



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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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.

Vincorp (Pty) Ltd v Trust Hungary ZRT (061/2017) [2018] ZASCA 35 (27 March 2018)

Today the Supreme Court of Appeal (SCA) upheld an appeal against the judgment of the full court of the Western Cape Division of the High Court, Cape Town (the full high court). The issue on appeal was whether or not there were a series of agreements of sale between the respondent, Trust Hungary ZR (Trust Hungary) and the appellant, Vincorp (Pty) Ltd (Vincorp) in relation to wine barrels. The full court answered the question in favour of Trust Hungary.

Trust Hungary pleaded, that since 2002, it had sold and delivered wine barrels to Vincorp, which wine barrels were ordered and purchased by Vincorp in terms of written purchase orders, the written purchase orders constituted the agreement between the parties. During the period December 2008 and 2009 Vincorp ordered and purchased wine barrels from Trust Hungary for a total purchase price of US\$146 850.00 – which wine barrels were delivered to Vincorp and/or its duly authorised agent. For the period of December 2008 and 2009 Vincorp was obliged to pay Trust Hungary, within 90 days, the sum of US\$146 850.00 which it failed to do, despite demand.

On appeal, after taking into consideration the evidence, the SCA held that it was always clear that Vincorp acted as a financing company and importing agent on behalf of Vinco, which is a separate entity from Vincorp. The invoices do not reflect Vincorp as the purchaser but were in fact dispatched by Trust Hungary to Vinco, not Vincorp. Vincorp only started being reflected in the invoices as a result of the fact that, in 2004, Vincorp's bankers began to experience difficulty with the payment of Trust Hungary invoices. The difficulty lay in obtaining approval

from National Treasury for the expatriation of funds to meet Trust Hungary's invoices – which had been issued in the name of Vinco, not Vincorp.

To remedy the aforementioned difficulty, Vinco requested, on 2 February 2004, Trust Hungary to replace Vinco with Vincorp on its invoices. In its request, Vincorp specifically mentioned that Vincorp 'acts as financing company and importing agent on behalf of VinCo'. The change in the invoices was for a limited purpose and in no way served to alter the relationship between the parties.

The SCA held that the onus to prove that there was a contract, between Trust Hungary and Vincorp for the purchase of wine barrels, was on Trust Hungary. This included proof of the terms of the contract and the anterior question namely whether both parties had the requisite *animus contrahendi*. Trust Hungary failed to prove the existence of such. The mere fact that Vincorp came to be reflected as the purchaser or importer on some of the invoices did not herald any new legal relationship between Vincorp and Trust Hungary. Payment for the supply and purchase of wine barrels to Trust Hungary was made by Vinco through Vincorp. As a result the appeal was upheld with costs.