



REPUBLIC OF SOUTH AFRICA

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 27 September
STATUS Immediate

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

CASE ***J A LEGH v NUNGU TRADING 353 (PTY) LTD***
(Case No 3 / 07)

Media Statement

Today the SCA held that s 20(1)(c) of the Insolvency Act does not apply to a company in winding up. It accordingly upheld an appeal by John Alistair Legh, a shareholder in Rietfontein General Galvanisers ('the Company') and dismissed a conditional cross appeal by Nungu Trading 353 (Pty) Limited ('Nungu'). The Company is the registered owner of Portion 40 (Portion of Portion 24) of the farm Rietfontein in the Province of Gauteng. It has no other assets and conducts no other business. Charges on the property had not been paid to the Ekurhuleni Metropolitan Municipality since 1998. That resulted in an action being instituted by the Municipality against the company and eventually judgment by default was taken against it during November 2003. When the judgment remained unsatisfied the property was sold in execution on behalf of the Municipality by the Deputy-Sheriff to Nungu and thereafter steps were taken to effect registration and transfer of the property into the name of Nungu. On 15 August 2006 the appellant launched an urgent application for the winding up of the Company and the Company was placed in provisional winding up by an order of the Johannesburg High Court. Nungu applied to intervene in the winding up application. It sought the discharge of the provisional winding up order. In the alternative Nungu contended that it was entitled, even if the provisional order was made final to registration and transfer of the property into its name in terms of s 20(1)(c) of the Insolvency Act. The High Court agreed with Nungu. It accordingly placed the company in final winding up and at the same time declared Nungu to be entitled to take transfer of the property.

The issue on appeal was whether s 20(1)(c) was rendered applicable to a company in winding up by virtue of s 339 of the Companies Act. The SCA held that s 20(1)(c) finds no application to a company in winding up, principally because of s 361(1) of the Companies Act, which provides that all of the property of a company in winding up shall be deemed to be in the custody and under the control of the Master until the appointment of a provisional liquidator.

In so far as the conditional cross appeal was concerned. The appellant had established that he was a creditor of the company and that the Company was unable to pay its debts. He therefore had a right to a winding up order. The SCA accordingly held that the High Court which had exercised its discretion in favour of the grant of a final winding up order could not be faulted.

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