

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

D H S SMITH v G P PORRITT AND OTHERS CASE NO 536/05

From : The Registrar, Supreme Court of Appeal

Date: 23 March 2007

Status: Immediate

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

The appellant, a superintendent in the SAPS, sought an order in the High Court, Pietermaritzburg, setting aside two subpoenas calling on him to appear at a meeting of creditors in EBN Trading (Pty) Ltd (in liquidation) and, on a different day, a meeting of creditors in Awethu trust (in sequestration). In terms of the subpoenas he was to produce the documents in his possession relating to claims proved against EBN and Awethu by PSC Guaranteed Growth Ltd (in liquidation). The application was refused by Mr Justice Msimang and the matter came on appeal to the Supreme Court of Appeal.

Mr Gary Porritt, at some stage, had an interest in all three entities. He is presently the subject of a criminal investigation involving allegations of fraud and various contraventions of the Companies Act and Exchange Control Regulations. Some of these relate to PSC Guaranteed Growth. The subpoenas were issued by the Master at the request of Porritt. The appellant sought to have them set aside on the basis that Porritt's true motive was to obtain insight into the criminal investigation and to obtain the documents at an earlier stage than he would otherwise have been entitled.

In response, Porrit contended that PSC's claims are without substance and that he needed the documents to show that EBN and Awethu trust are not indebted to PSC and that the latter's true debtor is Synergy Management (Pty) Ltd. This contention, it appeared, was supported to some extent by the head liquidator of PSC who in a letter to the Master had expressed doubts regarding the validity of PSC's claims against EBN and Awethu.

On behalf of the appellant it was argued in the SCA that it would serve no purpose for the documents to be produced at the creditors' meetings because the claims of PSC had already been decided by the Pietermaritzburg High Court when granting final orders of liquidation and sequestration against EBN and Awethu respectively. Those orders were granted at the instance of PSC which was obliged to show that it had valid claims against EBN and Awethu in order to establish that it had standing to seek the orders. The effect of the orders, so argued the appellant, was to finally decide the indebtedness of EBN and Awethu to PSC and that this issue could not be revisited even if the liquidators and trustees of EBN and Awethu were to be persuaded that PSC's claims were invalid. On this basis it was argued that Porritt's real motive must have been to gain access to the documents prematurely.

The SCA held that the effect of the liquidation and sequestration orders was not to preclude the liquidators and trustees from rejecting PSC's claim should they be of the view they were invalid. The appellant had accordingly failed to establish that Porritt had an ulterior motive in requesting the subpoenas to be issued.

The appeal was accordingly dismissed with costs.

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