



APPEAL CASE NO.30/99

In the matter between:

STANDARD BANK (SWD) LTD APPELLANT

AND

BUDGET SPARES CENTRE (PTY) LTD RESPONDENT

CORAM : LEON J P

: STEYN J A

: TEBBUTT J A

FOR THE APPELLANT : MR D. KUNY S. C

FOR THE RESPONDENT : MR. P. SHILUBANE

JUDGMENT

Steyn J A:

The appellant (Standard Bank) appeals against a judgment of the High Court in which the respondent (the customer) was granted an order that Standard Bank was to pay it the sum of E788,522.00 "currently held by Standard Bank at its Manzini Branch. "

The customer's claim arises from a transaction, the nature of which has to be inferred from the documentation filed of record in the notice of motion proceedings brought as a matter of urgency before the High Court. It appears that a cheque dated 23rd October 1998 was drawn by the South African Rail Commuter Corporation in favour of Union Carriage and Wagon (Pty) Ltd in the above amount. The cheque was allegedly endorsed by the payee in favour of the customer.

2

This cheque was deposited by the customer in its account with Standard Bank on the 23rd December 1998 and the customer's account was credited accordingly on the same day.

It is common cause that payment of the cheque was stopped on receipt of an instruction from the drawer bank (ABSA). Standard Bank accordingly reversed the credit of the 23rd December 1998 on 28th December 1998. The customer avers that this reversal was "wrongful and unlawful". Standard Bank denies this allegation and has in evidence tendered documentation, being faxes received from ABSA in substantiation of its decision to reverse the credit.

A fax from ABSA dated 28th December 1998 was attached to Standard Bank's opposing affidavit. In it ABSA advises Standard Bank that payment was stopped. A notification of the 4th February 1999 again advised Standard Bank that payment had been stopped. In this advice ABSA instructs Standard Bank not to credit its client and that Standard Bank would be "held responsible for any losses incurred".

The customer alleges that it made enquiries at the Standard Bank, Matsapa Branch and was

handed a print out which showed that the cheque had not been cleared by the 6th January 1999. It also alleges that its representative was informed that the cheque would be "cleared" by the 13th January 1999.

In the founding affidavit sworn to by the customer's managing director, he says that he visited the Manzini Branch of Standard Bank and was informed that the cheque had been cleared. These latter two allegations are not admitted by the banker and these averments are placed in issue by Standard Bank.

There is no dispute however, that on this occasion Standard Bank's Manager informed the customer that the cheque was being returned marked "payment stopped".

There are allegations made by the customer as to discussions it had with a representative of the payee/endorser of the cheque (Union Carriage). However, these allegations are also placed in issue by Standard Bank. In any event they do not in the view which we take of the matter assist the customer in substantiating its cause of action against Standard Bank.

3

It is the customer's contention that Standard Bank is obliged "either to credit its account with the amount in question or to return the aforesaid cheque to (it) to enable it to take action against the purchaser of the customer's goods".

In the relief which the customer claimed in the High Court and as an alternative to the payment of the amount claimed the customer sought an order "directing the Respondent, Standard Bank forthwith to deliver the original alleged unpaid cheque no. 022677, made out in an amount of E788, 522.00 to the applicant, the customer".

The court a quo held in its judgment that Standard Bank was not a collecting banker (agent for collection). Counsel for the respondent conceded before us that the court erred in coming to this conclusion and that Standard Bank was indeed a collecting bank. Counsel also admitted that as a collecting banker the fact that Standard Bank credited the customer's account on the 23rd December did not amount to an unconditional payment of the amount in question.

Both these concessions were in our view correctly made. The deposit slip in accordance with which the cheque deposited was made by the customer, states the following:

"Cheques etc. handed in for collection will only be available as cash when paid Items unpaid or lost in transit will be debited back to the account".

Counsel was accordingly obliged to concede that the credit entered in the customer's account was provisional. See in this regard ABSA BANK LIMITED VS I. W BLOOMBERG AND WILKINSON 1997(3) SA669 (A) at 682 I - J where the following passage from Willis, Banking in South African Law at page 33 is cited with approval:

"Current practice in banking operations is for a bank to credit a customer's account immediately upon the deposit of funds, even though the payment of cheques in that deposit (has) not yet (been) collected. The bank will then debit the account of the customer in the event of any cheques being dishonoured when sent for collection".

See also the reasoning in the judgment of Leon J.P. in Kunene Vs Nedbank (Swaziland) Ltd, Civil Appeal No. 34 of 1999, delivered contemporaneously with this judgment.

4

As pointed out above, and on advice received on the 28th December 1998 from the drawer

bank that payment of the cheque had been stopped, Standard Bank reversed the credit and debited the customer's account with the amount in question.

Counsel for the customer submitted that because ABSA had debited the drawer's account the cheque had in fact been paid and Standard Bank was obliged to pay the customer. This submission ignores the fact that, as mentioned above, on December 28th 1998 Standard Bank was advised that payment had been stopped. Subsequently Standard Bank received no communication from ABSA authorising it as collecting bank to credit the customer's account. Indeed it did receive a communication advising it not to do so. As pointed out above, Standard Bank was again advised on the 4th February that payment of the cheque had been stopped and that Standard Bank was "not to credit its client back".

It follows that:

1. Standard Bank had received the cheque in its capacity as a collecting banker;
2. The credit entered in the customer's account was provisional;
3. The provisional credit was reversed on the 28th December 1998 on the advice of ABSA that payment had been stopped;
4. That at no stage thereafter was Standard Bank ever advised that the restraint on dealing with the cheque had been reversed;
5. Indeed such advice as it received from the drawer bank (ABSA) instructed it not to honour the cheque.
6. No evidence was ever produced that subsequent to the 28th December 1998, Standard Bank had ever held the sum of E788, 522-00 in its account as alleged by the customer.

In VOLKSKAS VS BANKORP BPK 1991(3) SA605 at 607 the Court pointed out that- "payment (of a cheque) was a bilateral juristic act which, barring an agreement to the contrary, could not have taken place without the knowledge of the respondent".

Counsel for the customer was unable to point to any facts which either directly or by way of inference could justify a finding that any such bilateral juristic act ever took place.

5

On the evidence before the court a quo there was accordingly no justification for holding Standard Bank liable for payment of the cheque. The judgment ordering it to do so was clearly made in error and cannot stand. It is therefore ordered as follows:

"The appeal is upheld with costs. The order decreed by the High Court is set aside, in its place it is ordered: Application dismissed with costs".

J. H. STEYN J A

I agree :

R. N. LEON J P

I agree :

P. H. TEBBUTT J A

Delivered on this 3 day of December 1999: