SUPREME COURT OF APPEAL
OF SOUTH AFRICA

Reportable

Case no: 198/2001

In the matter between

MICHELIN TYRE COMPANY (SOUTH AFRICA)

(PTY) LTD Appellant

and

F JANSE VAN RENSBURG 1st Respondent

L JANSE VAN RENSBURG 2nd Respondent

L M JANSE VAN RENSBURG 3rd Respondent

Coram: ***HEFER AP, ZULMAN , BRAND, NUGENT, JJA LEWIS AJA***

Heard: 16 May 2002

Delivered: 29 May 2002

Summary: Companies Act 61 of 1973 - s 417 enquiry - only available in windings-up by the court.

JUDGMENT

HEFER AP:

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[1] The crisp question before us is whether an enquiry under s 417 of the Companies Act 61 of 1973 may be held into the affairs of a company which is being wound up voluntarily. The question originally arose before Soggot AJ in the Witwatersrand Local Division of the High Court in an application to set aside the Master's decision to hold such an enquiry. The learned judge ruled that s 417 does not apply in voluntary windings-up and granted the application. The creditor who had requested the enquiry has now appealed.

[2] I do not intend dealing with all the points in the elaborate written heads of argument filed by appellant's counsel because the oral debate in this court has reduced his entire argument to two basic submissions. They are (1) that the language used in s 417 reveals an intention to make the enquiry available in compulsory as well as in voluntary windings-up, and (2) that, interpreted purposively and in such a way that unreasonable and unintended results are avoided, the section does not exclude an enquiry relating to a company being wound up voluntarily.

[3] I reject the first submission for the simple reason that it is not supported by the wording of s 417. Let me say first that the Act contains a number of provisions which are expressly devoted to compulsory windings-up, others expressly devoted to voluntary windings-up and a series of general provisions which expressly relate to both types of winding-up. It is not possible to fit s 417 into any one of these categories. Whether it only applies to compulsory windings-up or to voluntary windings-up as well must be decided by interpreting the section itself. It reads as follows:

> "In any winding-up of a company unable to pay its debts, the Master or the Court may, at any time after a winding-up order has been made, summon before him or it any director or officer of the company or person known or suspected to have in his possession any property of the company or believed to be indebted to the company, or any person whom the Master or the Court deems

capable of giving information concerning the trade, dealings, affairs or property of the company."

The argument for the appellant rests entirely on the opening words "*in any winding up of a company unable to pay its debts*" and on the fact that the same words occur elsewhere in the Act in provisions which apply to both types of winding-up. I have two observations. The first is that the opening words cannot be isolated from the rest of the provision. As Soggot AJ said in his judgment,

> "whilst it is true that the introductory words of section 417 ' ... *in any winding-up of a company unable to pay its debts ...'* would suggest that the section is wide-ranging in its effect, they are immediately followed by the words ' ... *the Master or the court may at any time after a winding-up order has been made, summon before him or it any director* ...' indicating in my view with specificity an intention to limit the ambit of the section to that genre of winding-up proceedings which has been initiated by a compulsory winding-up order."

Secondly, I attach little weight to the fact that the same words appear elsewhere in the Act in the context of both types of winding-up. An assumption of consistent intent arising from the use of the same words in several parts of the same legislation is only justified where there is insufficient countervailing material. Quite unlike any other provision of the Act the words in question are followed in s 417 by others which bear the plain implication that the operation of the section is confined to windings-up by the court. One cannot ignore these words; nor can one qualify them so that they mean something less without reading a qualification into the section which the legislature itself has not inserted.

[4] Coming to the second submission I wish to say that I share the view expressed in *South African Philips (Pty) Ltd and Others v The Master and*

Others 2000(2) SA 841 (N) at 847G that the language used in s 417 is perfectly clear; and that one cannot nullify a plainly expressed intention under the guise of purposive interpretation. The second submission rests in any event upon a misconception. The court *a quo*'s construction does not, as appellant's counsel suggested, exclude an enquiry of the kind envisaged in the section in the case of a company being wound up voluntarily. There are at least two ways of procuring a s 417 enquiry even in a voluntary winding-up. The first is to convert the winding-up into a winding-up by the court under s 346(1)(e); and the other is an application to court under s 388 for leave to convene an enquiry.

[5] In my view the court *a quo*'s interpretation of s 417 is correct.

The appeal is dismissed with costs.

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JJF HEFER
Acting President.

Concur:
Zulman JA
Brand JA
Nugent JA
Lewis AJ