



**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:** 30 December 2023

**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***

*Cloete Murray N O and Others v Humansdorp Co-operative Limited (1274/2021) [2022] ZASCA 187 (30 December 2022)*

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Today the Supreme Court of Appeal (SCA) handed down judgment dismissing the appeal against the order of the Eastern Cape Division of the High Court, Grahamstown (the high court).

The high court dismissed, with costs, the application brought by the liquidators of the appellant, Cape Concentrate (Pty) Ltd (Cape Concentrate) to set aside, as a payment without value, the payment of monies made to the Respondent from trust account of Pagdens (a firm of attorneys of which the business rescue practitioner was a director). The high court found that the payment was a demand guarantees made by Cape Concentrate to the Respondent and was a disposition with value.

The issues for determination before the SCA was whether the payment of monies amounted to a disposition not made for value as envisaged in s 26 of the Insolvency Act 24 of 1936 (the Act); whether the payment was made by Cape Concentrate, or whether it was a payment made by or on behalf of The Standard Bank of South Africa Limited (Standard Bank), of demand guarantees issued in favour of the Co-op for the liabilities of the Tyefu Community Farming Trust (the Trust).

On evaluating the facts before it, the SCA held that it was common cause that a debt was owed to the Respondent by the Trust. While Cape Concentrate was under business rescue, the business rescue practitioner caused monies of Cape Concentrate to be paid into the trust account of Pagdens. Pagdens paid that money from its trust account to the credit of Standard Bank Third Party Trust Administration (TPFA) accounts, in order for Pagdens to cause guarantees to be issued by its utilisation of the Standard Bank's online TPFA system. The guarantees were to secure the debts of the Trust to the Respondent. The Trust was not able to honour its debt to the Respondent, which made demand in terms of the guarantees. When demand was made, the guarantees were not presented to Standard Bank for payment, but to Pagdens.

Crucially, the SCA held, it was not disputed that the bank guarantees were binding on Standard Bank. Once those monies were credited to the Standard Bank TPFA account, they became subject to a pledge and cession in favour of Standard Bank. The fact that the cession was in respect of a property guarantee, as opposed to a demand guarantee, was irrelevant, said the SCA. Once a guarantee is valid on the face of it, the contractual obligation of the bank is to pay the nominated beneficiary if the conditions are met. The SCA held that when the demand was made by the Respondent for payment under the guarantees, payment of the pledged and ceded monies was made by Pagdens on behalf of Standard Bank, in line with its obligations under the guarantees. The payment was therefore made by Standard Bank in satisfaction of the demand guarantee and not by Cape Concentrate.

In light of the above, the SCA held, it was unnecessary to make a determination in respect of the other issues that arose in the pleadings. As a result, the SCA made an order dismissing the appeal with costs, including the costs of two counsel where so employed

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