



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 01 October 2014

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.

INVESTGOLD CC V UYS & ANOTHER (686/13) [2014] ZASCA 166 (01 OCTOBER 2014)

Today the Supreme Court of Appeal (SCA) upheld the appellant's appeal against a judgment by the South Gauteng High Court (Boruchowitz J) with costs. The order of the trial court was set aside and replaced with an order dismissing plaintiff's claim with costs.

The respondent had issued summons against the respondent for specific performance in the form of delivery of the *merx*. The respondent's case is that they had purchased Kruger coins from the appellant for R1,6 million cash. The appellant was represented by its brokers, Hugo and Jardine. On 19 January 2011, Hugo forged Uys' signature to secure a safe at Knox Vault. On 26 January 2011, the appellant's stock controller, Davids, delivered the Kruger coins to Uys, who after inspecting them signed a delivery receipt. Uys was assisted by Hugo and Jardine to inspect and verify the Kruger coins. As Uys prepared to leave with the Kruger coins, Uys suggested that he should take them for safekeeping at Investgold's safe as it was unsafe to travel with them. After receiving the Kruger coins, Uys took them for safekeeping at Knox Vault whilst under the erroneous belief that it was Investgold's safe. Investgold had no control over Knox Vault. Sometime hereafter, Hugo stole Uys' kruger coins from Knox's Vault.

The trial court found that as the appellant is a corporation, it acted through its agents or employees. It found further that when Hugo secured the safe at Knox's Vault, he had already formulated the intention to steal the Kruger coins, and that therefore Investgold through Hugo, never had any intention to deliver the Kruger coins to Uys and Troskie. The trial court held

that in the circumstances, Investgold was liable to Uys and Troskie for delivery of the Kruger coins.

The SCA found that this was a cash sale. It found further that as the purchase price had been paid, when Investgold's stock controller (Davids) handed the Kruger coins to Uys delivery took place. The SCA held further that, when Uys took the Kruger coins to Knox's Vault after he had received them, he was exercising his unfettered right as the owner. In essence, the SCA held that Uys had control over the Kruger coins and that Investgold can therefore not be held liable for their subsequent theft from Knox's Vault. Consequently, the appeal was upheld with costs.

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