

THE SUPREME COURT OF
JUDGMENT



APPEAL OF SOUTH AFRICA

Not Reportable

Case No: 37/2015

In the matter between:

**MICHAEL MMATHOMO MASILO NO
PHILIPPUS GIOVANNI TORRE NO
MONICA COWIN NO**

**FIRST APPELLANT
SECOND APPELLANT
THIRD APPELLANT**

And

BETTERBRIDGE (PTY) LIMITED

RESPONDENT

Neutral citation: *Masilo v Betterbridge* (37/2015) [2016] ZASCA 73 (25 May 2016)

Coram: Cachalia, Seriti, Willis and Mbha JJA and Victor AJA

Heard: 16 May 2016

Delivered: 25 May 2016

Summary: Prescription – extinctive prescription – delay in completion – debt object of claim filed against company in liquidation – claim withdrawn after ‘admitted to proof’ under s 44 of the Insolvency Act 24 of 1936. Whether prescription delayed in terms of s 13(1)(g) of the Prescription Act 68 of 1969.

ORDER

On appeal from: North Gauteng Division of the High Court, Pretoria (Unterhalter AJ sitting as court of first instance), judgment reported sub nom as *Betterbridge (Pty) Ltd v Masilo & others* 2015 (2) SA 396 (GP):

The appeal is dismissed with costs.

JUDGMENT

Cachalia JA (Seriti, Willis and Mbha JJA and Victor AJA concurring)

[1] This is an appeal from the North Gauteng Division of the High Court, Pretoria (Unterhalter AJ) rejecting a special plea by the defendants that the plaintiff's claim had prescribed. Instead, it upheld the plaintiff's contention that the completion of prescription was delayed in terms of s 13(1)(g) of the Prescription Act 68 of 1969.

[2] The facts and the reasoning of the learned judge are set out fully in his judgment, which has now been reported sub nom as *Betterbridge (Pty) Ltd v Masilo & others* 2015 (2) SA 396 (GP). I agree fully with the judgment. No purpose will be served by rehashing the facts or repackaging the reasoning.

[3] Before us the appellants raised a new argument, one that the court a quo was not asked to consider. They now contend that if a claim is withdrawn before the presiding officer at the meeting of creditors decides whether to admit or reject the claim, as in this case, the claim will not be the 'object of a claim filed' as s 13(1)(g)

envisages. This is because a creditor, who wants the benefit of a delay in the completion of prescription, must participate in the process provided for in s 44 of the Insolvency Act until completion. A creditor, who lodges a claim with the Master, and then withdraws it from the adjudication process provided for in s 44, does not make his claim the object of a claim filed against the company in liquidation. And therefore cannot gain the benefit of the delay of prescription. A withdrawn claim, so it is contended, is as good as no claim at all.

[4] There is no merit in this contention. Apart from the fact that this defence was not pleaded in the rejoinder, it is apparent from the judgment of the court a quo that the impediment becomes operative as soon as the claim is 'admitted to proof'. This occurs when the presiding officer at the meeting of creditors accepts the claim as filed in terms of s 13(1)(g); the adjudication process need not be completed. This is precisely what happened in this case.

[5] Mr Pye properly accepted that if the court a quo was correct in coming to this conclusion, the appeal could not succeed. The appeal must therefore fail.

[6] I make the following order:

'The appeal is dismissed with costs.'

A CACHALIA
JUDGE OF APPEAL

APPEARANCES

For Appellant:

W B Pye

Instructed by:

Harvey Nossel Attorneys, Johannesburg

Lovius-Block, Bloemfontein

For Respondent:

G Nel

Instructed by:

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