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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Gorr Assist (Pty) Ltd v Bayport Securitisation (RF) Ltd (788/2024) [2026] ZASCA 51 (14 April 2026)

Today, the Supreme Court of Appeal (SCA) handed down judgment in an appeal against a judgment of the Gauteng Division of the High Court, Johannesburg (the full bench), sitting as a court of appeal. The matter came before the SCA by way of an application for special leave to appeal, which had been referred for oral argument in terms of s 17(2)(*d*) of the Superior Courts Act 10 of 2013.

The appeal concerned whether the Randburg magistrates' court (the Randburg court) was correct in determining that Gorr Assist's (Gorr) claims had prescribed. If not shown to have erred, then Gorr could not enjoy reasonable prospects of succeeding with any appeal.

The relevant facts, briefly, were as follows. Mr Letlhogonolo Percy Mothibi (Mr Mothibi) concluded certain small and intermediate loan credit agreements with Bayport Financial Services (Pty) Ltd (BFS) or Bayport Financial Services 2010 (Pty) Ltd (BFS 2010), from May 2009. He defaulted in his obligations in terms of the loan agreements, and two actions were instituted against him by BFS during 2010 under case numbers 26633/2010 and 28870/2010 in the Verulam Magistrate's Court (the Verulam court). On 14 and 15 September 2010, Mr Mothibi, consented in writing, in terms of s 58 of the Magistrates' Court Act 32 of 1944 (MCA), to judgments being entered against him in favour of BFS and for emolument attachment orders in terms of s 65J of the MCA to be issued. Pursuant to the consents, two judgments were granted in favour of BFS, and emoluments attachment orders were issued in favour of BFS on 8 November 2010. Gorr's claims are alleged to arise from the two judgments granted by the Verulam court.

Mr Mothibi did not reside, nor was he employed in the area of jurisdiction of the Verulam court when he signed the consents and when the judgments were granted. Accordingly, the Verulam court lacked jurisdiction to have granted the judgments against him. It is common cause that the judgments were therefore, in law, void *ab initio* (from the outset). Mr Mothibi became aware that the judgments had been obtained out of the wrong jurisdiction during February 2017. During November 2017, he brought an application against BFS to rescind the Verulam court judgments. He did not claim repayment of what he had paid pursuant to the judgments in the rescission application. In both the founding and replying affidavits filed in support of the rescission applications, BFS is cited as the respondent. It is alleged by Gorr that the Verulam court, acting in terms of s 36(1)*(b)* of the MCA read with rule 49(8) of the Rules of the Magistrates Court, on 14 June 2021, rescinded the two judgments.

On 27 July 2021, Mr Mothibi ceded all his right, title and interest in respect of his 'present claim of' R30 838.72 and R30 237.73 that he 'obtained or acquired against [BS and/or BFS 2010]' to Gorr. On 4 August 2021, Gorr issued the summons commencing action in the Randburg court against BS. The summons was served on BS on 19 August 2021. Gorr's cause of action, as pleaded in its particulars of claim, was as follows: the judgments of the Verulam court in favour of BFS were void; the payments made by Mr Mothibi pursuant to these judgments were accordingly not due pursuant to a valid court order; the judgments were subsequently rescinded; accordingly restitution should follow; therefore the amounts paid by Mr Mothibi should be repaid to Gorr as cessionary of Mr Mothibi's claims.

On 29 April 2022, the Randburg court upheld the special plea of prescription. It reasoned that: the claims did not only arise when the Verulam court judgments were rescinded; the Verulam court in rescinding the judgments had simply confirmed what the legal position was at the time that the judgments were granted, that is that they were void *ab initio*; Mr Mothibi knew all the facts in support of his claims by latest February 2017; a judgment does not create a cause of action but simply confirms that a liability exists; the judgments gave effect to the loan agreements; and, as the summons against BS was served more than four and a half years after Mr Mothibi knew all the facts required to commence proceedings, the claims had prescribed. The judgment reaffirmed the well-known principle that, for the start of prescription, a debt is not considered due until the creditor knows the identity of the debtor and the facts that give rise to the debt or could reasonably have obtained such knowledge. Additionally, understanding the legal conclusions to be drawn and legal remedies that may result from the facts is not necessary before prescription begins to run.

Gorr resolved to appeal the decision of the Randburg court. It failed to file the record of the proceedings before the Randburg court timeously and the appeal lapsed. It applied for condonation. It submitted that condonation should be granted in the best interest of justice and that the special plea of prescription should be dismissed. The appeal was heard by the full bench on 31 January 2024. The full bench did not determine the appeal on its merits. It remarked in relation to the application for condonation, that BS's contention that Gorr had not advanced a satisfactory explanation for its delay, had merit. But it concluded that: ultimately, the appeal had no reasonable prospects of success on appeal; the appeal was doomed to fail on its merits; and that the lack of prospects of success on appeal was dispositive of the application for condonation. It dismissed the application for condonation for that reason, with costs.

The judgment of the full bench was delivered on 21 February 2024. On 13 July 2024, Gorr applied to the SCA for special leave to appeal against the decision of the full bench. It failed to file its application for special leave timeously. Accordingly, the application for special leave to this Court lapsed. Gorr applied for condonation. Gorr's prospects of successfully appealing are important also in deciding whether the SCA should condone its failure to file its application for special leave timeously.

The SCA held that Gorr's case on prescription contains a conceptual flaw. It fails to recognise that the court orders requiring payment, were in law void *ab initio*. Gorr's attack on the judgment of the Randburg court also fails to have regard to other trite principles applicable to prescription. The prescriptive period commenced from February 2017. Legal conclusions, such as whether the judgments of the Verulam court were void *ab initio* and first had to be rescinded, were not required to be addressed before prescription would commence. Consequently, service of the summons on BS, could not interrupt the running of prescription of the claims for restitution of what had been performed pursuant to the void judgments granted in favour of BFS. Mr Mothibi owed the amounts claimed in terms of the underlying loan agreements. His consents to judgment admitted that much.

The SCA held further that it was not persuaded that rescission of the Verulam court judgments was a prerequisite to the relief claimed by Gorr, assuming that a claim based on restitution was otherwise competent against BS. Gorr could simply have claimed the return of what was paid pursuant to judgments that were void *ab initio*. One should not confuse the *de jure* effect of a void act in law, with a situation where a party might dispute that the particular act is void in law. In the latter instance, whether the judgment is void, is simply one of the *facta probanda* in a claim for repayment of what was performed. The Verulam court did not have jurisdiction. Section 165(5) of the Constitution is not implicated. The order would in any event only be binding on the persons to which it applies. BS, on what had been placed before the SCA, was not a party to the Verulam court orders. The orders did not apply to it. Gorr had not established that it enjoys reasonable prospects of success. That finding is dispositive of the issue of condonation before the full bench, the condonation sought in the SCA, and the application for special leave to appeal to the SCA.

Accordingly, the SCA dismissed the applications for condonation and for special leave to appeal with costs.

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