

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

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

***Momentum Group Ltd v Van Staden NO & another
(207/08) [2009] ZASCA 60 (29 May 2009)***

Media Statement

Today the Supreme Court of Appeal ('SCA') dismissed an appeal by Momentum Group Limited against a judgment of Murphy J in the Pretoria High Court.

Briefly stated, the facts giving rise to the litigation are as follows: in July 1999, Renbes Family Foods CC borrowed R750 000 from Boland Bank PKS. Mr Retief van Heerden stood surety for this loan and signed a deed of cession in which he ceded to Boland all his rights in a fixed deposit of R250 000 held with Boland 'and/or any re-investment, renewal or substitution thereof'. Van Heerden's liability under the deed of cession was limited to R250 000.

The fixed deposit was substituted with a redemption policy issued by Momentum in August 1999. On 6 August 1999, Ms Marietjie de Jager, a broker consultant and marketing advisor at Momentum, wrote to Mr Deon Hurter, a commercial banker employed by Boland, confirming that the redemption policy '*met onmiddelijke effek aan Boland Bank gesedeer word*' and stating that '*die sessie vorm deel van die polis en word onmiddelik met aanvaarding teen Boland Bank aangeteken*'. On the strength of this letter, Mr Tinus de Beer, a risk manager in Boland's employ, authorised the transfer of R250 000 (the amount held under Van Heerden's fixed deposit) from Boland to Momentum.

On 12 December 2000, after certain queries were made, Momentum granted an interest-free loan against the policy to Van Heerden in the amount of R267 891. In the meantime, Renbes was liquidated on 28 November 2000 and Boland became entitled to enforce its suretyship against Van Heerden. As Van Heerden was not able to pay the debt, Boland invoked the cession and attempted to collect its security in the amount of R250 000 from Momentum. The latter informed Boland that a loan had been granted against the policy and that the surrender value thereof was only R29 690.

Van Heerden's estate was sequestrated on 21 January 2008, the first respondent (Mr PJM van Staden) being appointed as trustee of the insolvent estate. In his capacity as trustee, Van Staden and the second respondent, Nedbank, Boland's successor in title, sued Momentum for payment of R250 000, plus interest, out of the proceeds of the policy.

The issue on appeal was whether Momentum had knowledge of the cession of the policy in favour of Boland at the time it granted to Van Heerden the interest-free loan against the policy. It was contended on behalf of Momentum, first, that De Jager lacked authority to bind it to any agreement or to make any representation on its behalf and, second, that when making the loan against the policy to Van Heerden, it had no knowledge of the cession. Neither of these defences had succeeded in the court below.

The Supreme Court of Appeal agreed with Murphy J that De Jager did have authority to represent Momentum, at the very least to accept and record a notification of the existence of the cession of the policy in Boland's favour. Boland could not reasonably have been expected to know of any internal limitations on De Jager's actions. The SCA also held that, the knowledge of the cession in favour of Boland being material and important, a reasonable person in De Jager's position would be expected to impart this knowledge to Momentum, the entity who had delegated to her the control and conduct of its affairs in this regard.

Momentum must therefore be said to have had knowledge of the cession in Boland's favour in August 1999, long before it authorised and paid out to Van Heerden the loan against the policy. There was nothing in the evidence to indicate that, despite this knowledge, Momentum could nevertheless be said to have acted in good faith in paying out the loan to Van Heerden.

The appeal was accordingly dismissed with costs.

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