



THE 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 22 May 2015
STATUS Immediate

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

Lodhi 5 Properties Investments v Firststrand Bank Limited (170/14) [2015] ZASCA 72

MEDIA STATEMENT

Today, the Supreme Court of Appeal (SCA) partially dismissed the appeal against a judgment of Gauteng Division, Pretoria brought by Lodhi 5 Properties Investments CC (Lodhi 5), Lodhi 4 Properties Investments (Pty) Ltd (Lodhi 4) against a winding-up order granted against them but reduced the amount payable by their co-appellant, Mr Muhammed Islam Lodhi, to Firststrand Bank Limited (the Bank) from R10 328 574,25 to R2 642 006,98. The appellants were ordered to pay the costs of the appeal including the costs of two counsel.

The issues before the SCA were whether (a) Lodhi 4 and Lodhi 5 were correctly placed under liquidation; (b) whether the amount that Mr Lodhi had been ordered to pay to the Bank should be reduced; and (c) whether Mr Lodhi was liable to pay interest on the outstanding balance.

In June 2008, Lodhi 5 concluded a loan agreement with Firststrand Bank in terms of which the bank granted him a loan structured to comply with *Shari'ah* (Islamic) law, which prohibits the charging of interest on a loan debt. As security for this debt, Lodhi 4 and Mr Lodhi executed suretyship bonds in the bank's favour. Lodhi 5 defaulted on repayments and, following demand to which there was no response, the bank applied for an order that Mr Lodhi pay the outstanding balance together, and for the winding up of Lodhi 4 and Lodhi 5.

As to issue (a), the SCA found that Lodhi 4 and Lodhi 5 were both clearly commercially insolvent and upheld the winding up order. As to issue (b), the Bank conceded that the amount payable should be reduced to the capital amount admitted as outstanding by the appellants and so, to that extent, the SCA altered the order granted against Mr Lodhi. As to issue (c), the SCA held that Mr Lodhi was

liable to pay the interest claimed by the bank. This was so despite the *Shari'ah* law prohibition against the charging of interest on loan debts because the mora interest ordered in this matter was not interest in terms of a loan contract. Rather, it was a form of damages that flow naturally from the contract itself by reason of the debtor having failed to perform a contractual obligation within the agreed time (here Lodhi 5's delayed payment of its outstanding debt to the bank). It has nothing to do with and is not affected by the *Shari'ah* law prohibition against payment of interest on a loan debt. Accordingly, the application of the Prescribed Rate of Interest Act 55 of 1975 was not excluded.

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