



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

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Sumeil (Pty) Ltd v Coogal Finance (Pty) Ltd (In Liquidation) and Others (1140/2023) [2025] ZASCA 27 (28 March 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment, wherein the appeal was upheld with costs, against an order of the Free State Division of the High Court, Bloemfontein (the full court).

This matter concerned a financial dispute between the appellant, Sumeil (Pty) Ltd (Sumeil) and the first respondent, Coogal Finance (Pty) Ltd (Coogal) (in liquidation), with the second respondent being the appointed liquidator, Ms Karen Fortein (Ms Fortein). Coogal was finally liquidated on 11 April 2019. The application for its liquidation was brought by another creditor which was duly lodged with the Registrar of the high court on 4 February 2019 (the deemed date of liquidation) under section 348 of the Companies Act 61 of 1973.

Coogal's business primarily involved leasing heavy-duty vehicles, while Sumeil operated in the transport sector. In 2012 Coogal concluded four separate instalment sale agreements with ABSA Bank (ABSA), where it acquired four Volvo trucks (the trucks). Coogal was to pay ABSA approximately R30 000 per month per truck, while ownership of the trucks was reserved and vested in ABSA pending full payment of the trucks. In 2016, Coogal leased the four trucks to Sumeil under four master rental agreements. These agreements required Sumeil to pay monthly instalments of R10 000 (excluding VAT) and balloon payments of R165 000 (excluding VAT) upon maturing on 28 February 2019. The agreements required Coogal to carry the maintenance costs of the trucks, but this duty was eventually assumed by Sumeil which invoiced Coogal. Sumeil had the option to own the trucks at no cost, as confirmed by the 'End of Contract/ Rental' notices but required Sumeil to notify Coogal of its election within three months of the termination of the agreement, and if Sumeil failed to notify, they would be deemed to have elected to acquire ownership of the trucks.

At the time of Coogal's liquidation, Ms Fortein, as the appointed liquidator, brought an application in the high court, where she sought an order for the liquidation of Sumeil and that the corporate veils of Coogal and Sumeil be pierced. In the alternative, Ms Fortein alleged that Sumeil owed Coogal R185 000 for the master rental agreements and R165 000 plus VAT

(R189 750) for the balloon payments of each truck, totalling R944 000. In effect, they sought an order that Sumeil pay Coogal the R944 000, plus interest and the costs of the application.

Sumeil opposed the application and denied that it was insolvent or that it was just and equitable for it to be wound-up. Further, Sumeil disputed that it was indebted to Coogal on the deemed date of liquidation. Asserting, instead, that Coogal owed Sumeil R1 227 906.83 as a ‘set-off’ when Sumeil settled Coogal’s indebtedness of the instalment sale agreements directly with ABSA. The payments to ABSA were accounted for in the books of Coogal and evident from the journal entries made after 18 February 2019.

The court of first instance (the high court) found in favour of Coogal in terms of the alternative claim for the payment of R944 000 but dismissed its application for Sumeil’s liquidation and the piercing of the corporate veil to have their separate corporate statuses ignored and treated as one entity. On appeal to the full court, the high court’s decision on the payment claim was upheld. Sumeil then appealed with the special leave of this Court.

The SCA held that in terms of the *Plascon-Evans* rule where final relief is sought the facts in dispute are decided on the respondent’s version unless that version is clearly untenable that it can be rejected on the papers. The Court held that the full court erred by not properly applying this principle when assessing whether Sumeil owed R944 000 to Coogal. Further, the Court held that Coogal and the liquidator bore the burden of proving that Sumeil owed R944 000. The Court found insufficient evidence to support this claim. Sumeil’s debt of R185 000 was set-off against the amount Coogal owed it before Coogal’s liquidation, but set off did not operate in respect of the amount owing for the balloon payments (ie the balance). The Court found that, in any event, a case had not been made for the payment of the balance. In the absence of a reciprocal tender of performance by Coogal and the liquidator that would enable Sumeil to become the owner of the trucks, the liquidator (and Coogal) failed to make out a valid case in law for the payment to Coogal.

The Court clarified that ‘set-off’ requires parties to be mutually indebted to each other in their personal capacities; and the mutual debts must be liquidated and be due and payable. And further that set-off did not operate after liquidation. The Court held that if set-off was permissible after liquidation, then it may give a particular creditor an undue preference and undermine the entire rationale of a *concurso*.

As a result, the SCA upheld the appeal with costs, including costs of two counsel where employed, and set aside the high court’s order dismissing the payments order.

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