



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 26 November 2008

Status: Immediate

Today, the Supreme Court of Appeal (the SCA) overturned the judgment of the Pretoria High Court in terms whereof a claim by the liquidator of the appellant company was dismissed.

The appellant owed the respondent a sum of R594 032 in September 2001. At the same time the respondent owed the appellant a sum of R436 430. The latter amount was not yet payable when the appellant was liquidated for failing to pay its debts.

The appellant claimed it but the respondent refused to pay, contending that it had set off its own debt in the amount of R594 032 against the sum claimed by the liquidator. The trial court upheld the defence of set-off.

On appeal the SCA reversed the trial court's decision on the basis that the respondent could not invoke set-off because the appellant's debt became payable after liquidation had occurred. Nor could it invoke set-off before liquidation because one of the reciprocal debts was not yet payable. The SCA held that for set-off to come into operation, both debts have to be payable. But where liquidation intervenes before the second debt has become payable, set-off cannot be invoked.