THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Vantage Goldfields SA (Pty) Ltd and Others v Arqomanzi (Pty) Ltd

Today the Supreme Court of Appeal (SCA) partly upheld and partly dismissed an appeal from the Mpumalanga Division of the High Court, Mbombela (high court). The crux of the appeal is whether the high court was correct in confirming a rule nisi interdicting business rescue practitioners (practitioners) of three companies in business rescue (the Vantage companies) from implementing business rescue plans after the practitioners purported to amend such plans.

Business rescue proceedings commenced following the collapse of the Lily Gold Mine in Barberton, Mpumalanga. Business rescue plans were adopted, subject to funding being obtained. The adopted business rescue plans could, however, not be implemented as the necessary funding could not be secured. Arqomanzi, the respondent, submitted an offer to rescue the Vantage companies while another company, Real Win Investments (Pty) Ltd (RWI), also submitted an offer. The practitioners made it clear that their preference was for RWI's proposal prompting Arqomanzi to launch an urgent application to interdict the practitioners from implementing the adopted business rescue plans (the first application).

Upon hearing the first application, Roelofse AJ found that Arqomanzi was an independent creditor of Vantage Goldfields (Pty) Ltd (VGL) and the adopted rescue plans had not failed. The practitioners were ordered to convene a meeting to propose, prepare and publish amendments to the adopted plans and then convene a creditors' meeting to vote on the amended plans (the Roelofse order). The practitioners proceeded to give effect to the Roelofse order and with the cooperation of Arqomanzi published amended business rescue plans for two of the companies, Barbrook Mines (Pty) Ltd (Barbrook) and Makonjwaan Imperial Mining Company (Pty) Ltd (MIMCO), on 22 and 25 June 2020 respectively. Due diligence investigations were conducted and finalised by Arqomanzi during November 2020 and a proposed amended business rescue plan was also prepared for the third company, VGL. On 20 January 2021, the practitioners informed all the creditors of the Vantage companies that the proposed amended business rescue plans for all three companies would be circulated shortly, after which a meeting would be arranged to discuss and vote on the amended plans.

A few days later, the practitioners informed Arqomanzi that they had received a proposal from the first and second appellants, VGSA and VG Limited, who invited them to unilaterally amend the adopted plans by relying on a clause in the adopted plans. This clause permits the practitioners to amend the plans if an amendment would not be prejudicial to the affected persons and if the practitioners acted reasonably. On 15 February 2021, the practitioners informed the creditors and affected persons of the Vantage companies that they had unilaterally amended the plans in the manner proposed by VGSA and VG Limited, and that the amended plans would be implemented with immediate effect. This prompted Arqomanzi to launch urgent proceedings to stop the implementation of the amended plans and a rule nisi was granted. On the return date on 31 May 2021, it was made an order of court, declaring, *inter alia*, that the practitioners could not unilaterally amend the previously adopted business rescue plans and that any offers received be dealt with in compliance with relevant legislation and procedures pertaining to business rescue.

Upon appeal, this Court determined that the only issue to be determined was whether the high court was correct in confirming the rule nisi. The SCA found that the high court granted extensive relief that went far beyond what was sought by Arqomanzi or any other party. The order granted was too broad and the high court overstepped its judicial powers by having made declaratory orders, although none were sought.

Lastly, this Court found that there is no provision in the Companies Act for the amendment of a business rescue plan once it has finally been adopted. A clause in a business rescue plan that provides for the unilateral amendment of the plan by the practitioners is contrary to the scheme of the Companies Act. At most such a clause in an adopted plan would only allow for amendments of an administrative nature that do not affect the substance of the plan. The change relating to the identity of the funding entities is no small matter. It 'goes into the heart of seeking to resuscitate a distressed company'. The funding will affect the reopening of the mines, the payment of creditors and employees, and will determine who will retain ownership of the Vantage companies. The practitioners were not entitled to amend the adopted plans in the manner they did. In lieu hereof, the Court found that confirmation of the rule nisi by the high court could not be faulted as Arqomanzi had established a clear right capable of protection.

In the result, the SCA dismissed the appeal with regards to the confirmation of the granting of the rule nisi.

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