

CHHC TRADING PTY (LTD) v STANDARD BANK LTD AND ABSA BANK LTD (Case No. 5278/07)

KATHREE-SETILOANE J:

Banking – liability follows functionality – banker closest to the loss, whether collecting or drawee bank, must assume responsibility for a fault lying within its sphere of activity, provided the customer is not to blame.

- Plaintiff intended to pass ownership of cheque and deliver to the transferee who intended to accept ownership thereof thus enabling him to determine fate of proceeds (regardless of the restriction on transferability). The transferee accordingly had a right to instruct collecting bank to collect proceeds of cheque into any account of his choice. Loss sustained by plaintiff accordingly not attributable to either drawee bank (because mandate has not been breached) or collecting bank (because ownership in the cheque passed to the transferee, and it was not negligent in following the transferee's instruction and making collection into his personal account)
- Evidence demonstrating that cheque drawn in suspicious circumstances and plaintiff assumed risk of handing to the transferee knowing full well that he was dishonest and unreliable
- Investment could not simultaneously be risk free and attract a high interest rate if it was above board. Therefore functionality most closely associated with loss was extraordinary risk assumed by plaintiff itself – and not the bankers
- Tenor of the cheque not a mechanism for protection of the drawer against commercial risk, and misrepresentation by an unscrupulous business partner. Plaintiff accordingly not entitled to any right of compensation against either drawee bank or collecting bank.