



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: 30 November 2012  
Status: Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

***Glenrand MIB Financial Services (Pty) Ltd & others v Theodor Wilhelm van den Heever NO***

Today the Supreme Court of Appeal (SCA) dismissed an appeal by Glenrand MIB and upheld the appeal of the second and third appellants.

This is an appeal from the South Gauteng High Court (Monama J) dealing with misappropriation of money, unjust enrichment, setting aside of a disposition under s 26 of the Insolvency Act 24 of 1936 (the Insolvency Act) and a breach by directors of their fiduciary duties. The appellants appeal to this court with the leave of the high court.

The fourth respondent, Protector Group Holdings (Pty) Ltd (In Liquidation), (Protector), was wound up by the high court on 1 December 2004. The first appellant, Glenrand MIB Financial Services (Pty) Ltd, (Financial Services), was a wholly owned subsidiary of Glenrand MIB Ltd (Glenrand MIB). At all relevant times, Financial Services, held 65 per cent of the issued share capital in Protector, while the remaining 35 per cent was held by Protector Group Management Company (Pty) Ltd (PGMC). David Harpur, the second appellant, was a director of Protector, Financial Services and a director, shareholder and chief executive officer of Glenrand MIB Ltd. Allan Mansfield, the third

appellant, was a director of Protector and the chairperson of its board of directors, a director of Financial Services and a director, shareholder and chairperson of the board of Glenrand MIB.

During 2003, the board of Glenrand MIB decided to dispose of its interests in Protector. Marc Seelenbinder and Leon Janse van Rensburg, sixth and seventh defendants in the court a quo respectively, both directors of Protector and PGMC, made offers to purchase Financial Services' 65 per cent shareholding in Protector. New Protector and the IDC concluded a loan agreement on 4 March 2004 to enable New Protector to acquire the business of Protector as a going concern. The sale of business agreement was implemented and the business and assets of Protector were transferred to New Protector. The IDC released the funds to New Protector on 5 March 2004. R50m from these funds was paid to Protector, but the funds were deviated and ended by being paid by Freefall to Financial Services in respect of the sale of the latter's shareholding in Protector to Freefall.

[The respondents instituted action in the court a quo against Financial Services (first defendant), Glenrand MIB Ltd (second defendant), Freefall (third defendant), Harpur (fourth defendant), Mansfield (fifth defendant), Seelenbinder (sixth defendant) and Janse Van Rensburg (seventh defendant). In the action the respondents claimed, inter alia, payment of various sums of money from the respondents. There were six causes of action pleaded by the respondents, namely: (1) collusive dealings contemplated by s 31 of the Insolvency Act (claim A); (2) unlawful and intentional misappropriation of funds (claim B); (3) unjust enrichment (claim C); (4) an alleged disposition without value liable to be set aside under s 26 of the Insolvency Act (claim D); (5) a fraud perpetrated on the body of creditors of Protector (claim E); (6) breach by certain directors of Protector, namely Harpur, Mansfield, Seelenbinder and Van Rensburg, of their fiduciary duties owed to the company (claim F).

The court a quo upheld claims B (misappropriation of money), C (unjust enrichment), D (setting aside of a disposition without value in terms of s 26 of the Insolvency Act) and F (breach of fiduciary duty). It also found against the appellants on the basis of a contravention of s 38 of the Companies Act. The judge granted judgment against Glenrand MIB, Financial Services, Harpur, Mansfield and Van Rensburg. The appellants appeal against the judgment of the court a quo, with the leave of that court.

On appeal it was found that claim B (misappropriation of money), claim C (unjust enrichment), claim D (setting aside of a disposition without value in terms of s 26 of the Insolvency Act) and claim F (breach of fiduciary duty) had not been proved. For this reason the appeals by the second and third

appellants were upheld. The court further found that Protector was impoverished by the payment of the amount of R50 million and that Financial Services was enriched by this amount. The court also found that the sale of shares agreement between Financial Services and Freefall was not valid therefore the money was transferred from Freefall to Financial Services without a true liability and thus did not interrupt the chain of causation linking Financial Services' enrichment with Protector's impoverishment.