



MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 13 April 2021

Status: Immediate

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

Timasani (Pty) Ltd in business rescue) and Another v Afrimat Iron Ore (Pty) Ltd (91/2021) [2021] ZASCA 43 (13 April 2021)

The SCA today dismissed an appeal against an order by the Gauteng Division of the High Court, Pretoria, directing Timasani (Pty) Ltd (in business rescue) (Timasani) and its appointed business rescue practitioner (the BRP) to repay the sum of R1.7 million to Afrimat Iron Ore (Pty) Ltd (Afrimat). Afrimat paid this amount as a deposit which was held in a separate interest-bearing account pending the fulfilment of suspensive conditions. These included the conclusion of two contracts for (a) the sale of a farm in Kuruman owned by Timasani; and (b) mineral rights and mining equipment. However, those contracts were never concluded.

Timasani contended that the application for repayment of the deposit was precluded by s 133(1) of the Companies Act 71 of 2008 (the Act), which places a general moratorium on legal proceedings against a company in business rescue. The section provides that ‘no legal proceedings, including enforcement action against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum,’ except with the written consent of the BRP or leave of the court. Timasani also claimed that its creditors had to be joined in the proceedings as envisaged in s 145(1) of the Act, which states that creditors are entitled to notice of, and to participate in, court proceedings concerning the business rescue.

The SCA held that s 145(1) is a general notification requirement to inform creditors of court proceedings brought during business rescue. It does not require the joinder of every creditor in such proceedings. The duty to inform creditors of court proceedings relating to business rescue rests on the BRP. It held further that s 133(1) means that during business rescue proceedings, (1) no legal proceedings, including enforcement action against the company; and (2) no legal proceedings in relation to property belonging to or in the lawful possession of the company may be commenced or continued. Property ‘belonging to the company’ means property belonging in a legally valid sense, such as property owned by the company; and s 133(1) does

not apply to property unlawfully in possession of the company. It could not have been intended that the restructuring of the affairs of a company during business rescue should prevent recovery of property not belonging to it or unlawfully in its possession. Once Timasani and Afrimat did not conclude the contracts for the farm and the movable assets, the deposit had to be repaid. The SCA did not uphold the finding of the court below that the deposit was property in respect of which Timasani exercised the powers of a trustee, as envisaged in s 133(1)(e) of the Act. The deposit was not paid as property in trust and Afrimat's claim was not founded on any breach of trust.