



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 21 December 2023

**Status:** Immediate

*The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal*

*Allied Steelrode (Pty) Ltd v Dreyer and Another (1120/2022) [2023] ZASCA 181 (21 December 2023)*

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Today, the Supreme Court of Appeal (SCA) upheld an appeal with costs against the decision of the Gauteng Division of the High Court, Johannesburg, per Siwendu J (the trial court), which granted an order declaring that a loan and an acknowledgment of debt (the AOD) was subject to the National Credit Act 34 of 2005 (the NCA).

The appellant was a company operating the business of processing and distributing hot steel plates. The first respondent, Mr Paul Dreyer, was a businessman and a co-owner of a company called Lasercraft, which was a customer of the appellant. The second respondent was cited in her capacity as the wife of the first respondent and as a signatory to the AOD.

The appellant claimed repayment of R15 million from the respondents. The foundation of the appellant's claim, as pleaded, arose from the AOD signed by the parties on 1 October 2014. In their plea, the respondents admitted the existence of the AOD. As part of their defence, they invoked the applicability of the NCA and clauses of the AOD.

At the close of pleadings, the respondents sought the separation of issues in accordance with rule 33(4) of the Uniform Rules of Court. This was opposed, and after hearing argument, the court issued the order. The separation application involved a dispute over whether the underlying loan or the AOD was subject to the NCA.

There were two issues which arose in the appeal. The first concerned whether the order granted by the trial court was appealable. The second concerned the application of the NCA. This latter question related to whether the transaction was concluded at arm's length and whether it constituted a credit agreement as defined by the NCA.

In regard to appealability, the SCA found that the judgment appealed against in this matter was definitive of the rights of the parties, disposed of a substantial part of the appellant's main claim, and was final in effect. The issue could no longer be revisited by the high court if and when it considered the alternative claims. The matter was thus appealable.

The SCA found further this matter exemplified the importance of courts to carefully consider whether to grant a separation order. In this regard, the SCA found that insufficient consideration was given by the trial court in granting the separation order. This was also apparent from the wording of the order. It did not explicitly indicate whether the issue pertained to the loan or the AOD. The issue for

determination was not adequately spelled out. Had this been done, the SA found that it would have been evident that separation was not appropriate. The result was a costly, piecemeal determination of the issues and an unwarranted delay in the finalisation of the matter.

On the merits, the SCA found that it was evident that the trial court conflated the loan and the AOD. It was drawn into the error because of the manner in which the separated issue was formulated and addressed. Therefore, the trial court misdirected itself. The SCA found further that the loan agreement giving rise to the AOD was clearly not at arm's length. Consequently, the trial court's conclusion that the parties transacted at arm's length was flawed and a misdirection unsupported by the evidence.

The SCA found further that the AOD, despite not falling under the ambit of the NCA, remained a credit agreement. The finding by the trial court that the agreement was unlawful and void as provided for in s 89 constituted a misdirection. Based on the evidence, the loan originated from an oral agreement, with no interest charged between parties with a familial relationship, conducted outside the scope of arm's length dealings.

Accordingly, the SCA held that, on the facts of this case, it was evident that neither the loan nor the AOD were subject to the NCA. The trial court was therefore in error and its order had to be set aside.

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