



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: 20 December 2024

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

Macneil Plastics (Pty) Ltd v Van den Heever N O and Others (906/2023) [2024] ZASCA 181 (20 December 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment, where it dismissed an appeal with costs, against an order of the Gauteng Division of the High Court, Pretoria (the high court). This matter, brought by Macneil Plastics (Pty) Ltd (Macneil Plastics), concerned the legal effect of payments made after the commencement of liquidation and the impact of subsequent business rescue proceedings.

On 28 October 2015, the Gauteng high court placed Ronnie Dennison Agencies (Pty) Ltd t/a Water Africa Systems (Pty) Ltd (the Company) under final liquidation as it was unable to pay its debts. Shortly after the liquidation order, on 2 November 2015, the Company paid R407 010.30 to Macneil Plastics, as one of its creditors. On 9 December 2015, the high court granted an order suspending the liquidation proceedings and placing the Company under business rescue in terms of s 131 of the Companies Act 71 of 2008 (the new Companies Act). However, on 12 April 2016, the high court reinstated the liquidation proceedings, effectively ending the business rescue process.

The appointed liquidators applied to declare the payments made to Macneil Plastics void under s 341(2) of the old Companies Act, which invalidates dispositions (previous sales or transfers of assets) made after the commencement of liquidation. The high court and, subsequently, the full court both held that the payments were void. The appeal is with special leave granted by this Court.

The SCA confirmed that under s 341(2) of the old Companies Act, any payments made after the commencement of liquidation are void unless a court orders otherwise. Here the Company was in final liquidation when the payments were made; the Company's inability to pay its debts had been established; and the payments to Macneil Plastics constituted a disposition of property made in contravention of the law. The Court emphasised that validating such payments would undermine the principle of *concursum creditorum*, which requires that creditors' claims be dealt

with in a manner that protects the interests of all creditors collectively. Creditors must be paid in the order of their preference.

The SCA rejected Macneil Plastics' argument that business rescue proceedings automatically replaced the liquidation process. The SCA held that under s 131(6)(b) of the new Companies Act, business rescue proceedings 'suspend' liquidation proceedings, suspension does not terminate the liquidation order or invalidate the legal consequences of liquidation, such as void payments. The Court emphasised that the word suspend means 'to halt temporarily' and does not amount to setting aside or nullifying the liquidation order. The Court concluded that interpreting s 131(6) to terminate liquidation proceedings would lead to an absurd result. The clear language of the provision only provides for the suspension of liquidation proceedings, not their termination.

As a result, the SCA dismissed the appeal with costs.

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