



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

Dr Waa Gouws (Johannesburg) v HR Computek (Pty) Ltd and Others (909/2023) [2025] ZASCA 103 (2025)

Today the Supreme Court of Appeal (SCA) handed down judgment, wherein the appeal was dismissed with costs, against an order granted in the Gauteng Division of the High Court, Johannesburg (high court).

On 21 November 2019, the high court, at the instance of the appellant, Dr Waa Gouws (Johannesburg) (Pty) Ltd (Dr Waa Gouws company), provisionally wound up the first respondent, HR Computek (Pty) Ltd (HR Computek) after it struggled to meet its debts to the appellant. The provisional liquidation order was made final on 6 January 2020 and the third, fourth and fifth respondents were appointed as joint liquidators. In July 2021, HR Computek brought an application to rescind both the provisional and final winding-up orders (the rescission application), predicated on the alleged fraudulent misrepresentation by Dr Gouws's company, acting through its director, Ms Yolandi Ann Mes (Ms Mes). In addition, HR Computek averred that the applications for its winding-up were never received by it. It was therefore unaware of the application, and as a result, it lost an opportunity to oppose the winding-up application.

In opposing the rescission application, Dr Gouws's company brought a challenge by way of raising a point *in limine* against HR Computek's *locus standi*, arguing that only a liquidator, creditor or member could bring a rescission application as envisaged in s 354(1) of the Companies Act 61 of 1973 (the Companies Act). Dr Gouws's company maintained that s 354(1) conferred exclusive standing on liquidators, creditors or members to apply for a stay or rescission of winding-up orders. Furthermore, Dr Gouws's company argued that the board of directors became defunct on presentation of the winding-up application under s 348 of the Companies Act.

Conversely, HR Computek argued that neither the statute nor its purpose ousted common law rights: directors had inherent 'residual powers' to protect the company's interests even after liquidation. HR Computek further contended that no rule or legislative intent required

liquidator consent for a rescission application. The high court, per Coppin J, dismissed the point *in limine* raised by Dr Gouws's company, holding that HR Computek's directors retained residual powers at common law and under Rule 42(1)(a) of the Uniform Rules of Court to oppose or rescind winding-up orders without liquidator co-operation. The high court granted leave to appeal to this Court only on the question of the *locus standi* of HR Computek.

This Court held that, under common law and Rule 42(1)(a), a company retains its juristic personality after a winding-up order and directors retained residual powers to apply for rescission under common law and Rule 42(1)(a) without invoking s 354(1) of the Companies Act. The Court reasoned that s 354(1) plainly granted standing to liquidators, creditors or members but did not expressly exclude other 'affected' parties from invoking Rule 42(1)(a) to set aside the orders. The Court concluded that the high court correctly followed the authorities of *Storti v Nugent and Others* and *Praetor and Another v Aqua Earth Consulting CC*, which recognised that the company in liquidation, represented by its board of directors, retained the residual power to oppose the final winding-up order and may apply for the rescission of a winding-up order. The Court further held that there was no logical basis to require consent from the liquidators, as directors owe fiduciary duties to the company, while liquidators focused on asset preservation under ss 386 to 370 of the Companies Act.

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

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