



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Superior Macadamias (Pty) Ltd and Others

v

Emvest Agricultural Corporation (Mauritius) Ltd and Another

Today the Supreme Court of Appeal handed down judgment by electronic means in four appeals which were heard together. Four winding up applications were heard by Nyathi J in the Gauteng Division of the High Court, Pretoria (the high court). The first and second respondents, Emvest Agricultural Corporation (Mauritius) Ltd (Agricultural) and Emvest Food Products (Mauritius) Ltd (Products) applied for liquidation orders against each of the first four appellants: Superior Macadamias (Pty) Ltd (Superior), Emvest Evergreen (Pty) Ltd (Evergreen), Emvest Foods (Pty) Ltd (Foods) and Emvest Barvale (Pty) Ltd (Barvale). All four were placed in final liquidation by the high court and appealed to the Supreme Court of Appeal against these orders.

The four appeals had lapsed and an application was brought to reinstate them. The Supreme Court of Appeal held that the prospects of success were decisive in determining them.

Agricultural based its *locus standi* on the provision in s 345(1)(a) read with s 344(f) of the Companies Act (the old Act) to the effect that, if a demand for payment of a debt is made in a particular way and payment does not eventuate within a certain period, that company is deemed to be unable to pay its debts. On the other hand, Products based its *locus standi* on it being a shareholder in the companies and that it was just and equitable that the companies should be wound up. Its application did not relate to Superior since it was not a shareholder in Superior.

The indebtedness of the four appellants was disputed. In particular, it was clear that the case had not been made out that Superior was indebted to Agricultural. As a consequence, Agricultural lacked the *locus standi* to invoke the provisions of s 345 of the old Act against Superior. That having been the only basis on which it might be wound up, its prospects on appeal were overwhelming and the Supreme Court of Appeal reinstated the appeal, upheld it and set aside the final liquidation order, substituting an order that the application against Superior be dismissed with costs.

The prospects of appeal of the other three companies were then considered. In each case, the company in question had a sole director who was not resident in the Republic. Nor were there any offices in the Republic from which the companies were run or any local management. On the grant of provisional liquidation orders and the appointment of provisional liquidators, the directors had purported to continue to manage the companies. In two of the companies, amounts had been paid since they were placed in provisional liquidation but the directors had refused to disgorge these. In all cases the directors had refused to produce books and documents of the companies as required by the insolvency legislation. They had likewise failed to comply with other requirements of the Companies Act 71 of 2008.

The Supreme Court of Appeal held that it was just and equitable that each of them be placed in final liquidation and accordingly declined to reinstate the appeals. As such the final orders granted by the high court stood. An associated company which had vigorously supported the appeals was directed to pay the costs in respect of those three matters in both the high court and the Supreme Court of Appeal.