



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY: JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

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STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

South African Reserve Bank v Leathern NO and Others (854/2020) [2021] ZASCA 102 (20 July 2021)

Today, the Supreme Court of Appeal (the Court) upheld an appeal against an order of the Gauteng High Court, Pretoria, which had issued a declaratory order that the funds blocked by the South African Reserve Bank (the Reserve Bank) in terms of regulations 22A and 22C of the Exchange Control Regulations (the regulations); promulgated in terms of s 9 of the Currency and Exchanges Act 9 of 1933 (the Act), vested in the insolvent estate of the account holder, Mr Borhat, who had been sequestered at the instance of the South African Revenue Services (SARS), pursuant to an unsatisfied judgment. A week before the sequestration of his estate, the Reserve Bank had issued a blocking order in terms of the regulations against Mr Borhat's two accounts held with Grobank Limited (Grobank). The high court accordingly lifted the blocking order and ordered Grobank Limited, to pay over the funds to the trustees of the insolvent estate.

Amongst other things, the regulations prohibit various financial transactions, including the transfer of money from South Africa to any person outside the country, save within their ambit. In terms of the regulations, where a designated functionary of the Reserve Bank, on reasonable grounds, suspects a person to be involved in the contravention of any provisions of the regulations, the functionary is empowered, under the provisions of regulations 22A and/or 22C, to issue a blocking order in respect of a banking account suspected of being used for illegal purposes. The effect of the order is to prohibit any person from withdrawing, or causing to be withdrawn any money standing to the credit of the bank account in question. If the Reserve Bank is satisfied that contraventions indeed occurred, it may ultimately declare the attached funds forfeit to the State.

On the Reserve Bank's investigations, Mr Borhat was identified as part of a group of persons and entities designated as 'forex transferring entities', who were suspected of having used their bank accounts as conduits for illicit transfer of money to various foreign beneficiaries, in China and Hong Kong. As a result, the accounts were blocked.

The Court considered three issues. First, whether the high court was correct to set aside the blocking order. Secondly, whether the funds standing to the credit of Mr Borat's bank accounts 'belonged' to him and fell into his insolvent estate, thus vesting in the trustees. Thirdly, and closely linked to the second issue, was whether a sequestration order invalidates a blocking order by operation of law.

The Court found that the high court was not entitled to set aside the blocking order, as the provisions of regulation 22D, read with those of s 9(2)(d)(i)(bb) of the Act, were not satisfied, as the trustees could not gainsay the Reserve Bank's reasonable suspicion that the accounts were used for the contravention of the regulations. As to whether the funds vested in the insolvent estate of Mr Borat, the Court considered the general position that where money is deposited into a bank account of an account holder it mixes with other money and, by virtue of *commixtio*, it becomes the property of the bank, and the account holder acquires a personal right to payment of that amount from the bank, arising from their bank-customer relationship. However, the Court pointed out, with reference to various decisions of this Court, the latest being *FirstRand Bank Limited v Spar Group Limited* [2021] ZASCA 20; [2021] 2 All SA 680 (SCA), that this is not a universal and inflexible rule.

The Court held that where an account held in the name of a person is subject to a blocking order, for the duration of the Reserve Bank's investigations or the allowed 36-month period, it cannot be determined whether the funds vest in the trustees of the insolvent estate. This can only be finally determined if a forfeiture order is sought. As such, a blocking order functions to temporarily delay a determination whether the funds in a blocked account vest in the trustees. For that reason, in the interim, the trustees were not entitled to demand that the funds be paid out to them for distribution. As to whether a sequestration order invalidates a blocking order by operation of law, the Court held that, on a proper interpretation of the regulations, the reach of the regulations was such that a sequestration order must yield to a blocking order, which interpretation is consistent with s 224 of Constitution, in terms of which the primary object of the Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic.

Accordingly, the Court, per Makgoka JA (with Maya P, Mbha JA and Gorven and Unterhalter AJJA concurring), upheld the appeal with costs of two counsel.

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