



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Not Reportable

Case no: 1334/2022

In the matter between:

CENTAUR MINING SOUTH AFRICA (PTY) LTD

APPELLANT

and

CLOETE MURRAY N O

FIRST RESPONDENT

SIVALUTCHMEE MOODLIAR N O

SECOND RESPONDENT

NDUMISO SENZOSENKOSI SIBIYA N O

THIRD RESPONDENT

[In their capacities as the duly appointed joint provisional liquidators of Trillian Management Consulting (Pty) Ltd]

**TRILLIAN CAPITAL PARTNERS (PTY) LTD
RESPONDENT**

FOURTH

**TRILLIAN SECURITIES (PTY) LTD
RESPONDENT**

FIFTH

TRILLIAN NOMINEES (PTY) LTD

SIXTH RESPONDENT

**TRILLIAN SHARED SERVICES (PTY) LTD
RESPONDENT**

SEVENTH

TRILLIAN PROPERTY (PTY) LTD

EIGHTH RESPONDENT

TRILLIAN FINANCIAL ADVISORY (PTY) LTD

NINTH RESPONDENT

ZARA W (PTY) LTD

TENTH RESPONDENT

MASTER OF THE HIGH COURT, PRETORIA

ELEVENTH RESPONDENT

**COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION**

TWELFTH

RESPONDENT

Neutral citation: *Centaur Mining South Africa (Pty) Ltd v Cloete Murray N O and Others* (Case no 1334/2022) [2024] ZASCA 34 (28 March 2024)

Coram: PONNAN, SCHIPPERS, MEYER AND MATOJANE JJA AND COPPIN
AJA

Heard: 12 March 2024

Delivered: 28 March 2024

Summary: Rescission in terms of rule 42(1)(a) of the Uniform Rules of Court of default judgment granted under s 20(9) of the Companies Act 71 of 2008 – no proper case made out.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Wepener J, sitting as court of first instance):

The appeal is dismissed with costs, including those of two counsel.

JUDGMENT

Meyer JA (Ponnan, Schippers and Matojane JJA and Coppin AJA concurring):

[1] The appellant, Centaur Mining South Africa (Pty) Ltd (CMSA), appeals against a judgment of the Gauteng Division of the High Court, Johannesburg, per Wepener J (the high court), dismissing an application for the setting aside or rescission of a judgment under s 354 of the Companies Act 61 of 1973 (the 1973 Companies Act), alternatively r 42(1)(a) of the Uniform Rules of Court or the common law (the rescission application). The appeal is with leave of the high court.

[2] The Trillian group of companies include the first to tenth respondents: Trillian Capital Partners (Pty) Ltd (TCP), Trillian Management Consulting Pty Ltd (TMC), Trillian Securities (Pty) Ltd (TS), Trillian Property (Pty) Ltd (TP), Trillian Nominees (Pty) Ltd (TN), Trillian Financial Advisory (Pty) Ltd (TFA), and Trillian Shared Services (Pty) Ltd (TSS). TCP owns 100 per cent of the shareholding in TCP, TMC, TS, TP, TN, TFA, and TSS. Zara W (Pty) Ltd (Zara) owns 100 per cent of the shareholding in TCP. The Trillian group of companies was established pursuant to a failed bid by the Gupta family (associated with the so-called state government officials and entities) in 2014 to acquire the Regiments group of companies.¹ Mr Eric

¹ The Regiments group of companies are made up of Regiments (Pty) Ltd, Regiments Fund Managers (Pty) Ltd, Regiments Securities (Pty) Ltd, Little River Trading 191 (Pty) Ltd, Ashbrook 15 (Pty) Ltd (with a 59.82% ownership share therein), Coral Lagoon (Pty) Ltd (a wholly owned subsidiary of Asbrooke 15 (Pty) Ltd), Kgoro Consortium (Pty) Ltd and Cedar Park Properties 39 (Pty) Ltd.

Anthony Wood (Mr Wood) was the former chief executive officer of Regiments (Pty) Ltd (Regiments). It was a 'fund manager' and 'strategy advisor' specializing in public sector infrastructure programs and projects, supposedly rendering services to state owned entities (SOE's), such as Transnet SOC Ltd (Transnet) and Eskom SOC Ltd (Eskom). Mr Wood was the sole director of TMC prior to its liquidation and also the controlling mind of TMC and certain other entities within the Trillian group of companies. TCP and TMC are financial advisory companies, who conducted similar business to Regiments.

[3] During January 2020 the South African Revenue Services (SARS) formed the view that Mr Wood was treating the Trillian group of companies under his control as a mere extension of himself. He was at all relevant times responsible for the financial affairs of the companies but either failed to submit tax returns when due, or submitted returns that contained incorrect declarations. It appeared to SARS that the preferred *modus operandi* of Mr Wood was to funnel funds through the various Trillian companies, thereby creating many layers between the original source of income and the final destination of the funds. Mr Wood, according to SARS's investigation, would receive SOE funds in the hands of a Trillian company and the funds would subsequently be channeled to various other entities through the creation of what appears to have been fictitious invoices purportedly issued by another Trillian company which to all intents and purposes was not trading or conducting any form of business. The fictitious invoices were intended to fraudulently misrepresent a legitimate *causa* to extract funds out of a Trillian company and ultimately to funnel the funds into the hands of the ultimate beneficiaries.

[4] Following an investigation, SARS issued letters of audit findings to TMC. The letters of audit findings were based on a comparative analysis of source documents submitted to SARS by TMC, as well as its bank statements, VAT schedules, invoices, draft annual financial statements, trial balances, general ledgers and other financial documentation of certain Trillian companies. SARS determined that:

- (a) TMC received approximately R595 million on 28 February 2007 from Eskom, which it failed to declare for tax purposes;
- (b) The funds so received by TMC from Eskom were distributed to companies which were reasonably expected not to have been legitimate businesses;

(c) TMC received interest from the Bank of Baroda which it unlawfully failed to declare for tax purposes;

(d) TMC was indebted to SARS, at that stage, in an amount of R460 970 690.87.

[5] In light of the seriousness of the allegations levelled against Mr Wood and some of the Trillian companies under his control, SARS brought a preservation application as contemplated by s 163 of the Tax Administration Act 28 of 2011. The application was successful, and Mr Cloete Murray (Mr Murray) was appointed as the curator in terms of the order.

[6] In that capacity, Mr Murray instructed a chartered accountant and forensic auditor, Mr Stephen Robinson (Mr Robinson), to investigate the affairs of TMC and TCP. He issued Mr Murray with his first report on 23 February 2020. Therein, he concluded that TMC received an amount of R595,2 million from Eskom. It almost immediately dispersed that amount to other Trillian associated or connected companies, some of whom carried on no form of legitimate enterprise. TMC was not managed as a self-standing enterprise, but as part of the greater Trillian group of companies.

[7] In the light of those findings, Mr Murray instructed Mr Robinson to also investigate the affairs of certain other Trillian companies and to furnish a report of his findings. Mr Robinson issued his second report on 8 July 2020. The findings made by Mr Robinson were *inter alia* based on a thorough and comparative analysis of particularly, but not exclusively, the bank account statements of TMC, TP, TCP, TA, and numerous other entities involved in the perpetration of a massive fraud on the State. No bank accounts existed for some of the Trillian companies. Mr Robinson found that more than R 834 million was paid to the Trillion companies: R595,2 million was paid by Eskom to TMC, R147,1 million by Regiments to TMA and R76,4 million by Transnet to TC. It was subsequently ascertained that R 5.7 million was also paid to a Trillian company by SA Express. These monies, in turn, were transferred between the accounts of the various Trillian companies, one company transferring funds to another.

[8] Mr Robinson stated that 'the affairs of Trillian Management Consulting Pty Ltd and the other Trillian companies are intermingled to the extent that it is not possible to properly investigate the dealings and affairs of Management in the absence of the other Trillian companies'. The business of the Trillian companies, according to him, was indistinguishable and they were being managed as one economic entity. Mr Robinson also dealt with the massive fraud that had been perpetrated and the corrupt activities in which the Trillian companies were participants. The monies flowed to TMC and the other Trillian companies in circumstances where they did not render any legitimate services to either Eskom, Transnet, SA Express, Regiments, or the other entities that paid monies into their bank accounts. Mr Robinson's findings evince in no uncertain terms that TMC and the other Trillian companies were not only incorporated or used in a manner that constitutes an unconscionable abuse of the juristic personality, but also that the companies conducted business in a fraudulent manner and for a fraudulent purpose.

[9] On 18 June 2019, the Gauteng Division of the High Court of South Africa, Pretoria (the high court, Pretoria) *inter alia* granted judgment against TMC and TCP to repay to Eskom the sum of R595 228 913.29 plus interest and costs. TMC applied for leave to appeal against the judgment. On 2 October 2019 its application for leave to appeal was dismissed.

[10] The judgment debt remained unpaid. On 17 January 2020, Eskom issued a liquidation application in the high court, Pretoria. In its founding affidavit Eskom specifically dealt with Mr Wood's answering affidavit in opposition to the s 18 application. Therein, Mr Wood confirmed that at that point in time further litigation had been instituted against the Trillian group of companies by: (a) Transnet against TAM and others for payment of R93 480 000; (b) Transnet against TFA, TCA and others for payment of R11,4 million; (c) Transnet against TCP, TFA and others for payment of R41 040 000; and (d) Transnet Second Defined Benefit Fund against TCP, TFA, TAM, TMC and Mr Wood for payment of *inter alia* R179 543 257.21. Transnet established that TMC was factually and commercially insolvent. On 9 March 2020, it was finally wound up by order of that court. The Master of the High Court appointed Mr Murray, Ms Sivalutchmee Moodliar and Mr Ndumiso Sibiya as the joint provisional liquidators of TMC (the liquidators).

[11] On 25 September 2020, the liquidators initiated motion proceedings in the high court against TCP, TS, TN, TSS, TP, and TFA as the first to sixth respondents (the subject companies). Zara was cited as the seventh respondent, but no relief was sought against it. The eighth respondent was the Master of the High Court, Pretoria (the Master), and the ninth respondent, the Companies and Intellectual Property Commission (the CIPC). The liquidators sought relief in terms of s 20(9) of the Companies Act 71 of 2008 (the Companies Act) (the s 20(9) application).

[12] Section 20(9) reads:

'If, on application by an interested person or in any proceedings in which a company is involved, a court finds that the incorporation of the company, any use of the company, or any act by or on behalf of the company, constitutes an unconscionable abuse of the juristic personality of the company as a separate entity, the court may-

(a) declare that the company is to be deemed not to be a juristic person in respect of any right, obligation, or liability of the company or of a shareholder of the company or, in the case of a non-profit company, a member of the company, or of another person specified in the declaration; and

(b) make any further order that the court considers appropriate to give effect to a declaration contemplated in paragraph (a).'

[13] Our common law recognises 'piercing' or 'lifting' the corporate veil. In *Cape Pacific Ltd v Lubner Controlling Investments (Pty) Ltd and Others*,² Smalberger JA, said this:

'Recently this was confirmed in *The Shipping Corporation of India Ltd v Evdomon Corporation and Another* 1994 (1) SA 550 (A) where Corbett CJ expressed himself as follows at 566C-F:

"It seems to me that, generally, it is of cardinal importance to keep distinct the property rights of a company and those of its shareholders, even where the latter is a single entity, and that the only permissible deviation from this rule known to our law occurs in those (in practice) rare cases where the circumstances justify "piercing" or "lifting" the corporate veil. And in this regard it should not make any difference whether the shares be held by a holding company or by a Government. I do not find it necessary to consider, or attempt to define, the circumstances under which the Court will pierce the corporate veil. Suffice it to say that they

² *Cape Pacific Ltd v Lubner Controlling Investments (Pty) Ltd and Others* [1995] ZASCA 53; [1995] 2 All SA 543 (A); 1995 (4) SA 790 (A) at 803E-804J.

would generally have to include an element of fraud or other improper conduct in the establishment or use of the company or the conduct of its affairs. In this connection the words "device", "stratagem", "cloak" and "sham" have been used. . . ."

Two matters arising from the quoted passage merit further comment. First, reference is made to "those (in practice) rare cases where the circumstances justify "piercing" or "lifting" the corporate veil". It is undoubtedly a salutary principle that our Courts should not lightly disregard a company's separate personality, but should strive to give effect to and uphold it. To do otherwise would negate or undermine the policy and principles that underpin the concept of separate corporate personality and the legal consequences that attach to it. But where fraud, dishonesty or other improper conduct (and I confine myself to such situations) is found to be present, other considerations will come into play. The need to preserve the separate corporate identity would in such circumstances have to be balanced against policy considerations which arise in favour of piercing the corporate veil (cf Domanski 'Piercing the Corporate Veil - A New Direction' (1986) 103 SALJ 224). And a court would then be entitled to look to substance rather than form in order to arrive at the true facts, and if there has been a misuse of corporate personality, to disregard it and attribute liability where it should rightly lie. Each case would obviously have to be considered on its own merits.

The second is the reference to the inclusion of "an element of fraud or other improper conduct in the establishment or use of the company or the conduct of its affairs". (My emphasis.) It is not necessary that a company should have been conceived and founded in deceit, and never have been intended to function genuinely as a company, before its corporate personality can be disregarded (as appears in some respects to have been the view of the trial Judge - see the judgment at 821G-J). As *Gower (op cit)* states (at 133):

"It also seems clear that a company can be a facade even though it was not originally incorporated with any deceptive intention; what counts is whether it is being used as a facade at the time of the relevant transactions."

Thus if a company, otherwise legitimately established and operated, is misused in a particular instance to perpetrate a fraud, or for a dishonest or improper purpose, there is no reason in principle or logic why its separate personality cannot be disregarded in relation to the transaction in question (in order to fix the individual or individuals responsible with personal liability) while giving full effect to it in other respects. In other words, there is no reason why what amounts to a piercing of the veil *pro hac vice* should not be permitted.'

[14] Section 20(9) has introduced a statutory basis for piercing or lifting the corporate veil. In *City Capital SA Property Holdings Limited v Chavonnes Badenhorst St Clair Cooper NO and Others*,³ this Court stated:

'Section 20(9) of the 2008 Act provides a statutory basis for piercing the corporate veil. On its plain wording, s 20(9) permits a court to disregard the separate juristic personality of the company where its incorporation, use or an act performed by or on its behalf 'constitutes an unconscionable abuse of the juristic personality of the company as a separate entity'. The term 'unconscionable abuse' is not defined in the 2008 Act and must therefore be given its ordinary meaning.

The meaning of 'unconscionable' in the *Oxford English Dictionary* includes, 'Showing no regard for conscience . . . unreasonably excessive . . . egregious, blatant . . . unscrupulous.' It is in my view undesirable to attempt to lay down any definition of 'unconscionable abuse' [Leslie Brown *The New Shorter Oxford Dictionary on Historical Principles* (3 ed 1993) vol 2 p 1466]. It suffices to say that the unconscionable abuse of the juristic personality of a company within the meaning of s 20(9) of the 2008 Act includes the use of, or an act by, a company to commit fraud; or for a dishonest or improper purpose; or where the company is used as a device or facade to conceal the true facts [804C-D].

Thus, where the controllers of various companies within a group use those companies for a dishonest or improper purpose, and in that process treat the group in a way that draws no distinction between the separate juristic personality of the members of the group, as happened in this case, this would constitute an unconscionable abuse of the juristic personalities of the constituent members, justifying an order in terms of s 20(9) of the 2008 Act [*Ex parte Gore and Others NNO* 2013 (3) SA 382 (WCC) para 33. This is not new. In *Ritz Hotel [Ritz Hotel Ltd v Charles of the Ritz Ltd and Another* 1988 (3) SA 290 (A) at 315F] this court referred to English authority in which Lord Denning MR observed that, as regards piercing the corporate veil, there was a general tendency to ignore the separate legal entities of various companies within a group and to look instead at the economic entity of the whole group, especially where a parent company owns and controls the subsidiaries [*DHN Food Distributors Ltd v Tower Hamlets London Borough Council* [1976] 1 WLR 852 (CA) at 860B ([1976] All ER 462 at 467b-c).]

[15] Section 20(9) did not abolish or replace the common law. It supplements the common law and does not establish a defined set of circumstances in which a court may disregard the separate legal personality of a company.⁴

³ *City Capital SA Property Holdings Limited v Chavonnes Badenhorst St Clair Cooper NO and Others* [2017] ZASCA 177; 2018 (4) SA 71 (SCA) paras 28-30.

⁴ *Ex parte Gore NO and Others NNO* [2013] ZAWCHC 21; [2013] 2 All SA 437 (WCC) para 34.

[16] None of the respondents opposed the s 20(9) application. On 20 October 2020, the high court (Keightley J) issued the following order prayed for in the notice of motion (the s 20(9) interim order):

1. The applicants' non-compliance with the rules of court concerning forms, service and time periods otherwise applicable is condoned, such rules are dispensed with and the application is heard and adjudicated upon as an urgent application in terms of uniform rule 6(12);
2. It is hereby declared that a *rule nisi* in the following terms are granted ("the provisional order"):
 - a. Trillian Capital Partners (Pty) Ltd [Reg No: 2015/111759/07], Trillian Securities (Pty) Ltd [Reg No: 2015/152852], Trillian Nominees (Pty) Ltd [Reg No: 2017/036662/07], Trillian Shared Services (Pty) Ltd [Reg No: 2015/111747/07], Trillian Property (Pty) Ltd [Reg No: 2016/046295/07] and Trillian Financial Advisory (Pty) Ltd [Reg No: 2014/122082/07] ("the subject companies"):
 - i. are deemed not to be separate juristic persons in respect of any right, obligation or liability of those companies or of a shareholder of the subject companies;
 - ii. are collapsed into Trillian Management Consulting (Pty) Ltd ("TMC") and the subject companies and TMC henceforth exist as a single entity by ignoring their separate legal existence as contemplated by section 20(9) read with section 22 of the Companies Act, 71 of 2008 ("the 2008 Act"); and
 - iii. the effective date of the commencement of the subject companies' liquidation proceedings is the date upon which TMC was placed in liquidation;
 - b. The Companies and Intellectual Property Commission ("CIPC") and the Master of the High Court, Pretoria are directed to amend their records to reflect the consolidation of the subject companies, their composite winding up proceedings and such further consequences as they deem fit and/or necessary, in accordance with the orders granted pursuant to this application.
 - c. The costs of this application are costs in the consolidated winding-up of TMC and the subject companies.
2. Any order granted pursuant to this application shall forthwith be published in the Government Gazette and two newspapers published in the Gauteng Province.
3. Any party with an interest in this application and the provisional order are called upon to show cause on a date to be allocated by the registrar of this court, which shall be a date after days from the publication of any order granted pursuant to this application, as to why the provisional order should not be made final.

4. The costs consequent upon this application, up to the date of confirmation or discharge of the provisional order, are reserved pending the final determination of this application, save in the event that this application becomes opposed, in which event the applicants will request that any such opposing party be ordered to pay the costs of this application on the scale as between attorney and client.’

[17] The s 20(9) interim order was duly published in the Government Gazette and two local newspapers. Confirmation of the provisional order was not opposed by any of the subject companies, Zara, or anyone else. On 20 January 2021, the high court (Vuma AJ) granted an order confirming the *rule nisi* (the s 20(9) final order).

[18] On 4 February 2021, the liquidators instituted an action against CMSA on the grounds that an aggregate amount of R210 298 901 repaid by TSS to CMSA pursuant to a loan agreement concluded between the two entities, an aggregate amount of R69 956 099 repaid by TFA to CMSA pursuant to a loan agreement concluded between the two entities, and the amount of R160 246 000 repaid by TMC to CMSA pursuant to the loan agreements, constitute voidable dispositions as contemplated in ss 21, 29 or 31 of the Insolvency Act 24 of 1936, and for such payments to be set aside and repaid to the liquidators for the benefit of the creditors of the Trillian companies in liquidation.

[19] This prompted CMSA to launch an application in the high court, on 5 August 2021. It sought an order that the s 20(9) order ‘be rescinded and set aside’ under s 354 of the 1973 Companies Act,⁵ r 42(1)(a) of the Uniform Rules of Court or the common law (the rescission application). CMSA did not take issue with any of the factual averments set out in the liquidators’ founding affidavit in their s 20(9) application. The case sought to be made out is simply that it was erroneous and incompetent for the high court to grant the relief set out in paragraphs 2.a.ii. and 2.a.iii. of the s 20(9) order, collapsing the subject companies into TMC (in liquidation)

⁵ Section 354 reads:

‘354. Court may stay or set aside winding-up.

(1) The Court may at any time after the commencement of a winding-up, on the application of any liquidator, creditor or member, and on proof to the satisfaction of the Court that all proceedings in relation to the winding-up ought to be stayed or set aside, make an order staying or setting aside the proceedings or for the continuance of any voluntary winding-up on such terms and conditions as the Court may deem fit.

(2) The Court may, as to all matters relating to a winding-up, have regard to the wishes of the creditors or members as proved to it by any sufficient evidence.’

and to place them under a composite winding-up with TMC. The rescission application was opposed by the liquidators.

[20] On 12 September 2022, the high court delivered its judgment. It dismissed the rescission application with costs, including those of two counsel. It held that no case was made out for any relief under s 354 of the 1973 Companies Act or under the common law. It further held that '[t]he case for CMSA does not fall within the category of cases that qualify for rescission based on an erroneous order under Rule 42(1)(a)'. It nevertheless undertook an interpretive analysis of s 20(9) of the Companies Act and concluded 'that the provisions of s 20(9) are wide and would not only permit of such an order but the circumstances of this matter call for such an order'. In this regard, it further stated:

'It would be untenable that a main fraudster can be liquidated and that when the co-conspirators are discovered and found to be holding the assets and being solvent, that the court would not exercise the powers in terms of s 20(9), as it happened in this matter.'

[21] I agree with the high court that no case was made out for any relief under s 354 of the 1973 Companies Act or under the common law. CMSA's founding affidavit advanced no case for the setting aside of the s 20(9) final order under s 354 or for rescinding that order in terms of the common law. Its case, to the extent that there was one, rested squarely on r 42(1)(a) of the Uniform Rules of Court. Rule 42(1)(a) provides:

'The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary –

(a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby.'

[22] In *Lodhi 2 Properties Investments CC and Another v Bondev Development (Pty) Ltd*,⁶ Streicher JA held '[t]hat where notice of proceedings to a party is required and judgment is granted against such party in his absence without notice of the proceedings having been given to him such judgment is granted erroneously'.⁷ 'However, a judgment to which a party is procedurally entitled cannot be considered

⁶ *Lodhi 2 Properties Investments CC and Another v Bondev Development (Pty) Ltd* [2007] ZASCA 85; 2007 (6) SA 87 (SCA).

⁷ *Ibid* para 24.

to have been granted erroneously by reason of facts of which the Judge who granted the judgment, as he was entitled to do, was unaware'.⁸ Streicher JA further held:

'Similarly, in a case where a plaintiff is procedurally entitled to judgment in the absence of the defendant the judgment if granted cannot be said to have been erroneously granted in the light of a subsequently disclosed defence. A Court which grants a judgment by default like the judgments we are presently concerned with, does not grant the judgment on the basis that the defendant does not have a defence: it grants the judgment on the basis that the defendant has been notified of the plaintiff's claim as required by the Rules, that the defendant, not having given notice of an intention to defend, is not defending the matter and that the plaintiff is in terms of the Rules entitled to the order sought. The existence or non-existence of a defence on the merits is an irrelevant consideration and, if subsequently disclosed, cannot transform a validly obtained judgment into an erroneous judgment.'

[23] The liquidators were in terms of the Uniform Rules of Court entitled to approach the high court for the interim s 20(9) order and the s 20(9) final order. CMSA's subsequently disclosed defence (should there be one) based on its interpretation of s 20(9) of the Companies Act, cannot transform the validly obtained judgments into erroneous judgments. In truth, the rescission application is nothing else but a disguised appeal. However, CMSA does not have a right of appeal against the s 20(9) final order. Wepener J, who dismissed the rescission application, undertook a comprehensive interpretative analysis of s 20(9). As an appeal does not avail CMSA, the correctness of that interpretation is not before us.

[24] Importantly, Zara and none of the subject companies have ever attempted to assail the s 20(9) final order. It is doubtful that any of them would have been able to successfully invoke r 42(1)(a) – much less CMSA. Moreover, the composite winding-up order was granted more than three years ago. An enquiry in terms of s 417 of the 1973 Companies Act was convened by the high court for the purposes of investigating the affairs of the Trillian group of companies, and retired Judge C Pretorius was appointed to act as Commissioner to preside over the enquiry. The enquiry is not yet concluded and has already run over several weeks with the testimony of numerous witnesses received. The documentary evidence forming part of the record runs into several thousands of pages. The total cost incurred thus far exceeds R4 million. It can safely be accepted that the composite winding-up is

⁸ Ibid para 25.

presently at an advanced stage. The liquidators and creditors of the subject companies have an interest in finality.

[25] In *Express Model Trading 289 CC v Dolphin Ridge Body Corporate*⁹ where the winding-up had also progressed apace, Ponnann JA observed in the context of a condonation and reinstatement of an appeal application, that it may indeed prove impossible to turn back the clock and that it may thus be arguable that the appeal has become academic, but he considered it unnecessary ‘to go that far’. The progress of the winding-up, however, is in my view a weighty consideration within the context of the exercise of a court’s discretion whether to grant rescission of a judgment under r 42(1)(a) of the Uniform Rules of Court.¹⁰

[26] In the result the appeal is dismissed with costs, including those of two counsel.

P.A. MEYER
JUDGE OF APPEAL

Appearances

For appellant:

G Wickens SC with J Brewer

⁹ *Express Model Trading 289 CC v Dolphin Ridge Body Corporate* [2014] ZASCA 17; [2014] 2 All SA 513 (SCA); 2015 (6) 224 (SCA) para 18.

¹⁰ *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others* [2021] ZACC 28; 2021 (11) BLCR 1263 (CC) para 53.

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