



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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STATUS Immediate

Masibuyisane Services (Pty) Ltd v Eqstra Corporation (Pty) Ltd (Case no 1245/2019) [2020] ZASCA 159 (1 December 2020)

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.

Today the Supreme Court of Appeal (the SCA) dismissed the appeal of the appellant, Masibuyisane Services (Pty) Ltd, against the decision of the Gauteng Division of the High Court, Pretoria (the High court)

The respondent, Eqstra Corporation (Pty) Ltd (Eqstra), obtained in 2014 a default judgment against the appellant, wherein the appellant was cited as Masibuyisane CC, in respect of a suretyship in the respondent's favour. The appellant approached the SCA for the rescission of the default judgment on the basis that the suretyship, on the strength of which the default judgment was granted, was invalid because no Close Corporation existed, the appellant having prior to the judgment having converted itself into a company.

Masibuyisane Services CC, a close corporation (CC), was incorporated in 1998 then converted into a company in 2006. On 23 October 2007 a resolution was brought into being which bore the masthead: 'Masibuyisane Services CC' and authorised one of the members to sign all documents in relation to 'the above company' although what was earlier described was a CC not a company. On the same day, 'Masibuyisane CC' signed a suretyship in favour of Maze Products (Pty) Ltd (Maze). Notably on that date the form of the appellant was that of a company and not a CC. In 2009 Masibuyisane (Pty) Ltd re-converted itself into a CC; and subsequently in 2013 Masibuyisane CC re-re-converted itself into a company. Thereafter Eqstra sued Maze and its sureties. Eqstra cited 'Masibuyisane CC' as the fourth defendant and service was effected on the domicilium stated in the suretyship. Default judgment was granted and a writ of execution was issued citing 'Masibuyisane CC'. The sheriff issued a nulla bona return of service dated which recorded that it was served at the domicilium stated in the suretyship but the sheriff was told that the 'Business has changed to Masibuyisane (Pty) Ltd'. In 2018, the writ was again re-issued now citing 'Masibuyisane (Pty) Ltd, (previously Masibuyisane CC)'. The execution of the writ was effected. The appellant then launched a rescission application which was dismissed by the High Court.

The SCA held that the legislation governing the conversion of corporate identity includes the Close Corporations Act 69 of 1984, the Companies Act 61 of 1973 (1973 Companies Act) and the Companies Act 71 of 2008. These statutes regulate the manner and legal consequences of conversions by a CC into a company and vice versa, all of which reflect the singularity of juristic personality and the absence of any multiple identities in consequence of a conversion one way or the other. The SCA further upheld the findings of the High Court that upon the conversion of a CC to a company and vice versa, the very same entity continues to exist. The form of the entity, as the language, makes plain in s 29D(1)(c) of the 1973 Companies Act, changes, but the entity that is capable of undertaking obligations is the same. The language in s 29D(1)(c): 'But in the form of a company' does not seem

to alter the essential point which is this: *a juristic person that has a continued existence may assume an obligation even when the expression which is given to the assumption of that obligation takes place in the form of a now superseded CC.*'

The SCA held that it must be noted that important information explaining why the resolution and the suretyship alluded to the CC when the persons responsible for creating the documents knew full well that the CC had been converted into a company were not put on record. Indeed, it was plain that the rationale for that conduct has been deliberately obscured. Nonetheless, whether or not their conduct was attributable to a mistake on the part of the appellant or its directors and/or members, does not matter much because the statutes make provision for an absolute absence of any hiatus or interruption of juristic personality upon conversions one way or the other.

The SCA, therefore, held that the juristic persona remains the same regardless of the corporate form upon conversion from CC to company or vice versa. An incorrect description of the juristic persona is not a ground to compromise a contract concluded between it and another person. The suretyship was therefore valid and enforceable. In the circumstances, the appeal was dismissed with costs.