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
Date:	28 March 2013
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.

IMPERIAL BANK LTD v HENDRICK JACOBUS RUST BARNARD NO

The supreme court of appeal (SCA) today dismissed an appeal against the order of the South Gauteng High Court, Johannesburg, granting an amendment to particulars of claim in which the plaintiffs were not properly cited.

The respondents (plaintiffs a quo) who are the appointed joint liquidators in the estate of Pro Med Construction CC were cited in their own names in the particulars of claim in an action in which the appellant (Imperial Bank) was sued on a contract concluded between Pro Med and the appellant. The respondents had applied and were granted an order amending the particulars of claim so as to reflect that they were bringing the action in the name and on behalf of Pro Med as required by section 386(4) of the Companies Act 61 of 1973, which empowers a liquidator to bring or defend in the name and on behalf of the liquidated company any action or other legal proceedings of a civil nature.

On appeal the appellant argued that the granting of the amendment proposed by the respondents would amount to a substitution of parties, giving rise to a new claim, alternatively a new cause of action and in so doing deprive the appellant the opportunity of raising a valid defence of prescription. This is because, the appellant argued, prescription had not been duly interrupted by the service of the summons on the appellant because the respondents were not the correct plaintiff.

The SCA upheld the decision of the court a quo and reasoned that: firstly, it was clear from a reading of the summons and the particulars of claim that the respondents were not acting in their personal capacities; secondly, the amendment did not amount to a substitution of a new party or the introduction of a new cause of action; and thirdly, the amendment in fact corrected a misnomer where it was unclear in what capacities the respondents were acting. The SCA also held that prescription had been duly interrupted by service of the summons on the appellant and thus no prejudice would result from the granting of the amendment.