



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 28 November 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Ciba Packaging (Pty) Ltd t/a Cibapac v Timelink Cargo (Pty) Ltd (1156/2022) [2023] ZASCA 161 (28 November 2023)

Today, the Supreme Court of Appeal (SCA) struck from the roll, with costs, an appeal against the judgment of the Gauteng Division of the High Court, Johannesburg (the high court), which dismissed an exception raised by the appellant, Ciba Packaging (Pty) Ltd t/a Cibapac (Cibapac), to the particulars of claim of the respondent, Timelink Cargo (Pty) Ltd (Timelink).

The issue in the appeal was whether the high court's order dismissing the exception was appealable; and, if so, whether Timelink's particulars of claim were excipiable on the basis that they did not disclose a cause of action.

The thrust of Cibapac's exception was that Timelink was seeking to enforce a debt allegedly owed by Cibapac immediately before the beginning of the business rescue process under which Cibapac was placed. Since Timelink did not plead that the business rescue plan allowed for the enforcement of its alleged debt, Cibapac alleged that its particulars of claim did not disclose a cause of action. Hence, Timelink's claim was barred by the provisions of s 154(2) of the Companies Act 71 of 2008 (the Act). Cibapac argued further that its exception was appealable, because it was not competent for the court to entertain a claim such as the one advanced by Timelink in its summons, as the claim was expressly prohibited by s 154(2) of the Act.

The SCA restated the general principle that the dismissal of an exception was not appealable, save where the exception challenged the jurisdiction of the court. The SCA found that in this matter the high court had jurisdiction to determine the action brought by Timelink. It might grant or refuse the claim. It might base its refusal of the claim on the legal challenge posed by s 154(2) of the Act or on other bases. Thus, any view taken by the high court when dismissing the exception was capable of being altered by the court deciding the matter on trial. That order would be competent. The SCA found further that there was no precondition required to be fulfilled in the matter before the high court could have determined the matter. It thus had jurisdiction. As the dismissal of the exception in this case had nothing to do with jurisdiction, the SCA found that it was not appealable.

Given the findings on appealability, the SCA found that it was not necessary to decide whether the exception was good in law or not.

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