



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: 4 June 2024

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

Bonifacio and Another v Lombard Insurance Company (247/2023) [2024] ZASCA 86 (4 June 2024)

The Gauteng Division of the High Court, Johannesburg, had previously found that Mr Jorge Alexandre Da Costa Bonifacio, and Mr Sergio Rui Da Costa Bonifacio (collectively referred to as the Bonifacios), were liable to indemnify Lombard Insurance Company Limited (Lombard), for a payment it made to DBT Technologies (Pty) Ltd (DBT). The payment to DBT was in respect of a guarantee which Lombard had issued to secure the due performance of the obligations of Tubular Construction Projects (Pty) Ltd to DBT. The Bonifacios appealed against that decision with the leave of the high court.

On appeal before the Supreme Court of Appeal, the Bonifacios contended that the high court had erred as the demand by DBT had been tainted by fraud, that the decision by Lombard to settle the claim of DBT deprived them of a procedural advantage they had enjoyed to raise the issue of fraud and that they were accordingly now excused from liability, and that the claim against them, on the pleadings before the high court, was conditional on their liability in terms of the indemnity being determined by a court, and not by a settlement between DBT and Lombard.

The Supreme Court of Appeal in its judgment handed down today confirmed the autonomous nature of a performance guarantee. Liability based on such guarantee depends on compliance with the terms of the guarantee and is not affected by any alleged breach of the terms of the underlying agreement in respect of which it was issued, unless the demand for payment was tainted by fraud. It found that there was no legal impediment to Lombard compromising on its liability to DBT. It also found that notwithstanding Lombard's settlement of DBT's demand, the Bonifacios had appropriate procedures available to them to have raised the issue of fraud on the part of DBT for determination, but that they had failed to do so. The SCA concluded that no evidence of fraud on the part of Lombard had been adduced before the court, and that the issue of any fraud on the part of DBT, had not been properly raised for determination. Finally, it concluded that that the claim for an indemnity was, based on the terms of the indemnity and a proper interpretation of the affidavits, not conditional.

The appeal was therefore dismissed with costs, including the costs of two counsel where so employed.

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