



THE SUPREME COURT OF APPEAL
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.

Lancelot Stellenbosch Mountain Retreat v S M Gore NO and others (108/2014) [2015] ZASCA 37 (25 March 2015)

The Supreme Court of Appeal (SCA) today delivered a judgment dismissing with costs an appeal against the judgment of the Western Cape High Court, Cape Town granting an order for the final liquidation of the appellant.

The issue before the SCA was whether the liquidators of Queensgate Wealth (Pty) Ltd (in liquidation) (Queensgate Wealth) had locus standi to bring an application for the winding-up of the appellant. The issue arose in the following circumstances.

On 14 May 2012 the liquidators brought an application in the Western Cape High Court, Cape Town for the liquidation of the appellant on the basis that it was unable to pay its debts and was factually insolvent. The appellant opposed the application and challenged the liquidators' locus standi to launch the liquidation proceedings against it contending that they were not creditors as the debt on which they relied, had prescribed.

The evidence established that Black River Development (Pty) Ltd (Black River), one of the companies in the Queensgate Group owed Queensgate Wealth a sum of R6 480 000 in terms of an oral loan agreement. The terms and conditions of that loan agreement were in dispute, in particular the date when it became due for repayment. On 23 September 2008, and shortly before its liquidation, Black River concluded a written agreement of assignment and delegation with the appellant and Queensgate Wealth. In terms of that agreement, as from 6 January 2009 Black River assigned and delegated to the appellant all of its obligations arising from an amount of R6 480 000 owed by it to Queensgate Wealth in terms of the oral loan agreement.

Queensgate Wealth was liquidated on 30 November 2009 and by that time, the amount of R6 480 000 owing by Black River to it still remained unpaid. On 26 April 2010 the liquidators addressed a letter of demand to the appellant in terms of s 345(1)(a), the Old Companies Act which was served on it at its previous registered address, and the then current registered address on 3 and 5 May 2010, respectively demanding payment of the sum of R6 480 000. The appellant ignored the letter of demand and when it received the winding-up application, it raised prescription as a defence.

The high court rejected the appellant's prescription defence. It found that the appellant's failure to respond to the liquidators' letter of demand constituted a tacit acknowledgement of debt and that such acknowledgement had interrupted the running of prescription. The high court held that the debt of R6 480 000 could not have prescribed as there had been an interruption of the running of prescription. It accordingly granted a final order of the liquidation of the appellant.

The appellant appealed to the SCA and challenged the correctness of the high court's finding that the running of prescription had been interrupted by the appellant's tacit acknowledgement of debt. The SCA dismissed the appeal. It held that the appellant had failed to establish the date on which the loan between Queensgate Wealth and Black River became due for the purposes of establishing the inception of the period of prescription. The SCA accordingly held that the high court correctly granted a final liquidation order.