



THE SUPREME COURT OF APPEAL
REPUBLIC 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.

SHAMLA CHETTY t/a NATIONWIDE ELECTRICAL

v

O D HART NO & ANOTHER

The Supreme Court of Appeal (SCA) today held that arbitration proceedings are legal proceedings, as this term is applied, in s 133(1) of the Companies Act 71 of 2008. Section 133(1)(a) provides that no legal proceedings may commence or continue against a company during business rescue proceedings except with the written permission of the business rescue practitioner. The main dispute in the high court was whether arbitrations were legal proceedings as envisaged in the section. The holding followed a high court ruling from Kwazulu-Natal, which came to the contrary conclusion.

The dispute between the parties, Shamla Chetty, trading as Nationwide Electrical and TBP Building and Civils (Pty) Ltd (TBP) occurred after they had referred a contractual dispute between them relating to a building contract for arbitration. The

arbitrator upheld Ms Chetty's claims against TBP for R420 573.93 plus interest. But she in turn was held liable to TBP in respect of its counterclaim against her for a substantially larger amount, namely R4 238 451.95 plus interest and costs. At the time the award was made, TBP was in business rescue.

Dissatisfied with the outcome she approached the high court, Kwazulu-Natal, to nullify the arbitral proceedings. She relied on the ground that the arbitral proceedings had gone ahead with the arbitration without her being aware that TBP was under business rescue, which meant that she had neither sought, nor was granted, the written permission of the business practitioner appointed to oversee the affairs of the company to continue the arbitration. TBP opposed the relief sought on the ground that the moratorium on legal proceedings against a company under business rescue, as provided for in s 133(1) of the Act, did not apply to arbitrations as the phrase legal proceedings referred only to court proceedings and not to arbitrations.

The SCA upheld Ms Chetty's contention that the arbitrations were legal proceedings for the purposes of s 133(1) of the Act. But it also ruled that her appeal could not succeed for two reasons. First, the section did not require legal proceedings to be nullified only because written permission of the business practitioner was not sought or obtained for the proceedings to continue. Secondly, because the requirement for written permission was enacted for the benefit of the company and not the creditor, Ms Chetty did not have standing to invoke this protection to nullify the proceedings.

Her appeal was accordingly dismissed with costs.