

(P) PS 4/99

**CAPE FINANCE CORPORATION LTD vs BEZER'S
TRAILERS & BODY CRAFT CC**

LEVY, AJ 2000/05/25

PRACTICE: APPLICATION FOR LEAVE TO APPEAL

SUMMARY JUDGMENT - A person who knowingly accepts a postdated cheque for value prior to maturity takes the cheque subject to equities.

Leave to appeal granted by reason of varying judgments on the subject and another Court could reasonably adopt a different view.

CASE NO. (P) PS 4/99

IN THE HIGH COURT OF NAMIBIA

In the matter between:

CAPE FINANCE CORPORATION LTD

APPLICANT

versus

BEZER'S TRAILERS & BODY CRAFT CC

RESPONDENT

CORAM: LEVY,

A.J.Heard on: 2000.05.25

Delivered on: 2000.05.25

JUDGMENT

LEVY, A.J.: This is an application for leave to appeal against the judgment delivered by this Court on 7 March 2000. Mr Coetzee appears for Applicant. There was no appearance for Respondent.

Prior to the 30 June 1999 the document which is described herein as a postdated cheque was not a cheque. The Plaintiff therefore was not an "endorsee" when it came into possession thereof. There were

no rights which he could get as endorsee whether he gave value therefore or not. If anything he took the "cheque" subject to equities.

When a post-dated cheque falls due, it most certainly becomes a cheque and as such the payee can present it for payment on due date or thereafter. Inasmuch as plaintiff was not the payee, the plaintiff could not present it for payment.

When Plaintiff came into possession it knew full well that the "cheque" was post-dated and therefore the question of equities comes into operation.

The authorities quoted by Mr Coetzee, do not deal with this point as I have set out above.

Authorities from foreign countries depend upon the legislation in those countries.

The only academic writers in South Africa, do not consider whether a document which will on some due date in the future become a cheque can be "endorsed" before due date and whether the "endorsee" then acquires the rights which an endorsee of a cheque would have acquired. If the endorsee in those circumstances does do so, this appears to be contrary to the provisions of the statute defining a cheque.

The aforesaid notwithstanding in view of the confusion which exists, a pronouncement on the subject by the Appellate Division is desirable and that Court may reasonably come to a different conclusion to that which I have come to.

Leave to appeal is therefore granted, costs of this application to stand over for decision by that Court.

ON BEHALF OF APPLICANT

ADV COETZEE

Instructed by:

P F Koep & Company