



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED

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Silostrat (Pty) Ltd & Others v Pieter Hendrik Strydom N. O. & Others (case no 845/2019 and 898/2019) [2021] ZASCA 93 (25 June 2021)

MEDIA STATEMENT

Today the Supreme Court of Appeal dismissed an appeal against an order of the Gauteng High Court, Pretoria which dismissed an application by the Standard Bank, for payment of money by the trustees of the insolvent estate of Mr Frederick Christoffel Kirsten, a farmer from the North West Province. In the high court the Standard Bank and four other entities: Silostrat (Pty) Ltd, Suidwes Landbou (Pty) Ltd, Technichem Osbeskerming (Pty) Ltd and the Land and Agricultural Development Bank of South Africa, were competing for payment to them of the funds that were realised by the trustees from Mr Kirsten's 2015 maize harvest.

Prior to the sequestration in 2016, Kirsten had been a widely respected and seemingly successful maize and farmer in the region of Makwassie in the Northwest. He had, however, accumulated enormous amounts of debt with Standard Bank and Suidwes for loans he had obtained and with Technichem for agricultural products he had bought on credit.

During the period starting from 2009 to 2014 he had been executing annual cessions in favour of Suidwes as collateral for the moneys advanced to him. In the cessions he ceded to Suidwes moneys that he would be receiving from his farming activities. In November 2011 he had executed a cession in favour of the Standard Bank. In October 2014 he had executed a cession in favour of Technichem.

In 2015 his farming enterprise collapsed. When his estate was sequestrated in 2016 Standard Bank launched court proceedings against the trustees of his insolvent estate and Suidwes, claiming the moneys realised from Kirsten's 2015 maize harvest and relying on the cession that Kirsten had executed in its favour in 2011. Later Silostrat, a grain trader, and Technichem also entered the fray because of their interest in moneys realised from Kirsten's maize produce.

Silostat's claim arose from events that took place in 2014, when Kirsten secured the last of his numerous loans from Standard Bank. To ensure that the Standard Bank money would be paid, Kirsten sold his then anticipated 2015 maize harvest to Silostat, in three forward contracts concluded in December 2014 and January and February 2015. However, after harvest, he sold and delivered the same produce to Africum, a subsidiary of Suidwes. Consequently, because Kirsten did not honour his obligations under the forward contracts he had concluded with Silostat, the latter had to buy maize to honour contracts it had concluded with third parties in anticipation of the maize it would be receiving from Kirsten. Silostat's claim related to damages it had suffered as a result of Kirsten's failure to deliver the maize bought from him in terms of the forward contracts.

The high court found that the cession executed by Kirsten in favour of Standard Bank did not relate to the proceeds of his maize produce whereas the cessions he had executed in favour of Suidwes and Technichem did. For that reason Standard Bank's claim was dismissed. The bank had, however, proved its claim in the sequestration proceedings.

The high court then found that Technichem's cession superseded Suidwes' cession because it was executed earlier. It also found that Silostat had a valid claim against the insolvent estate as a result of Kirsten's breach of the forward contracts. However,

a counterclaim by Silostrat against Standard Bank for damages for breach of an alleged legal duty on Standard Bank to ensure payment to Silostrat in the event of a breach by Kirsten was dismissed. So was a claim by Silostrat against Suidwes for damages allegedly caused by the latter's receipt of moneys realised from the maize delivered to Africum. In both instances the court found that there was no such legal duty on Standard Bank and Suidwes.

On appeal the Supreme Court of Appeal confirmed the findings of the high court, including an order that Suidwes should pay the costs incurred by Technichem.

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