



THE 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

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STATUS Immediate

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

Ritcher v Absa Bank
(20181/2014) [2015] ZASCA .. (..... 2015)

MEDIA STATEMENT: RICHTER v ABSA

Today the Supreme Court of Appeal upheld an appeal by Mr Dawid Jacques Richter against a judgement of the Gauteng High Court Pretoria which held that no application for business rescue may be brought after a final order of liquidation has been granted against a company.

In September 2012 Bloempro CC, with which 013 Mr Richter was employed as a general manager, was liquidated by the Free State High Court. In February 2013 Mr Richter brought an application in the Gauteng High Court, Pretoria, seeking an order that Bloempro be placed in business rescue. In terms of section 131 (6) of the Companies Act of 2008 if liquidation proceedings have commenced by the time an application for business rescue is brought, the application for business rescue will suspend those liquidation proceedings. Absa Bank opposed Mr Richter's application for rescission on the basis that the provisions of s131 (6) do not apply where a final liquidation order, The application was dismissed in his

absence and he applied for rescission of that order. The High Court held that indeed business rescue would be impermissible as Bloempro was in final liquidation. Mr Richter then appealed to the Supreme Court of Appeal.

In upholding the appeal the Supreme Court of Appeal held that liquidation proceedings includes liquidation prior to and after a final order of liquidation is granted. The court held that this interpretation was consistent with the historical interpretation of liquidation and also with the meaning of liquidation as used in other sections of the Act and its predecessor, the Companies Act 61 of 1973. That meaning had not been altered by the provisions of s131 (6) of the Companies Act and the interpretation of liquidation to include the complete liquidation process was consistent with the with the purpose for which the business rescue procedure was incorporated into the South African legal system. The court held that the matter revert to the High Court for determination of the application for rescission of judgment.