

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 8 March 2019

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Van Staden and Others NNO v Pro-Wiz Group (Pty) Ltd

The appellants are the liquidators of Oljaco CC, which was placed in provisional liquidation in February 2015 and final liquidation in May 2015. In April 2016 the respondent, Pro-Wiz (Pty) Ltd, applied to place Oljaco under business rescue. The liquidators and SARS opposed that application. It was due to be heard on 14 August 2017, but Pro-Wiz withdrew it two days before the hearing without explanation. They did not tender the liquidators' costs so the liquidators applied for such an order in terms of the rules of court. It was refused.

The SCA today upheld an appeal against a decision by the Gauteng Division of the High Court, Pretoria and set aside its refusal to award the liquidators their costs. When the application was brought it had to be served upon the close corporation and the liquidators had been cited as such for that reason. Once they were cited they were entitled to oppose the application if, in their judgment, that was in the interests of creditors and the close corporation. The high court's reasons based upon s 131(6) of the Companies Act 71 of 2008 that the effect of the application for business rescue was to remove the liquidators powers to represent the company and administer its affairs was incorrect in law. The application

for business rescue was an abuse of both court process and the business rescue procedure. In those circumstances the SCA upheld the appeal with costs and substituted the high court's order with an order that Pro-Wiz pay the liquidators' costs on an attorney and client scale.