



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 16 September 2020

STATUS Immediate

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

*Investec Bank Limited v Erf 436 Elandspoort (Pty) Ltd and Others (410/2019) [2020]
ZASCA 104 (16 September 2020)*

MEDIA STATEMENT

The Supreme Court of Appeal (SCA) today upheld the appeal of Investec Bank Limited (Investec) against Erf 436 Elandspoort (Pty) Ltd (Erf 436) and four other respondents.

The central issue in the appeal was whether a debt in relation to which Investec had issued summons against Erf 436, as principal debtor, and the remaining respondents, as sureties, had prescribed. The court found that the debt had not prescribed because prescription had been interrupted by a series of payments and a number of letters in which Erf 436's liability had been acknowledged.

Investec had lent money to Erf 436 to enable it to enter into a notarial lease with the South African Rail Commuter Corporation (the SARCC) in respect of a commercial property in Pretoria. Erf 436 had defaulted, the SARCC had cancelled the lease and Investec had demanded payment of the full amount outstanding in respect of the loan. Thereafter, Investec had, in terms of a tripartite agreement entered into with the SARCC and Erf 436 stepped into Erf 436's shoes as lessee of the property. The purpose was to ensure that Erf 436's loan could be repaid from rental paid by sub-tenants and eventually by the sale of Investec's rights in the property to a third party.

It was agreed between Investec and Erf 436 that initially Erf 436 would continue to manage the property and that rental paid by sub-tenants would be allocated to the payment of its loan. It was later agreed that Investec would take over the management of the property and similarly allocate rental payments to the repayment of Erf 436's loan. Mr Pierre Joubert, a director of Erf 436 wrote a number of letters to Investec in which he acknowledged the liability of Erf 436 to Investec. Eventually, Investec's rights in the property were sold to a third party and the purchase price was allocated towards the repayment of Erf 436's loan. Investec then sued for the balance but their summons was met with a special plea of prescription. Investec pleaded in its replication that the payments of the sub-tenants' rental and the purchase price, as well as the letters written by Joubert constituted express or tacit acknowledgements of liability that, in terms of s 14 of the Prescription Act 68 of 1969, had interrupted the running of prescription.

The court held that the letters written by Joubert were express acknowledgements of liability that had the effect of interrupting prescription. It held that the payments, made with the knowledge of Erf 436 in terms of an agreement between it and Investec in order to pay its loan were tacit acknowledgements of liability that likewise interrupted the running of prescription. The result was that the debt had not prescribed.