



## 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:** 14 April 2021

**Status:** Immediate

***Please note that the following summary is for the benefit of the media and does not form part of the judgment.***

*The Attorneys Fidelity Fund Board of Control v Love (Case No 170/2020) [2021] ZASCA 44 (14 April 2021)*

Today the Supreme Court of Appeal (SCA) handed down judgment upholding the appeal against the Gauteng Division of the High Court, Johannesburg (the high court). The SCA ordered that the special plea raised by the appellant be upheld and that the order of the high court be set aside.

The issue before the SCA was whether the appellant, the Attorneys Fidelity Fund Board of Control (the Fund) was liable to pay the respondent ( Mr Love) the sum of R10 million, which was misappropriated after being deposited into Turnbull and Associates attorney's trust account (the trust account).

On 7 October 2013, Mr Love gave the Fund notice of his R10 million claim against the Fund. On 4 September 2014, the Fund rejected the claim on the grounds that Mr Love had failed to give the Fund written notice of the claim within three months of him becoming aware of the theft of the R10 million. Section 48(1)(a) of the Attorney Act 53 of 1979 (the old Act) required a claimant to notify the fund of any claim, within three months of the claimant becoming aware of the theft of money paid into a trust account. Mr Love instituted proceedings in the high court, against the Fund, for

payment of the R10 million. The Fund raised a special plea to Mr Love's claim on the basis that Mr Love knew by no later than 28 November 2012, and probably as early as 15 May 2012, that the amount of R10 million had been misappropriated from the trust account. As a result, argued the Fund, Mr Love failed to give the Fund written notice of the claim within three months of him becoming aware of the theft, as provided by s 48(1)(a) of the Old Act. The high court dismissed the special plea and granted judgment in favour of Mr Love.

The SCA held that Mr Love knew in October 2011 or at the latest 28 November 2012 that there had a misappropriation by Turnbull and Associates of the money entrusted to it, as it was required to keep the money in the trust account until the happening of some known future event. This event did not occur. The SCA held that the special plea raised by the Fund should have been upheld by the high court. The SCA therefore upheld the appeal and ordered that the order of the high court be set aside.

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