

In the matter between:

**FIRSTRAND BANK LIMITED, WESBANK DIVISION**

Applicant

and

**PMG MOTORS ALBERTON (PTY) LIMITED  
(IN LIQUIDATION)**

First Respondent

**PMG MOTORS KYALAMI (PTY) LIMITED  
(IN LIQUIDATION)**

Second Respondent

**PMG MOTORS WESTVILLE (PTY) LIMITED  
(IN LIQUIDATION)**

Third Respondent

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### **Summary**

Companies – Application against joint liquidators of companies, which have been wound-up – Jurisdiction of court to hear and determine such application – Both Companies Act 61 of 1973 as well as Companies Act 71 of 2008 Act silent on the area of jurisdiction of a court in relation to proceedings after liquidation, where such proceedings do not relate to the winding-up of a company *per se* - Court in area where joint liquidators of a company have administrative offices has jurisdiction, even though place of central control of other joint liquidators is located in an area outside of area of court's jurisdiction - Notional "residence" of joint liquidators can accordingly take form of dual residency - Principles underlying companies having more than one "residence" within framework of previous legislation can potentially still apply in relation to joint liquidators if central control and/or joint administration of liquidated company for the benefit of creditors is conducted by more than one joint liquidator from more than one jurisdiction – s 23(3) of 2008 Act relating to registered office of a company being at the same location as the principal office of a company do not apply once a company is liquidated - new principles underlying s 23(3) do not apply retrospectively to joint liquidators of companies, which were already incorporated prior to the 2008 Act coming into effect - Considerations of convenience, justice and good sense also justify unnecessary multiplication of proceedings in relation the same subject matter on the basis of peculiar facts and circumstances of the present case

Insolvency – Creditors –Hypothec arising out of instalment sale agreement – Cancellation of sale agreement prior to insolvency – Insolvency Act 24 of 1936, s 84(2) – Applicability of s 84(2) contemplates an extant instalment sale "transaction" and not a transaction, which has already terminated – applicant entitled to entire proceeds of sale of goods, if transaction cancelled

### **Annotations:**

#### **Reported cases**

*Absa Bank Ltd v Cooper NO and Others* 2001 (4) SA 876 : applied

*Attorney-General v Blumenthal* 1961(4) SA 313 (T) : referred to

*Bisonboard Ltd v Braun Woodworking Machinery* 1991(1) SA 482 (AD) : applied

*Dairy Board v John T Rennie & Co (Pty) Ltd* 1976(3) SA 768 (W) : referred to  
*De Villiers and Others NNO v Electronic Media Network (Pty) Ltd* 1991 (2) SA 180 (W) :  
 referred to  
*Epsom Motors (Pty) Ltd v Estate Winson* 1961 (1) SA 687 (E) : applied  
*Fey NO v Lala Exporters* 2011 (6) SA 181 (WLD) : referred to  
*Griffin and Others v The Master and Others* 2006(1) SA 187 (SCA) : referred to  
*Ntsobi v Berlin Mission Society* 1924 TPD 378: applied  
*Permanent Secretary, Department of Welfare v Nguxuza* 2001(4) SA 1184 (SCA) : applied  
*Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984(3) SA 623 (AD) : applied  
*Ponnisamy and Another v Versailles Estates (Pty) Ltd* 1973 (1) SA 372 (A) : applied  
*President of the Republic of South Africa and Another v Hugo* 1997 (4) SA 1 (CC) : referred to  
*Roberts Construction Co. Ltd v Willcox Bros. (Pty) Ltd* 1962 (4) 327 (AA) : referred to  
*Roering and Others NNO v Nedbank Ltd* 2013(3) SA 160 (GSJ): applied  
*Shepstone & Wylie and Others v Geyser NO* 1998 (1) SA 354 (N) : referred to  
*Sibakhulu Construction (Pty) Ltd v Wedgewood Village Golf Country Estate*, 2013 (1) 191  
 (WCC) : distinguished  
*Swart v Vosloo* 1965(1) SA 100 (AD): applied  
*T W Beckett & Co Ltd v H Kroomer Ltd*, 1912 AD 324 : referred to

### **Unreported cases**

*Airborne Express CC and Another v Van den Heever NO and Others* (WLD Case No  
 05/18568): referred to  
*Imperial Bank Limited v Levinia Ramsaroop (in her capacity as liquidator of Dezzo Trading  
 213 (Pty) Limited & Others* (case number 1893/2006) : distinguished

### **Statutes**

Companies Act 61 of 1973: s 1; 12(1); s 348; s 367; s 386(1); s 386(3); s 386(4)(a); s  
 386(4)(f); s 386(5); s 387  
 Companies Act 71 of 2008 : s 7(k); 23(3); a 131(1); s 9 of schedule 5,  
 Insolvency Act, 24 of 1936 : s 83; s 84;  
 Supreme Court Act 59 of 1959: s 19 (1)(a); s 19(3)  
 Uniform Rules of Court: r 4(1)(a)(v)