

SOUTH AFRICA / JUDGMENT

Spar Group Limited v Absa Bank Limited (74870/2019) [2020] ZAGPJHC 259 (14 August 2020) [2020] ZAGPJHC 259

COURT

South Gauteng High Court, Johannesburg

BEFORE

Kathree-Setiloane

CASE / FILE NUMBER

74870/2019

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

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 74870/2019

In

the matter between:

SPAR

GROUP

LIMITED Plaintiff

And

ABSA

BANK

LIMITED Defendant

Delict

- common law developed to extend a legal duty to banks to avoid economic loss to a third party not to reverse EFT payments without doing more.

Where

bank has a discretion to reverse a payment, it has a legal duty to a beneficiary/payee of an EFT payment to verify, or to

make enquiries,

or to investigate, or to inform or report instructions given by its customer -particularly compelling where suspicious or unusual

circumstances present giving rise to a reasonable doubt about whether the instructions had been given lawfully and/or in good faith and/or for the reasons advanced by its customer.

JUDGMENT

KATHREE-SETILOANE J,

- [1] The plaintiff, Spar Group Limited (“Spar”) claims payment of R2 464 856.32 from the defendant, ABSA Bank Ltd (“Absa”)

as a consequence of certain reversals of debit order payments effected by Absa which had previously been credited to Spar’s

bank account held with First National Bank (“FNB”).

- [2] From 25 May until 3 July 2009, Trifecta Trading 61 (Pty) Ltd, trading as Atterbury SuperSpar (“Trifecta”), a retail customer of Spar, made certain payments to Spar by Electronic Funds Transfer (“EFT”) in terms of a written debit order instruction which Trifecta gave in favour of Spar. Trifecta held an Absa bank account.
- [3] During the period 1 to 8 July 2009 Absa reversed nine of the above-mentioned payments, and as a result, Spar’s account with FNB was debited and Trifecta’s account with Absa was credited in the total sum of R 2 464 856.32. The reversals took place between 2 and 37 days after the relevant payment dates. As a result of the reversals, Trifecta’s overdraft debt with Absa was settled to the extent of the credits.
- [4] Spar alleges, in its particulars of claim, that it was subsequently unable to obtain payment of the sum of R2 464 856.32 from Trifecta and seeks to hold Absa liable for payment of this amount. Spar claims damages in delict for the recovery of pure economic loss. Absa denies liability and that Spar was unable to obtain payment from Trifecta.

Background

- [5] Spar conducts a wholesale business. It supplies merchandise including groceries to retailers who do business under the “SPAR”

banner. Spar’s business and its relationship to retailers is a “franchise type” one. Trifecta was one of its retailers. It owned and managed the Atterbury SuperSpar at the Atterbury Value Mart, in the east of Pretoria.

- [6] Spar sells its goods to retailers on credit. Spar provides the retailers with weekly statements. The terms of credit require the retailers to make payment of the amounts reflected on the weekly statements within a period of either 19 or 31 days from the date of each weekly statement. These statements are sufficiently detailed to enable the retailers to easily identify all the deliveries made during the particular week on which the statement is based. Retailers

may purchase merchandise directly from Spar's distribution centres and/or from other suppliers. Merchandise that Spar supplies to the retailers from its distribution centres are referred to as "warehouse transactions". The merchandise that retailers purchase from other suppliers are for Spar's account. They are referred to as "dropshipments". The retailers pay Spar for this merchandise in due course.

- [7] The retailer has up to 19 days from date of statement (for warehouse transactions) or 31 days from date of statement (for dropshipment

transactions) to check the statements for accuracy and to raise a complaint (this procedure is regulated contractually) regarding short delivery, or quality of goods etc. before payment is to be made.

- [8] Trifecta applied for a credit facility with Spar. In respect of the credit sought, it offered security by way of a suretyship given by its only shareholder and director, Mr Tobie Schoeman ("Mr Schoeman"), and a bank guarantee for R600 000.00, to be given by its bank, Absa. Although Trifecta's application for a credit facility was successful, Spar sought additional security which it established by way of a general notarial bond for R1.5 million over all Trifecta's movable property. This notarial bond was registered on 31 October 2005. Spar subsequently obtained more security and a second general notarial bond for R2 million was registered on 7 September 2006.

- [9] Spar obtains a debit order instruction or authority from each retailer in order to ensure prompt payment. The debit order instruction which Spar receives, enables it to withdraw money from the retailer's nominated bank account every Wednesday and Friday. These debit transfer transactions are known as the "pull" transactions.[1] Trifecta provided Spar with a debit order instruction on 24 August 2005. Its salient terms were as follows:

'I/we hereby request, instruct and authorise you to draw against my/our account with the abovementioned bank [Absa], variable amounts for payment of weekly purchases due in respect of dropshipment and warehouse transactions on the Monday and Wednesday of each and every week. All such withdrawals from my/our bank account by you shall be treated as though they had been signed by me/us personally.

'I/we understand that the withdrawals hereby authorised will be processed by computer through a 'Payment and Collection System'[2] known as PACS, and I also understand that the details of each withdrawal will be printed on my bank statement or on each accompanying voucher.

...

This authority may be cancelled by me/us giving you thirty days' notice, in writing, sent by prepaid registered post. I/we understand that I/we shall not be entitled to any refund of amounts legally owing to you, which you have withdrawn while this authority was in force.'[3]

- [10] According to Spar's records, payments collected from Trifecta were, from time to time, returned to Spar unpaid. This became more prevalent towards the end of 2008, albeit that two debit order payments were returned unpaid "payment stopped" on respectively 8 March 2007 and 25 February 2008. Four payments were returned "payment stopped" on, respectively, 23 July, 27 August, 8 October and 19 November 2008. This continued into 2009 and by 11 May 2009, a further six debit order payments had been returned "payment stopped". Seven returns "not provided for" occurred in the period from 4 May 2009 to 19 June 2009. By the end of May 2009 Trifecta was R3 336 488.26 in arrears on its warehouse account and at least R1 167 355.91 on its dropshipment account. By the end of June 2009, before the reversals at issue herein had occurred, Trifecta owed Spar R6 951 298.07 on the two accounts in aggregate. Trifecta, in addition, owed Spar a further sum exceeding R5 million.
- [11] Absa was, apart from Spar, Trifecta's other substantial third party creditor. Absa provided overdraft facilities of R2 million to Trifecta.
- [12] Spar, despite the debit order payment returns, continued to supply merchandise to Trifecta on credit by way of warehouse deliveries and dropshipments until June 2009, while still attempting to make twice a week recoveries via the EFT Debit Pull payment system. This was because Trifecta was in financial difficulties and wanted to sell the Atterbury Superspar. Spar, in assisting to facilitate the sale, took the view that the best option was for the business to be sold as a going concern, as this would retain its identity as a Spar retailer.
- [13] Mr Schoeman brought a buyer to the table who offered a purchase price of R8 million. Spar rejected the purchaser but introduced Mr Schoeman, in June 2009, to Mr Giannacopoulos, whose company, Tayegetos Supermarket (Pty) Limited ("Tayegetos"), was willing to buy the business for a purchase price of R5 million. Mr Schoeman was left with no choice but to accept Tayegetos' offer to purchase the business. Trifecta and Tayegetos concluded an agreement of sale on 18 June 2009. The agreed purchase consideration was R5 million in respect of the goodwill and equipment of the business, payable on Monday, 29 June 2009, plus the value of the stock-in-trade to be determined on Sunday, 28 June 2009, by a joint stocktaking, payable in three monthly instalments from the end of July 2009.
- [14] Tayegetos took possession of the business, on Monday 29 June 2009, and started trading as a Spar retailer for its own account.

Trifecta's stocktaking provided a figure of R2.8 million for the stock. However, on Tayegetos calculation it was R2.1 million and it refused to accept the R2.8 million stock-figure. This led Mr Schoeman to believe "... that I have paid much too much for the stock that was apparently in my business". In other words, he believed that Spar was not entitled to the payments from Trifecta's account which, in the recent past, Spar collected via the EFT payment system.

- [15] Mr Schoeman telephoned Mr BW Botten (“Mr Botten”), who at the time was the Provisional Managing Director of the North Rand Division of Spar, to complain. Mr Botten, however, advised him to accept the figure. On the basis of his unhappiness at the stock value which Tayegetos was prepared to pay, he telephoned Ms Claire Koen (“Ms Koen”) at the Centurion branch of Absa, where Trifecta’s account was based, and conveyed to her that “there was a huge problem with the values of the stock and deliveries” and instructed her to “send back as many debit orders as the system would allow her to do”.
- [16] Trifecta’s bank statement for Tuesday, 30 June 2009, the day on which Mr Schoeman spoke with Ms Koen, shows a credit of R297 783.76 under the caption “Acb debiet terug”. This related to a Spar initiated EFT debit pull transaction on the account on the previous day, 29 June 2009. Mr Schoeman’s instruction to Ms Koen, resulted in Absa processing returns of 9 payments that had been collected by Spar from Trifecta’s bank account through the EFT Debit Pull payment system, via Bankserv. The R297 783.76 first credited to Trifecta’s account in this regard reflected as a debit on Spar’s account with FNB on 1 July 2009 under code “04”, i.e. “payment stopped”. Two further prior EFT debit pull debits on Trifecta’s account were also returned on 30 June 2009. The one, for R222 247.04 related to a debit against the account on 25 May 2009 and the other, for R295 568.42 to a debit on 1 June 2009. These were returned to Spar’s account under code “34”, i.e. “Authorisation cancelled”.
- [17] Three further EFT debit pull debits were returned from Trifecta’s account on the following day, 1 July 2009. These were for R295 568.42, R109 708.17 and R311 875.03. These related to prior EFT debit pull transactions initiated by Spar and debited on Trifecta’s account on 8 June 2009, 12 June 2009 and 15 June 2009, respectively. These payments were returned under return code “34” “Authorisation cancelled”.
- [18] Two further prior debits for R249 418.60 and R434 533.98 respectively, were returned from Trifecta’s account on 2 July
2009. These related to prior EFT debit pull transactions initiated by Spar and debited on 22 June 2009 and 26 June 2009, respectively. The payments were returned under return code “34” “Authorisation cancelled”.
- [19] The final return, for R361 765.56, related to a Spar initiated debit on Trifecta’s account on Friday, 3 July 2009. It was returned on Tuesday, 7 July 2009. The return reflected on Spar’s FNB account on Wednesday, 8 July 2009 (within four business days of the action date) under code “04”, “payment stopped”. These codes in respect to all nine reversal incorrectly refer to the nature of the returns which were neither “authorisation cancelled” nor “payment stopped”.
- [20] It is common cause that Mr Schoeman did not provide Trifecta’s instructions to Absa in writing. Ms Koen (who did not testify) confirmed, in an affidavit dated 22 June 2012, that Mr Schoeman’s instructions were not given in writing, but were given telephonically. She stated that she acted on the basis of the “written authorisation that Trifecta had given to Absa to act

on Mr Schoeman's telephonic instructions". The document referred to is the "Mandate and Indemnity in Respect of E-mail, Faxed and/or Telephone Instructionss (ACBB) which Trifecta gave to Absa. Absa had consulted with Ms Koen but elected not to call her to testify at the trial.

[21] Spar caused summons to be issued against Trifecta and Mr Schoeman on 3 July 2009. The claim was for the sum of R7 653 284.63 relating to overdue dropshipment and warehouse accounts at that time. Mr Schoeman was cited as surety and co-principal debtor. Spar also launched an urgent application to perfect its notarial bonds on the basis that Tayegetos, who had been in possession of the business since 29 June 2009, had cancelled the agreement of sale and that the business would, shortly, revert to Trifecta. Trifecta opposed the application and it was struck from the roll for lack of urgency. Trifecta disputed that Tayegetos was entitled to cancel the agreement of sale.

[22] Spar and Trifecta reached a settlement on 17 July 2009. Tayegetos, Mr Schoeman and Interactive Trading 351 (Pty) Ltd ("Interactive

Trading") [4] were also party to the settlement. The settlement agreement reinstated the agreement of sale, now for the purchase price of R7.1 million, which included the stock. It recorded Trifecta's indebtedness to various creditors: Spar for an agreed R14.7 million, Mr Schoeman for R6 million, Interactive for R2.8 million, Absa for R1.5 million and miscellaneous creditors for R1 million.

[23] In terms of the settlement agreement the proceeds of the sale of the Atterbury Superspar were divvied up. Spar received the full face value of its notarial bonds in the amount R3.5 million. Spar also received the benefit of the bank guarantee for R600 000.00 issued by Absa pursuant to the agreement between Spar and Trifecta in 2005. The remaining R3.6 million of the purchase price of the Atterbury Superspar was distributed among the notional "concurrent" creditors, including Spar, on the basis of a notional dividend of 16.44 Cents in the Rand, providing Spar with further recovery of R1 743 000. Interactive's share of R450 000 was also retained by Spar on the basis that it sold Mr Schoeman's suretyship to Interactive, and would withdraw the action that it had instituted against Trifecta and Mr Schoeman.

[24] The balance of R1 407 000 was to go to Trifecta's attorneys for distribution among the remaining creditors, including

Absa and Mr Schoeman (the latter for some R993 000). Mr Schoeman accepted full responsibility to settle the remainder of Trifecta's

Absa account, as well as to settle with any of the miscellaneous creditors who refused to accept the notional "dividend".

Trifecta's overdraft with Absa was settled in full on 23 October 2009 and its overdraft facility was cancelled.

[25] On 27 July 2009, Spar's attorneys wrote to FNB demanding that FNB credit its account with the R2 464 856.32 representing the aggregate of the nine EFT Debit Pull transactions that had been returned. Further correspondence between FNB and the attorneys

followed, culminating in a letter dated 18 September 2009, in which FNB reported the results of its investigations into the matter to Spar, as follows: "FNB therefore did not debit the Spar account without Spar's authority but rather the debit was actioned by Absa acting on its client's instruction, through the EFT system".

[26] On 13 July 2010, Spar wrote a further letter to FNB demanding payment and stating that it regarded the dispute resolution in terms of clause 17 of the CAMS Agreement (which it had entered into with FNB)[5] as inappropriate, for purposes of the dispute that had arisen. It sent a copy of this letter to Absa. It also sent a letter to Absa demanding payment of the sum at issue, and recording that, failing payment, it intended launching application proceedings against Absa and FNB. Spar, eventually, sued only Absa.

[27] Although the issue of whether the nine payments in question were owed by Trifecta to Spar was originally disputed, it became common cause as Spar's witness, Mrs CJ Swanepoel ("Mrs Swanepoel"), who was called to prove the debt owed by Trifecta to Spar, was not cross-examined on it. It is also common cause that Absa did not provide Spar with prior notice before effecting the reversals. Nor did it obtain Spar's consent to do so. It is likewise common cause that Mr Schoeman did not cancel his debit order instruction.

[28] Spar called the following witnesses: Mr Botten (Provisional Managing Director: North Rand Division of Spar), Mrs Swanepoel, the Credit Control Supervisor in the Debtor's Department: North Rand Division of Spar in 2009, and Dr GTD Holtzhauzen ("Dr

Holtzhauzen"), a banking expert. Absa called the following witnesses: Mr CJ Erasmus ("Mr Erasmus"), a payment

specialist expert employed by Absa and Mr Schoeman (Managing Director of Trifecta).

Issues

for Determination

[29] Although Spar relies, in its particulars of claim, on both a delictual claim against Absa for damages for the recovery of pure

economic loss and a quasi-vindictory claim – at the hearing, it relied only on the delictual claim for damages against Absa as the banker of Trifecta. Spar and Absa do not stand in a banker / customer contractual relationship. FNB, through which the debit order collections were processed, was Spar's banker.

[30] This matter concerns a novel issue of delictual liability resulting from a bank's wrongful and negligent conduct in the reversal of EFT payments collected by debit order. The primary issues that arise for determination are whether: (a) a legal duty rested on Absa to act reasonably towards Spar and whether Absa breached that duty; and (b) Spar's interests should be accorded judicial protection against Absa's conduct in this particular type of situation.

Regulatory Framework

[31] Absa submits that its defences to Spar's claim have to be understood against the backdrop of the Payment Association of South Africa ("PASA") Rules and the concept of a payment system, more particularly, the payment system that exists in terms of the EFT Debit Pull PCH Agreement ("the Debit Pull payment system"). PASA is an association of banks operating in the country that regulates the participation of its member banks and other role players in the various payment systems that, collectively comprise the South African National Payment System.

[32] Spar collected payments from Trifecta's Absa account in terms of the: (a) National Payment System Act, No. 78 of 1998;

(b) "Payment Clearing House Agreement for the Clearing of EFT Debit Payment Instructions ("EFT Debit Pull Agreement");

(c) Rules Governing the Clearing of Debit and Credit Electronic Funds Transfer Payment Instruction ("EFT Rules").

[33] The South African National Payment System is "a set of instruments, procedures and rules that allow consumers, businesses and other organisations to transfer funds, usually held in an account at a financial institution to one another." [6] The South African Reserve Bank Act [7] mandates the South African Reserve Bank ("the SARB") to oversee the regulation of the National Payment System and ensures its safety, soundness and efficiency. [8] The National Payment System Act [9] ("the NPS Act"), in turn, provides the framework for the SARB's management, administration, operation, regulation and supervision of payment, clearing and settlement systems in South Africa. [10] The NPS Act defines a "payment system" as "a system that enables payments to be effected or facilitates the circulation of money and includes any instruments and procedures that relate to the system". The Debit Pull payment system is a "payment

system" as defined. The SARB document entitled "Oversight of the South African National Payment System" ("Oversight

Brochure") describes the significance of the National Payment System in the following terms: [11]

'A payment system, as defined by the Bank for International Settlements (BIS), consists of a set of instruments, banking procedures and interbank funds transfer systems that ensure the circulation of money.

A national payment system is one of the principal components of a country's monetary and financial system and is, therefore, crucial to a country's economic development, since almost all economic transactions involve some form of payment. Payment and settlement systems thus play a crucial role in a market economy, and central banks have always had a close interest in them as part of their responsibilities for monetary and financial stability.

Well-designed and managed payment systems help to maintain financial stability by preventing or containing financial crises, and help to reduce the cost and uncertainty of settlement, which could otherwise act as an impediment to economic activity. Financial instability may be characterised by banking failures, intense asset price volatility, interest and exchange rate volatility, liquidity problems, and systemic risk, which are often manifested in the disruption of the payment and settlement system.

Payment systems not only entail payments made between banks, but encompass the total payment process, including systems, mechanisms, institutions, agreements, procedures, rules and laws. Modern payment systems also involve the settlement of substantial trade in financial instruments such as bonds, equities and derivatives.'

[34] The EFT PCH Debit Pull Agreement and Payment Clearing House ("PCH") Agreements and Clearing Rules issued by PASA ("EFT Rules") were agreed to and issued under the auspices and authority of PASA. All payment systems are governed by PCH Agreements and EFT Rules issued by PASA. The rules are required to be equitable, fair and transparent in terms of the National Payment System Act.

[1] Before electronic banking and debit orders became prevalent, Spar agreed contractually with its retailers to provide it with a cheque book of blank cheques made out to Spar and signed by the retailer. This enabled Spar to fill in the amount on the cheque and present it for collection. There are indications in the case law that a debit order is in the nature of an electronic cheque.

[2] A "Payment and Collection System" is described later in the judgment.

[3] Emphasis added.

[4] Mr Schoeman was a director and shareholder of Interactive. It was a creditor of Trifecta.

[5] The CAMS Agreement will be dealt with more fully later in the judgment.

[6] South African Reserve Bank: Starter Pack for Participation within the National Payment System (2009) p. 943.

[7] No. 90 of 1989.

[8] Section 10(1)(c) of the South African Reserve Bank Act, 1989 provides that the SARB may perform such functions, implement such rules and procedures and in general, take such steps as may be necessary to establish, conduct, monitor, regulate and supervise payment, clearing or settlement systems.

[9] No. 78 of 1998.

[10] The SARB's role in this regard is specified in various sections of the NPS Act (see ss 3, 4A, 6, 10 & 12).

Section 12 provides for the SARB to issue legally binding directives regarding a payment system or the application of the provisions of the NPS Act.

[11] Oversight Brochure at para 1. Mr Erasmus, Absa's expert witness, confirmed the contents of the Oversight Brochure in evidence.

[12] Oversight Brochure, fn 9.

[13] Oversight Brochure, fn 28.

[14] See Oversight Brochure, fn 18.

[15] Schedule 2 of the EFT Debit Pull PCH Agreement specifies its scope under the heading "Payment Instructions and Transactions

Governed by this Agreement". It states that: "[o]nly EFT debit payment instructions issued by a participant

in the PCH or by its customer, and EFT debit payment instructions issued in respect of the return of such EFT debit payments where same are unpaid, may be cleared through this payment clearing house."

[16] Clause 3.1 of the agreement provides that: '3.1 The parties, by entering into this contractual relationship, hereby establish and become participants in the PCH, and agree that the rights and obligations contemplated herein shall govern the clearing of EFT debit payment instructions between them'

[17] Clause 2.2.20 of the EFT PCH Debit Pull Agreement.

[18] Clause 2.30 of the EFT PCH Debit Pull Agreement.

[19] Clause 2.2.3 of the EFT PCH Debit Pull Agreement.

20 Own emphasis.

21 Settlement of the debt arising between the user's bank and the payer's would again have taken place at the SARB, on the instructions of Bankserv.

[20] Since the CAMS agreement was signed in 2004 between FNB and Spar, its terms are not *ad idem* with the operation of the EFT Debit Pull payment system and EFT Rules that applied in 2009. This presumably stems from whatever the rules and practices were at the time that the CAMS agreement, a standard form document, was drafted. Clause 14 of the CAMS agreement, entitled "Compliance with the User Manual", however, provides that:

“The parties shall adhere to the rules, standards and procedures governing the operation of the System as published in the relevant

User manuals and any amendments thereof as notified in writing to the Users from time to time. The Bank shall make itself

available to discuss the consequences of such amendments with the Users.”

[21] Appendix C to FNB’s EFT User Manual lists the “Reason Codes for Return Transactions”. In doing so, it specifies the categories under which paying banks return EFT debit pull transactions to users’ banks.

Returns are identifiable in relation to numerical codes that serve to inform the user’s bank, as well as the user, of the reason for the return of the transaction. A distinction is drawn, among others, between “Unpaid Reason Codes” and “Disputed Transaction Codes”. An EFT debit pull transaction would, for example, be returned as an “unpaid

item” by the paying bank under code 02 if the payer does not have sufficient funds available in its account or a sufficient

credit facility to meet the payment. A further basis upon which a previously processed EFT debit pull transaction can be returned to the user’s bank as an “unpaid item” is under code 04 signifying “Payment stopped (by A/C holder)”. “Disputed transaction Codes” apply when the payer has objected (to its bank) to a payment on the grounds that the payment was unmandated or contrary to the mandate information (as contemplated in terms of clause 14.4.4 of the EFT Debit Pull PCH Agreement). Code 30 signifies “no authority to debit”; code 32 “debit in contravention of payer’s authority”; code 34 “authorisation cancelled” and code 36 “previously stopped via stop payment advice”.

[22] Mrs Swanepoel confirmed this in her evidence.

[23] *Odinfin (Pty) Ltd v Reynecke* 2018 (1) SA 153 (SCA) par 12.

[24] *Fourway Haulage SA (Pty) Ltd v SA National Roads Agency Ltd*

[2008] ZASCA 134; 2009 (2) SA 150 (SCA); *Country Cloud Trading CC v MEC, Department of Infrastructure Development* 2014

(2) SA 214 (SCA); *Itzikowitz v ABSA Bank Limited* 2016

(4) SA 432 (SCA) par 8; *Country Cloud Trading CC v MEC, Department of Infrastructure Development* 2015 (1) SA (1) (CC).

[25] *Steenkamp N.O. vs Provincial Tender Board, Eastern Cape* 2006

(3) SA 151 (SCA) par 1.

[26] *Country Cloud Trading CC v MEC, Department of Infrastructure Development* 2014

(2) SA 214 (SCA) para 21.

[27] Minister of Safety and Security v van Duivenboden 2002

(6) SA 431 (SCA) para 21.

[28] Zimbabwe Banking Corporation Limited v Pyramid Motor Corporation (PvT) Limited 1985

(4) SA 553 (ZS) at 564 C - D.

[29] Loureiro and Others v Invula Quality Protections (Pty) Ltd 2014 (3) SA 394 (CC) para 53.

[30] E Abrahams & Co v Gross and Cohen 1991

(2) SA 301 (C) at 309.

[31] Evidence of Dr Holtzhauzen. See also clause 2.2.8 of the EFT Debit Pull PCH Agreement defines an ‘EFT debit payment instruction’

to mean “an electronic payment instruction to a paying participant to make a payment, issued by the collecting participant

or by its customer on behalf and ostensibly under the mandate of the customer of a paying participant.

[32] Absa pleaded that Trifecta did not have the intention to make payment of the nine payments in question (with the implication that those payments did not, as a matter of law, take place). This defence has fallen away rightly so, as there was no suggestion in the evidence of Mr Schoeman, who at all relevant times represented Trifecta, that Trifecta did not have the intention to make payment of the nine payments. He, in fact, acknowledged in his testimony that, in terms of the debit order instruction, Spar had an “open cheque” to take an amount according to what they perceived the value of that order was. The debit order instruction given by the Trifecta to Spar made it clear that Trifecta need not have knowledge of, or concur in, the payment being effected.

[33] Clause 9.4.1 of the Code of Banking Practice provides that a customer “must cancel a debit order by providing written or other appropriate notification to the third party whom you authorized to make the deductions (ie. the party in the position of Spar).

[34] Dr Holtzhauzen also confirmed that it was consistent with the requirements that such customer identify himself or herself by means of an identification document, and should also present the debit order mandate if possible.

[35] Notably, Mrs Swanepoel, who was employed by Spar (North Rand Division) in 2009 as the Credit Control Supervisor in the Debtor’s

Department testified that she was not aware of the EFT Rules – neither the 1 April 2009 version nor the 1 July 2009 version.

[36] Indac Electronics (Pty)Ltd v Volkskas Bank Ltd 1992

(1) SA 783 (A).

[37] Indac Electronics at 798 D – E.

[38] Dr Holtzhauzen also testified that in the ordinary course payment reversals occur in the first four days.

[39] Country Cloud Trading CC v MEC, Department of Infrastructure Development 2014

(2) SA 214 (SCA) at par 30 (referred with approval to the dictum of McHugh J in *Perre v Apand (Pty) (Ltd)*)

[1999] HCA 36; (1999) 198 CLR 180 (HCA) at par 118).

[40] Country Cloud (SCA) at par 30.

[41] See: *Spar Group Limited v Firststrand Bank Limited* (Case No. A145/17) GPD, 23 August 2019.

[42] *Petersen and Another NNO v Absa Bank Ltd* 2011 (15) SA 484 (GNP).

[43] *Indac Electronics (Pty) Ltd v Volkskas Bank Limited* 1992 (1) SA 783 (A).

[44] *Indac* at 798 G – H and see 800 G – J.

[45] *Indac* at para 57.

[46] *Kruger v Coetzee* 1966

(2) SA 428 (A) at 430E-H; *Langley Fox Building Partnership (Pty) Ltd v de Valence* 1999

(1) SA 1 (A) at para 12; *Sea Harvest Corporation (Pty) Ltd v Duncan Dock Cold Storage (Pty) Ltd* 2000

(1) SA 827 (SCA) par 21 where it was emphasised that the true criterion for determining negligence is whether in the particular circumstances the conduct complained of falls short of the standard of the reasonable person.

[47] *Powell and Another v Absa Bank Ltd t/a Volkskas Bank* 1998

(2) SA 807 (SE) at 819C-820C.

[48] While Dr Holtzhauzen accepted that the risk referred to would also be present in every case where there is a reversal on the basis of disputed authority, the evidence did not establish that any of the reversals were effected on the basis of disputed authority.

[49] Although Absa cross-examined Dr Holtzhauzen on this aspect of his expert testimony, Absa did not present any cogent evidence to counter his opinion. Dr Holtzhauzen's evidence on this aspect stands uncontested. Mr Erasmus, did not, in his expert report, address the conduct to be expected of a reasonably prudent banker when effecting the reversals of debit order payments.

[50] *Castell v De Greef* 1994

(4) SA 408.

[51] Clauses 3.5 and 3.7.2 of the Settlement Agreement between Spar, Trifecta, Tayegetos Supermarket, Mr Schoeman and Interactive

Trading 351 (Pty) Ltd t/a Total Elardus Park (“Interactive”)

[52] *Minister van Veiligheid en Sekuriteit v Japmoco BK h/a Status Motors* 2002

(5) SA 649 (SCA) paras 18-22.

[53] *Afrisure CC and Another v Watson NO and Another* 2009

(2) SA 127.

[54] Japmoco at para 21.

[55] *Nedcor Bank Ltd t/a Nedbank v Lloyd-Gray Lithographers (Pty) Ltd* 2000 (4) SA 915 (SCA) at 920G-H.

[56] Japmoco at para 21.

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/ZAGPJHC/2020/259.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/spar-group-limited-v-absa-unknown-topic-agpjhc-2020>

Prepared on 10 October 2026 · Esheria