

Supreme Court of Appeal of South Africa

MEDIA STATEMENT

From: The Registrar, Supreme Court of Appeal

Date: Tuesday 30 November 2004

Status: Immediate

This media statement is released for informational purposes only. It does not form part of the Court's judgment.

On 30 November 2004 the Supreme Court of Appeal handed down judgment in *BJV Durandt v Fedsure General Insurance Ltd.*

The appellant and one Van Rensburg were appointed co-trustees in an insolvent estate. Both signed undertakings in favour of the Master of the High Court for their administration. The respondent issued a guarantee to the Master in which it bound itself jointly and severally with the trustees.

Van Rensburg decamped with the proceeds of the major asset in the estate. When called upon to make good the loss the respondent paid the Master. It then sued the appellant relying on the common law principle that a trustee is liable to make good loss caused by his co-trustee irrespective of whether the former was at fault. This argument found favour with the Cape High Court. It ordered the appellant to pay the respondent.

On appeal the Supreme Court of Appeal held that the appellant's liability to the Master had to be sought in his own undertaking. Properly interpreted that undertaking

was limited to responsibility for his own administration of the estate and did not extend to the conduct of his co-trustee. If the basis of the appellant's liability was lacking, as it was, the respondent must bear the loss should it be unable to recover from Van Rensburg.

The appeal accordingly succeeded.

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