THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not reportable

Case No: 20096/2014

In the matter between:

P REDDY	**APPELLANT**
and	
ABSA BANK LTD	**FIRST RESPONDENT**
COLIN MARK POOLE NO	**SECOND RESPONDENT**
NICOLA CRONJE NO	**THIRD RESPONDENT**

Neutral citation:	Reddy v Absa Bank (20096/2014) [2015] ZASCA 83 (28 May 2015).
Coram:	Lewis, Ponnan and Saldulker JJA and Van der Merwe and Mayat AJJA
Heard:	**21 May 2015**
Delivered:	**28 May 2015**

Summary: The winding up of a close corporation during the period of deregistration is automatically retrospectively validated upon reinstatement in terms of s 82(4) of the Companies Act 71 of 2008.

ORDER

On appeal from: KwaZulu-Natal Division of the High Court, Durban (Koen J sitting as court of first instance): reported *sub nom Missouri Trading CC v Absa Bank* 2014 (4) SA 55 (KZD).

The appeal is dismissed with costs.

JUDGMENT

Van der Merwe AJA (Lewis, Ponnan and Saldulker JJA and Mayat AJA concurring):

[1] As a result of its failure to submit annual returns, Missouri Trading CC (Missouri) was deregistered in terms of s 82(3)*(a)* of the Companies Act 71 of 2008 (the Act) on 29 July 2011. It is common cause that the registration of Missouri was reinstated in terms of s 82(4) of the Act on 18 April 2013. (These provisions of the Act are applicable to close corporations in terms of s 26 of the Close Corporation Act 69 of 1984). The issue in this appeal is whether the corporate activities of Missouri, during the period of its deregistration, had been validated upon its reinstatement.

[2] On 2 August 2011, the first respondent launched an application for the provisional winding up of Missouri. Despite opposition, a provisional winding up order was granted on 31 May 2012. A final winding up order was made on 27 August 2012. The second and third respondents were appointed as the liquidators of Missouri and they commenced with the winding up of its affairs in terms of the Act.

[3] Only at this stage did the deregistration of Missouri come to the knowledge of the first respondent and to that of the appellant, the sole member of Missouri. The appellant consequently launched an application in

the KwaZulu-Natal Division of the High Court, Durban for an order declaring that the winding up of Missouri was void and of no force and effect. The application was based solely on the ground that when the provisional and final winding up orders and the appointment of the second and third respondents as liquidators were made, Missouri had been deregistered.

[4] The first respondent opposed the application and filed a counter-application. It essentially asked for a declarator that the winding up of Missouri was valid in all respects and of full force and effect. The counter-application was in turn based only on the contention that the reinstatement of Missouri operated retrospectively.

[5] The High Court (Koen J) dismissed the application of the appellant and granted the declarator sought by the first respondent. It is clear that the fate of the appeal depends on whether the reinstatement of Missouri retrospectively validated the corporate activities thereof during the period of its deregistration. This question was decisively settled by this court in *Newlands Surgical Clinic v Peninsula Eye Clinic* [2015] ZASCA 25 (20 March 2015). In para 29 of *Newlands*, Brand JA stated that s 82(4) of the Act 'has automatic retrospective effect, not only in revesting the company with its property but also in validating its corporate activities during the period of its deregistration'. It is accordingly not necessary to analyse the reasoning of the court a quo.

[6] Upon its reinstatement the winding up of Missouri had therefore been automatically validated retrospectively in all relevant respects. It follows that the appeal is devoid of merit.

[7] In supplementary heads of argument, the attorney for the appellant appeared to attempt to seek relief in terms of s 83(4) of the Act, based on factual allegations put forward in the heads of argument. It suffices to say that this is wholly impermissible.

[8] The appeal is dismissed with costs.

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C H G VAN DER MERWE
ACTING JUDGE OF APPEAL

APPEARANCES:

For Appellant: C Lenasch
Instructed by:
Lenasch Attorneys, Durban
Honey & Partners, Bloemfontein

On behalf of first, second and third respondents:
A Stokes SC
Instructed by:
Johnston & Partners, Durban
Phatshoane Henney Inc, Bloemfontein