# THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

## JUDGMENT

**Not Reportable**

Case no: 396/19

In the matter between:

**GRIEKWALAND WES KORPORATIEF BEPERK** **APPELLANT**

and

**STANDARD BANK OF SOUTH AFRICA LIMITED** **RESPONDENT**

**Neutral citation:** *Griekwaland Wes Korporatief Beperk v Standard Bank of South Africa Limited* (Case no 396/19) [2020] ZASCA 10 (19 March 2020)

**Coram:** NAVSA, MOLEMELA and PLASKET JJA and LEDWABA and GORVEN AJJA

**Heard**: 12 March 2020

**Delivered**: 19 March 2020

**Summary:** Claim to ownership – identification – documentary evidence – whether the evidence adduced proved ownership.

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## ORDER

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**On appeal from:** Free State Division of the High Court (Jordaan J, sitting as court of first instance):

The appeal is dismissed with costs, such costs to include those consequent on the employment of two counsel where this was done.

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## JUDGMENT

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**Gorven AJA (Navsa, Molemela and Plasket JJA and Ledwaba AJA concurring)**

[1] This appeal concerns the ownership of 306 beef calves. Vierfontein Voerkraal (Eiendoms) Beperk (Vierfontein) ran a cattle feedlot business on its farm (the farm). The appellant concluded two sets of written agreements with Vierfontein. The first was a series of Liaison Service Transactions (LSTs). In these, the appellant was reflected as an agent and charged commission. Vierfontein was reflected as the purchaser. The series of LSTs reflected that 306 calves had been purchased for Vierfontein from various sellers in a number of transactions. The appellant paid the sellers and arranged transport of the calves to Vierfontein's farm. It then invoiced Vierfontein for the purchase price, its commission and transport costs. The second agreement was termed a Non-Production Credit Facility. This provided Vierfontein with credit of R3 million.

[2] The respondent held a general notarial bond over all movables owned by Vierfontein. On 16 March 2018 it obtained an order that it could perfect its security under this bond. In executing the order, the sheriff attached all of the livestock on the farm. Vierfontein was provisionally liquidated on 12 April 2018 and finally liquidated thereafter.

[3] The appellant claimed to own 306 calves of those attached. It brought an *ex parte* Anton Piller application, ostensibly to obtain documents and related evidence as to its assertion of ownership. It obtained an order on 14 May 2018 and executed it on 15 May, 18 May and 14 June at the farm. This resulted in 306 calves being pointed out as those claimed by the appellant. The appellant thereafter supplemented the application to apply for a declaration that it was the owner of those 306 calves. The appellant claimed ownership based on certain terms of the LSTs and the credit facility.

[4] The respondent opposed this relief. The opposition had three essential grounds. The respondent had invited the appellant to identify those attached calves which it claimed to own. The respondent was not satisfied that the appellant had done so or could do so. The first ground of opposition, therefore, was that the respondent disputed that the appellant could identify the claimed 306 calves. Secondly, it denied that, in law, the appellant became owner of any of the calves purchased pursuant to the LSTs. Finally, it contended that, if it was held that ownership had passed to the appellant as a result of the credit agreement, the provisions of s 84 of the Insolvency Act[1] applied.

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[1] Insolvency Act 24 of 1936. Section 84 reads:
'(1) If any property was delivered to a person (hereinafter referred to as the debtor) under a transaction that is an instalment agreement contemplated in paragraph (a), (b), and (c) (i) of the definition of 'instalment agreement' set out in section 1 of the National Credit Act, 2005 (Act 34 of 2005), such a transaction shall be

[5] The matter came before Jordaan J in the Free State Division of the High Court. He did find that the appellant had proved that the 306 calves identified by it pursuant to the Anton Piller order were those purchased under the LSTs. However, he held that the appellant had not proved ownership of the cattle which had been attached. For example, the LSTs, by virtue of which all of the calves were purchased, reflected Vierfontein as purchaser and the appellant as agent. The appellant reflected a commission payable on each LST. This was payable as the agent of Vierfontein. As a result, he found that it could not be said that the various sellers intended to transfer ownership to anyone other than Vierfontein. The application for a declaration of ownership was dismissed with costs but leave to appeal to this court was granted by the court of first instance.

[6] The onus rests on the appellant to prove ownership. It conceded in argument that there was no admissible evidence identifying the calves purchased as being any of those which had been attached. All that was produced in the application was a series of documents whose provenance was not attested to. The concessions were correctly made. It need hardly be said that, as a result, the appellant was unable to discharge the onus. This, too, was correctly conceded. This means that, even if the appellant could show that it obtained or reserved ownership by virtue of the two sets of agreements, it

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regarded on the sequestration of the debtor's estate as creating in favour of the other party to the transaction (hereinafter referred to as the creditor) a hypothec over that property whereby the amount still due to him under the transaction is secured. The trustee of the debtor's insolvent estate shall, if required by the creditor, deliver the property to him, and thereupon the creditor shall be deemed to be holding that property as security for his claim and the provisions of section 83 shall apply.
(2) If the debtor returned the property to the creditor within a period of one month prior to the sequestration of the debtor's estate, the trustee may demand that the creditor deliver to him that property or the value thereof at the date when it was so returned to the creditor, subject to payment to the creditor by the trustee or to deduction from the value (as the case may be) of the difference between the total amount payable under the said transaction and the total amount actually paid thereunder. If the property is delivered to the trustee the provisions of subsection (1) shall apply.'

cannot succeed. The second and third grounds of opposition accordingly need not be dealt with. The conclusion of the court of first instance that the appellant had failed to prove ownership cannot be faulted. This means that the appeal must fail. Both parties utilised two counsel and it is appropriate that the costs order include provision for this.

[7] In the result, the appeal is dismissed with costs, such costs to include those consequent on the employment of two counsel where this was done.

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GORVEN AJA

ACTING JUDGE OF APPEAL

Appearances

For appellant: B Knoetze SC, with him JG Gilliland

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| Instructed by: | Van De Wall & Partners, Kimberley |
| | Blair Attorneys, Bloemfontein |
| For respondent: | P Zietsman SC, with him J Els. |
| Instructed by: | Phatshoane Henney Incorporated, Bloemfontein. |