

The discharge of a debt with stolen funds

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The Supreme Court of Appeal (SCA), in the matter of Absa Bank Ltd vs Lombard Insurance Company Ltd, recently handed down an insightful judgement, in which it clarified certain misconceptions that have arisen, pursuant to unjustified interpretations given by some to various prior judgments, dealing with the ability of an offended party to recover stolen funds, transferred to the credit of the bank account, of a fraudster or thief.

A certain Ms Manickum was the financial accountant of Lombard Insurance. Ms Manickum was indebted in substantial amounts to both Absa and FNB (where she held various credit card, current account as well as home loan facilities). Heavily indebted, Ms Manickum could not resist the temptation to use her position to cause funds to be dishonestly transferred from the bank account of Lombard Insurance to her current account at FNB, to which she credited the sum of R2.1 million. From that account, Ms Manickum then caused numerous transfers to be made, extinguishing her overdraft and credit card facilities (as well as her home loan indebtedness) in respect of her various accounts both with FNB and Absa. Once these liabilities had been extinguished, certain credit balances remained. Lombard Insurance, on uncovering the fraud perpetrated by Ms Manickum, instituted action against both Absa as well as FNB, seeking repayment of the sums received in the various accounts held by Ms Manickum.

Lombard Insurance did not limit its action to recovery of the credit balances, which stood to the credit of Ms Manickum's various accounts, but sought to recover the sums used to discharge the debit balances on Ms Manickum's account.

Did payment discharge obligations?

The important question that therefore arose was whether or not payment by Ms Manickum of her debts to the banks, with stolen funds, validly discharged those obligations.

Malan JA, delivering judgment on behalf of the SCA, confirmed that a bank overdraft is indeed discharged by the receipt (into that overdraft account) of stolen funds. Put differently, Lombard Insurance was not entitled to repayment from either Absa or FNB of any sums that had served to extinguish the overdraft obligations of Ms Manickum.

The position pertaining to credit balances, on accounts into which the stolen funds were transferred is, however, entirely different. In that instance, the monies have not been used to extinguish any existing liability or obligation, and the thief (in this instance Ms Manickum) has no entitlement to give instructions to the bank in regard to the funds (credit balance) held in her account. To the extent of those credits, Lombard Insurance was accordingly entitled to payment of the sums still held in the accounts of Ms Manickum with Absa and FNB (but no more).

Had all parties known...

The position would, of course, be entirely different if both parties (in this instance both the bank and Ms Manickum) knew that the debt (her overdraft obligations) was being discharged with stolen money. In that instance, the victim of the fraud would have been entitled to a full recovery from the bank. In the present instance, however, there could be no suggestion that either FNB or Absa might have been party to the machinations of Ms Manickum.

Plainly, Ms Manickum, through her conduct, intended to discharge her indebtedness to FNB and Absa on her various accounts. Payments made into those accounts accordingly extinguished her debts to Absa and FNB, respectively. Neither bank was, in respect of those sums, enriched at all. The claims that were previously held against Ms Manickum for the payment of her overdraft facilities had been discharged. The only person who had been enriched in consequence of the fraud perpetrated was Ms Manickum herself, and it therefore follows that the claim in respect of those sums is a claim that Lombard Insurance stands to pursue against Ms Manickum.

This judgment finally lays to rest a number of misconceptions previously inferred from earlier judgments, which were incorrectly interpreted as amounting to a development in our law in terms of which a bank, which has credited a thief's account with the proceeds of stolen money, might be liable to the owner of the money. The clarification now furnished is most welcome.

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