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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Bassani Mining (Pty) Ltd v Sebosat (Pty) Ltd & Others (835/2020) [2021] ZASCA 126 (29 September 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing, with costs, an appeal against a decision of the Gauteng Division of the High Court, Johannesburg (the high court).

The issue before the SCA was whether there could be possible exceptional circumstances dispensing with or lowering the base requirements of an anti-dissipation interdict, pending a damages claim.

On 19 February 2020, Sebosat (Pty) Ltd (Sebosat*),*represented by Mr Kurt Herman (Herman)*,* its sole director and shareholder, entered into a written sub-contract agreement with the appellant, Bassani (Pty) Ltd *(*Bassani). The essential terms of the agreement were that Bassani, as the subcontractor, would mine coal at Wesselton Mine on behalf of Sebosat, as the contractor. Furthermore, Bassani would only be entitled to payment of its invoices after the coal mined had been sold and Sebosat had received payment from its client, Mashala Resources (Pty) Ltd *(Mashala)*. Bassani mined the coal from March 2020 until 31 May 2020. At the end of May 2020, a dispute arose between Bassani and Sebosat. Bassani claimed that Sebosat owed it monies. During July 2020, according to Bassani, it discovered for the first time, that, *inter alia,* Mashala had been under business rescue since 20 November 2014, that the agreement concluded between Sebosat and Mashala, purporting to be the authority for Sebosat to act as contractor, did not exist, and that Sebosat was a shelf company with no business address and assets. Mashala was the beneficiary of the coal that Bassani had mined.

Bassani launched an anti-dissipation interdict, pending a damages claim in the high court. The high court found that Bassani failed to prove that there was '***a real risk',*** that in the intervening period before the damages claim was heard, that the respondents would 'dissipate and/or diminish their assets in order to avoid the efficacy of a court order and to leave it with a hollow judgment, should it succeed.'

The SCA found, *inter alia*, that the conclusion by the high court that there were no longer any identifiable assets belonging to Sebosat, against which execution could be levied, was irrefutable. Furthermore, Bassani had no contractual nexus with Mashala. The fraud on which Bassani relied was allegedly perpetrated by Herman and Sebosat. According to the business rescue practitioners, they had given no permission for mining activities during the period in question, contrary to what was asserted by Herman. The SCA therefore concluded that Bassani failed to establish the foundational requirements for an interdict, nor did it establish that it was entitled to an anti-dissipation interdict against any of the respondents. The possible 'exceptional' circumstances justifying a lower bar for the anti-dissipation interdict were not identified. It was thus considered unnecessary take the discussion on 'exceptional' circumstances any further. The appeal was dismissed.

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