



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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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.

Express Model Trading 289 CC v Dolphin Ridge Body Corporate (656/13)
[2014] ZASCA 17 (26 March 2014)

The Supreme Court of Appeal handed down judgment today in an appeal from the Western Cape High Court, Cape Town. The respondent, Express Model 289 CC (Express Model), a body corporate for a residential sectional title development (Dolphin Ridge), had applied to the high court for the winding-up of the appellant, which had been the developer of the development and still owned several units therein.

The high court had ordered that Express Model be placed under a provisional order of winding-up, but before the return day an undisclosed third party had paid its arrear levies to its provisional liquidator. The matter was thereafter postponed on several occasions at the behest of Express Model. It was agreed between the parties that in the interim additional affidavits would be filed and that in view of the payment of the arrear levies that had been made, the provisional liquidator would file a preliminary report on the financial position of Express Model with the court. On the return day in February 2012, the high court placed Express Model under a final order of winding-up.

Pursuant to a petition addressed to this court, Express Model was granted leave to appeal that order. The record of appeal was filed with the registrar of this court on 9 May 2013 and Express Model then had six weeks within which to file its heads of argument. However, it failed to meet this deadline. Express Model accordingly sought condonation for its failure to timeously file its heads of argument with the registrar of this court. That application was opposed by Dolphin Ridge. The question before this court was therefore whether this default should be condoned and the appeal revived.

In outlining the factors relevant to this enquiry, including Express Model's prospects of success on appeal, weighed against the other relevant factors, this court noted that no inferences favourable to Express Model's creditworthiness or its ability to raise arm's length funding can be drawn; the provisional liquidator had concluded that the corporation was insolvent; and since then its position appears only to have deteriorated.

As Express Model, at all material times, has been unable to pay its debts, the SCA concluded that had no prospects of success on appeal. Moreover, the lack of attention to detail in the application for condonation – particularly in respect of matters that obviously called for an explanation – taken together with the non-existent prospects of success on appeal rendered it impossible to justify the grant of condonation. The application for condonation was thus dismissed with costs.