

CONTENTIOUS ISSUES ARISING FROM PAYMENTS MADE IN FULL AND FINAL SETTLEMENT

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Summary

Payments made in full and final settlement have on several occasions presented interpretative difficulties for our judiciary, as will become apparent from this case discussion: *Be Bop A Lula Manufacturing & Printing v Kingtex Marketing* 2008 3 SA 327 (SCA). The Supreme Court of Appeal reversed the judgments of the trial court and the appeal court (full bench of the Cape Provincial Division) which were in favour of the creditor. In such cases, the essential enquiry is whether an agreement of compromise exists. A *transactio* or compromise (in the form of a legal agreement) exists where the relevant parties agree to settle previously disputed or uncertain obligations. Like any other agreement, a compromise is based on the contractual rules of offer and acceptance. The first material enquiry in this case wherein the debtor delivered the cheque payment to the creditor (in full and final settlement of the account), is whether 1) an intended offer of compromise exists; or 2) did the debtor merely intend to make payment towards an admitted liability. The court in the *Be Bop* (SCA) case came to the correct finding that an offer of compromise existed. Whilst the judgment is brief, the finding itself gives practical recognition to the principle that admission of liability for a specific amount, accompanied by payment (in full and final settlement), may still be accompanied by an intended offer of compromise, instead of merely making payment towards an admission of liability.

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