

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 28 March 2008

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

On 28 March 2008 the Supreme Court of Appeal, in the case of *Joint Stock Company Varvarinskoye v Absa Bank Ltd and others* upheld an appeal against a judgment of the Johannesburg High Court, in terms of which it dismissed an application by the appellant for an order that the bank pay it an amount of R28 244 780.59 that had stood to the credit of an account held by a client of the bank. The bank had appropriated that amount, asserting a right to set-off that amount against amounts owing to it by the account holder.

The appellant had been charged with the responsibility for establishing a mine and processing facilities in Kazakhstan. Its case was that it had agreed with the bank and the account holder that the account in question be used exclusively for payment of amounts owing to the main contractor and sub-contractors who had been contracted to establish the mine and processing facilities and that the bank had therefore wrongfully appropriated money it knew did not belong to its client.

The Johannesburg High Court held that it was in dispute that the funds in the account were as a matter of objective fact the funds of the appellant and that the bank knew of this. It consequently dismissed the application.

This court held that the bank was aware from the outset of the source and purpose of the funds in the account and that it had agreed that funds could only be withdrawn upon a particular procedure being followed and that the account holder had no

interest in or control over the funds. This court held that in these circumstances that the bank could not rely on set-off to justify the appropriation of the funds in question. The appeal was upheld with costs including the costs of two counsel and the order of the Johannesburg High Court below was substituted to the effect that the bank pay the appellant the sum of R28 244 780.59 together with *mora* interest at the rate of 15.5 per cent per annum from 10 December 2005.

In a separate concurring judgment, Cachalia JA agreed with the result but held that the bank's knowledge was immaterial.

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