

In the Supreme Court of Appeal of South Africa

MEDIA SUMMARY

In the matter between:

FREDERICK WILLEM WYPKEMA

APPELLANT

and

TOBIAS JOHANNES LUBBE

RESPONDENT

From: The Registrar, Supreme Court of Appeal

Date: 28 March 2007

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

The SCA today delivered judgment against an attorney on a cheque that he drew on his trust account that was dishonoured. The respondent negotiated a loan with the appellant as bridging finance on behalf of one of his clients. The client was in the process of acquiring an immovable property and needed the money prior to the proceeds of a mortgage bond, which was to be registered over the property, becoming available. The respondent was instructed to effect registration of the mortgage bond and the proceeds of the bond would have been paid into his trust account according to the instructions of his client. The appellant agreed to extend a loan at an agreed fee against receipt of a trust cheque from the respondent for the full amount of the loan and the fee, which cheque was to be presented for payment after the date on which the proceeds of the mortgage bond was to be received in the respondent's trust account.

The respondent sent his trust cheque to the appellant under cover of a letter in which he assured him of the imminent registration of the mortgage bond and receipt of the proceeds thereof in his trust account. The appellant presented the cheque for payment as per their agreement, but the cheque was dishonoured. The mortgage bond was never registered.

The SCA overturned the decision of the Pretoria High Court that the attorney was not personally liable and found that when an attorney draws a cheque on his trust account, he acts as a principal and not in a representative capacity

and is therefor personally liable on such a cheque to the payee thereof. The judgment in the matter was referred to the Law Society of the Northern Provinces.

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