



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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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.

**THE TRUSTEES OF THE INSOLVENT ESTATE OF GRAHAME ERNEST
JOHN WHITEHEAD**

v

LEON JEAN ALEXANDRE DUMAS & ANOTHER

The Supreme Court of Appeal (SCA) today held that where a person transfers money from his bank account to the bank account of another after being induced to enter into an agreement by the latter's fraudulent misrepresentation the money cannot be reclaimed from the receiving bank, but instead falls into the estate of the fraudster upon sequestration. The SCA thus upheld an appeal against a contrary finding of the South Gauteng High Court.

In 2009, Dr Leon Dumas instructed his bank, First National Bank, to transfer R3 million into the Absa bank account of Mr Graham Whitehead. He did so after an agent acting on behalf of Whitehead persuaded him to invest the money in an

investment scheme operated by Whitehead. But unbeknown to Dumas this was a fraudulent Ponzi scheme. And, at the time that Dumas paid over money, Whitehead was under arrest in the United Kingdom for fraud. Whitehead was subsequently convicted and sentenced to ten years' imprisonment in the UK where he is currently serving his sentence. In addition his assets were frozen and his estates in the UK and South Africa sequestrated. It transpired that Whitehead had duped many other investors from afar a field as Zimbabwe, the UK, Australia and New Zealand to invest in his scheme, which promised huge returns. Many lost their money.

The SCA held that as soon as the money was credited to Whitehead's Absa bank account, Absa had the obligation to account to him in accordance with their bank-client relationship. And, once Whitehead was placed under sequestration, the bank became obliged to account to the trustees of the insolvent estate, who stepped into Whitehead's shoes. Whitehead therefore has a delictual claim against the trustees of the insolvent estate arising from the fraudulent misrepresentation, along with Whitehead's other creditors, but had no claim against the bank for the return of his moneys.

Dumas was ordered to pay the trustees' costs of the appeal as well as their costs in the high court.