



**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 21 May 2021

STATUS Immediate

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

Oakbay Investments (Pty) Ltd v Tegeta Exploration and Resources (Pty) Ltd
and Others (1274/2019) [2021] ZASCA 59 (21 May 2021)

The SCA today dismissed an application for leave to appeal against the decision of the Gauteng Division of the High Court, Pretoria in this matter. Oakbay Investments applied to the High Court for the removal of Messrs Knoop and Klopper as business rescue practitioners (BRPs) in respect of Tegeta Resources a subsidiary of Oakbay. The application was based on an alleged conflict of interest on the part of the BRPs in their treatment of an inter-company loan by Tegeta to its wholly-owned subsidiary Optimum Coal Mines (OCM). It was contended that in principle the same BRPs should not be appointed to two or more companies in the same group, at least where there were inter-company transactions that might be the subject of dispute. Alternatively, it was contended that there was a real conflict of interest in this case because the BRPs could not at one and the same time both advance the claim on behalf of Tegeta and dispute it on behalf of OCM.

The court held that the argument in principle had been rejected by the SCA last November in another case involving the same BRPs and two other companies in the Oakbay Group. It was not asked to revisit that decision. As

regards the secondary argument the SCA held that the BRPs had treated the claim in the same way in both Tegeta and OCM by describing it as disputed. There were facts at the disposal of the BRPs that provided a basis for this view. However, no immediate conflict had arisen and there was no reason to believe that the issue could not be resolved in due course as the business rescue of the two companies and the entire group of companies proceeded. In the circumstances there was no reasonable prospect of the decision by the high court being overturned on appeal and the application for leave to appeal was dismissed with costs.