



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

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

PFC Properties (Pty) Ltd v Commissioner for the South African Revenue Services and Others (Case no 543/21) and Brita De Robillard NO and Another v PFC Properties (Pty) Ltd and Others (Case No 409/22) [2023] ZASCA 111 (21 July 2023)

Today the Supreme Court of Appeal (SCA) delivered judgment dismissing with costs, two appeals against orders of the Gauteng Division of the High Court, Pretoria (case no 543/2021); and the KwaZulu-Natal Division of the High Court, Pietermaritzburg (case no 409/2022). The first was an appeal against a winding-up order granted against the appellant, PFC Properties (Pty) Ltd (PFC), in favour of the first respondent, the Commissioner for the South African Revenue Services (SARS), by the Pretoria High Court. The second appeal was against an order by the Pietermaritzburg High Court, in terms of which it dismissed an application to place PFC in business rescue. That application was brought by Mrs Brita De Robillard NO and Mr Clifford Edward Alexander NO, the trustees of the De Robillard Family Trust (the DRFT trustees). The said Trust is the sole shareholder of PFC.

PFC owed SARS some R52 million for VAT and R5 million for income tax. Due to PFC's failure to pay these tax debts, SARS applied to the Pretoria High Court for its winding-up. The trustees of the insolvent estate of Mr de Robillard (the insolvency trustees) successfully applied to intervene in the winding-up proceedings. PFC undertook to file answering papers in the winding-up application, but failed to do so. A few days before the hearing of the winding-up application, the DRFT trustees launched the business rescue application in the Pietermaritzburg High Court. SARS and the insolvency trustees filed detailed answering papers in that application. PFC however, failed to file any replying affidavit. Instead, PFC applied for a postponement of the business rescue application, a few days before the hearing of the winding-up application. In the postponement application, PFC contended that in terms of s 131(6) of the Companies Act 71 of 2008 (the Act), SARS was precluded from proceeding with the winding-up application, because the business rescue application automatically suspended the winding-up proceedings until the former application was adjudicated. The Pietermaritzburg High Court refused the postponement and PFC's counsel did not proceed with the business rescue application and left the

court. Subsequently, SARS proceeded with the winding-up application in the Pretoria High Court, which was granted.

The issue before the SCA was whether the conduct on the part of PFC and the DRFT trustees in launching the business rescue application, constituted an abuse of court process. The SCA held that that application should not have been considered by reason of its use in a scheme of abuse. The business rescue application was a stratagem. PFC's registered address was suddenly changed to KwaZulu-Natal so that the business rescue application could be brought in the Pietermaritzburg High Court. The DRFT trustees had no intention of filing a replying affidavit or prosecuting that application to its conclusion. It had been launched in order to advance a technical argument that it suspended the winding-up application, so as to delay that application; any enquiry into the stewardship of PFC by the De Robillards; and the payment of the tax debts of PFC. Consequently, the business rescue application could not suspend the liquidation application because the former was tainted by abuse. Apart from this, the DRFT trustees failed to make out a case that there was any prospect of rescuing PFC. All its assets had been sold-off and it had lost its substratum. The SCA further held that the liquidation order granted by the Pretoria High Court was unassailable. For these reasons, both appeals were dismissed with costs.

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