



THE SUPREME COURT OF APPEAL  
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME  
COURT OF APPEAL

30 May 2012

STATUS: Immediate

*Gungudoo v Hannover Reinsurance Group Africa 585/11*

*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*

The Supreme Court of Appeal (the SCA) today dismissed an appeal from the South Gauteng High Court, Johannesburg, against the final order of sequestration of the joint estate of Shaun and Ayesha Gungudoo, who are married in community of property.

The first appellant, Shaun Gungudoo, was employed by the respondent, Hannover Reinsurance Group, as its Senior Investment Manager. He was responsible for managing the company's investment assets and was the only authorised person to instruct stockbrokers. Mr Gungudoo had without authorisation used the assets of the respondents to conclude short trading in the equity market for the benefit of his close corporation, Shaneil, of which Mr Gungudoo was a sole member. This allegedly resulted in a loss of R41million to the respondents and on discovery of this loss; a semi-urgent application was successfully launched in the high court to sequester the appellants.

On appeal the two main issues before the court were first, whether the respondents' claims were disputed on bona fide and reasonable grounds and secondly, whether the respondents had properly notified the appellants' employees of the sequestration proceedings in line with the Insolvency Act. On the first ground, the SCA examined one of the claims of the respondents dealing with the misappropriation of shares by Mr Gungudoo to the value of almost R11million and held that on consideration of the evidence before it, Mr Gungudoo produced no evidence to support the allegation that Shaneil owned the shares and the respondents had demonstrated that Mr Gungudoo engaged in an elaborate subterfuge to create the impression that the

misappropriations were legitimate. The SCA found that the respondents established a claim which the appellants cannot dispute on reasonable and bona fide grounds.

On the second ground, Mr Gungudoo alleged that failure by the respondents to serve the sequestration application on his employees, to notify them of the return day of the provisional order and to ensure the sheriff complied with his obligations to his employees meant that non-compliance with these pre-emptory requirements vitiates the application. These employees consisted of one security guard, two drivers, three domestic workers and a bookkeeper. The SCA held that against the background to the adoption of the relevant provisions of the Insolvency Act 24 of 1936 which was adopted alongside relevant provisions of the Labour Relations Act 66 of 1995 and the Companies Act 61 of 1973, the purpose of notice to employees was to ensure that where a debtor conducts a business, notice of sequestration must be given to employees of the business. The SCA held further that since none of the Gungudoos' employees were employed in a business operation, the respondents did not attract any obligation to notify them of the sequestration proceedings.

The appeal was consequently dismissed with costs.

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