THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Ratlou v Man Financial Services (1309/2017) [2019] ZASCA # (# March 2019)

From: The Registrar, Supreme Court of Appeal

Date: 01 April 2019

Status: Immediate

***Ratlou v Man Financial Services* (1309/2017) [2019] ZASCA 49 (01 April 2019)**

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Today, the Supreme Court of Appeal (SCA) dismissed an appeal brought by Mr Stephen Ratlou against an order obtained against him by the Gauteng Division of the High Court, Johannesburg, declaring a settlement agreement or acknowledgement of debt between him, his company Phapho Nkone Transport, and Man Financial Services, to be an order of court. A cross-appeal against t portions of the same order, declaring the settlement agreement to be a credit transaction in terms of the National Credit Act 34 of 2005, succeeded.

At the centre of this appeal was whether a settlement agreement was governed by the provisions of the National Credit Act 34 of 2005 (the NCA) when the underlying contracts – the rental of trucks to the corporate entity – and a suretyship executed by Mr Ratlou in respect of the leases – were not governed by the Act. The court a quo held that it was.

On 28 July 2016 MAN Financial Services, SA (Pty) Ltd (MAN) launched an application in the Gauteng Division of the High Court, Johannesburg (high court), (Wepener J), against Phapho Nkone Transport (PNT), a registered company, together with its director, Mr Stephen Ratlou (Mr Ratlou), claiming payment of R4 269 278.79 and interest, based on the acknowledgment of debt. The high court refused to grant judgment on the basis that the settlement agreement was a credit agreement within the meaning of the NCA and that MAN was obliged to comply with the provisions of s 129 of that Act compelling it to give notice to Mr Ratlou and PNT before enforcing the terms of the settlement agreement, which it had failed to do

In the appeal MAN contended that because the underlying truck rental agreement to which the settlement agreement related did not constitute a credit agreement as envisaged by the NCA, the agreement did not fall within the ambit of the NCA. MAN also argued that in any event the NCA also did not apply to the suretyship which Mr Ratlou had executed to secure the rental agreements. Therefore, the agreement which was concluded in settlement of the rental agreements and the suretyship, was outside the ambit of the NCA. Mr Ratlou persisted in the argument that the settlement agreement, as a new and independent contract, extinguished the underlying causa and his status in relation to the debt was altered to that of a co-principal debtor and not a surety. He contended that the provision of the NCA therefore applied.

The SCA found that on a literal interpretation of s 8(4)*(f)* of the NCA, the settlement agreement met the definition of a credit transaction. However, the result was so absurd that it could not have been intended by the legislature. A purposive interpretation was required. It is quite clear that the NCA was not aimed at settlement agreements. On a literal interpretation of s 8(4)*(f)* of the NCA, a settlement agreement concluded in relation to a delictual claim, would immediately fall within the ambit of the NCA and this could never have been the intention of the legislature. The consequence would be equally absurd for settlement agreements concluded in respect of non-contractual claims. The application of the NCA to such agreements would have devastating effect on the efficacy and the willingness of parties to conclude settlement agreements and thereby curtail litigation. .

Consequently the settlement agreement in this appeal did not fall within the ambit of the NCA. MAN had no obligation to comply with the provisions thereof prior to enforcing its terms.