



**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 3 June 2021

STATUS Immediate

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

Van Zyl v Auto Commodities (Pty) Ltd (279/2020) [2021] ZASCA 67 (3 June 2021)

The SCA today dismissed an appeal against the decision of the Northern Cape Division of the High Court, Kimberley in this matter. A company called Blue Chip Mining and Drilling (Pty) Ltd was supplied with petroleum products by Auto Commodities (Pty) Ltd on credit and obtained a deed of suretyship from Mr van Zyl. Blue Chip went into business rescue shortly afterwards and a business rescue plan involving the winding down of the company was agreed to and implemented. Auto Commodities received a dividend under the plan and then sued Mr van Zyl under the suretyship for the balance of the claim. It succeeded in the high court and leave to appeal was granted.

The argument on behalf of Mr van Zyl was that as a result of the implementation of the business rescue plan there was no longer a debt owing by Blue Chip to Auto Commodities and accordingly his liability under the suretyship had been discharged. He relied for this on the provisions of s 154(2) of the Companies Act, 2008. In the first instance the SCA held that the terms of the deed of suretyship were such as to maintain Mr van Zyl's

liability notwithstanding the discharge of Blue Chip. However, the court went on to deal with the legal question of the effect of the implementation of a business rescue plan on the liability of a surety. The issue had attracted some confusion and controversy and it was desirable that it be determined authoritatively.

The court drew a distinction between the provisions of s 154(1), where the plan provided for debts to be discharged and the creditor acceded to the plan, and s 154(2), where after the approval and implementation of the plan the creditor could not enforce any debt pre-dating the business rescue except to the extent provided in the plan. It held that the proper interpretation of s 154(1) is that the section provides a purely personal defence to the company, but does not affect the liability of the surety. Accordingly Mr van Zyl remained liable under the deed of suretyship and the appeal was dismissed with costs.