



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

1 December 2010

STATUS: Immediate

**SCOIN TRADING (PTY) LIMITED V BERNSTEIN NO (29/2010) [2010]
160 (1 December 2010)**

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal ('the SCA') today upheld the appeal with costs, finding the deceased estate liable for the payment of *mora* interest.

The appellant launched an application for payment of the balance of the purchase price of a ZAR Een Pond Overstamp gold coin, together with interest at a rate of 15,5 per cent per annum from 1 January 2008 to date of payment against delivery of the coin.

The KwaZulu-Natal High Court (Durban), the court below, granted the claim for the balance of the purchase price but refused the claim for interest.

The issue before the SCA was the liability of the deceased estate for the payment of interest. This issue depended on two aspects, one factual and one legal. First, the parties disagreed on whether payment of the balance of the purchase price had to be made by 31 December 2007 or when the proceeds of a sale of property by the deceased became available to him. Second, the effect of the death of a debtor on the consequences of *mora* was in issue. The SCA held that it was a term of the agreement that payment was to be made by the end of December. As to the second issue: when a contract fixes a time for performance, *mora (mora ex re)* arises from the contract itself and no demand (*interpellatio*) is necessary to place the debtor in *mora*. The debtor's obligation was to pay the sum of money on this date and he was

in *mora* in that he failed to perform on or before the time agreed upon, and the damages that flow naturally from such failure will be *mora* interest. The purpose of *mora* interest is to place the creditor in the position he would have been in, if the debtor had performed in terms of the undertaking. That *mora* interest is sometimes regarded as a kind of penalty for a failure to pay on due date does not mean that the breach of contract is a delict or that a breach of contract is only established if the debtor acted 'wrongfully' or 'culpably'. All the creditor is required to prove is that the debtor is in *mora*. The SCA held that the death of the deceased did not amount to supervening impossibility, as performance was not of a personal nature. The executor as administrator of the estate is obliged to pay the debt. The SCA held that the appellant is entitled to interest *a tempore morae* on the outstanding balance of the debt at a rate of 15,5 per cent per annum from 1 January 2008 to date of payment.

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