



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

Date: 06 October 2021

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Park 2000 Development 11 (Pty) Ltd v Mouton and Others (Case no 684/21) [2021] ZASCA 140 (06 October 2021)

This appeal was heard on 06 September 2021. On that day the Supreme Court of Appeal ((SCA) made an order dismissing with costs the appellant's appeal against the judgment and order of the Western Cape Division, Cape Town, in terms of which a resolution adopted by a director of the appellant to place the appellant under business rescue, was declared invalid and set aside. Today the SCA handed down the reasons for its order.

The appellant had failed to satisfy a judgment debt in favour of the first respondent. As a result the first respondent obtained a writ of execution which authorised the attachment and sale of the appellant's two immovable properties by public auction. On the day before the auction for the sale of the immovable properties was to be held, the first respondent's attorneys received two emails. The first email, from the appellant's alleged creditor (Meiprops Twee en Twintig (Pty) Ltd (Meiprops)), notified that Meiprops had launched an application for the liquidation and winding up of the appellant. The second email was from the appellant's alleged business rescue practitioner (BRP). This email advised the first respondent's attorneys that the appellant had made an application that same day to be placed under business rescue. In both the liquidation and the business rescue applications, the director of the appellant deposed to the motivating affidavits. However, the averments contained in those affidavits were in stark contrast to each other. In the one the appellant is alleged to be hopelessly insolvent, whereas in the other it is alleged that the appellant could trade profitably if placed under business rescue. On the day of the auction, the liquidation application was withdrawn and the sale in execution took place notwithstanding the business rescue application. The two immovable properties were sold to the second respondent.

The SCA held that the high court was correct in concluding that that the resolution adopted to place the appellant in business rescue was not passed in good faith, that it had no intention of attaining the objectives of the Companies Act 71 of 2008, as amended, in regard to business rescue and that it was done with a view to frustrate the sale in execution.

Dealing with the issue of mootness, the appellant submitted that if its business rescue status was restored, the transfer of the two properties to the second respondent could be set aside retrospectively by the BRP who should also have been reinstated to his previous position as the appellant's BRP. The appellant submitted further that even though the second respondent may not have been aware of the appellant's business rescue 'status', it undoubtedly subsequently gained such knowledge before transfer could take place and therefore assumed the risk that the sale might be set aside in due course. The SCA held that the aforesaid argument by the appellant cannot succeed and fell to be rejected outright. The validity of the sales in execution was not even challenged in the high court. The SCA held

further, that the appellant only had the two immovable properties concerned as its only noteworthy assets. It had no assets left to administer. Clearly in those circumstances restoring it to business rescue would serve no purpose. The grant of the appeal would not reverse the transfer of the properties. The SCA held further, that s 16(2)(a)(i) of the Superior Courts Act 10 of 2013 provides that 'when at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone'. As a result, the SCA found that there were no longer any live issues between the parties and that an appeal would not have any practical effect. The SCA therefore dismissed the appeal.

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