



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: 30 September 2021

Status: Immediate

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Pride Milling Company (Pty) Ltd v Bekker NO and Another (Case no 393/2020) [2021] ZASCA 127 (30 September 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment and dismissed an appeal by the appellant, Pride Milling Company (Pty) Ltd, thereby upholding the order of the Gauteng Division of the High Court, Pretoria (high court).

The issue before the SCA was whether it would be appropriate for a court to validate dispositions made by a company that was being wound-up. And more particularly whether a court could validate dispositions made after a provisional winding-up order had been granted but prior to the grant of a final liquidation order.

Irfan Sohail Trading (Pty) Ltd (Irfan), a private company carrying on business as a general trading store at Ga-Masha Village in Limpopo, was placed under provisional winding-up at the suit of Eendag Meule Bothaville (Pty) Ltd (Eendag Meule). The application for the liquidation of Irfan – presented to the court on 5 May 2017 – was founded on the contention that Irfan was indebted to Eendag Meule in the sum of R144 165 in respect of goods sold and delivered for which Irfan had failed to pay because it was unable to pay its debts as contemplated in s 345(1) of the Companies Act 61 of 1973 (the Companies Act). Irfan was placed under final liquidation on 14 September 2017. During the period 7 June 2017 and 8 August 2017 Irfan effected four payments to the appellant amounting to R295 000.

A dispute subsequently arose between the appellant and the respondents, Messrs Marthinus Jacobus Bekker and Edward Gnanapargarsum Sebastian NNO, who were appointed as Irfan's joint liquidators. The respondents questioned the propriety of the four payments made to the appellant, contending that they constituted void dispositions and were thus hit by the prohibition in s 341(2) of the Companies Act. Consequently, the joint liquidators asserted that these payments were liable to be set aside because they were made after the effective date of the winding-up application, ie 5 May 2017.

The respondents instituted legal proceedings, citing the appellant as the respondent, in which they sought an order directing the appellant to repay the amount of R295 000 together with interest, and ancillary relief. The appellant resisted the application and also brought a counter-application in which it sought an order validating the impugned dispositions. The high court granted the relief sought in the main application with costs but dismissed the counter-application with costs. Before the high court it was common cause between the parties that although the provisional winding-up order against Irfan was granted on 29 June 2017, the effective date of Irfan's winding-up was in actual fact 5 May 2017.

On appeal, the SCA observed that the high court exercised a discretion in the true sense which meant that a court exercising such a discretion could properly come to different decisions having regard to a wide range of equally permissible options available to it. All of the dispositions in issue were made after the lodgement to the court, on 5 May 2017, of the application for Irfan's winding-up and thus after the effective date. The first disposition was made on 7 June 2017, some 21 days before the grant of the provisional order on 29 June 2017, and a month after the effective date. The next three dispositions were made after the grant of the provisional order but before the final order of liquidation on 14 September 2017.

The SCA held that s 341(2) is clear and unambiguous. Its provisions unequivocally decree that every disposition of its property by a company being wound-up is void. And that the mischief that s 341(2) seeks to obviate is to prevent a company being wound-up from dissipating its assets and thereby frustrating the claims of its creditors.

The SCA held further that as to the rider to s 341(2) of the Companies Act, its manifest purpose was to give a court an unfettered discretion to decide whether or not to direct otherwise and thus reverse the default position decreed by the legislature. This discretion was only exercisable in relation to payments made between the date of lodging of the application for winding-up and the grant of a provisional order. Once a provisional winding-up order has been granted the court has no discretion to order otherwise.

Finally, the SCA held that the high court had properly exercised its discretion in relation to the payment effected on 7 June 2017 and, thus, there was no basis to interfere on appeal. Hence the appeal was dismissed with costs, including the costs of two counsel.