent held goods on behalf of the first appellant's client, Manzano Trading, and released the goods to Bridge Shipping on instruction of the first appellant's express instructions. Any liability that the respondent could have incurred by releasing the goods as a consequence of acting on instructions by the first appellant was covered by the indemnity agreement. The appellants contended that they could not have been held liable as liability would never have been incurred had the respondent kept proper records of their paperwork. This contention, however, was rejected, as the allegations levelled by SARS did not revolve around the respondent's inability to provide SARS with documentation, but rather that the documents provided were forged or fraudulently obtained. As the licensed operator of a customs warehouse, the respondent was to ensure that proper bills of entry was presented when receiving goods, and when releasing the goods for transportation, to do so only upon receipt of the prescribed authorisation.

The second appellant, in turn, contended that he had only bound himself as surety for warehousing services and only to a stipulated maximum. His intention had been to limit his suretyship when the agreement was entered into and the respondent had failed to indicate that his assertion was untrue. However, this Court found the second appellant's assertions inadmissible and at odds with the clear stipulations of the agreement.

Ultimately, the first appellant's contractual obligations were separate and in addition to its liability in terms of other clauses of the agreement. Because the second appellant's liability as surety was accessory to the first appellant, the obligation incurred by the first appellant extended to the second appellant. The second appellant was therefore liable as surety and co-principle debtor for any amount that the first appellant was obliged to pay in terms of the agreement.

In the result, the order of the high court is upheld and the appeal is dismissed with costs.