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Placing holds on accounts

● If a contract allows a bank to freeze an account of a customer, it does not act against their rights

BY ALL ACCOUNTS

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On June 8 2020, the high court in Pretoria handed down judgment in Moyo v The Standard Bank of SA Ltd.

The judgment dealt with an urgent application by Moyo against Standard Bank, in which he sought declaratory relief to the effect that the hold placed on his accounts by Standard Bank was unlawful. The hold was placed after Moyo's debit card was reported stolen and after the bank had become suspicious over the use of the accounts. Subsequently, the bank also received orders from the Financial Intelligence Centre (FIC) instructing it to prevent transactions in the accounts.

The issues before the court were:

- Whether the bank had any power in terms of the agreement between the parties to unilaterally place a hold on the account;
- Whether the bank's conduct placing the hold on the accounts was justified by any law; and
- Whether the bank is justified in placing a hold on the accounts without affording its customer an opportunity to be heard, prior to the bank's decision or shortly after the hold is placed on the accounts.

POWER TO PLACE AN ACCOUNT ON HOLD

The applicant attempted relying on the judgment in South African Petroleum Energy Guild (NPC) (Sapeg) v Rand Merchant Bank). In Sapeg, it was accepted by the bank's customer, for purposes of argument, that the account holder was engaged in unlawful activities and the bank placed a hold on the account into which the proceeds of the alleged unlawful activity was paid.

The bank in Sapeg argued that there was an implied term, which empowered it to place the hold on its customer's account. The court in Sapeg did not accept that such an implied term existed, found that "criminals have rights" and declared the decision by the bank to suspend the operation of the bank account as unlawful.

THE JUDGMENT REITERATED THAT THE RELATIONSHIP BETWEEN A BANK AND ITS CLIENT IS REGULATED BY CONTRACT

IS IT LEGAL?

In Moyo's matter, the court rejected his reliance on the reasoning in Sapeg. The court distinguished the facts in Sapeg and highlighted that the terms and conditions applicable to Moyo's accounts expressly provided for the bank to place a hold on the accounts without notice to the customer. The relevant term in the agreement provided that Standard Bank may restrict or suspend activity on a customer's account, without notice to the customer, if it suspected that the account had been used fraudulently, negligently or unlawfully, for money laundering activities or the financing of terrorist and related activities. Further, the court accepted the bank was entitled to place the hold as it was acting in accordance with orders from FIC.

The court also rejected the contention that Moyo was entitled to a hearing and highlighted that the bank was exercising its contractual rights. It was not necessary to give Moyo a hearing before the hold was placed.

The court accepted that Standard Bank is not a public official or public body exercising a public power but a private entity whose relationship with its customers is regulated by contract. The terms and conditions provided for the holds to be placed on the accounts without notice to the customer.

The judgment reiterated that the relationship between a bank and its client is regulated by contract. If it provides for the account to be placed on hold under specific circumstances, the bank is within its rights to do so.