



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

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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

Standard Bank of South Africa Ltd v Swartz and Others (Case no 1175/2022) [2024] ZASCA 28 (22 March 2024)

Today the Supreme Court of Appeal upheld an appeal from a judgment of the Western Cape Division of the High Court, Cape Town (the high court) in which Goliath DJP considered three related applications brought by the Standard Bank of South Africa Ltd (the bank). The first was an application for the liquidation of Pygon Trading CC (Pygon). The second for the liquidation of JCICC Network 100 CC (JCICC). And the third sought the sequestration of the joint estate of Dr Jerome Benjamin Swartz and Mrs Lucille Swartz (the joint estate). Dr Swartz (Swartz) was the guiding mind of the two close corporations in question (the CCs) and of other entities.

During the course of litigation, provisional liquidation orders in respect of the CCs were granted as was a provisional sequestration order for the joint estate. After the latter order was granted, Swartz sought leave to intervene in the Pygon application in order to launch an application for the business rescue of Pygon. The application to intervene was never adjudicated on. The disputes between the parties were settled and the settlement agreement was made an order of court by Goliath DJP. The essence of the settlement and order was that the application for business rescue was withdrawn. It was agreed that payment of R18 million was to be made to the bank. If made by a certain date, the provisional orders in question would be discharged on the return date. If not, the provisional orders would be made final.

The R18 million was not paid on due date or at all. On the return date, the bank requested that the consent order be put into effect by way of final liquidation orders in respect of the CCs and a final sequestration order in respect of the joint estate. However, after reserving judgment, Goliath DJP placed Pygon in business rescue and granted allied orders. She also discharged the provisional liquidation order in respect of JCICC as well as the provisional sequestration order in respect of the joint estate. Her judgment did not mention the settlement agreement or the consent order which she had previously granted.

The Supreme Court of Appeal held that Goliath DJP had failed to appreciate that the application for business rescue had never been launched because Swartz had not been given leave to intervene and, if it had been launched, it had been withdrawn in the settlement agreement. She accordingly granted an order on a non-existent application. In addition, she failed to appreciate that the *lis* between the parties concerning the liquidation and sequestration applications had been compromised and that, as a result, she had no jurisdiction to deal with the merits of those applications. She thus granted orders concerning those applications where she had no jurisdiction to do so.

The Supreme Court of Appeal thus set aside the orders of the high court and substituted orders finally liquidating the two CCs and finally sequestrating the joint estate.

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