



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: 27 JUNE 2023

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 judgment of the Supreme Court of Appeal

Firm-O-Seal CC v Prinsloo & Van Eeden Inc and Another (Case no 483/2022) [2023] ZASCA 107 (27 June 2023)

Today, the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal against a decision of the Mpumalanga Division of the High Court, Middelburg (the high court).

The appellant, Firm-O-Seal CC, instituted action in the high court against the first respondent, Wynand Prinsloo & Van Eeden Inc., and the second respondent, Mr Derick van Wyk, who, at the relevant time, served as an attorney and director of the first respondent. Four claims were asserted arising out of professional legal services rendered by the respondents to the appellant. The claims were met by five special pleas. After hearing argument on all five special pleas, the high court upheld the special plea of lack of *locus standi* and dismissed the appellant's claims with costs. The high court did not decide the four remaining special pleas of prescription, as it considered the finding on the special plea of lack of *locus standi* to be dispositive of the matter.

The respondents had pleaded that, in bringing the action, the directors of the appellant had acted outside the scope and ambit of section 137(2)(b) of the Companies Act 71 of 2011 and that consequently the bringing of the action is void as contemplated under section 137(4). Section 137(4) provides:

'If, during a company's business rescue proceedings, the board, or one or more directors of the company, purports to take any action on behalf of the company that requires the approval of the practitioner, that action is void unless approved by the practitioner.'

According to the SCA, the high court appeared to have misapprehended the enquiry. It approached the enquiry on the basis of the general rule that a contract or agreement which is expressly prohibited by statute is illegal and null and void. The SCA held that *locus standi in iudicio* is an access mechanism controlled by the court itself. The high court failed to consider whether, in each instance, the claim asserted was indeed in the nature of an 'action' that 'requires the approval of the practitioner' as contemplated by the section. Absent that determination, the special plea could not succeed, because where *locus standi* is challenged, it must be dealt with on the assumption that all allegations of fact relied upon by the party whose *locus standi* is attacked are true.

The SCA also disagreed with the high court's conclusion that *ex post facto* ratification was not possible. It stated that it is clear from the common cause facts that the business rescue practitioner had consented to the institution of the action. It therefore followed that the conclusion reached by the high court that the appellant lacked *locus standi* to approach the court for the relief sought not be supported.

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