

SUMMARY

The appellant in this matter is Scoin Trading, a company that trades in coins and similar items. Gregory John Till (the deceased) was an avid coin collector who had purchased some gold coins and medallion from the appellant. During August 2007, deceased entered into an agreement with the appellant to purchase a rare ZAR Een Pond Overstamp coin.

The parties agreed that the selling price would be R1 950 000. The deceased at that time only had R200 000 which he immediately made available with the promise to pay the outstanding amount by the end of the year (31 December 2007).

The deceased unfortunately passed away on 16 November 2007 before settling payment of outstanding amount. The respondent was appointed as executor of the estate of the deceased. The issue in this specific matter is not whether the outstanding balance is due by the deceased's estate but rather whether the deceased's estate should also be liable for the interest of the outstanding amount due.

HELD

In reaching its decision, firstly there was a need to define *mora*, being a delay or default. The concept is used in instances of failure to perform a contractual obligation within an agreed time. There is a difference however when there isn't an expressed or tacit stipulation as to when the performance is due. In the latter case, the debtor does not fall into *mora* if they do not perform immediately or within a reasonable time. The debtor will only fall into *mora* once performance has been demanded by the Creditor. Where a fixed performance date has been stipulated, no demand is required and interest will start running the day after the fixed date.

The court considered the case of **Linton v Corser** which held that there is no need to prove any loss or damage as a debtor failing to pay up to a monetary obligation will ultimately deprive a creditor of productive use of the money due and thereby.

Counsel for the respondent argued that for the respondent to be in *mora*, the failure to perform should be due to *culpa*. Reference was made to the cases of **Victoria Falls and Transvaal Power Co Ltd v Consolidated Langlaagte Mines Ltd** and **RB Ranchers (Pvt) Limited v McLean's Estate & another** where the courts held that *mora* interest encompasses a notion that the debtor

had the means to make payment but neglected to do so meaning that it is claim for wrongful conduct. Counsel further argued that the premature death of the deceased does meet the requirement of culpability and therefore, the deceased's estate cannot be held responsible for the payment of *mora* interest.

To contrast the above opinion, the court considered the case of ***Tritman v Edwick*** where a clear distinction between contractual and delictual damage was made. The court held that in cases of delictual recovery, a claim for a loss suffered is claimed, whereas in a contractual matter, a bargain or its equivalent is sought.

The court held that the deceased was due to make payment on a fixed date of 31 December 2007 and failed to do so and as a result the consequence of his *mora* is the liability to pay interest which commenced the next day. Accordingly, the appellant is entitled to the interest *a tempore morae*.

VALUE

Death of a debtor does not negate the creditor's right to claim *mora* interest.

Written by Puseletso Radebe and supervised by Refilwe Letaba, 30 May 2018

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