THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not reportable
Case no: 541/2023

In the matter between:

IAN JULIAN SMITH **APPELLANT**

and

THE LEGAL PRACTITIONERS' FIDELITY FUND BOARD **RESPONDENT**

Neutral citation: *Smith v The Legal Practitioners' Fidelity Fund Board* (541/23) [2024] ZASCA 170 (11 December 2024)

Coram: MOCUMIE and MABINDLA-BOQWANA JJA and MOLOPA-SETHOSA, BLOEM and MOLITSOANE AJJA

Heard: 4 November 2024

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives via e-mail publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down are deemed to be 11 December 2024 at 11h00.

Summary: The Attorneys Act 53 of 1979 – whether funds were 'entrusted', as contemplated in s 26*(a)* of the Attorneys Act – applicability of s 47(1)*(g)* – whether the Legal Practitioners' Fidelity Fund is liable for money stolen by an employee of a firm of attorneys.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Kubushi J, sitting as a court of first instance):

1 The appeal is allowed in part, with the parties to pay their own costs.

2 The order of the high court is set aside and substituted with the following order:

'(a) The plaintiff's first, third and fourth claims are dismissed.

(b) The plaintiff's second claim is upheld.

(c) The defendant shall pay R900 000 to the plaintiff, with interest thereon at the rate of 10.25% per annum *a tempore morae*, from the date of service of the summons.

(d) The parties shall pay their own costs.'

JUDGMENT

Bloem AJA (Mocumie and Mabindla-Boqwana JJA and Molopa-Sethosa and Molitsoane AJJA concurring):

[1] The issue in this appeal is whether the appellant, Mr Ian Julian Smith, entrusted money, as envisaged in s 26*(a)* of the Attorneys Act 53 of 1979,[1] to Dadic Attorneys, a firm of attorneys (the firm), or its employee, Mr Andruw Stephens, when he paid money or caused money to be paid into the trust account of the firm (the trust account). The Gauteng Division of the High Court, Pretoria (the high court) dismissed Mr Smith's claims. It found that he did

[1] Although the Attorneys Act 53 of 1979 was repealed by the Legal Practice Act 28 of 2014 with effect from 1 November 2018, the provisions thereof are applicable to the facts of this case because the events described herein happened before 1 November 2018, when the provisions of the Attorneys Act still applied.

not entrust the money that he paid into the trust account to the firm or Mr Stephens.

[2] Mr Smith appeals to this Court against that finding, with the leave of the high court. He also appeals against the finding that the Legal Practitioners' Fidelity Fund (the Fund) is not liable to reimburse him in respect of the loss that he suffered as a result of the theft of the money. The high court made that finding on the basis that Mr Smith instructed the firm, represented by Mr Stephens, to invest the money on his behalf.

[3] Mr Smith lodged four claims with the Fund for the reimbursement of the loss that he suffered as a result of the theft committed by Mr Stephens of money that Mr Smith entrusted to the firm, represented by Mr Stephens, in the course of his duties in the firm. After the Fund had rejected Mr Smith's claims, he instituted an action in the high court against the respondent, the Legal Practitioners' Fidelity Fund Board (the Board).[2] The high court dismissed all four claims.

[4] In his particulars of claim, in claim 1, Mr Smith alleged that in October 2015 he entrusted R1 million to the firm. In claim 2 he alleged that in March 2015 a firm of solicitors paid £50 000 (R900 000) for his benefit into the trust account. He alleged that the payment was entrusted to the firm. In claim 3 he alleged that in June 2016 he entrusted R4 million to the firm and in claim 4 he alleged that in July 2017 he entrusted R2.7 million to the firm.

[5] Mr Smith alleged that, at all relevant times hereto, the firm was represented

[2] The Legal Practitioners' Fidelity Fund Board is established by s 61(1) of the Legal Practice Act to manage and administer the Fund. In terms of s 61(2) of the Legal Practice Act, the Fund must be held in trust by the Board for the purposes mentioned in that Act. Although the Legal Practice Act repealed the Attorneys Act, in terms of s 53(1) of the Legal Practice Act, the Attorneys Fidelity Fund, which was established by s 25 of the Attorneys Act, continues to exist as a juristic person under the name of the Legal Practitioners' Fidelity Fund. The Fund acts through the Board in terms of s 53(2) of the Legal Practice Act.

by Mr Stephens; it came to his knowledge in March 2018 that Mr Stephens had stolen the sums of money referred to in each claim; and that, as a result of the theft, he suffered pecuniary loss of R1 million, R900 000, R4 million and R2.7 million respectively.

[6] The Board's plea in respect of each claim is largely in line with the evidence adduced by Mr Smith. Since I deal with the evidence hereunder, I will not deal with the plea in each case in detail. Although the Board admitted that the above amounts of money were paid into the trust account, it denied that the money was entrusted to the firm or Mr Stephens. It pleaded that it was excluded from liability by operation of s 47(1)*(g)*,[3] read with s 47(5)*(b)* of the Attorneys Act.

The issues

[7] From the pleadings, it is apparent that two issues call for determination. The first is whether Mr Smith 'entrusted' the money in each of the claims to the firm, represented by Mr Stephens, as contemplated in s 26*(a)* of the Attorneys Act. The second issue is, to the extent that it might become necessary to determine, whether the Fund's liability was excluded because of the operation of s 47(1)*(g)*.

[8] Section 26 of the Attorneys Act deals with the purpose of the Fund. The relevant part thereof reads as follows:

'Subject to the provisions of this Act, the fund shall be applied for the purpose of reimbursing persons who may suffer pecuniary loss as a result of-

(a) theft committed by a practising practitioner, his or her candidate attorney or his or her employee, of any money or other property entrusted by or on behalf of such persons to him or her or to his or her candidate attorney or employee in the course of his or her

[3] Section 47(1)*(g)* reads as follows:
'The fund shall not be liable in respect of any loss suffered-
. . .
(g) by any person as a result of theft of money which a practitioner has been instructed to invest on behalf of such person after the date of commencement of this paragraph.'

practice or while acting as executor or administrator in the estate of a deceased person or as a trustee in an insolvent estate or in any other similar capacity;

(b) … '.

[9] To enable the court to find the Fund liable to reimburse a person in terms of s 26*(a)*, a claimant has to show that he or she (i) may suffer or has suffered pecuniary loss; (ii) as a result of; (iii) theft; (iv) committed by a practising practitioner, his or her candidate attorney or employee; (v) of money or other property; (vi) entrusted by such person to such practising practitioner, candidate attorney or employee; (vii) and that such entrustment was made to the practising practitioner, candidate attorney or employee in the course of his or her practice or while acting as executor or administrator in the estate of a deceased person or as a trustee in an insolvent estate or in any other similar capacity.

[10] I am satisfied that in each of the claims Mr Smith suffered pecuniary loss as a result of theft committed by Mr Stephens, the firm's employee, of money that Mr Smith paid or caused to be paid into the trust account and that such payment was made to Mr Stephens in the course of his duties in the firm. The question to be answered is whether Mr Smith entrusted the money to the firm or Mr Stephens when he paid or caused it to be paid into the trust account. Subject to s 47(1), the Fund must reimburse Mr Smith if he entrusted those payments to the firm or Mr Stephens. The converse is that Mr Smith would not be entitled to reimbursement if those payments did not amount to entrustment.

[11] It was submitted on behalf of Mr Smith that, because he paid money or caused money to be paid into the trust account in each claim, he entrusted the amounts paid to the firm represented by Mr Stephens. It was submitted on behalf of the Board that Mr Smith failed to establish that he entrusted the amounts of money that he paid into the trust account.

[12] The word 'entrust' has not been defined in the Attorneys Act. However, the courts have previously interpreted the word 'entrust' for the purposes of claims in terms of s 26*(a)*. For instance, in *Provident Fund for the Clothing Industry v Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund*[4] with reference to *British Kaffrarian Savings Bank Society v Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund Board of Control*[5] and a further dictionary definition of the word 'entrust', Nicholas J said the following about the word 'entrust':

'From these definitions it is plain that "to entrust" comprises two elements: (a) to place in the possession of something, (b) subject to a trust. As to the latter element, this connotes that the person entrusted is bound to deal with the property or money concerned for the benefit of others (cf Estate Kemp and Others v McDonald's Trustee 1915 AD at 499).

"(The trustee) is bound to hold and apply the property for the benefit of some person or persons or for the accomplishment of some special purpose".'

[13] The above interpretation of the word 'entrust' by Nicholas J has been referred to with approval by this Court.[6] The fact that money is paid into a trust account does not necessarily satisfy the first element, as such payment does not mean that it is trust money.[7] The issue of entrustment, for purposes of s 26*(a)*, must, in the circumstances of each case, be judged in the light of the intention of the person who placed the money or property in the possession of the receiver thereof; or if the payer made the payment on behalf of someone else, one must look at the intention of the person on whose behalf the payment was made. In the case of an attorney and his or her client, one must accordingly look at the intention

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[4] *Provident Fund for the Clothing Industry v Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund* 1981 (3) SA 539 (W) at 543E-F.

[5] *British Kaffrarian Savings Bank Society v Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund Board of Control* 1978 (3) SA 242 (E).

[6] *Industrial and Commercial Factors (Pty) Ltd v Attorneys Fidelity Fund Board of Control* (*Industrial and Commercial Factors)* 1997 (1) SA 136 (A) at 144B-I. See also *Attorneys Fidelity Fund Board of Control v Mettle Property Finance (Pty) Ltd* [2011] ZASCA 133; 2012 (3) SA 611 (SCA) para 11.

[7] *Paramount Suppliers (Merchandise) (Pty) Ltd v Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund Board of Control* 1957 (4) SA 618 (W) at 625F. Referred to with approval in *Industrial and Commercial Factors (Pty) Ltd v Attorneys Fidelity Fund Board of Control* fn 5 at 143I-J.

of the client when he or she placed the money in the attorney's possession to determine the issue of entrustment.[8] If, for example, a person is in the process of purchasing an immovable property and paid, in terms of the deed of sale, the purchase price into the trust account of the seller's attorney, there can be no doubt that the purchaser entrusted the money to the seller's attorney.[9]

[14] The situation is different when an attorney and his client agree on a scheme to purchase, for example, an immovable property. In terms of the agreement, they must each pay, say, R500 000 to make the purchase, the client to make his payment into the attorney's trust account, whereafter the attorney would purchase the property. Invariably, the client will have difficulties to show that he entrusted the money to the attorney after he had paid the R500 000 to discharge his obligation in terms of the agreement. The same applies in the case where the attorney and client agree to jointly pay money to a borrower in terms of a loan account. That is so because, when the client made the payment into the attorney's trust account, the client did not intend the money to be in the attorney's possession, but in the possession of the seller or in the possession of the borrower, in the case of the loan agreement. The fact that the money was paid into the attorney's trust account is immaterial. The trust account was used simply as a conduit to facilitate the payment to the seller or borrower.

[15] In the light of the above authorities, to 'entrust', for purposes of s 26*(a)* of the Attorneys Act, means that a person, like a client of a practising practitioner, must have placed the money or other property in the possession of the practising practitioner or his or her candidate attorney or employee, who must deal with the money or property for the client's benefit. In other words, the practising practitioner, candidate attorney or employee must deal with the money or

[8] *Industrial and Commercial Factors* fn 5 at 142H.
[9] *Provident Fund for the Clothing Industry v Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund* fn 3 at 542G-H.

property in accordance with the intention of the client who placed the money or property in his or her possession.

[16] It is necessary to consider the evidence to determine whether Mr Smith entrusted his money to the firm, represented by Mr Stephens. The only evidence before the high court was the evidence given by Mr Smith and his witness, Mr Parsons. The Board did not adduce evidence. I shall look at the evidence as it pertains to the individual claims. I will deal with claims 1, 3 and 4 first and then with claim 2, in the same order in which counsel made submissions.

Claim 1

[17] Mr Smith testified that he met Mr Stephens on the golf course, whereafter they became friends. During October 2015 Mr Stephens informed him that Flake Ice wanted to purchase an immovable property from Telkom for R6.8 million but required R5 million cash. Although Mr Parsons had R7.8 million in the trust account which was sufficient to cover the purchase price of the property, it could not be released until a mortgage bond registered over an immovable property, owned by East Cape Game (Pty) Ltd, was cancelled. The R7.8 million would also serve as security for the Telkom property. Mr Stephens told him that Flake Ice accordingly required bridging finance to purchase the Telkom property; that he (Mr Stephens) would make R4 million available; and what was required from him was a loan of the remaining R1 million to Flake Ice. Mr Stephens told him that once the R5 million was available, the firm would provide the guarantee for the purchase of the Telkom property.

[18] Mr Stephens showed him a copy of a document dated 12 October 2015 in terms whereof Mr Parsons consented to cancel the mortgage bond passed by East Cape Game (Pty) Ltd in his favour. He also showed him a copy of a letter dated 8 October 2015 from the firm to Mahlangu Attorneys wherein it was

confirmed that the firm held R6 814 333 in its trust account on behalf of Flake Ice, with instructions to pay that amount to Mahlangu Attorneys upon the registration of transfer of the Telkom property in the name of Flake Ice. Mr Stephens also showed him a loan agreement between Mr Stephens, himself, Flake Ice and Mr Parsons in terms whereof the above agreement was captured. That agreement was signed by Mr Stephens. Mr Parsons purportedly also signed it on behalf of Flake Ice and as surety.

[19] Mr Smith testified that Mr Stephens told him that Mr Parsons, on behalf of Flake Ice, offered to pay 5% per month 'relating to this transaction, which was obviously a very, very attractive amount' and that it 'was a good proposition, obviously from a financial point of view it was a marvellous proposition and I agreed that I would be interested'. Believing that his money was safe, he paid R1 million into the trust account on 13 October 2015, in accordance with the loan agreement. His understanding was that the money would 'remain in the trust account for at least a period of time, until the transaction could take place', namely when the Telkom property was registered in the name of Flake Ice. At that stage the R5 million would leave the trust account, was his understanding.

[20] It later turned out, and it is common cause, that the above transaction was fake. During his evidence Mr Parsons confirmed the authenticity of the consent to cancellation of the mortgage bond in his favour as well as the letter from the firm to Mahlangu Attorneys. He also confirmed Flake Ice's interest to purchase the Telkom property, which it ultimately purchased by paying cash. It only subsequently registered a bond over that property in favour of Nedbank. He denied that Flake Ice required or obtained bridging finance from the firm or any other source to purchase the Telkom property or that he signed the loan agreement on behalf of Flake Ice or as surety. He testified that Mr Stephens knew about Flake Ice's intention to purchase the Telkom property, because Mr Stephens was

his and Flake Ice's 'primary lawyer', as he handled all their legal matters.

[21] The high court found that the first element of entrustment has been established, namely that Mr Smith's R1 million was paid into the trust account. It means that the firm was in possession of Mr Smith's R1 million. In respect of the second element of entrustment, the high court found that Mr Smith placed the R1 million in the trust account so that it could be lent to Flake Ice in terms of the loan agreement, in return of interest. The high court accordingly found that, because Mr Smith knew that the R1 million would be paid to Flake Ice soon after being in possession thereof, his intention was not to entrust the money to the firm or Mr Stephens.

[22] The high court was correct in its finding that Mr Smith failed to prove that he entrusted the R1 million to Mr Stephens or the firm. The above facts show that, when Mr Smith paid the R1 million into the trust account, he knew that the money would soon thereafter be paid to Flake Ice. He intended the money to be paid to Flake Ice in the discharge of his obligation in terms of the loan agreement. The trust account was accordingly nothing other than a conduit for the transfer of the money from Mr Smith to Flake Ice.[10] That the transaction later turned out to be fake is also immaterial, since the issue of entrustment must, in the circumstances of this case, be judged in the light of Mr Smith's aforesaid intention when he made the payment.[11] In the circumstances, it cannot be said that Mr Smith entrusted the R1 million to the firm or Mr Stephens. The appeal against the order dismissing the first claim must accordingly be dismissed.

[10] *Attorneys Fidelity Fund Board of Control v Mettle Property Finance (Pty) Ltd* fn 5 para 15.
[11] *Industrial and Commercial Factors* fn 3 at 142H.

Claim 3

[23] Mr Smith testified that during June 2016, Mr Stephens told him that one of his big clients, CP Crane Hire, of which Mr Parsons was a member, had a claim of R7.5 million against Lubbe Construction; that Lubbe Construction had acknowledged its indebtedness to CP Crane Hire and undertook to pay R750 000 per month over 10 months to CP Crane Hire to settle its indebtedness; that CP Crane Hire needed money urgently; that he believed that he could purchase the debt for R6.1 million; and that he had R2.1 million available. Mr Stephens enquired whether Mr Smith was interested in making the remaining R4 million available. Mr Smith testified that Mr Stephens told him that he would purchase 66% of the CP Crane Hire claim for R4 million, provided that a proper agreement was concluded wherein it would be reflected that, at the end of the 10-month period, the R4 million plus R950 000 would be paid to him. When it was agreed that he would receive R4 950 000 at the end of that period, he transferred R4 million into the trust account.

[24] It later transpired that the transaction was fake. Mr Parsons confirmed that he was a member of CP Crane Hire. He testified that Lubbe Construction was one of its customers until it defaulted with its payment obligations of less than R1 million towards CP Crane Hire. Lubbe Construction was at no stage indebted to CP Crane Hire to the extent of R7.5 million. He could therefore and did not instruct Mr Stephens to prepare an acknowledgment of debt, cession, security and suretyship documents, referring to documents that Mr Stephens had drafted or caused to be drafted and fraudulently signed.

[25] The high court found that Mr Smith transferred the R4 million into the trust account not with the intention of entrusting the money to the firm or Mr Stephens, but for the purpose of investing in the financial scheme proposed by Mr Stephens. In my view the high court was correct in its finding that Mr Smith did not entrust

the R4 million to the firm or Mr Stephens. I am satisfied that the evidence shows that the payment of the R4 million into the trust account was immaterial, since Mr Smith's intention was to purchase 66% of the CP Crane Hire claim with that amount. All he intended to do when he paid the money into the trust account was to discharge his obligations in terms of the agreement to purchase that percentage of the claim. As in the case of the first claim, it cannot be said that Mr Smith entrusted the R4 million to the firm or Mr Stephens. The appeal against the order dismissing the third claim must also be dismissed.

Claim 4

[26] Mr Smith's evidence was that Mr Stephens informed him that Trudon, the firm's biggest client, had a book debt of R44 million, which was going to go on tender; that he could acquire the book debt for R4 million; and that he wanted to purchase that book debt to prevent the tender. At some stage, his son worked at the firm collecting debt on behalf of Trudon. He confirmed to his father that Trudon was the firm's biggest client and that it had collected about 30% of the firm's debt. Mr Stephens suggested to Mr Smith that the book debt should be acquired by Sun-Down Red; that each of them should make a loan of R1 million to Sun-Down Red, which should borrow the remaining R2 million from a third party.

[27] Mr Smith testified that the purchase of a book debt of R44 million for R4 million 'sounded like a very good proposition to become involved … so I said that I was interested'. Mr Stephens showed him emails from which it appeared that no one else was interested in the transaction. Mr Smith then volunteered to lend the additional R2 million to Sun-Down Red on the basis that the R2 million plus 25% interest would be paid to him first from the collections made, and whatever was collected thereafter would be shared equally between him and Mr Stephens. In accordance with the agreement with Mr Stephens, he paid

R500 000 on 11 July, R200 000 on 19 July and R2 million on 26 July 2017 into the trust account, for onward transmission to Sun-Down Red. Mr Stephens had undertaken to pay R1.3 million towards the purchase price of the book debt, R1 million being what he undertook to pay on his own behalf and R300 000 on behalf of Mr Smith, being an amount that he owed Mr Smith in respect of a different transaction. The truth is that Trudon at no stage sold or contemplated to sell its book debt to Sun-Down Red. The transaction that Mr Stephens proposed to Mr Smith was fake. It was Mr Stephens' way of fleecing Mr Smith of his money.

[28] The high court found that Mr Smith did not entrust the R2.7 million to the firm or Mr Stephens when he paid that amount into the trust account. It found that he invested in Sun-Down Red with the intention of achieving a profit. The evidence shows that at no stage did Mr Smith intend the R2.7 million to be held by the firm for any length of time. He understood the agreement to be that, on receipt of the money, the firm would transfer the money to Sun-Down Red, which would purchase the book debt from Trudon. He intended the money to be paid to Sun-Down Red, which, in turn, would pay the money to Trudon in exchange of the book debt. The evidence accordingly does not support a finding that Mr Smith entrusted the R2.7 million, for the purpose of s 26*(a)*, to the firm or Mr Stephens. In the circumstances, the appeal against the dismissal of the fourth claim can also not be upheld.

Claim 2

[29] The legal proceedings that Mr Smith, Inter Globe Financial Solutions (Pty) Ltd and other (natural and legal) persons had instituted in England against Skelwith Leisure (Pty) Ltd concluded in their favour when the court ordered Skelwith Leisure (Pty) Ltd to pay £125 191.80 plus interest to them. Mr Smith testified that he instructed Mr Stephens to collect the money. On 26 March 2015

the solicitors in England, who had been instructed by Mr Stephens, transferred £50 000 on behalf of Mr Smith into the trust account. Mr Stephens confirmed receipt of the money to Mr Smith, who understood that the money would 'be held in the trust account until such time as I called for [the money]'. When Mr Smith made enquiries as to when the money would be paid to him, Mr Stephens said that he should wait until the £125 191 had been paid in full. Mr Smith agreed to wait. He testified that he was not too concerned because the R900 000 was paid into the firm's trust account. He also made enquiries about the payment of the money in 2016.

[30] When Mr Smith approached Mr Stephens during March or April 2017, the latter enquired whether Mr Smith would be interested in using the R900 000 and R4 950 000, referred to in claim 3, as bridging finance in favour of Flake Ice. The transaction that Mr Stephens proposed involved the lending by Mr Smith of the R900 000 and R4 950 000 to Flake Ice. Mr Smith would pay the money to Sun-Down Red, which would make the loan to Flake Ice, which would pay 3% per month on the loan amount to Sun-Down Red. Mr Smith 'agreed for my money to be used for this transaction. But in truth and in reality, the transaction was completely and utterly fraudulent'.

[31] Mr Smith came to realise that the transaction was fraudulent in March 2018, when an attorney, attached to the firm, informed him that Mr Stephen had disappeared. The bank statement of the trust account shows that all Mr Smith's monies had been depleted. It shows that R1 668 013.88 and R428 283.37 were paid into the trust account on 26 March 2015; and R300 and R800 000 on the following day, leaving a trust balance of R3 040 318.51, but that R2 868 013.88 and R1 259 were withdrawn on that same day, leaving a trust balance of only R51 045.63 as at 27 March 2015. The bank statement of the trust account also shows that on 12 June 2015 there was only R2 883.35 left.

[32] The high court found that it was not in dispute that the R900 000 was entrusted to the firm. It furthermore found that the entrustment came to an end when Mr Smith allowed Mr Stephens to use the R900 000 and R4 950 000 for the Flake Ice loan, from which Mr Smith received a benefit of R1 260 000 as interest on that loan.

[33] I agree that Mr Smith established that he entrusted the R900 000 to the firm, represented by Mr Stephens. I do not agree that the entrustment came to an end in June 2017 when Mr Smith agreed to become involved in the Flake Ice transaction. This is so because, by then the money which had been entrusted to the firm had already been stolen by Mr Stephens. The evidence shows that Mr Stephens stole the money in late-March 2015, certainly by 12 June 2015. When he stole the money, it had been entrusted to him, representing the firm. The Flake Ice transaction was proposed and concluded only in 2017. Mr Smith has established an entitlement to be reimbursed, because he suffered pecuniary loss as a result of theft committed by Mr Stephens of the R900 000 that he entrusted to him in the course of his duties in the firm. The factual finding that the money was stolen before the Flake Ice transaction in 2017, renders the defence raised by the Board, that the Fund was excluded from liability in terms of s 47(1)*(g)*, irrelevant. It accordingly dispenses with the need to deal with that defence.

Costs

[34] Although the Board was substantially successful in defending the judgment in its favour, Mr Smith had to appeal against the order of the high court to be successful in his quest to secure the R900 000. In the circumstances, it would be appropriate to order the parties to pay their own costs of the appeal.

[35] In the result, the following order is granted:

1 The appeal is allowed in part, with the parties to pay their own costs.

2 The order of the high court is set aside and substituted with the following order:

‘(a) The plaintiff’s first, third and fourth claims are dismissed.

(b) The plaintiff’s second claim is upheld.

(c) The defendant shall pay R900 000 to the plaintiff, with interest thereon at the rate of 10.25% per annum *a tempore morae*, from the date of service of the summons.

(d) The parties shall pay their own costs.’

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G H BLOEM

ACTING JUDGE OF APPEAL

Appearances

For the appellant:	L Hollander with P Dlangamandla
Instructed by:	Jacobson & Levy Inc, Pretoria
	Honey Attorneys, Bloemfontein
For the respondent:	G A Oliver
Instructed by:	Brendon Müller Inc, Wynberg
	Van der Merwe & Sorour, Bloemfontein.