



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 31 May 2018
STATUS Immediate

De Villiers v GJN Trust (756/2017) [2018] ZASCA 80 (31 May 2018)

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.

Cape Animal Health Brokers (Pty) Ltd (in liquidation) (the company) was liquidated, its affairs wound up and dissolved. Prior to the dissolution of the company, the first appellant, Dr Francois de Villiers, was the only director of the company and the third appellant, the trustees of the Francois De Villiers Share Trust, its only shareholder. The second appellant, Cape Veterinary Wholesalers CC (the CC) and the first appellant were creditors of the company but had not proved claims in the liquidation.

However, the respondent, the trustees of the GJN Trust (the GJN Trust), another creditor of the company that did not prove a claim in the liquidation, applied for an order declaring the dissolution to have been void in terms of s 420 of the Companies Act 61 of 1973 (the section 420 application). In essence, the GJN Trust alleged that shortly before the liquidation of the company, the first appellant had caused a debt owed by the CC to the company to be written off and trading stock of the company to be removed to

the CC. Thus the purpose of the section 420 application was to have these matters investigated with a view of distribution of assets to creditors. The GJN Trust cited only the Master and the erstwhile liquidators of the company as the respondents in the section 420 application. The Western Cape Division of the High Court (the High Court) granted the order sought (the section 420 order). The appellants then applied to have the section 420 order rescinded on the ground that it had erroneously been granted in their absence. The High Court dismissed the application for rescission and the appellants appealed to the Supreme Court of Appeal (SCA).

Today the SCA dismissed the appeal with costs. It analyzed the ambit of s 420 of the Act and held that the legal effect of the section 420 order was to restore the dissolved company to a company in liquidation, with the rights and obligations that existed immediately prior to its dissolution. The SCA concluded that the appellants had no direct and substantial interest in the subject matter of the section 420 application and therefore had no standing to challenge the section 420 order.
