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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 474/2024

In the matter between:

INTENGO IMOTO (PTY) LTD t/a NORTHCLIFF

NISSAN

APPELLANT

And

ZOUTPANSBERG MOTOR WHOLESALERS CC t/a

HYUNDAI LOUIS TRICHARDT

RESPONDENT

Neutral citation: *Intengo Imoto (Pty) Ltd t/a Northcliff Nissan v Zoutpansberg Motor Wholesalers CC t/a Hyundai Louis Trichardt (474/2024)*
[2025] ZASCA 93 (20 June 2025)

Coram: ZONDI DP and MOTHLE, WEINER, KATHREE-SETILOANE and COPPIN JJA

Heard: 20 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The time and date for hand-down is deemed to be 11h00 on 20 June 2025.

Summary: Contract—purchase and sale—claim for payment of price of vehicles purchased—payment by way of electronic funds transfer (EFT)—details of seller's bank account provided in invoice sent by email—plea of payment into bank account—payment not received by seller in its bank account—whether the onus of proving payment discharged.

ORDER

On appeal from: Limpopo Division of the High Court, Thohoyandou (Tshidada J and Khosa AJ, sitting as a court of appeal):

- 1 The appeal is upheld with costs.
 - 2 The order of the high court is set aside and replaced with the following order: 'The appeal is dismissed with costs.'
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JUDGMENT

Coppin JA (Zondi DP and Mothle, Weiner and Kathree-Setiloane JJA concurring):

[1] This appeal concerns the question whether a purchaser who pays the price of the thing purchased into a bank account, other than the account of the seller, without the authority of the seller, but due to a fraudulent substitution of account details, has discharged the onus of proving payment.

[2] This is an appeal against the order of the Limpopo Division of the High Court, Thohoyandou (Tshidada J and Khosa AJ) (the high court) which upheld with costs, an appeal by the respondent against an order of the Regional Court for the Regional Division of Limpopo, held at Louis Trichardt (the regional court). The regional court ordered the respondent, Zoutpansberg Motor Wholesalers CC t/a Hyundai Louis Trichardt (Hyundai), to pay the appellant, Intengo Imoto (Pty) Ltd t/a Northcliff Nissan (Intengo): (a) the purchase price (R290 000) for two motor vehicles; (b) mora interest; and (c) party and party costs. The high court substituted the regional court's order with an order that Intengo's claim for payment against Hyundai is dismissed with costs. Leave to appeal against the high court's order was granted to Intengo on petition to this Court.

Background facts

[3] On 30 October 2018 and in Northcliff, Johannesburg the parties concluded a partly written, partly oral agreement in terms of which Intengo sold to Hyundai two Nissan NP200 vehicles for the price of R145 000 each. The written part of their contract consisted, essentially of two invoices generated in respect of each of the vehicles, which reflected the particulars of the vehicles, the price, the delivery address, and of significance for this appeal, the banking details of Intengo.

[4] It is common cause that it was agreed between them that: (a) upon receipt of the invoices that were to be sent by email, Hyundai would effect payment of the purchase price of the vehicles by way of an electronic funds transfer (EFT) into the banking account of Intengo, the details of which were provided on the invoices; and (b) upon receipt of payment, Hyundai could take delivery of the vehicles.

[5] The following is also common cause. In entering into the agreement, Intengo was represented by Mr Marco Sutherland (Mr Sutherland), who at the time was the new vehicle sales team leader. Hyundai was represented, initially, by Mr Dawie Schlebush (Mr Schlebush) and subsequently by Mr Brian Lucien Meth (Mr Meth), a senior sales executive. Mr Sutherland sent an email to Mr Meth on Tuesday, 30 October 2018, in which he requested the invoicing details of Hyundai. On the same day Mr Meth emailed those details to Mr Sutherland.

[6] According to Mr Sutherland, he emailed the invoices pertaining to the sale of the two vehicles to Mr Meth on the same day, ie 30 October 2018 at 13h12. The invoices were attached to an email addressed by Mr Sutherland to Mr Meth and copied to Mr Schlebush. The subject of the email was 'invoices'. The attached invoices also contained Intengo's banking details, which included the name of the banking institution, First National Bank (FNB), the account number and branch number, which for security purposes is only described here with reference to the last three digits, namely 7[...] and 3[...] respectively. Payment of the purchase price of the two vehicles was to be made by means of an EFT into Intengo's banking account, as described on those invoices.

[7] On 31 October 2018 at about 15h56, Mr Meth emailed proof of payment in respect of the first vehicle to Mr Sutherland. It is accepted that the proof of payment

reflected that the amount owing in respect of that vehicle had been paid into a FNB account number ending with the digits 9[...]. On the same day, and without establishing whether the payment was reflected in Intengo's bank account, Mr Sutherland released the first vehicle for delivery, and it was delivered to Hyundai.

[8] On 1 November 2018, Mr Meth, by WhatsApp, furnished Mr Sutherland with a proof of payment in respect of the second vehicle. The proof of payment document showed that an amount of R145 000 had been paid into an FNB account ending with the digits 9[...]. On that same day Mr Sutherland, again, without establishing whether any of the amounts were reflected in Intengo's bank account, released the second vehicle for delivery and it was delivered to Hyundai.

[9] It is also not disputed that on 7 November 2018 Intengo became aware that the payments for the vehicles had not been made into its FNB bank account number (ie ending with 7[...]) as reflected in the invoices that Mr Sutherland had sent to Mr Meth and Mr Schlebush on 30 October 2018.

[10] It was discovered that instead of having paid the purchase price for the two vehicles into Intengo's bank account ending with 7[...] and held at branch 3[...], the amounts had been paid into a different (fraudulent) account ending with 9[...], purportedly held at FNB branch number ending with 6[...]. Intengo demanded payment. Hyundai, on the other hand, insisted that it had paid. In doing so, it relied on the proofs of payment into, what turned out to be fraudulent account(s), and that Mr Sutherland had released the vehicles upon receipt of those proofs of payment.

[11] On 9 March 2020, Intengo instituted an action in the regional court in which it claimed the payment of the total purchase price for the two vehicles (R290 000), plus mora interest and costs from Hyundai. The action was defended by Hyundai. The matter eventually proceeded to trial. Intengo called as witnesses, Mr Sutherland and Mr Adrian Petrus Roux (Mr Roux). Mr Roux gave evidence on the information technology (IT) aspects, including the fraudulent electronic interception of the emails and computers. Hyundai only called Mr Meth as a witness.

[12] The regional court found that the matter involved “cybercrime”; that the payments had been made erroneously into the wrong account; and that it was indisputable that Intengo never received payment. Relying on the decision of *Potgieter v Capricorn Beach Homeowners Association and Another*,¹ it held that Hyundai was obliged to pay Intengo. Ultimately, the regional court found that Hyundai ought to have verified the banking account details with Intengo before making the payments; and that if Hyundai ‘did this the risk would have been mitigated’; and that [t]he money was spirited away but [Hyundai] still owes [Intengo]. On that basis the regional court granted Intengo the relief as prayed and ordered Hyundai to pay the principal sum, mora interest and costs.

[13] Hyundai appealed to the high court. The high court found in its favour and substituted the regional court’s order with an order dismissing the appellant’s claim with costs. The high court found as follows:

‘[23] [Intengo’s] claim was founded in contract, not in delict. As the *dominus litis*, [Intengo] bore the onus to prove the terms of the contract, that it complied with the terms and that [Hyundai] breached those terms.

[24] The appellant pleaded additional terms of the contract. By doing so, it placed the onus on [Intengo] to prove that those additional terms are not terms of the contract. In my view, The Regional Court erred in finding that the onus shifted to [Hyundai] to prove that it paid into the correct bank account. There is no basis in law for that shift of onus to [Hyundai].

[25] [Intengo] failed to prove the terms of the contract and to disprove the additional terms of the contract pleaded by [Hyundai]. Without a clear identification of the terms of the contract, it would naturally be difficult to make a determination whether there is a breach.

[26] In order to succeed, [Intengo] had to prove a breach of the terms of the contract relating to payment of the purchase price. Instead, [Intengo] adduced evidence of negligent failure to verify bank account details. Effectively, [Intengo] failed to prove the breach of a term of the contract claim it pleaded. On this basis alone, [Intengo] claim ought to have failed.

¹ *Potgieter v Capricorn Beach Homeowners Association and Another* [2012] ZAWCHC 66 (20 March 2012).

[27] In determining the liability of [Hyundai] to pay [Intengo] the sum of R290 000.00 based on negligence, the court a quo erred in that it lost sight of the pleaded case. Therefore, the judgment of the Regional Court falls to be set aside.'

The pleadings

[14] In the particulars of claim to its summons Intengo, inter alia, alleged that 'in breach of its obligations according to the agreement, [Hyundai] has failed to make payment to [Intengo] of any of the amounts owed to [Intengo] in respect of the vehicles'.

[15] Hyundai defended the action and, in its plea, inter alia, denied that it was indebted to Intengo, and pleaded, effectively, that it had paid all amounts due in respect of the purchase of the vehicles in full to Intengo. In particular, Hyundai alleged that:

'9

[Intengo] alleges that the payment effected by [Hyundai] was paid into an unknown bank account. [Hyundai] pleads that at all material times it effected payment into the bank account described on the invoices.

10

At all material times, [Intengo] stipulated the mode of payment by [Hyundai] and elected electronic funds transfer (EFT) as its chosen mode of payment. [Intengo] elected email as its chosen mode of communication. [Hyundai] acceded the request of [Intengo] in respect of [Intengo's] stipulated mode of payment and communication, any risk inherent in the stipulated methods were for [Intengo's] account.

11

[Hyundai] reacted to the invoice received and effected payment of the purchase price of the vehicles into the bank account stipulated on the invoices received.

12

At all material times, the risk of loss in utilizing the EFT system and email lay with [Intengo]. [Hyundai's] obligation to pay, must be deemed to be fulfilled. Any risk associated [with] and inadequacies of the EFT payments system and the email communication system must be assumed by [Intengo].

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[Hyundai] denies being indebted to [Intengo] for the sums claimed in [Intengo's] summons or any sum at all.

14

Wherefore [Hyundai] prays that [Intengo's] action be dismissed with costs.'

[16] Since Intengo did not replicate to the plea, Hyundai's allegations were to be taken as denied. In an affidavit in support of an application for summary judgment Intengo, inter alia, averred that payment had not been made into the account specified in the invoices that were sent to Mr Meth and Mr Schlebusch of Hyundai on 30 October 2018 and that the proofs of payment relied upon by Hyundai show payment into another account not linked to Intengo.

The issues arising from the pleadings and the onus

[17] The high court erred in its characterisation of the issues arising from the pleadings and the nature of the onus. Essentially, Intengo claimed payment of the purchase price and Hyundai alleged that it had paid the purchase price. Hyundai bore the onus to prove, inter alia, payment (and any additional terms it alleged) on a balance of probabilities.² If it failed to discharge that onus, judgment had to be given in favour of Intengo. It is another trite principle of law that the onus of proof does not shift, and that only an evidentiary burden shifts, depending on the evidence presented in respect of the issues and in respect of which the onus is to be discharged.³

[18] As part of its onus, Hyundai had to prove that the payment was made into the bank account of Intengo as per Intengo's request, which Hyundai agreed to. This Court has accepted, that as a matter of common sense, for effective payment to occur the payee must, in the absence of a contrary agreement, acquire 'the unfettered or unrestricted right to the immediate use of the funds in question otherwise the payment is inchoate'.⁴ It has also been held that the place of payment in the case of an EFT is when the funds (meant for payment) are actually received by the payee in its bank account.⁵

² See inter alia, *Pillay v Krishna* 1946 AD 946 at 952 and 958; *Standard Bank of South Africa Ltd v Oeanate Investments (Pty)Ltd (In Liquidation)* [1997] ZASCA 94; 1998 (1) SA 811 (SCA); [1998] 1 All SA 413 (A) at 823.

³ *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (A).

⁴ *Vereins – Und Wesbank AG v Veren Investments and Others* 2002 (4) SA 421 (SCA).

⁵ *Bush and Others v B J Kruger Inc. and Another* [2013] ZAGPJHC 4; [2013] 2 All SA 148 (GSJ) para 67.

[19] The essential facts in this case are not unique. This kind of incident seems to occur often. In *Mosselbaai Boere Dienste (Pty) Ltd t/a Mosselbaai Toyota v OKB Motors CC t/a Bultfontein Toyota*⁶ the full court of the Free State High Court dealt with a similar situation. Having reviewed a few judgments⁷ where a similar issue was dealt with, that court correctly concluded: ‘The golden thread in the judgments referred to *supra* places an obligation on the purchaser to ensure that the bank account details contained in the invoice is in fact correct/verified and that payment is made to the seller and not to an unknown third party. Failure to do so, and where payment is made into an incorrect bank account, such incorrect payment does not extinguish the purchaser’s obligation and liability to pay the debt.’⁸

[20] Regarding the risk - our courts⁹ have effectively held that the same general principle that applies where payment was made by means of a cheque also applied in these instances, namely, that the ‘risk is the debtor’s since it is the debtor’s duty to seek out his creditor’.¹⁰ Recently, in a matter where a debtor who made a payment into a false account sued attorneys for pure economic loss, this Court reversed the decision of a court which effectively found that all creditors owe a legal duty to protect debtors from the possibility of their accounts being hacked. This Court found that imposing such a duty was untenable in circumstances where the debtor could have taken steps to protect itself but failed to do so. It held: ‘The ratio of the high court’s judgment that all creditors in the position of ENS [Edward Nathan Sonnenberg] owe a legal duty to debtors to protect them from the possibility of their accounts being hacked is untenable. The effect of the judgment of the high court is to require creditors to protect their

⁶ *Mosselbaai Boere Dienste (Pty) Ltd t/a Mosselbaai Toyota v OKB Motors CC t/a Bultfontein Toyota* [2024] ZAFSHC 95; 2024 (6) SA 564 (FB) (*Mosselbaai Boere Dienste*).

⁷ *Galactic Auto (Pty) Ltd v André Venter* [2019] ZALMPPHC 27 paras 49-51; *Fourie v Van der Spuy & De Jongh Inc.* [2019] ZAGPPHC 449; 2020 (1) SA 560 (GP) paras 23-24; *André Kock en Seun Vrystaat (Pty) Ltd v Snyman NO* [2022] ZAFSHC 161; 2022 JDR 1792 (FB) paras 8-9; *Gerber v PSG Wealth Planning (Pty) Ltd* [2023] ZAGPJHC 270; 2023 JDR 0899 (GJ) paras 89-90; *Hartog v Daly and Others* [2023] ZAGPJHC 40; [2023] 2 All SA 156; 2023 JDR 0189 (GJ) paras 41-73 and 80-81. See also *Gripper & Company (Pty) Ltd v Ganedhi Trading Enterprises CC* [2024] ZAWCHC 352; 2025 (3) SA 279 (WCC); Njabulo Kubheka ‘Email fraud and payment verification: How have the courts adapted to the challenges posed by cybercrime?’ (2025) *De Rebus*.

⁸ *Mosselbaai Boere Dienste* para 58.

⁹ See the cases referred to in footnote 6 and 7.

¹⁰ *Mannesman Demag (Pty) Limited v Romatex* 1988 (4) SA 383 (D) at 389 F – 390 D.

debtors against the risk of interception of their payments. The high court should have declined to extend liability in this case because of the real danger of indeterminate liability.’¹¹

[21] Intengo, through the evidence of Mr Sutherland and Mr Roux established a prima facie case that Mr Sutherland sent the invoices to Mr Meth and Mr Schlebusch by email; these invoices bore the correct banking details of Intengo; and there was no interception of the email until it left the server of Intengo. Implicit in their evidence is that there must have been an interception of the email on the side of Hyundai.

[22] Although Mr Roux conceded that he could not verify whether it had been intercepted on the side of Hyundai because he had no access to its server or computer, he was adamant that the interception and infiltration of Intengo’s banking details could not have been from Intengo’s side. According to Mr Roux: ‘. . . definitely [the] [e]mail was intercepted, and an attachment was changed on the email’. Mr Roux pointed out, that if he had access to Hyundai’s mail server and computer he would have been able to determine more accurately when the interception occurred and when the changes were affected.

[23] Hyundai did not produce any evidence at all that would address that issue. Instead, it only led the evidence of Mr Meth, who testified to the following effect: he passed on the invoices, that he received in the email from Mr Sutherland to Hyundai’s accounts department ‘to load it for payment’. Once he had concluded the deal in respect of the vehicles with Hyundai’s customer, he sent his driver on the morning of 31 October 2018 to Intengo, and instructed Hyundai’s accounts department ‘to release payment and forward proof of payment’.

[24] Hyundai did not call anyone from its accounts department to testify how payment was made. Mr Meth, on his own version, did not have personal knowledge of that fact. Hyundai appears to have relied a great deal on the fact that Mr

¹¹ *Edward Nathan Sonnenberg Inc. v Judith Mary Hawarden* [2024] ZASCA 90; 2024 (5) SA 9 (SCA) para 21.

Sutherland released the vehicles after the proofs of payment had been sent to him. But that was clearly not enough to prove payment.

[25] Mr Meth conceded that Intengo 'did not receive the money which had been paid into the account' ie the account number ending with the digits 9[...]. When asked whether the respondent had received the appellant's correct banking details as alleged by the appellant, Mr Meth answered as follows: 'I received the correct banking details which was on the invoice'. And he further testified: '[s]o, according to us we have paid the correct account number, the funds into the correct account'. He further testified that he did not call Mr Sutherland after receiving the invoices in order to confirm that the banking details were correct, because he did not have a 'reason to suspect that the banking details would be different.' He was asked whether there was a duty on him to check whether payment was made into the correct account. His answer was: '[m]y duty was to make sure the payment is made on the proof of payment. My accounts must release funds and then I sent the proof of payments. Once Mr Sutherland releases the bakkies, that confirms with me that he has received the funds.'

Mr Meth further testified that the incorrect payment was Mr Sutherland's fault 'because he did not check his accounts before releasing the bakkies'.

[26] Mr Meth conceded that it was normal business practice in car dealerships to request payment by way of an EFT. He testified to the effect that he was not aware of cybercrime and the fact that emails could have been intercepted as occurred in this instance. This intensified the need on the respondent's side to produce the necessary evidence to call someone from the accounts department of Hyundai who was responsible for the payments. But none of that was done. Mr Meth could not speak for and on behalf of the accounts department of Hyundai.

[27] The most concerning aspect of Mr Meth's evidence was that he could not explain a third notification of payment that he emailed to Mr Sutherland on 1 November 2018. The notice shows that an amount of R145 000 had been transferred by the respondent into the correct account of the appellant (ie the FNB banking account number ending with the digits 7[...]). That notification, however, bears the incorrect branch code. The fact that this notification emanated from the respondent shows that the respondent was aware of Intengo's correct banking

account details. The anomaly created by that notification called for an answer from Hyundai, but it remained unexplained. Ms Tahera Karim, who handled the finances and accounts of Hyundai, and who furnished Mr Meth with the proofs of payment, was not called as a witness, and Hyundai made no effort to deal with the anomaly presented by this third notification. It is also common cause that Hyundai never verified Intengo's banking details before making the payments into the false account(s).

[28] On a conspectus of all the facts, Hyundai failed to discharge its onus of proving that it had paid Intengo the purchase price for the two vehicles. A payment into a different account, not authorised by Intengo, and without verifying Intengo's banking details, did not release Hyundai of its payment obligation to Intengo. Hyundai's contention that Intengo bore the risk in those circumstances is untenable. The regional court correctly ordered Hyundai to pay those amounts, plus mora interest and costs. Insofar as the high court held otherwise, it erred.

[29] In the result:

- 1 The appeal is upheld with costs.
- 2 The order of the high court is set aside and replaced with the following order:
'The appeal is dismissed with costs.'

P COPPIN
JUDGE OF APPEAL

Appearances

For the appellant:

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