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

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Bobroff and Another v The National Director of Public Prosecutions (Case no 194/20) [2021] ZASCA 56 (3 May 2021)

Today the Supreme Court of Appeal (SCA) upheld an appeal, in part only, against the judgment of the Gauteng Division of the High Court, Pretoria (the high court). The high court had granted a forfeiture order in terms of s 50(1) of the Prevention of Organised Crime Act, 121 of 1998 (the POCA) in respect of certain credit balances held in names of the first and the second appellants, Mr Ronald Bobroff and Mr Darren Bobroff, respectively, in the Bank Discounts (BD) and the Bank Mizrahi Tefahot (BMT) in Israel.

The issues before the SCA were, firstly, whether the high court had jurisdiction to grant a forfeiture order in terms of the POCA in respect of property held in Israel by the Bobroffs, who were presently resident in Australia, and, secondly, if so, whether the evidence had established that the said credit balances were 'proceeds of unlawful activity' committed in South Africa.

In respect of the first issue the SCA considered the provisions of the POCA and the International Co-operation in Criminal Matters Act, 75 of 1996 (the ICCM Act) and concluded that the POCA provided for the high court to grant a forfeiture order in respect of the proceeds of crime irrespective of where it may be held. It found that the ICCM Act, which empowers South Africa to request the assistance of a foreign state in enforcing a forfeiture order, provided the mechanism to render the order effective. It accordingly dismissed the argument that the high court did not have the required jurisdiction.

In respect of the second issue the SCA considered the facts as they emerged from the evidence. The appellants had been attorneys and directors in the firm Ronald Bobroff & Partners Incorporated, practising predominantly in the sphere of personal injury litigation in Johannesburg. During the period 2007 to 2014 they frequently concluded contingency fee agreements in terms of which they accepted a percentage of an award for damages made in favour of their clients, which were contrary to the Contingency Fees Act, 66 of 1997. In 2014 the Constitutional Court declared that contingency fee agreements unlawful and invalid. The appellants did not repay the unlawfully obtained fees to their erstwhile clients.

In addition, the SCA found that the evidence of a senior bookkeeper made damning allegations of financial impropriety during the period 2008 to 2012 against the appellants was largely

uncontested. The SCA concluded, accordingly, the allegations of dishonesty, theft and fraud had been established on a balance of probabilities.

The SCA found that during the period 2009 to 2012 substantial amounts of money from the firm had been channelled to various accounts in Israel and that no adequate explanation for the source of the funds had been provided. Numerous accounts had been opened and closed and the appellants acknowledged that funds which flowed to the Israeli bank accounts were channelled through different banking institutions. The SCA concluded, on the evidence, that the funds in credit balances were, on a balance of probabilities, the proceeds of the unlawful activities and that the money had been laundered to disguise its origin and identity prior to their deposit in the Israeli bank accounts.

In respect of the first appellant USD 256 217.84 and AUSD 284 785.32 had been separately identified and invested prior to the urged financial impropriety and was unrelated. These funds, it held, were accordingly not ‘proceeds of unlawful activity’. Save to this extent the appeal was dismissed with costs.