

SOUTH AFRICA / JUDGMENT

Dangene Property Investment (Pty) Ltd and Another v S (A 42/2012) [2012] ZAWCHC 210 (14 June 2012) [2012] ZAWCHC 210

COURT

Western Cape High Court, Cape Town

BEFORE

Allie, Binns-Ward

CASE / FILE NUMBER

A 42/2012

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record**Republic****of South Africa****IN****THE HIGH COURT OF SOUTH AFRICA****(WESTERN****CAPE HIGH COURT, CAPE TOWN)****Case****No: A 42/2012****Before:**

Ms Justice Allie

Mr

Justice Binns-Ward

In

the matter between:

DANGENE

PROPERTY INVESTMENT (PTY) LTD

.....First

Appellant

PIETER

JOHANNES GROENEWALD

.....Second

Appellant

and

THE

STATE

.....Respondent

JUDGMENT

DELIVERED ON: 14 JUNE 2012

[1] The facts of this case are not complicated, and by and large common cause. [2] The appellant - there are two appellants but it is convenient to refer to them as if they were one - owned a property over which the Standard Bank had a mortgage. The appellant subdivided the property and sold off the subdivided portions, while retaining ownership of the mother-erf. Standard Bank's consent, as bond holder, was required to enable the subdivisions to be transferred to the purchasers. Standard Bank was willing to grant the required consent only against the payment to it by the appellant of a sum which would reduce the outstanding debt secured by the bond. The reason for this requirement was because the mortgaged property would be reduced in size once the subdivisions were alienated to third parties, and thus also reduced in value in respect of the bank's security for repayment of the loan advanced to the appellant. As a condition of its consent the bank required the conveyancing attorneys to give it an undertaking that the amount required to reduce the bond would be deducted from the proceeds of the sale and paid by the attorneys to the bank. The required undertaking was duly given by the attorneys and the transfers of the subdivided portions went ahead. This arrangement constituted a contract of guarantee between the attorneys and Standard Bank. It may accepted that the appellant must have known about the bank's condition and acquiesced in its fulfilment. This means that the appellant must be taken to have instructed the attorneys to make payment to the bank on his behalf from the proceeds of the sales of his subdivided properties. [3] The attorneys received the purchase price of the subdivided portions into their trust account on behalf of the appellant, as seller. In accordance with their undertaking in favour of the bank, and their instructions from the appellant, they deducted the sum required by the bank from the proceeds and tried to effect transfer of the amount to the Standard Bank by way of EFT1 from the attorneys' trust account held with ABSA Bank. The EFT was either unsuccessful, or the funds were returned to the

attorneys' trust account for an unknown reason. The attorneys' trust account statements show the amount being debited on 9 March 2007, and then credited a few days later on 14 March 2007. The items can be identified on the attorneys' bank statement by the amount entailed and the payment reference, which was the appellant's Standard Bank bond account number. There is no conclusive evidence that the payment was effective. The conveyancing attorney made a passing remark in his evidence to the effect that the payment had been rejected by the bank according to their records. The remark was unsubstantiated hearsay and its import is inconsistent with subsequent events. [4] The portion of the proceeds of the purchase price that had been earmarked for payment to the bank remained in a suspense account in the attorneys' trust account for some months because the bookkeeping department did not recognise the funds as being those of the appellant and failed to investigate and determine to which ledger account they should have been allocated. This failure by the bookkeeping department put the attorneys in breach of their contractual arrangements with both Standard Bank and with the appellant. [5]

The appellant was understandably annoyed and demanded an explanation from the attorneys. He also wanted to know how the attorneys

proposed to compensate him for his damages. It is in this connection that various disputes of fact come into play. The appellant says that the attorney was apologetic and undertook to compensate him for his loss by means of discounts against future fees. (The appellant, who was a property developer, apparently conducted business regularly with the attorneys.) The appellant testified that the attorney also said that as it appeared that the bank was not calling for the money he would pay it over to the appellant. The implication of the appellant's evidence was that the attorney took the view that if the bank should later call for the money the appellant could pay it over then.

- [1] The facts of this case are not complicated, and by and large common cause.
- [2] The appellant - there are two appellants but it is convenient to refer to them as if they were one - owned a property over which the Standard Bank had a mortgage. The appellant subdivided the property and sold off the subdivided portions, while retaining ownership of the mother-erf. Standard Bank's consent, as bond holder, was required to enable the subdivisions to be transferred to the purchasers. Standard Bank was willing to grant the required consent only against the payment to it by the appellant of a sum which would reduce the outstanding debt secured by the bond. The reason for this requirement was because the mortgaged property would be reduced in size once the subdivisions were alienated to third parties, and thus also reduced in value in respect of the bank's security for repayment of the loan advanced to the appellant. As a condition of its consent the bank required the conveyancing attorneys to give it an undertaking that the amount required to reduce the bond would be deducted from the proceeds of the sale and paid by the attorneys to the bank. The required undertaking was duly given by the attorneys and the transfers of the subdivided portions went ahead. This arrangement constituted a contract of guarantee between the attorneys and Standard Bank. It may be accepted that the appellant must have known about the bank's condition and acquiesced in its fulfilment. This means that the appellant must be taken to have instructed the attorneys to make payment to the bank on his behalf from the proceeds of the sales of his subdivided properties.
- [3] The attorneys received the purchase price of the subdivided portions into their trust account on behalf of the appellant, as seller. In accordance with their undertaking in favour of the bank, and their instructions from the appellant, they deducted the sum required by the bank from the proceeds and tried to effect transfer of the amount to the Standard Bank by way of EFT1 from the attorneys' trust account held with ABSA Bank. The EFT was either unsuccessful, or the funds were returned to the

attorneys' trust account for an unknown reason. The attorneys' trust account statements show the amount being debited on 9 March 2007, and then credited a few days later on 14 March 2007. The items can be identified on the attorneys' bank statement by the amount entailed and the payment reference, which was the appellant's Standard Bank bond account number. There is no

conclusive evidence that the payment was effective. The conveyancing attorney made a passing remark in his evidence to the effect that the payment had been rejected by the bank according to their records. The remark was unsubstantiated hearsay and its import is inconsistent with subsequent events.

[4] The portion of the proceeds of the purchase price that had been earmarked for payment to the bank remained in a suspense account in the attorneys' trust account for some months because the bookkeeping department did not recognise the funds as being those of the appellant and failed to investigate and determine to which ledger account they should have been allocated. This failure by the bookkeeping department put the attorneys in breach of their contractual arrangements with both Standard Bank and with the appellant.

[5] The appellant was understandably annoyed and demanded an explanation from the attorneys. He also wanted to know how the attorneys

proposed to compensate him for his damages. It is in this connection that various disputes of fact come into play. The appellant says that the attorney was apologetic and undertook to compensate him for his loss by means of discounts against future fees. (The appellant, who was a property developer, apparently conducted business regularly with the attorneys.) The appellant testified that the attorney also said that as it appeared that the bank was not calling for the money he would pay it over to the appellant. The implication of the appellant's evidence was that the attorney took the view that if the bank should later call for the money the appellant could pay it over then.

[6] The attorney did not dispute that he offered the appellant some form of undertaking to recompense him for the loss occasioned by the non-transfer of the funds. He explained his decision to make out a not-transferable cheque in favour of the appellant in the amount due by the appellant to the Standard Bank by saying that the appellant refused to countenance the making of a second attempt to electronically transfer the funds and insisted on taking a cheque so that he could deposit it physically in order to effect the agreed reduction in the balance of the bond loan with Standard Bank. The attorney's version thus comes down to an allegation that the cheque that he gave to the appellant was in respect of funds entrusted to appellant to be used solely for the purpose of payment into his bond account with Standard Bank. [7] The appellant paid the cheque into his current account at Nedbank. Having regard to the nature of the instrument as a non-transferable

cheque (see *Standard Bank of SA Ltd v Sham Magazine Centre* 1977 (1) SA 484 (A) at 504-5; and - in respect of a crossed cheque so marked - *Eskom v First National Bank of Southern Africa Ltd* [1994] ZASCA 186; 1995 (2) SA 386 (A) at 397E-400F), it is difficult to imagine what else he could have done with it. If the attorney had intended the cheque to be used solely for the credit of Standard Bank, he should have made it out in favour of Standard Bank, alternatively, in favour of the appellant for the credit of his bond account with Standard Bank (cf. *Hill Samuel Merchant Bank SA Ltd v PPS Transport Holdings (Pty) Ltd* 1984

(1) SA 294 (W)). The appellant did not make a payment into his bond account, but continued to service the undiminished amount of the bond loan. [8] Two and a half years then passed without incident. In December 2009 the Standard Bank at last noted that the attorneys had not fulfilled their undertaking and called on them to make payment; It is apparent that by that time, the appellant, who had been flush with funds in 2007, had become insolvent. There is no evidence to the effect, but one may easily imagine that the bank's interest in the by then rather antiquated undertaking was awakened because the value of the bonded property had proven insufficient, upon its realisation in the winding-up, to redeem the full amount of the mortgage loan. [9] The attorneys were obliged to make good on their undertaking to the bank. They made a claim on their insurers to recover some of the amount that they had to pay to Standard Bank. They also laid a charge against the appellant, which resulted in his arraignment

before the Commercial Crimes Court magistrate on charges of fraud and theft. He was acquitted on the charge of fraud, but convicted on the count of theft. The magistrate found that he had stolen the money of Standard Bank. It is against that conviction that he has come on appeal to this court. [10] The theft of money, especially when it is not in specie, is a problematic area. That much is evident from a consideration of the illuminating review of case history undertaken by MM Loubser in his thesis, *Theft of Money in South African Law*

(1977) submitted in part fulfilment of his doctoral degree at the University of Oxford². A purist approach to ownership or possession in such cases is not appropriate; see e.g. *R v Scoulides* 1956 (2) SA 388 (A); and *S v Kotze* 1965 (1) SA 118 (A) and the other authority cited and discussed therein. After all, in any modern economy, people do not hold their monetary wealth in specie, but in banking accounts and in bank notes. The funds standing to a customer's credit in a banking account belong to the bank and not to the customer, whose right in the credit balance consists of a claim against the bank. Likewise banknotes are in the nature of promissory notes by the Reserve Bank which are accepted as monetary tender by virtue of legislation.³ Ownership' of money in the real, rather than legally theoretical, sense therefore mostly consists of a claim to payment

by the 'owner' against somebody else. If one understands that much one is able to grasp why the misappropriation by an attorney of money standing to the credit of his or her trust account is regarded as theft of the funds of the attorney's client or trust account creditor, notwithstanding that ownership of the money technically vested in the bank at which the trust account was operated (*SvKotze* 1965 (1) SA 118 (A) at 124). [11] Thus in a case like the current one, the theft, if there was one, could only have been of Absa Bank's money if one were to take a purist approach that ownership or possession of stolen property by a person other than the thief was an element of the offence (cf. *Wypkema v Ltibbe*

[2007] SCA 36 (RSA), [2007] 4 All SA 1224 (SCA), at para.s 4-64). That is because the cheque given by the attorney to the appellant was drawn on Absa. The difficulty with that approach is that the attorneys on whose trust account the cheque was drawn had a claim against Absa for the money and in making out the cheque in favour of the appellant and delivering it to

him they were voluntarily vesting a claim to payment of the money by Absa in the appellant, thereby instructing Absa to honour their claim to the funds by making payment to the plaintiff. The money could on that approach not be said to have been stolen from Absa when it honoured the instruction and made payment to the appellant. [12] It is therefore perhaps not surprising to discover that it is apparent that ownership or possession of the property stolen is not an essential element of the offence, as it is in the case of other corporeal property. Thus if A entrusts money to B to be used for a particular purpose, B is guilty of theft if he appropriates the money for his own use, at least if he does not constantly hold in funds sufficient to meet A's purpose if called upon to do so at any time. This is so notwithstanding that as a consequence of the fungible character of money the funds entrusted to him by A become his own money by *confusio* when he takes them and mixes them with his own. Thus in the case just postulated B could not escape conviction on a charge of theft if A had given him the funds by means of a cheque. It would not be a good defence for B to assert that on delivery of the cheque he had become its holder and owner, even though his assertion seen in isolation⁵ would technically be correct. The cases show that the *contrectatio* required for the commission of theft is effected in such an instance by B's appropriation of the funds given to him by A for an unauthorised purpose. [13] But what if A, who holds B's funds in trust for B, pays B an amount from those funds so that B can pay a debt owed to C, and instead of paying C, B applies the money for a different purpose? In our view, the position is quite distinguishable from the previous example. In the first case B misappropriates funds belonging to A - being monies to which he has no proprietary claim; while in the second case he uses money to which he at all times had a proprietary claim, and which is thus, in all senses relevant, his own property. On basic principle one cannot steal one's own property, unless its possessor happens to have a real right over it at the time, such as a pledgee might, for example. An important consideration in the context of the current case is that in terms of s 78(7) of the Attorneys' Act 53 of 1979 no amount standing to the credit of any practitioner's trust account shall be regarded as forming part of the assets of the practitioner, or may be attached on behalf of any creditor of such practitioner. This has the effect that the proprietary interest in the funds held in trust by an attorney remains with the party who entrusted the funds - in the current matter, the appellant. In the example given in this paragraph the appellant thus fills the role of B, the attorney is A and the Standard Bank is C. [14] But what if, as in the current case, by reason of an undertaking given by A in favour of C for the purposes of B, A was obligated to pay C if B did not use his funds released to him by A for the purpose of paying C, as promised? There is no misappropriation by B. There cannot be. One cannot misappropriate money of which oneself is the owner, or to which one has the proprietary claim. A is not remediless, however, because in failing to pay C, B has acted in breach of his agreement with A, and is liable to A for his breach of contract.

[6] The attorney did not dispute that he offered the appellant some form of undertaking to recompense him for the loss occasioned by the non-transfer of the funds. He explained his decision to make out a not-transferable cheque in favour of the appellant in the amount due by the appellant to the Standard Bank by saying that the appellant refused to countenance the making of a second attempt to electronically transfer the funds and insisted on taking a cheque so that he could deposit it physically in order to effect the agreed reduction in the balance of the bond loan with Standard Bank. The attorney's version thus comes down to an allegation that the cheque that he gave to the appellant was in respect of funds entrusted to appellant to be used solely for the purpose of payment into his bond account with Standard Bank.

[7] The appellant paid the cheque into his current account at Nedbank. Having regard to the nature of the instrument as a non-transferable

cheque (see *Standard Bank of SA Ltd v Sham Magazine Centre* 1977 (1) SA 484 (A) at 504-5; and - in respect of a crossed cheque so marked - *Eskom v First National Bank of Southern Africa Ltd* [1994] ZASCA 186; 1995 (2) SA 386 (A) at 397E-400F), it is difficult to imagine what else he could have done with it. If the attorney had intended the cheque to be used solely for the credit of Standard Bank, he should have made it out in favour of Standard Bank, alternatively, in favour of the appellant for the credit of his bond account with Standard Bank (cf. *Hill Samuel Merchant Bank SA Ltd v PPS Transport Holdings (Pty) Ltd* 1984

(1) SA 294 (W)). The appellant did not make a payment into his bond account, but continued to service the undiminished amount of the bond loan.

[8] Two and a half years then passed without incident. In December 2009 the Standard Bank at last noted that the attorneys had not fulfilled their undertaking and called on them to make payment; It is apparent that by that time, the appellant, who had been flush with funds in 2007, had become insolvent. There is no evidence to the effect, but one may easily imagine that the bank's interest in the by then rather antiquated undertaking was awakened because the value of the bonded property had proven insufficient, upon its realisation in the winding-up, to redeem the full amount of the mortgage loan.

[9] The attorneys were obliged to make good on their undertaking to the bank. They made a claim on their insurers to recover some of the amount that they had to pay to Standard Bank. They also laid a charge against the appellant, which resulted in his arraignment

before the Commercial Crimes Court magistrate on charges of fraud and theft. He was acquitted on the charge of fraud, but convicted on the count of theft. The magistrate found that he had stolen the money of Standard Bank. It is against that conviction that he has come on appeal to this court.

[10] The theft of money, especially when it is not in specie, is a problematic area. That much is evident from a consideration of the illuminating review of case history undertaken by MM Loubser in his thesis, *Theft of Money in South African Law*

(1977) submitted in part fulfilment of his doctoral degree at the University of Oxford². A purist approach to ownership or possession in such cases is not appropriate; see e.g. *R v Scoulides* 1956 (2) SA 388 (A); and *S v Kotze* 1965 (1) SA 118 (A) and the other authority cited and discussed therein. After all, in any modern economy, people do not hold their monetary wealth in specie, but in banking accounts and in bank notes. The funds standing to a customer's credit in a banking account belong to the bank and not to the customer, whose right in the credit balance consists of a claim against the bank. Likewise banknotes are in the nature of promissory notes by the Reserve Bank which are accepted as monetary tender by virtue of legislation.³ Ownership of money in the real, rather than legally theoretical, sense therefore mostly consists of a claim to payment

by the 'owner' against somebody else. If one understands that much one is able to grasp why the misappropriation by an attorney of money standing to the credit of his or her trust account is regarded as theft of the funds of the attorney's client or trust account creditor, notwithstanding that ownership of the money technically vested in the bank at which the trust account was operated (*SvKotze* 1965 (1) SA 118 (A) at 124).

[11] Thus in a case like the current one, the theft, if there was one, could only have been of Absa Bank's money if one were to take a purist approach that ownership or possession of stolen property by a person other than the thief was an element of the offence (cf. *Wypkema v Ltibbe*

[2007] SCA 36 (RSA), [2007] 4 All SA 1224 (SCA), at para.s 4-64). That is because the cheque given by the attorney to the appellant was drawn on Absa. The difficulty with that approach is that the attorneys on whose trust account the cheque was drawn had a claim against Absa for the money and in making out the cheque in favour of the appellant and delivering it to him they were voluntarily vesting a claim to payment of the money by Absa in the appellant, thereby instructing Absa to honour their claim to the funds by making payment to the plaintiff. The money could on that approach not be said to have been stolen from Absa when it honoured the instruction and made payment to the appellant.

[12] It is therefore perhaps not surprising to discover that it is apparent that ownership or possession of the property stolen is not an essential element of the offence, as it is in the case of other corporeal property. Thus if A entrusts money to B to be used for a particular purpose, B is guilty of theft if he appropriates the money for his own use, at least if he does not constantly hold in funds sufficient to meet A's purpose if called upon to do so at any time. This is so notwithstanding that as a consequence of the fungible character of money the funds entrusted to him by A become his own money by *confusio* when he takes them and mixes them with his own. Thus in the case just postulated B could not escape conviction on a charge of theft if A had given him the funds by means of a cheque. It would not be a good defence for B to assert that on delivery of the cheque he had become its holder and owner, even though his assertion seen in isolation⁵ would technically be correct. The cases show that the *contrectatio* required for the commission of theft is effected in such an instance by B's appropriation of the funds given to him by A for an unauthorised purpose.

- [13] But what if A, who holds B's funds in trust for B, pays B an amount from those funds so that B can pay a debt owed to C, and instead of paying C, B applies the money for a different purpose? In our view, the position is quite distinguishable from the previous example. In the first case B misappropriates funds belonging to A - being monies to which he has no proprietary claim; while in the second case he uses money to which he at all times had a proprietary claim, and which is thus, in all senses relevant, his own property. On basic principle one cannot steal one's own property, unless its possessor happens to have a real right over it at the time, such as a pledgee might, for example. An important consideration in the context of the current case is that in terms of s 78(7) of the Attorneys' Act 53 of 1979 no amount standing to the credit of any practitioner's trust account shall be regarded as forming part of the assets of the practitioner, or may be attached on behalf of any creditor of such practitioner. This has the effect that the proprietary interest in the funds held in trust by an attorney remains with the party who entrusted the funds - in the current matter, the appellant. In the example given in this paragraph the appellant thus fills the role of B, the attorney is A and the Standard Bank is C.
- [14] But what if, as in the current case, by reason of an undertaking given by A in favour of C for the purposes of B, A was obligated to pay C if B did not use his funds released to him by A for the purpose of paying C, as promised? There is no misappropriation by B. There cannot be. One cannot misappropriate money of which oneself is the owner, or to which one has the proprietary claim. A is not remediless, however, because in failing to pay C, B has acted in breach of his agreement with A, and is liable to A for his breach of contract.
- [15] In our judgment therefore, the appellant, who, on the facts as the attorney's evidence would have it, was in the role of B in the last scenario postulated, was not guilty of theft. The funds in issue were the proceeds of the sale of the appellant's property. He did not pay over those funds to the attorney. Had he done so, the abortive electronic transfer in favour of Standard Bank by the attorney would not have been made from the attorneys' trust account, but from their business account. And the cheque later made out by the attorneys to the appellant would, likewise, have been drawn on the attorneys' business account, and not on their trust account. The proceeds of the cheque therefore represented redemption of the proprietary claim that the appellant had on the funds to his credit in the attorneys' trust account. When the cheque was met the attorneys would debit the appellant's trust account in their books in order to strike a balance. When the appellant's failure to pay Standard Bank resulted in the attorneys having to make good on their undertaking, the attorneys had a claim in contract against the appellant. Charging him with theft was misdirected.
- [16] The position would, of course, have been different if the evidence had been that the attorney gave the cheque to the appellant only because of a fraudulent misrepresentation by the appellant that he would pay the amount to the proceeds to Standard Bank. By reason of the undertaking given by the attorney on the appellant's behalf in favour of the bank, the attorney would have had a contractual right to refuse to release the affected amount to the appellant. If he was induced to act to his prejudice by a misrepresentation by the appellant

that if the attorney released the money he would take it and deposit it directly to the credit of his Standard Bank bond account, the appellant would, assuming that he had acted with necessary criminal intent, have made himself guilty of fraud. A case of fraud was not made out, as the magistrate correctly found.

- [17] It appears from his judgment that the magistrate apprehended that the transfer of the subdivisions automatically vested the funds in the Standard Bank. There is no foundation in principle for such an apprehension. The bank was entitled to payment upon transfer of the subdivisions, but it could not obtain a proprietary interest in the proceeds of the sales of the subdivisions until payment was made to it. All it enjoyed was a contractual claim to payment. In convicting the appellant of theft, the magistrate held that he had stolen the money of Standard Bank. . There was no basis in the evidence to support that finding. It was not proven that Standard Bank had ever received the funds from the electronic transfer attempted by the attorneys, mentioned earlier. Unless and until payment to it was effected in terms of the applicable contract, Standard Bank did not obtain ownership of, or a proprietary interest in the funds. As observed earlier, there was no conclusive evidence of an effective payment by the attorneys to Standard Bank. It was suggested by the attorney, Mr Malherbe, and his conveyancing secretary, Ms Neal, that the funds from the EFT had been received by Standard Bank and 'bounced back' without explanation, but this aspect was not canvassed in sufficient detail to establish that Standard Bank had in fact received the money and returned it. Indeed, had they made an effective payment, the attorneys would have been discharged thereby from their undertaking.
- [18] We have determined that the appeal against conviction has to be upheld on the attorney's version of the facts. A fortiori, and indeed also quite independently of the foregoing legal principles, must this be the result if the appellant's evidence could reasonably possibly be true. For on his version of how the cheque came to be made out and handed to him he was under no obligation to the attorney to deposit it into his bond account. The appellant testified that he had confronted the attorney about the latter's failure to pay the bank and had demanded to know what the attorney intended to do to recompense him for the interest that had been paid on the undiminished balance of the mortgage loan as a consequence. The attorney's response, according to the appellant, was that as the bank had not called for the funds he would release them to the appellant, the understanding being that if the bank eventually called for payment, the appellant would comply. Is this so improbable as not to be reasonably possibly true? In our view not. The quite extraordinary conduct of the attorney in making the cheque out to the appellant and thereby giving up control of the funds, notwithstanding his liability under the letter of undertaking, is intelligently understandable only on this version. The attorney's version by contrast points to crass foolishness on his part. Had the attorney's version been true, one would in any event have expected him, in the context of his exposure under the letter of undertaking, to check to see that the appellant had indeed made the payment to the Standard Bank. There is no suggestion in the evidence that he did. His failure to check is conduct which, on the inherent probabilities, is more supportive of the truth of the appellant's evidence than that

of the attorney. The attorney, whose practice was of a commercial nature (he specialised in property transactions), is furthermore

unlikely to have drawn a not-transferable cheque in favour of the appellant if he intended that the funds should be used only for the credit of the appellant's bond account at Standard Bank.

This is a further feature of the case which is supportive of the appellant's evidence, rather than that of the attorney. Indeed,

the trial magistrate preferred the evidence of the appellant over that of the attorney. It is trite that the appellant's evidence does not have to be accepted as truthful for him to be entitled to the benefit of the doubt. It only has to be reasonably possibly true.

[19] In the result the appeal by the first and second appellants is upheld and the conviction and sentence, including the compensation order made in favour of the firm of attorneys are set aside.

R. ALLIE

Judge of the High Court

A.G. BINNS-WARD JJ:

¹Electronic funds transfer.

²Published in *Annale, Universiteit van Stellenbosch* vol.1 (1978).

³Section 17(1) of the South African Reserve Bank Act 90 of 1989.

⁴Wypkema was not a case about the theft of money; it was about the liability of an attorney as principal in respect of payments made to third parties by means of cheques drawn on the attorney's trust account.

⁵The payee of a cheque is ordinarily free to deal with the proceeds thereof as it chooses. See *African Life Assurance Co Ltd v NBS Bank Ltd* 2001

(1) SA 432 (W) at 441C.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAWCHC/2012/210.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/dangene-property-investment-pty-ltd-and-another-v-s-unknown-topic-awchc-2012>

Prepared on 12 October 2026 · Esheria