THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case No: 629/2011

In the matter between:

ABSA BANK LIMITED **APPELLANT**

and

LOMBARD INSURANCE COMPANY LIMITED **RESPONDENT**

Case No: 684/2011

In the matter between:

FIRSTRAND BANK LIMITED **APPELLANT**

and

LOMBARD INSURANCE COMPANY LIMITED **RESPONDENT**

Neutral citation: *ABSA and FIRSTRAND v LOMBARD INSURANCE* (629/2011 and 684/2011) [2012] ZASCA 139 (28 September 2012)

Coram: Mthiyane DP, Cloete, Malan, Pillay and Petse JJA

Heard: **13 September 2012**

Delivered: **28 September 2012**

Summary: **Recovery of stolen money – stolen money paid into thief's account – whether debts on overdraft, credit card account and home loan extinguished – whether banks holding the accounts enriched – *suum recipit*.**

ORDER

On appeal from: the South Gauteng High Court, Johannesburg (P A Meyer J sitting as court of first instance):

1 (1) The appeal of the appellant in case 684/2011 is upheld with costs.

(2) The order of the court below is replaced with the following:

'The application against the first respondent is dismissed with costs.'

2 (1) The appeal of the appellant in case 629/2011 is upheld with costs including the costs of two counsel save that the appellant is ordered to pay the respondent's costs up to the time of filing of the appellant's heads of argument.

(2) The order of the court below is replaced with the following:

'The second respondent is ordered to pay to the applicant the sum of R573 346,66 together with the interest that in fact accrued thereon until the date of payment and costs of suit.'

JUDGMENT

Malan JA (Mthiyane DP, Cloete, Pillay and Petse JJA concurring):

[1] These are two appeals against the judgment and order of Meyer J in the South Gauteng High Court, Johannesburg granting an application for the payment of money stolen from the respondent's bank account and transferred to accounts held by the thief with the two appellants. The appeals are with the leave of this court.

[2] The central figure in this matter is Ms Manickum. She was employed by the respondent, Lombard Insurance, as a financial accountant in its finance department. She was, as it was said, the 'second-in-command'. She had cheque accounts with both ABSA and FNB, the two appellants in this appeal. In addition, she had a home loan and a credit card account with FNB as well as a credit card account with ABSA. Most, if not all, of these accounts were in debit at the time of these events.

[3] Lombard Insurance is a short-term insurer and licensed financial services and credit provider. Its principal business is the provision of guarantees to customers guaranteeing the latter's performance of their contractual obligations to third parties. As security for issuing a guarantee Lombard Insurance would hold a cash deposit from its customer. These deposits are repayable once the guarantee has served its purpose and there are no outstanding amounts due by the customer to Lombard. In order to obtain repayment of the deposits a customer would in writing request

Lombard Insurance to effect payment by means of an electronic transfer of the amount due into the customer's account.

[4] Ms Manickum, heavily indebted, could not resist the temptation to forge a letter purporting to be a request by a customer of Lombard's for repayment of cash deposited as security. The customer never made the request and was quite unaware of it at the time. Ms Manickum prepared the required forms for the electronic transfer for signature by the authorised officials of Lombard Insurance. They were duly signed and the funds transferred by Lombard Insurance's bank and from its account, not to the innocent customer's account, but to the current account of Ms Manickum at FNB. Some R2 114 947,44 was credited to her current account on 2 August 2007. The existing debit balance of R57 013,42 was extinguished and converted into a credit balance of R2 057 934,02.

[5] Not satisfied with this windfall on her current account, Ms Manickum on 3 and 4 August 2007 made a number of further transfers from her FNB current account. She transferred R1 million to her home loan account thereby reducing the amount owing to FNB; and R100 000 to her FNB credit card account extinguishing the debit of R39 775,74 and leaving a credit balance of R60 224,26.

[6] She also favoured ABSA with her generosity. On the same two days she transferred R400 000 from her FNB current account to her ABSA current account thereby wiping out a debit balance of R47 440,68 on the latter account and converting it into a credit of R352 559,32. This amount was subsequently transferred to an ABSA account held in the name of the trustees of Ms Manickum's and her

husband's insolvent estate. A further R150 000 was paid into her ABSA account. At the time the theft was detected and Ms Manickum's accounts frozen, a credit of R220 392,21 remained in her ABSA current account. This amount was also transferred to an ABSA account held in the name of the trustees of her and her husband's insolvent estate. Her ABSA credit card debt of R43 275,53 was discharged by a transfer of R50 000 from her ABSA current account leaving it in credit in an amount of R6 724,47. A number of other transfers were also made from both her FNB and ABSA accounts but they need not detain us. She also continued using her credit cards with both banks depleting whatever credit balances remained on them.

[7] Lombard Insurance sought payment from FNB of the sum of R1 096 789,16 which is made up of R57 013,42 used to extinguish Manickum's indebtedness on her FNB current account; R1 000 000 used to reduce her indebtedness on her home loan account; and R39 775,74 used to extinguish her indebtedness with FNB on her credit card account. The remedy relied upon is the *condictio ob turpem vel iniustam causam*. Lombard Insurance did not seek payment of the credit balance which stood to the credit of Ms Manickum's current account with FNB but which was transferred to ABSA and held by it on behalf of the trustees in the insolvent estate of Ms Manickum and her husband.

[8] Lombard Insurance sought to recover from ABSA the amounts of R47 440,68 credited to Ms Manickum's overdraft and R43 275,53 in respect of the debit balance on her ABSA credit card account after transfer of R50 000 into it (ie a total of R90 716,21); and the said R220 392,21 as well as the R352 954,45 referred to.

[9] The appellants sought leave to appeal against the whole of the judgment of the court below. In its heads, however, ABSA conceded that the court below was correct in so far as it ordered the return of that part of the stolen funds that left the thief's accounts with credit balances. The appeal by ABSA relates solely to the amount of R90 716,21 which is the total of the amounts of R47 440,21 (being the amount of her overdraft settled by the payments into her ABSA current account) and R43 275,53 (being the debit balance on her ABSA credit card account settled by the payment credited to it). The appeal by FNB is concerned with its liability to restore moneys paid to it and which were used to discharge the debit balances on Ms Manickum's account. The appeals are thus concerned with the question whether receipt of the stolen funds by the appellant banks operated as a discharge of Ms Manickum's respective debts to them.

[10] In upholding the application Meyer J said as follows:

'Neither FNB nor ABSA has succeeded in establishing that either of them was not in the end enriched by the amounts which are presently claimed from them. Neither bank has set up facts that, had either sued Manickum, she could have been heard to say that her FNB or ABSA overdraft accounts had been extinguished or that her FNB home loan account had been reduced as a result of the payments. Manickum, on the accepted or undisputed facts, came to the money by way of fraud or theft and she had no entitlement to the amounts credited to her various FNB and ABSA accounts that are presently in issue. *The credits under consideration may validly be reversed by FNB and by ABSA, whether or not they reduced or extinguished debit balances or brought about or increased credit balances.* The joint trustees to Manickum's insolvent estate did not acquire any greater right to the funds that were credited to the ABSA insolvent estate accounts than Manickum ever had, and she

had none. The right to the funds does not form part of the insolvent estate of Manickum and that of her husband. No one other than Lombard has been shown to be entitled to these funds. The credits to the ABSA insolvent estate accounts may be validly reversed by ABSA.' (My emphasis.)

[11] The judgment thus raises important questions concerning payment and in particular the question whether payment by Ms Manickum of her debts with stolen funds discharges them. It was argued on behalf of Lombard Insurance that, because a bank may, generally, reverse a credit entry made in respect of a stolen cheque deposited or stolen money paid into an account, the bank may do so whether or not the proceeds of the cheque or the money paid was accepted in discharge of a debt owing by the customer (the thief) to the bank. It was contended that, following the cases of *First National Bank of Southern Africa Ltd v Perry NO*[1] and *Nissan South Africa (Pty) Ltd v Marnitz NO*,[2] a development in our law had taken place in terms of which a bank which has credited a thief's account with the proceeds of stolen money is liable to the owner of the money because it has no obligation to account to its customer (the thief having no enforceable claim against the bank). The bank, so the argument went, is obliged to repay the whole amount of the stolen money credited to the thief's account because it is enriched by its receipt also where and to the extent to which the whole or part of the stolen funds is used to discharge the thief's indebtedness to the bank. To my mind, too much has been read into these judgments and they do not justify the conclusion advanced. In fact, a proper reading of them establishes the contrary. *Perry's* case is not support for the conclusion that the bank crediting the thief's account with the amount of stolen money is obliged to

[1] *First National Bank of Southern Africa Ltd v Perry NO & others* 2001 (3) SA 960 (SCA).
[2] *Nissan South Africa (Pty) Ltd v Marnitz NO & others (Stand 186 Aeroport (Pty) Ltd Intervening)* 2005 (1) SA 441 (SCA).

restore the whole of the amount to the owner. It is correct that the *condictio ob turpem vel iniustam causam* is available against a possessor of stolen property who acquired it with knowledge of the theft and also against the possessor who becomes aware of it at a later stage.[3] But, and this is decisive:

'It is not only the person who receives with knowledge of illegality but also one who learns of it while he is still in possession. This does not mean that he is treated as liable for a delict as, among other things, his liability is limited to his enrichment, that is if he is enriched at all.'[4]

The court simply did not deal with the question whether any debt owed by the thief to the bank, such as an amount on overdraft, was discharged by the bank's crediting the account. Moreover, *Perry* was decided on exception. The question in that case was whether *prima facie* Nedbank had been enriched to the extent that the stolen funds received were used to repay the overdraft. No view was expressed on this question. The court expressly stated that 'non-enrichment is a matter of defence and is something yet to be fought out between FNB and Nedbank.'[5]

[12] The conclusion that the overdraft is discharged by receipt of the stolen funds is supported by *ABSA Bank Ltd v Intensive Air (Pty) Ltd & others*:[6]

'Had the company's money been stolen, and had the thief paid off his overdraft with the stolen money, the company would have no claim for repayment thereof against the bank … but would, of course, have had a claim against the thief and a possible enrichment action against anyone who knowingly received or retained the stolen money.'

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[3] *Perry* paras 24 and 25.
[4] Id para 25.
[5] Id para 34.
[6] 2011 (2) SA 275 (SCA) para 22. I need not concern myself with the question whether the reference to *Perry's* case in this passage supports the text. The text is quite clear.

[13] I fail to see how the judgment in *ABSA Bank Ltd v Standard Bank of SA Ltd*[7] advances the contentions of Lombard Insurance. In that case a forged cheque drawn on Standard Bank was deposited to the credit of an overdrawn account of one Horn with ABSA leaving a credit balance on the account. A week later Standard Bank alerted ABSA to the forgery and ABSA froze the account. Standard Bank claimed the funds used to extinguish the overdraft. Its claim was dismissed on the basis that the credit that was made was provisional and never became final.[8] The implication is that had the payment been final the result would have been different. This is borne out by the following statement:[9]

'It is true that a collecting bank presents a cheque to the drawee bank on behalf of the former's customer, the payee, but once the amount in question is effectively credited to the payee's account there is no longer a question of an agency relationship. The collecting bank then holds the proceeds in its own right. If the account was in credit, the collecting bank becomes the debtor of the payee to the extent of the increased credit. And, if the account was overdrawn, the payee's indebtedness to the collecting bank is extinguished or reduced.'

[14] Nor does *Nissan's* case support counsel's argument. That case was concerned with credit balances on accounts and not with an overdraft. The court there found that a bank which credited its customer's account is not liable to pay the amount to the customer if the customer came to the money by theft or fraud. In that case the customer knew that it was not entitled to the money credited to its account.

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[7] 1998 (1) SA 242 (SCA).
[8] Id at 252 C-D.
[9] Id a 251F-G. There is no evidence in the present case concerning any applicable clearing rule governing electronic funds transfers. The credit effected by means of an electronic funds transfer seems to be immediate. See *Take and Save Trading CC & others v Standard Bank of SA Ltd* 2004 (4) SA 1 (SCA). No question of the countermand of an electronic payment instruction arises in the present case. See W G Schulze 'Countermanding an Electronic Funds Transfer: The Supreme Court of Appeal Takes a Second Bite at the Cherry' (2004) 16 *SA Merc LJ* 667.

Its appropriation of it subsequently amounted to theft. As far as the credit balance remaining on the account was concerned the court said the following:

'I agree … that our law would be deficient if it did not provide a remedy for recovery of stolen money direct from the bank which received that money to the credit of the thief's account, for as long as the amount stands to the credit of the thief.'[10]

The implication is that the amount standing to the thief's credit may be recovered by condiction, but not the amount that discharged a debt owed by the thief to the bank. *Nissan* was concerned with a credit balance on the perpetrator's account. The bank had no duty to account to its customer. Nor did the customer have a contractual or other right to the stolen funds. The bank, by remaining in possession of the funds without any corresponding liability to account to its customer, was enriched and liable to make restitution to the owner.[11] Generally, where a customer deposits money in his account the customer becomes entitled to repayment but this is so only where the instruction given to the bank to collect or pay on his account pursuant to the general bank and customer contract is enforceable, not where it is *contra bonos mores*.[12] The effect of *Nissan* is that where a thief deposits stolen money into his account any instruction disposing of the funds is unenforceable. Hence, there is no obligation on the bank to account to the customer. Consequently, the *bank* retaining the funds could well be enriched because it is not liable to account to its customer, but retains the funds. The account holder, well knowing that he is not entitled to the funds, would thus not have been entitled to dispose of the funds credited to his

[10] *Nissan* para 16 and cf para 28.
[11] See F R Malan and J T Pretorius 'Credit Transfers in South African Law' 2006 (69) *THRHR* 594 and 2007 (70) *THRHR* 1 at 15 ff; Jacques du Plessis 'The cause of action in *Nissan South Africa (Pty) Ltd v Marnitz NO*' in H Mostert and M J de Waal (eds) 'Essays in Honour of C G van der Merwe' (2012) 1 at 8 and 16-17; and F R Malan, J T Pretorius and SF du Toit 'Malan on Bills of Exchange, Cheques and Promissory Notes in South African Law' 5 ed (2009) at 348-350.
[12] Cf *Nedcor Bank Ltd v ABSA Bank Ltd & another* 1995 (4) SA 727 (W) at 730E–F.

account because any act of disposition would have been tantamount to theft[13] and, moreover, because he never acquired a right against his bank to claim the funds, the mere credit entry on its account not having any material effect.[14] But it must be emphasised that *Nissan* dealt with an account in credit.

[15] Nor does *Nedbank Ltd v Pestana*[15] add to Lombard Insurance's case. The court there stated, quite correctly:

'[8] It is well established that, in general, entries in a bank's books constitute prima facie evidence of the transactions so recorded. This does not mean, however, that in a particular case one is precluded from looking behind such entries to discover what the true state of affairs is. Some examples where a credit may be validly reversed by a bank were mentioned by Zulman JA in *Oneanate*:[16]

"[I]f a customer deposits a cheque into its bank account, the bank would upon receiving the deposit pass a credit entry to that customer's account. If it is established that the drawer's signature has been forged it cannot be suggested that the bank would be precluded from reversing the credit entry previously made. So, too, if a customer deposits bank notes into its account the bank would similarly pass a credit entry in respect thereof. If it subsequently transpires that the bank notes were forgeries it can again not be successfully contended that the bank would be precluded from reversing the credit entry."

[9] Further examples where a credit may be validly reversed, include cases where a cheque has been deposited into a client's account and the resultant credit entry is treated as provisional (or conditional), subject to a hold period in terms of "standard banking practice"; or where the client came by the money by way of fraud or theft; or where a wrong account was erroneously credited. Absent *some* legitimate reason for reversal, however, the general

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[13] See *Nissan* para 24.
[14] See para 15 below.
[15] 2009 (2) SA 189 (SCA).
[16] *Standard Bank of South Africa Ltd v Oneanate Investments (Pty) Ltd (in Liquidation)* 1998 (1) SA 811 (SCA) at 823B and see *Burg Trailers SA (Pty) Ltd & another v ABSA Bank Ltd & others* 2004 (1) (SA) 284 (SCA) para 9.

principle is that once an amount has been *validly* transferred by A to the credit of B's bank account, the credit belongs to B and the bank has to keep it at B's disposal; it cannot simply retransfer the money back into the account of A without the concurrence of B.'

The issue in the present case was simply not addressed in *Pestana*.

[16] The basis on which ABSA and FNB resist the claims against them can loosely be termed the defence of *suum recipit*. It is based on the principle described in D 12.6.44 where it was said:[17] 'Repetitio nulla est ab eo qui suum recipit, tametsi ab alio quam vero debitore solutum est' or 'there is no restitution from him who received what is due to him even though it was given as payment by someone other than the true debtor'. Its operation is described as follows by Niall R Whitty:[18]

'The concept of "enrichment" … is ambiguous. It can be loosely used to mean receipt of a benefit in money or money's worth. Such a receipt does not necessarily enrich the recipient. A creditor is not enriched merely because a debt of £100 owed to him is discharged by payment. Immediately before the payment, he had a personal right of action or book asset worth £100. Immediately after the payment, the book asset is extinguished but he has £100 in cash. One form of wealth is replaced by another of equal value: *suum recipit*. For the same reason, the debtor suffers no loss by making the payment. In such a case, it is sometimes said that the recipient is "enriched" (*lucratus*) but justifiably, the justification being his entitlement to the benefit. This usage seems incorrect.'

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[17]See Jacques du Plessis *The South African Law of Unjustified Enrichment* (2012) at 153 fn 394 and see Robin Evans-Jones 'Unjustified Enrichment vol I: Enrichment by Deliberate Conferral: Condictio' (2003) paras 7.22 and 8.53 and Niall R Whitty 'The Edinburgh Seminars on Unjustified Enrichment (LLB Honours) offered in the School of Law at the University of Edinburgh' (2006-2007) at 45.

[18]Niall R Whitty 'Indirect Enrichment in Scots Law' 1994 *Juridical Review* 200 at 203 (and 'Indirect Enrichment in Scots Law: Part II' 1994 *Juridical Review* 239). See *B & H Engineering v First National Bank of SA Ltd* 1995 (2) SA 279 (A) at 285C-E and *Nedcor Bank Ltd v ABSA Bank & another* 1995 (4) SA 727 (W) at 730C-D.

[17] An example illustrating the *suum recipit* principle is found in *Commissioner for Inland Revenue v Visser*.[19] In that case a fraudster represented that a cheque signed by Visser in favour of the Commissioner was intended to serve as payment for the debt of a third person. It was held that that debt had been paid since payment was made in the name of the third person. Visser was not allowed to recover the amount paid which served to discharge the debt of the third person.[20] Voet[21] made it clear where he stated that–

'[t]his power of vindicating stolen property from a third party possessing in good faith fails nevertheless when stolen money has been paid by a thief to a creditor of his who receives it in good faith, or has been counted out by way of price for a thing sold, and has been either used up or mixed with other money; for cash is regarded as used up by the latter process; moreover cash of another which has been used up in good faith by a creditor can neither be vindicated nor claimed in a personal action.'

Elsewhere Voet stated:[22]

'Generally if a person has paid what he did not himself owe but another owed, then if indeed he paid in his own name as though he were himself the debtor, he rightfully employs this action. But if he paid in the name of the debtor this action falls away and the debtor will have release from the creditor, who has gotten back his own; and the debtor will start to be bound

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[19] 1959 (1) SA 452 (A).

[20] See also *John Bell & Co v Esselen* 1954 (1) SA 147 (A). Cf *B & H Engineering v First National Bank of SA Ltd* 1995 (2) SA 279 (A) at 291F-G and *First National Bank of Southern Africa Ltd v East Coast Design CC & others* 2000 (4) SA 137 (D) at 141-2. See J C Stassen and A N Oelofse 'Terugvordering van Foutiewe Wisselbetalings: Geen Verrykingsaanspreeklikheid sonder Verryking nie' (1983) 4 *Modern Business Law* 137 at 143 and 145; Jacques du Plessis *Unjustified Enrichment* at 242 and Daniel Visser *Unjustified Enrichment* at 354 ff. See, however, Catherine Joy Maxwell *Aspects of Multi-party Enrichment in South African Law – A Comparison with German Law* (unpublished LLD thesis, University of Cape Town) (2006) at 302 ff.

[21] *The Selective Voet being the Commentary on the Pandects* translated by Percival Gane 6.1.8. See the discussion of Stassen and Oelofse 'Terugvordering van Foutiewe Wisselbetalings' at 139-140 and also Lord Patrick Grant Elchies *Annotations on Lord Stair's Institutions of the Law of Scotland* (1824) para 1.7.9 at 39 ff.

[22] 12.6.9. Voet 12.7.2 stated that an action for the recovery of what was paid without cause lies 'when a third party pays money of mine to his own creditor without my consent; since certainly as regards me my cash is in the possession of a third party without cause.' It is suggested that in our law the owner of the money will succeed only where the creditor received the money in the absence of a *causa retinendi* or not *ex causa onerosa*. See *First National Bank of Southern Africa Ltd v East Coast Design CC & others* 2000 (3) SA 137 (D&CLD) at 142A-D and 144A-C.

to the payor for a refund in the judicial proceeding on management of affairs or other like proceeding.'

[18] To discharge a debt it must be paid in the name of the true debtor.[23] Generally, the discharge of a debt requires an agreement between the parties to that effect. For payment by electronic means to be effective the payee must acquire 'the unfettered or unrestricted right to the immediate use of the funds in question'.[24] It requires the parties to be in agreement as to the debt, whether that of the payer of that of a third party, to be paid.[25] A debt-extinguishing agreement, like any other agreement, may be concluded expressly or tacitly, by conduct. It may or may not be required to give notice of the acceptance of an offer to conclude a debt-extinguishing agreement.[26] In a case like the present notification of the acceptance of an offer to enter into a debt-extinguishing agreement would be impractical and superfluous. Acceptance is evidenced by the corresponding credit and its non-reversal. A debt-extinguishing agreement may, like any other agreement, not be *contra bonos* mores. It will be invalid where both parties know that the debt will be discharged with stolen money. This conclusion hardly requires authority. But none of the authorities referred to above suggest that the same result would follow where the creditor is in good faith and unaware of the fact that the debt is to be discharged with stolen funds.[27] Any suggestion that the validity of the payment may be questioned for this reason would lead to series of payment transactions being declared invalid ex post facto after discovery of the theft. Nor is it required that the law be developed further. The

[23]Scottish Law Commission *Recovery of Benefits Conferred under Error of Law* Discussion Paper 95 (1993) para 2.175.
[24]*Vereins- und Westbank AG v Veren Investments & others* 2002 (4) SA 421 (SCA) paras 11 and 12.
[25]*B & H Engineering* at 287A.
[26] See R H Christie and G B Bradfield *Christie's The Law of Contract in South Africa* 6 ed (2011) at 71-2.
[27]Christie *The Law of Contract in South Africa* at 399-401 and see *Ericsen v Germie Motors (Edms) Bpk* 1986 (4) SA 67 (A).

common law has already been developed to impose a duty of care on a collecting bank.[28] Extensive legislation aimed at the prevention of money laundering applies to banks.[29] Any further development along the lines suggested on behalf of Lombard Insurance which, to my mind, is neither necessary nor desirable, should be by way of legislation.

[19] There seems to be no doubt that Ms Manickum, both when she caused the fraudulent transfer from Lombard Insurance's account to her FNB current account and also when she made the other transfers from the latter account, intended to discharge or partially discharge her indebtedness to FNB on her credit card and bond accounts and her indebtedness to ABSA on her current and credit card accounts. As a matter of fact this is the only inference that can be drawn from her conduct. But, moreover, the relationship between a bank and its customer is one of debtor and creditor in terms of which the bank becomes entitled to funds deposited in the customer's account and obliged to receive and collect payments on the account and to give effect to his payment instructions.[30] Payments made into the customer's account extinguish any debit on it. As it was stated in *ABSA Bank Ltd v Standard Bank of SA Ltd*:[31]

'When a customer pays a cash amount equal to the debit balance of his overdrawn account into that account, there is no question of set-off operating. He simply pays the amount owing to the bank. The position is no different if the customer deposits a cheque drawn on another

[28] See *Indac Electronics (Pty) Ltd v Volkskas Bank Ltd* 1992 (1) SA 783 (A); *Columbus Joint Venture v ABSA Bank Ltd* 2002 (1) SA 90 (SCA).
[29] See ss 4 and 5 of the Prevention of Organised Crime Act 121 of 1998. See further regulations 47 and 50 of the Banks Act: Regulations, GN R1033, GG 34838, 15 December 2011; Chapter 3 of the Financial Intelligence Centre Act 38 of 2001.
[30] See eg *Kearney NO v Standard Bank of South Africa Ltd* 1961 (2) SA 647 (T) at 650 and *Muller NO & another v Community Medical Aid Scheme* 2012 (2) SA 286 (SCA) para 13.
[31] 1998 (1) SA 242 (SCA) at 251G-H.

bank into his account. If his bank collects payment and effectively credits his account, the debt is likewise paid (or partially paid).'

It matters not that the payments in the present case were made by electronic transfer. A bank is obliged to accept payments on a customer's account whether made in cash or by cheque or by money transfer. Nor does it matter whether the account was a current, credit card or mortgage loan account, because there is no contractual restriction on such payments on any of these accounts . When the funds were transferred into Ms Manickum's accounts when they were in debit and at a time when the banks had no knowledge of their theft, the latter were in the same position as any other creditor and were entitled to appropriate the funds transferred to extinguish the debts. The legal effect of an electronic funds transfer is that no physical money changes hands but that the account holder obtains a claim against his bank for the credit on the account.[32] Where the effect of the transfer is that there is no credit because the entire amount transferred was used to extinguish the debt on the account, the customer acquires no claim against his bank. However, he is enriched to the extent that the debt to the bank is no longer due. It follows that it was Ms Manickum who was enriched when the debit balances on her accounts were extinguished.

[20] It follows that Lombard Insurance's claim for the amount of the stolen funds used to discharge the debit balances on Ms Manickum's accounts with FNB and ABSA must fail.

[21] In the result the following order is made:

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[32] Cf *Roestof v Cliffe Dekker Hofmeyr Inc* (34306/2010) [2011] ZAGPPHC 219 (2012) paras 47 and 50; *Muller NO & another v Community Aid Scheme* para 13. See Malan, Pretorius and Du Toit *Bills of Exchange* para 202 at 276.

1 (1) The appeal of the appellant in case 684/2011 is upheld with costs.

(2) The order of the court below is replaced with the following:

‘The application against the first respondent is dismissed with costs.’

2 (1) The appeal of the appellant in case 629/2011 is upheld with costs including the costs of two counsel save that the appellant is ordered to pay the respondent’s costs up to the time of filing of the appellant’s heads of argument.

(2) The order of the court below is replaced with the following:

‘The second respondent is ordered to pay to the applicant the sum of R573 346,66 together with the interest that in fact accrued thereon until the date of payment and costs of suit.’

_____
F R Malan
Judge of Appeal

APPEARANCES:

For Appellant: Case No 629/2011	André Gautschi SC Lara Grenfell Instructed by: Lowndes Dlamini Johannesburg Matsepes Bloemfontein
For Appellant: Case No 684/2011	L Meintjies Instructed by: Rorich Wolmarans & Luderitz Inc Johannesburg Symington & De Kok Bloemfontein
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