



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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South African Reserve Bank and Another v Johnine Winsome Elisie Maddocks N O and another (1268/2021) [2023] ZASCA 04 (23 January 2023)

Today, the Supreme Court of Appeal (SCA) delivered a judgment in which it upheld with costs an appeal by the South African Reserve Bank (Reserve Bank) and the National Treasury against the decision of the KwaZulu-Natal Division of the High Court, Durban (high court). The Reserve Bank issued three separate forfeiture orders relating to the monies standing to the credit of Sun Candle Products (Pty) Limited (Sun Candle) and Xinming Mountain Textile (Pty) Limited (Xinming) in various South African Banks. The Reserve Bank ordered that the monies be declared forfeited to the State and be paid into the National Revenue Fund. The forfeiture orders were made after the liquidation of the companies and in terms of Regulation 22B of the Exchange Control Regulations promulgated under s 9 of the Currency and Exchanges Act 9 of 1933. The Respondents which are liquidators of the companies (liquidators), demanded that the forfeited monies be paid to them to be administered in terms of the insolvency laws.

The Reserve Bank refused to accede to the demand contending that the forfeiture orders were validly made pursuant to the blocking orders made prior to the liquidation of the companies. As a result, the liquidators brought an application to the high court, for an order declaring the forfeiture orders null and void and directing the National Revenue Fund to pay the forfeited monies into the liquidators' bank account.

The high court granted the orders as sought by the liquidators. Aggrieved by the outcome, the Reserve Bank and the National Treasury, sought and obtained from the

high court leave to appeal against its judgement. The appeal was before this Court with leave granted by the high court. The issue on appeal concerned the legal consequences of three forfeiture orders issued by the Reserve Bank after the liquidation of the companies.

The applications for their winding-up were lodged on 13 February 2017. The companies were provisionally wound up by the high court on 17 February 2017 and finally on 10 March 2017. *The concursus creditorum* in respect of each company was taken to have been established on 13 February 2017 when the applications were lodged with the high court. In each of these cases the orders were made under s 348 of the Companies Act 61 of 1973 (Companies Act) on the application of a creditor, Pathema CC.

On 10 September 2015 and before the liquidation of the companies, Mr Malherbe, an official in the Financial Intelligence Department of the Reserve Bank, acting in terms of Regulation 22A and/or Regulation 22C of the Regulations, issued 'blocking orders' in respect of the amounts standing to the credit of each of the companies in various South African banks. The accounts were blocked on the reasonable suspicion that the companies had, in contravention of the Regulations, exported from the Republic large sums of monies without permission of the second appellant, the National Treasury, and made advance payments for imported goods without submitting proof of importation of goods into the Republic to the authorized dealer. The effect of such orders is that 'no person may withdraw or cause the withdrawal of funds together with the interest thereon and/or accrual thereto in accounts held at the banks.'

The liquidators had demanded payment of the forfeited funds on the basis that by virtue of the winding-up and the establishment of the *concursum creditorum*, on 13 February 2017, the monies held in the bank accounts to the credit of the companies fell into the insolvent estates and were subject to the provisions of s 391 and s 342 of the Companies Act. Among other things, the liquidators asserted that after the liquidation of the companies, the Reserve Bank could not take steps to execute forfeiture orders in terms of the Regulations because by doing so it would interfere with their ability to carry out their statutorily entrenched functions in terms of Companies Act and the Insolvency Act 24 of 1936. The Reserve Bank disagreed. It argued that, notwithstanding the commencement of the winding-up of the two companies, the blocking orders remained in force, and that the liquidators could not,

by reason of the liquidation, acquire any greater rights to claim payment of the funds standing to the credit of the companies, than the companies themselves had immediately prior to the commencement of the winding-up.

On appeal, the SCA held that the liquidation of the two companies did not nullify the blocking order which was in existence at the time. As a blocking order was not nullified, reasoned the SCA, it was competent for the Reserve Bank after the liquidation of the companies to issue the forfeiture orders which made it mandatory for the banks which held the accounts in which monies were kept, to pay such monies into the National Revenue Fund. The forfeiture orders issued after the liquidation of the companies were not affected by the liquidation and the monies which were declared forfeited to the State did not fall into the estates of the insolvent companies.

The SCA held that the high court erred in declaring the three forfeiture orders null and void and directing the National Revenue Fund to pay the forfeited monies into the liquidators' bank account. It set aside the orders of the high court.

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