



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Reportable

Case no: 1105/2024

In the matter between:

BLUE LABEL DISTRIBUTION (PTY) LTD

APPELLANT

and

CHAVONNES BADENHORST ST CLAIR

COOPER N O

FIRST RESPONDENT

TIRHANI SITOS DE SITOS MATHEBULA N O

SECOND RESPONDENT

CAPE BASIC PRODUCTS (PTY) LTD

(IN LIQUIDATION)

THIRD RESPONDENT

Neutral citation: *Blue Label Distribution (Pty) Ltd v St Clair Cooper N O and Others*
(1105/2024) [2026] ZASCA 61 (29 April 2026)

Coram: NICHOLLS, MOLEFE and KOEN JJA and STEYN and
GOVINDJEE AJJA

Heard: 16 March 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website, and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 29 April 2026.

Summary: Companies Act 61 of 1973 – liquidation – whether liquidators can rely on

s 341(2) of the Companies Act to reclaim payments – amounts alleged to have been repaid after liquidation – whether appellant is the true disponent of the void payments.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Maier-Frawley J sitting as court of first instance):

The appeal is dismissed with costs.

JUDGMENT

Nicholls JA (Molefe and Koen JJA and Steyn and Govindjee AJJA concurring):

[1] The issue in this appeal is whether the Gauteng Division of the High Court, Johannesburg (the high court) erred in declaring void a series of payments made by a company after it had been provisionally liquidated. The liquidators of Cape Basic Products (Pty) Ltd (CBP) launched an application to recover eight payments, totalling R347 531.81 made to Blue Label Distribution (Pty) Ltd (Blue Label), on the basis that they were void dispositions as contemplated by s 341(2) of the Companies Act 61 of 1973 (the Act). The high court (per Maier-Frawley J) found in favour of the liquidators of CBP and ordered Blue Label to repay the amount plus interest. The matter is before this Court with the leave of the high court. Blue Label is the appellant and the liquidators of CBP and CBP in liquidation are the respondents.

[2] At the outset it is necessary to set out the relevant provisions of the Act. Section 341(2) of the Act provides that:

‘Every disposition of its property (including rights of action) by any company being wound-up and unable to pay its debts made after the commencement of the winding-up, shall be void unless the Court otherwise orders.’

Section 341(2) of the Act should be read with s 348 which provides that:

‘A winding-up of a company by the Court shall be deemed to commence at the time of the

presentation to the Court of the application for the winding-up.’

The time of the presentation to the court of the application for winding-up is when it is lodged with the registrar of the court, provided, of course, that the application is subsequently granted.¹

[3] From the above it is clear that the timing of the payments is the determining factor as to whether s 341(2) of the Act is applicable. CBP was placed under provisional liquidation on 2 March 2020 and final liquidation on 30 June 2020. The liquidators were appointed as provisional liquidators on 17 June 2020. The eight payments to Blue Label were made on 9 March 2020; 8 April 2020; 17 April 2020; 8 May 2020; and four on 2 June 2020. This was in the period after the provisional liquidation order had been granted but before the liquidators had been appointed.

[4] In *Pride Milling Company (Pty) Ltd v Bekker NO and Another*², this Court decisively found that dispositions made after a provisional winding-up order has been granted but before the grant of an order of final liquidation, cannot be validated by a court.³ Once a provisional liquidation occurs all property in the company is under the control of the Master. Accordingly, the discretion which a court has in terms of the proviso in s 341(2) of the Act to validate dispositions, is applicable only to payments made after the presentation of the liquidation application but prior to the date of the provisional liquidation, the so-called twilight zone.⁴ The validation discretion is primarily exercised having regard to the interests of the *concursum creditorum*.⁵

[5] As all the payments in this matter were made after CBP had been provisionally liquidated on 2 March 2020, counsel for Blue Label correctly disavowed any reliance on the proviso to s 341(2) of the Act. Therefore, this appeal does not concern a court’s

¹ *Ellerine Brothers (Pty) Ltd v McCarthy Ltd* [2014] ZASCA 46; 2014 (4) SA 22 (SCA) para 6.

² *Pride Milling Company (Pty) Ltd v Bekker NO and Another* [2021] ZASCA 127; [2021] 4 All SA 696 (SCA); 2022 (2) SA 410 (SCA) (*Pride Milling*).

³ *Ibid* para 18.

⁴ *Ibid*.

⁵ It should be noted that factors such as bona fides, honest intentions, prejudice suffered by the defendant have largely been subsumed by whether the disposition would benefit the collective interest of *concursum creditorum* or not. See Wikus De Wet ‘Void post-liquidation dispositions by companies and the validation of such dispositions in terms of section 341(2) of the Companies Act 61 of 1973’ *The Journal of South African Law*.

discretion to order the validation of payments under s 341(2).

[6] Blue Label identified two questions for determination in this appeal:

- (a) Are the liquidators entitled to rely on s 341(2) of the Act when the amounts were repaid to CBP before the application to declare the payments void had been instituted?
- (b) If so, was Blue Label the true disponent or was it merely acting as a collecting agent for its suppliers?

The high court answered the first question in the affirmative and, as regards the second, held that Blue Label was the true disponent.

Background

[7] Blue Label is one of the largest national distributors of pre-paid virtual products. It does so through a network of retailers who sell the products to customers. The virtual products include airtime, data, electricity, bill payments and ticketing. The distribution process makes use of terminal equipment, a vending machine solution, through which customers purchase the virtual products or settle accounts. Blue Label developed the software for the 'terminal equipment' which is either sold to a retailer, or leased (as in the case of CBP).

[8] On 19 September 2019, Blue Label entered into a written agreement with CBP. The written terms of the agreement constitute the entire agreement. It allowed CBP to sell virtual products to consumers, bill payments, airtime, data, electricity, betting and ticketing, via its terminal equipment. Blue Label is described as the 'Company' and CBP, the retailer, is described as the 'Outlet'. In terms of the agreement, Blue Label would supply pre-paid stock to CBP. Pre-paid stock is defined in the agreement as any pre-paid vouchers by the networks. These are supplied by Blue Label.⁶

[9] The agreement details how the pre-paid stock is supplied and paid for, as follows:

⁶ Clause 1.10 which reads, 'Pre paid Stock' means any pre-paid voucher by the respective Networks namely: Vodacom, MTN, Cell C, and Telkom Pre-paid services, which are supplied by the Company.

'5. SUPPLY OF THE PRE-PAID STOCK

5.1 The pre-paid stock is supplied by the Company via the following procedure:

5.1.1 The Outlet shall deposit money into the Company's Bank account. Credit will only be loaded to the Outlet account once the Company has confirmed the details of the deposit.

5.1.2 Once the Outlet's account is in credit the Terminal Equipment will via electronic means through a host computer system dial the server automatically for an order.

5.1.3 The server will transmit pin numbers to the Terminal Equipment and debit the Outlet's account. An invoice will automatically be generated.

5.1.4 Once the minimum stock levels have been reached, the Terminal Equipment automatically requests another order, and if the Outlet's account is in credit, the order will be delivered.

...

6 PAYMENT

6.1 The Outlet shall effect payment to the Company in the following manner:

6.1.1 Upon the presentation of an invoice, for the supply, delivery and installation of the Terminal Equipment.

6.1.2 By means of a bank transfer or deposit into the Company's bank account for the Pre-paid stock.

6.2 All monthly service charges, if applicable, shall be paid by the Outlet monthly in arrears, on or before the 7th day of each month.

6.3 Notwithstanding the above provisions, the Company may at any time, on reasonable written notice, vary its invoicing and payment procedures and requirements.

...'

[10] Ms Janse Van Rensburg (Ms Van Rensburg), a chartered accountant employed as a shared executive by Blue Label, was the deponent to Blue Label's answering and supplementary answering affidavits. She contended that CBP was required to deposit funds into a ring-fenced 'deposit account' held by Blue Label exclusively for CBP. These funds did not form part of Blue Label's general account and were treated as a current liability in Blue Label's books. The deposit was not payment for the purchase of stock but rather a payment for the ability to sell products in return for a commission. Until a customer purchased a product and paid CBP, Blue Label had no entitlement to use the deposited funds. CBP could withdraw unused funds at its discretion, and upon termination of the agreement any remaining balance

was refundable. The credit balance thus held remained an asset of CBP. These contentions of Ms Van Rensburg are not recorded in the written terms of the agreement.

[11] Ms Van Rensburg provided a practical example of how the relationship worked. If a retailer, like CBP, believed that consumers were likely to purchase products to the value of R10 000, it would pay this amount into Blue Label's distribution account. The terminal equipment of CBP would have a credit of R10 000, thus allowing CBP to sell virtual products to that amount. If a customer purchased a product, for example airtime, for the sum of R2 500, the customer would pay CBP directly. This meant that CBP would have a credit of R12 500.00 (the R2 500 plus the R10 000 in the terminal equipment) for the remaining period of that day. Again, this explanation is in conflict with the express terms of clause 5 of the agreement regarding the acquisition of pre-paid stock.

[12] On a daily basis at 23h59, Blue Label's system would automatically generate an invoice for the products sold that day. The value of the sales would then be deducted from the money that CBP had deposited into the deposit account, and transferred into the relevant trading account. After reconciliation, Blue Label would debit CBP's trading account for the face value of the transaction and pay that amount to the relevant supplier. Blue Label would not deduct its commission from the deposited funds. Instead, it would receive commission from the supplier, after payment of the full transaction value. Blue Label would, in turn, pay CBP its agreed commission, which was credited to CBP's trading balance.

Were the dispositions repaid prior to the application being launched?

[13] The payments were made by CBP to Blue Label. It is undisputed that no monies were repaid by Blue Label to CBP. Instead, Blue Label submits that because the customers paid CBP for the products, the amounts claimed as dispositions by CBP to Blue Label were repaid prior to the launching of the application. Blue Label argues that no money was lost, or disposed of, as a result of the eight transactions. Instead, CBP's asset value remained the same as it was before it paid the deposit; after it paid the deposit; and, before any sale took place. The only change in its asset value would have been an increase from the time a customer bought, for example airtime, until the

time Blue Label effected the debit at 23h59 the same day. It contends that 'to dispose' ordinarily means to get rid of something. Accordingly, for there to be a disposition the company which made the disposition must have 'got rid' of its property and its assets diminished thereby.

[14] Blue Label did not, as in the high court, persist with the contention that the payments were not 'dispositions'. It confirmed that the real issue is whether the payments made by CBP to Blue Label amounted to dispositions as envisaged by s 341(2) in the particular circumstances where the estate of CBP had not been diminished by the payments. This is because the system operated on the basis that customer payments flowed to the third-party suppliers, with Blue Label and CBP remunerated by commission, and with CBP's deposited funds remaining ring-fenced and treated as its asset until properly debited following completed sales.

[15] In sum, the contention is that payments by CBP into Blue Label's account did not diminish CBP's property in any way because the products had already been pre-paid. Thus, when a customer purchased pre-paid airtime, and paid CBP, the same amount would be debited to CBP's trading account with Blue Label and the same amount would be paid to the suppliers by Blue Label. CBP's asset value was restored to what it was before the payment had been made to Blue Label.

[16] What constitutes a 'disposition' is not defined in the Act. Section 2 of the Insolvency Act 24 of 1936 (Insolvency Act) however provides that disposition, 'means any transfer or abandonment of rights to property and includes a sale, lease, mortgage, pledge, delivery, payment, release, compromise, donation or any contract therefor, but does not include a disposition in compliance with an order of the court; and 'dispose' has a corresponding meaning'.

[17] The high court dealt extensively with whether the payments amounted to dispositions in terms of s 341(2) of the Act and concluded that, in light of the wide meaning attributed to the word 'disposition', they did. This finding is unassailable.

[18] A disposition refers to a disposition of the property of a company, be it

moveable or immovable, which the company disposes of, and includes a contract to effect such transfer.⁷ The act of disposition of property can also occur when assets are alienated without receiving any value in return, even in instances where the insolvent merely had some contingent right in the property. It can even include goods that are given away and not paid for.⁸ What is apparent is that the act of disposition has been widely interpreted, restricted by few parameters.

[19] This Court has repeatedly emphasised that the default position is that dispositions as contemplated by s 341(2) of the Act have no force and effect in the eyes of the law. They are regarded as if they had never occurred, they are void *ex lege*.⁹ This means that once a disposition of property is made after the commencement of winding-up, it is void *ab initio* unless validated by a court order in terms of s 341(2). Nullity is the default position and validation the exception.

[20] In *Mazars Recovery & Restructuring (Pty) Ltd v Montic Dairy (Pty) Ltd (in liquidation) and Others*,¹⁰ this Court confirmed that any payment after the date of presentation of the liquidation application is by default void, unless a court otherwise orders. The 'predominant purpose of s 341(2) is to decree that all dispositions made by a company being wound-up are void. If that is the existing position then these payments are rendered invalid *ex tunc* at the time that they are made'.¹¹ In *Gainsford and Others NNO v Tanzer Transport (Pty) Ltd*,¹² this Court held that s 341(2) of the Act is clear in its terms that every disposition made after the commencement of the winding up was void.

[21] In *Pride Milling*,¹³ it was emphasised that s 341(2) of the Act renders such dispositions void *ab initio* (*ex tunc*). The recipient acquires no right to retain the funds and incurs an immediate obligation to restore them, irrespective of any counter-

⁷ See the citations in Wikus De Wet, Select statutory methods of obtaining control of the insolvent estate, University of Pretoria footnotes 88, 89 and 91.

⁸ *Burns v Adlam* 1963 (3) SA 718 (D) at 720B-D.

⁹ *Pride Milling* fn 2 paras 13 and 30; *Mazars Recovery & Restructuring (Pty) Ltd and Others v Montic Dairy (Pty) Ltd (in liquidation) and Others* [2022] ZASCA 135; 2023 (1) SA 398 (SCA) (*Mazars Recovery & Restructuring*) para 11; *Eravin Construction CC v Bekker NO and Others* [2016] ZASCA 30; 2016 (6) SA 589 (SCA).

¹⁰ *Mazars Recovery & Restructuring* para 7.

¹¹ *Ibid* para 11.

¹² *Gainsford and Others NNO v Tanzer Transport (Pty) Ltd* [2014] ZASCA 32; 2014 (3) SA 468 (SCA); [2014] 3 All SA 21 (SCA) para 27.

¹³ *Pride Milling* fn 2 para 13.

performance or subsequent events. The Court went on to say:

'The provisions of s 341(2) could not be clearer. They, in unequivocal terms, decree that every disposition of its property by a company being wound-up is void. Thus, the default position ordained by this section is that all such dispositions have no force and effect in the eyes of the law ie the disposition is regarded as if it had never occurred. The mischief that s 341(2) seeks to obviate is plain enough. It is to prevent a company being wound-up from dissipating its assets and thereby frustrating the claims of its creditors.'¹⁴

[22] These authorities do not hold that repayment prior to the institution of proceedings does not give rise to a claim where the estate has already been restored. Rather, they establish that voidness gives rise to a restitutionary obligation upon receipt. This Court in *Eravin Construction CC v Bekker NO and Others*,¹⁵ made it clear that the recipient of a void disposition acquires no right to retain the payment but incurs an immediate restitutionary obligation upon receipt, in order to establish a *concursum creditorum*. Voidness gives rise to a debt owed to the company in liquidation.

[23] It is of little, if any, significance to what extent the payments diminished CBP's asset base, or to what extent its diminished asset base was replenished. What cannot be disputed is that the payments were made by the company after the institution of liquidation proceedings and while the company was being wound up. The payments amount to prohibited dispositions which Blue Label has no right to retain. The practical implication of the payments to Blue Label is that it would be in a more advantageous position than other creditors. Blue Label is a creditor which has received full payment after CBP's liquidation, while CBP's remaining creditors are required to submit claims to receive a dividend.

[24] Therefore, the liquidators were indeed entitled to rely on s 341(2) of the Act to recover the eight payments. This brings me to the question of whether Blue Label was the true donee of the disposition.

Was Blue Label the true donee or acting as an agent or conduit?

[25] With every disposition, generally, there must be a donor who makes the

¹⁴ Ibid para 30.

¹⁵ *Eravin Construction CC v Bekker NO and Others* fn 9 para 21.

disposition and a disponent who receives the disposition.¹⁶ Blue Label submits that it acts as a collecting agent for various third parties who supply the virtual products. As an example, Blue Label relies on its agreement with Multichoice, which expressly appoints Blue Label as a collection agent authorised to receive customer payments through its payment platform and network. It contends that customers pay for services owed to third-party suppliers; Blue Label facilitates the transmission of funds but does not acquire ownership of the products or the proceeds of the sale.

[26] It characterises its role as that of an intermediary and conduit between customers, retailers and suppliers, without beneficial entitlement to the transaction proceeds. It does not sell the third party's products and once CBP has sold a third-party's products to a customer, the full value of that sale belongs to the third party. Blue Label deposits that value and pays it to the relevant supplier. Blue Label does not appropriate the value of the sale as part of its assets but pays the money over to the supplier and it is the supplier that appropriates the money as part of its assets. It is only once the supplier has received the full value of the sale that it pays Blue Label an agreed commission. From that commission Blue Label in turn pays CBP an agreed commission. Thus, properly understood, according to Blue Label, the real sale transaction is one between the supplier, which sells the airtime, and the consumer who buys and consumes the airtime. Blue Label and CBP are merely intermediaries.

[27] There are a number of conceptual difficulties with this characterisation. The first point to make is that there is no privity of contract between CBP and the supplier, nor, undisputably, between the supplier and the customer. CBP owed no debt to the supplier. The contractual nexus is between Blue Label and CBP. In terms of this agreement Blue Label sold products, sourced from its suppliers, to CBP for onward sale to CBP's own customers, in both instances for reward, in the form of a commission. CBP becomes the debtor of Blue Label, which in turn was a debtor of its own suppliers. This contractual arrangement is not indicative of agency but instead reflects the existence of a debtor-creditor relationship between Blue Label and CBP. Nor do the facts sustain the submission that Blue Label and CBP acted as

¹⁶ *Van Wyk Van Heerden Attorneys v Gore NO and Another* [2022] ZASCA 128; [2022] 4 All SA 649 (SCA); 2023 (1) SA 80 (SCA) (*Van Wyk Van Heerden Attorneys*) para 28.

intermediaries between the customer and the supplier.

[28] To the extent that Blue Label relies on *Van Wyk Van Heerden Attorneys*,¹⁷ such reliance is misplaced. That matter dealt with whether a deposit into an attorney's trust account should be set aside as a disposition not for value in terms of s 26(1)(b) of the Insolvency Act. This Court rejected the contention that the power to operate a trust account, determines whether this amounts to a disposition. The issue to be decided was who had benefitted by the disposition. It was held that the construction of the section does not allow for liability to attach to one who has not benefitted from the disposition.¹⁸

[29] Although the Court held that the provision does not operate against a party who acts merely as a conduit or intermediary, the section of the Insolvency Act which applied in that case cannot be equated with s 341(2) of the Companies Act, where the default position is that the disposition is void *ab initio*. In any event, the contractual relationship between Blue Label and CBP cannot be equated with the legal relationship between attorneys who operate trust banking account for the benefit or on behalf of their clients.¹⁹

[30] At the time the payments were made, CBP was in the hands of the Master and, in terms of s 361(1) of the Act,²⁰ all its property, including any monies standing to its credit in the bank account, was under the custody and control of the Master until the provisional liquidators had been appointed. CBP was incapable of giving effect to any prior contractual arrangements which had been automatically suspended by the provisional liquidation order. This, too, is another insurmountable difficulty for Blue Label.

¹⁷ Ibid para 32.

¹⁸ Ibid.

¹⁹ Ibid para 23.

²⁰ Section 361(1) of the Companies Act provides that: 'In any winding-up by the Court all the property of the company concerned shall be deemed to be in the custody and under the control of the Master until a provisional liquidator has been appointed and has assumed office.'

[31] The defence that it was not the true disponee does not avail itself to Blue Label. This argument also must fail. In conclusion, the liquidators were entitled to repayment of the eight dispositions.

[32] In the result, the following order is made:
The appeal is dismissed with costs.

C E HEATON NICHOLLS
JUDGE OF APPEAL

Appearances:

For the appellant:

Instructed by:

J E Smit SC and J D Brewer

Barkers, Durban

Webbers, Bloemfontein

For the respondents:

Instructed by:

A R Newton

Lombard and Kriek Inc, Bellville

Honey Attorneys, Bloemfontein.