

# LEXPRO

## GAZETTE



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### **ENS was ordered to pay R 5.5 mil and Gavin Hartog Attorneys was ordered to pay R 1.4 mil, but for very different reasons**

Both ENS and Gavin Hartog was ordered by the High Court to pay substantial amounts of money back to their clients. Both cases involved a “business email compromise” or BEC. This is however where a lot of the similarities between the cases end.

#### **ENS Case**

<https://www.saflii.org/za/cases/ZAGPJHC/2023/14.html>

The ENS case involved a property purchase where the purchaser’s payment was transferred to a hacker’s bank account due to a hacked email with altered bank details.

A secretary working for ENS attorneys sent an email to the purchaser with their banking details attached in the form of an unprotected PDF attachment.

The court found that ENS Attorneys were aware of the risks of BEC and therefore a duty of care fell on them to take necessary steps to mitigate this risk. The court, therefore, found ENS negligent for not taking steps, such as warning the purchaser, securing the emails or attachments with passwords or loading the ENS Trust Account as a public beneficiary at the bank.

ENS Attorneys was subsequently ordered to pay R 5.5 million plus interest and legal costs to the purchaser.

#### **Gavin Hartog Case**

[https://www.groundup.org.za/media/uploads/documents/bec\\_case.pdf](https://www.groundup.org.za/media/uploads/documents/bec_case.pdf)

The Gavin Hartog case involved a property purchase where the balance of the proceeds of the sale had to be paid to a nominated bank account one Patrick – which is the husband of one of the sellers.

Patrick sent an email to the attorney providing him with his bank details. It later emerged that a fraudster intercepted an email between the parties and changed the bank details to those of an account held by the fraudster. The attorney proceeded to pay the funds into the fraudster's bank account.

Because the obligation rests on the attorney to pay the proceeds of the sale in the correct bank account, Gavin Hartog Attorneys was ordered to pay R 1.4 million plus interest to the sellers.

### **Steps attorneys can take to protect themselves against BEC.**

Business email compromise remains a real risk to attorneys, especially for conveyancers. No measures will guarantee complete protection against BEC, but they will go a long way in reducing the risk thereof.

1. Encrypt all email attachments containing bank account confirmation letters and invoices. [Lexpro Systems is in the process of developing encrypted invoices which will be rolled out free of charge to our online clients during March 2023.](#)
2. Don't send bank account confirmation letters via email only. Follow this up with secondary communication like an SMS. [The Lexpro Systems SMS functions are ideal for this because you can select the bank detail from a template instead of retyping it and a record of the SMS is stored on the system.](#)
3. Never follow a payment instruction from an email without confirming the bank account details with another communication channel such as WhatsApp, SMS or telephone calls. This is known as the "two-step verification" method.
4. Don't send the passwords to the attachments via email. Use another communication channel such as WhatsApp, SMS or telephone calls instead.
5. Make sure that you warn your client of BEC, especially if you send bank account confirmation letters via email. Ask your client to phone to confirm your account number or to use the "verify account" option on their Internet banking site.
6. Give bank account confirmation letters to your client in person during their first visit, instead of transmitting them electronically.
7. Register your trust account as a "Public Recipient" at your bank. This option allows the client to select your firm's name and the banking details will be completed by the bank



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