



## 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:** 5 October 2026

**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***

*FJ Senekal Inc v The Standard Bank of South Africa Limited and Others (167/2025) [2026] ZASCA 137*

*(5 October 2026)*

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Today the Supreme Court of Appeal (SCA) dismissed with costs an appeal by FJ Senekal Inc (Senekal Inc) against a judgment of the Free State Division of the High Court, Bloemfontein (the high court). The high court had set aside a decision of the Master of the High Court, Bloemfontein (the Master), dismissing objections by The Standard Bank of South Africa Limited (Standard Bank) to an amended liquidation, distribution and contribution account in the insolvent estate of Mr J N Herselman. The appeal had lapsed because the record was lodged late. The SCA granted the unopposed application for its reinstatement.

The appeal concerned s 63(2) of the Insolvency Act 24 of 1936 (the Act). The section provides that a trustee, the trustee's partner, and any person who employs the trustee or is a fellow employee of the trustee, is not entitled to remuneration out of the insolvent estate for services rendered to it, other than the remuneration due to the trustee as trustee. The principal question was whether that prohibition can be avoided where the person who did the work leaves the trustee's firm, establishes a firm of his own, and then invoices the estate in the name of the new firm for work done while he was still with the trustee's firm.

Mr Herselman was sequestrated on 5 December 2013. The Master appointed Mr E R Smith and Mr T V Matsepe as co-trustees. Mr Matsepe was a director of the attorneys' firm Matsepes Inc. Mr F J Senekal was a fellow director of that firm until October 2017. At the second meeting of creditors in July 2014, the creditors resolved that the trustees could appoint attorneys to interrogate the insolvent and other witnesses, but that the costs of the interrogation were excluded from the costs of administration. One creditor, Farmsecure Livestock (Pty) Ltd (Farmsecure), financed the interrogation on the basis that it would bear its costs and receive its proceeds. Mr Senekal conducted the interrogation and the recovery proceedings that followed as a director of Matsepes Inc. He left that firm in October 2017, and Senekal Inc was registered on 27 October 2017. In December 2019 and February 2020, Senekal Inc invoiced the estate for work performed from November 2013 onwards, most of which had been done before it existed.

At the Master's direction, the trustees included Senekal Inc's fees in an account signed in June 2021 as costs of administration, with the resulting shortfall to be met by a contribution from Farmsecure alone. Standard Bank was not required to contribute and did not object. The Master confirmed that account on 15 September 2021. Farmsecure, however, was already in liquidation. Senekal Inc then brought an application against the trustees, which was settled and made an order of court on 6 October 2022. The order directed the trustees to collect contributions from creditors liable under the Act, after taxation and

in accordance with the statutory procedure for amending the account. The trustees' amended account of February 2023 required Standard Bank to contribute R1 085 723.12. Standard Bank objected. The Master dismissed its objections, and the high court set that decision aside.

The SCA rejected Senekal Inc's contention that the confirmation of the June 2021 account barred Standard Bank from objecting. It held that s 111(1) of the Act allows any interested person to object to an account before it is confirmed, and that the February 2023 account was a new, unconfirmed account. Confirmation under s 112 is final only as to what the confirmed account decided and as between the persons whose rights it determined. The June 2021 account decided nothing against Standard Bank. The contribution imposed on Standard Bank flowed directly from the inclusion of the fees, and a creditor entitled to object to the contribution could not be prevented from objecting to the charge that gave rise to it.

The SCA further held that the October 2022 order did not determine which creditors were liable to contribute, or that the fees were recoverable from the estate. By requiring compliance with the statutory amendment procedure, the order preserved the right of objection. A settlement between a claimant and the trustees, made an order of court, could not impose liability on creditors who were not parties or validate a charge that the Act prohibits. Standard Bank's objections were accordingly not a collateral attack on the order.

On s 63(2), the SCA held that any claim for fees for work done by Mr Senekal while a director of Matsepes Inc belonged, if it existed at all, to Matsepes Inc. Senekal Inc could have acquired such a claim only by cession, and none appeared in the record. Even a cession would not have assisted it, since Matsepes Inc was itself disentitled by s 63(2) and had nothing to cede. The SCA held that the section prohibits entitlement, not merely duplicated payment, and that it cannot be evaded by transferring the claim to someone outside its reach. No proof of dishonesty was required. The SCA also rejected the argument that the section applies only to partners and not to directors, holding that an incorporated law practice is the statutory equivalent of a partnership and that a purposive reading of the section reaches both.

The SCA held, in addition, that the interrogation costs had been excluded from the costs of administration by the creditors' own resolution. Farmsecure's insolvency did not convert them into costs of sequestration for which the general body of creditors must contribute under s 106 of the Act.

The SCA accepted that s 63(2) would not apply to services rendered by Senekal Inc after its incorporation under a proper mandate from the trustees. Senekal Inc's invoices, however, did not separate work done before and after that date, and the record did not establish that the trustees had jointly mandated it. The SCA noted that the amended account will again lie open for inspection and objection.

Finally, the SCA held that a review under s 111(2)(a) of the Act is a wide statutory remedy in which the court decides the matter afresh and may make such order as it thinks fit. The high court was therefore entitled to uphold the objections itself rather than remit them to the Master.

In the result, the SCA reinstated the appeal and dismissed it with costs.