



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### De Klerk v Griekwaland Wes Korporatief Bpk

CCT 187/13

**Date of hearing: 13 May 2014**

**Date of judgment: 19 June 2014**

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#### MEDIA SUMMARY

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

Today the Constitutional Court handed down judgment refusing leave to appeal against a judgment of the Northern Cape High Court, Kimberley (High Court).

Mr de Klerk, the applicant, concluded a credit agreement with the respondent, Griekwaland Wes Korporatief Bpk (Griekwaland), but did not fulfil his payment obligations. Mr de Klerk approached a debt counsellor who determined that he was over-indebted and delivered a debt-restructuring proposal to Griekwaland.

After receiving the proposal, Griekwaland applied to the High Court for a provisional sequestration order. The High Court granted the order on two grounds. First, the debt-restructuring proposal constituted an act of insolvency because it was an admission of inability to pay debts; and second, Mr de Klerk was factually insolvent. The High Court later made this sequestration order final. Mr de Klerk's appeal to the Full Court was unsuccessful, and the Supreme Court of Appeal dismissed his application for leave to appeal.

In the Constitutional Court, Mr de Klerk argued that the debt-restructuring proposal, purportedly sent in terms of the National Credit Act, cannot constitute an act of insolvency under the Insolvency Act, as this would be contrary to the purpose of debt-review procedures. He conceded that in order to reach this question, it would be necessary to disturb the lower court's finding that he was factually insolvent. Griekwaland argued that it is not in the interests of justice to grant leave to appeal because, when the matter was heard in this Court, there was pending remedial legislation

dealing with this exact issue and in any event Mr de Klerk could be sequestrated on the ground of his factual insolvency alone.

In a unanimous judgment, written by Van der Westhuizen J, leave to appeal was refused. Mr de Klerk was found to be factually insolvent. He would not benefit from a finding by this Court on whether a debt-restructuring proposal in terms of the National Credit Act is an act of insolvency under the Insolvency Act. There was no reason for this Court to interfere in the High Court's factual finding. Further, it was not in the interests of justice for the Court to determine the issue since remedial legislation, assented to by the President shortly after the hearing, is aimed at resolving the alleged tension between the National Credit Act and the Insolvency Act.