

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 intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

**KH ELEY v LYNN & MAIN INC [2007] SCA 142 (RSA).**

[1] Today the Supreme Court of Appeal dismissed an appeal by Ms Karen Harriet Eley (formerly Memmel) against an order of the Johannesburg High Court. Ms Eley had signed a deed of suretyship on 9 September 1994, binding herself as surety and co-principal debtor for the repayment by a company of which she was a director, Help Seat It Southern Africa (Pty) Ltd, of the sums of money lent and advanced by Nedcor Bank to the company. The bank obtained judgment against the company on 21 May 2001.

[2] When Ms Eley was sued by Lynn & Main Inc, to which Nedcor Bank had ceded its claim against the principal debtor amounting to R157 685,55 plus interest and costs on 14 September 2005, she pleaded that the claim against her had become prescribed, in that she had not been served with the summons within three years after judgment was obtained against the principal debtor, Help Seat It Southern Africa (Pty) Ltd.

[3] This defence was however rejected by the SCA which held that the principal debt is kept alive by a judgment, and that the surety's accessory obligation by common law continues to exist, because the obligation of the surety and that of the principal debtor relate to the same debt.

[4] The SCA also rejected an alternative defence raised by Ms Eley that there had not been a proper cession of the debt. It was clear from the deed of cession, held the SCA, that the judgment debt against the principal debtor was included.