



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
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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.

**GAVIN CECIL GAINSFORD NO & OTHERS V TANZER TRANSPORT (PTY)
LTD & OTHERS**

The Supreme Court of Appeal (SCA) today unanimously upheld an appeal against a decision of the South Gauteng High Court to dismiss an application for an order declaring that certain payments made to Tanzer Transport (Proprietary) Limited (Tanzer) were voidable dispositions as envisaged in s 341(2) of the Companies Act 61 of 1973 (the Act).

Tanzer was a sub-contractor of State Logistics (Proprietary) Limited (State Logistics), providing the latter company with transportation services. State Logistics experienced various financial problems and a special resolution to commence a creditor's voluntary winding-up was passed and duly registered in early 2009, at which point the winding-up of the company commenced. Thereafter, the company made payments totalling R14 231 61.86 to Tanzer. It was these payments that the liquidators sought to have declared void.

Tanzer resisted the application on the basis that the liquidators lacked locus standi insofar as the main application was brought in their own names. Further, Tanzer argued that the creditors' resolution upon which the liquidators relied for such authority applied only to amounts owing to the company by debtors and did not apply to proceedings to recover voidable dispositions. Thirdly, Tanzer objected to the application on the grounds that the liquidators ought to have proceeded by way of trial action, there being foreseeable and material disputes of fact between the parties in relation to the question whether the company was in fact insolvent at the time of its winding-up. On appeal, the SCA found that the high court erred in dismissing the application on these grounds; that liquidators acting in their representative capacities, as the liquidators purported to do in this case, *are* accorded locus standi; that the phrasing of the creditors' resolution was broad enough to encompass a debt arising by virtue of a voidable disposition; and that there was no dispute of fact regarding the insolvency of the company.

Turning to the merits of the application, the SCA held that even where a disposition was alleged to constitute 'a mere administrative rectification', the fact that the effect thereof was to remove a claim from the concursus and settle it in full in favour of one creditor concerned, to the prejudice of the general body of creditors, is impermissible. In the result, the liquidators were held to be entitled to the relief they sought.

In the second application, Tanzer sought an order setting aside the winding-up of the company, which application the SCA dismissed.