



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: 21 June 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

Alert Steel (Pty) Ltd (in liquidation) v Mercantile Bank Limited (case no 165/21) [2022]
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The Supreme Court of Appeal (SCA) today dismissed an appeal by the appellant, Alert Steel (Pty) Ltd (in liquidation) (the company), against an order by the Gauteng Division of the High Court, Johannesburg (the high court), which dismissed its claim against the respondent, Mercantile Bank Limited (the bank) for repayment of the sum of R105 226 381.17, together with interest and costs.

The Company previously traded as a wholesaler and retailer of steel and hardware products. In 2014 the bank granted the company overdraft facilities in the sum of R104 million against certain securities, including a registered notarial bond over the company's stock and movable assets, and cession of its present and future book debts, and an insurance cover. The company was provisionally wound-up in 22 July 2014. A final winding-up order was made in February 2015.

On 22 July 2014 the provisional liquidators received a written offer from West Lake Trade and Investments (Pty) Ltd (West Lake) to purchase all the companies assets for R100 million. The bank accepted this offer and the liquidators obtained the Master's consent to proceed with the sale. The assets were sold to West Lake and the company's indebtedness to the bank was reduced by R100 million. The liquidators paid an amount of R3.1 million in respect of book

debts which they collected to the bank. An amount of R2 126 381.17 was collected by the bank pursuant to the perfection of its notarial bond.

Subsequently, the liquidators applied to the high court for an order directing the bank to repay the amount of R105 226 381.17 together with interest, on the basis that the bank was not entitled to retain this amount because it had not proved the claim in the company's insolvent estate. The liquidators' claim was based on enrichment, namely the *condictio indebiti*, alternatively the *condictio sine causa*.

The SCA held that the requirements of enrichment had not been satisfied. The bank had not been enriched: the liquidators had acknowledged that the company was indebted to the bank in an amount in excess of R104 million, and that the bank was a secured creditor. The company, correspondingly, was not impoverished. No payment was made at the company's expense. It owed the bank R104 million plus interest. The payment to the bank was not unjustified: there was a legal basis for payment to the bank of the proceeds of the sale of the company's assets to West Lake. The inevitable conclusion to be drawn from the facts was that the recovery of the liquidators' fees was the sole reason for their claim.

The appeal was accordingly dismissed with costs, including the costs of two counsel.