



## 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:** 31 March 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 judgments of the Supreme Court of Appeal***

*Prevance Bonds (Pty) Ltd v Voltex (Pty) Ltd (58/2022) [2023] ZASCA 40 (31 March 2023)*

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Today, the Supreme Court of Appeal (SCA) dismissed an appeal with costs against the judgment and order of the Gauteng Division of the High Court, Pretoria (the high court), in terms of which it had granted an application by the first respondent, Voltex (Pty) Limited (Voltex 2), to rectify a recordal on an application for credit facilities, dated 26 January 1999, containing a security cession. The credit application form that was submitted to Voltex 2 by the second respondent, First Strut (RF) Limited (in liquidation) (First Strut), indicated Voltex 2's incorrect registration number.

The appellant is Prevance Bonds (Pty) Limited (Prevance). It was Voltex 2's business competitor. First Strut was liquidated on 8 July 2013. Before its liquidation, First Strut had conducted business with both Prevance and Voltex 2 as well as Aberdare Cables SA (Pty) Limited (Voltex 1). On 26 January 1999, First Strut applied to Voltex 2 for credit facilities. The application for credit facilities form that was presented to them for signature contained the security cession clause. It was only after the liquidation of First Strut that Voltex 2 realised that the company registration number on the credit application form was incorrect.

On 13 November 2013, Voltex 2 submitted proof of its claims to the liquidators of First Strut. The liquidators accepted that Voltex 2's claims were secured by the security cession and reflected this in a first liquidation and distribution account. On 2 March 2017, Prevance objected to the liquidation and distribution account recording Voltex 2 as a secured creditor. On 3 May 2017, the third respondent, the Master of the High Court, Pretoria, upheld the objection and directed the liquidators to amend the liquidation and distribution account to exclude Voltex 2 as a secured creditor.

On 27 June 2017, Voltex 2 applied to the high court for the rectification of the recordal of its registration number on the credit facilities application form and the security cession. Prevance, to whom First Strut had also ceded its book debts to secure payment of its claims, opposed the application. It denied that Voltex 2 was a secured creditor.

Two issues arose for determination in the appeal. The first was whether Voltex 2 provided sufficient evidence to sustain a claim for rectification of the security cession in motion proceedings; and, secondly, whether it was competent to order rectification of a document after the institution of a *concursum creditorum*.

With regard to rectification, the SCA found that on the facts the high court was correct to conclude that Voltex 2 had made out a case for rectification of the document which embodied the security cession. Mr Green, for Voltex 2, explained how it came about that the company registration number of Voltex 1, instead of Voltex 2, was recorded on the application for credit facilities that was presented to First Strut by Voltex 2. He testified that it was the intention of both Voltex 2 and First Strut that the creditor referred to in the security cession was Voltex 2 and not Voltex 1. Prevaence produced no credible evidence to challenge Mr Green's evidence. His evidence therefore remained uncontested. It was clear from his evidence that both parties to the security cession had the common continuing intention for the rectification of the security cession.

With regard to the effect of rectification on *concursum creditorum*, the SCA found that the intervention of insolvency of First Strut was no impediment to the rectification of the document in which the security cession was recorded, as it was clear from the evidence that a valid cession of book debts was concluded between the parties, and from that moment Voltex 2 became a secured creditor and remained as such when First Strut was wound-up. Rectification did not bring about a change in Voltex 2's status. Rectification did not therefore offend the *concursum creditorum* principle and did not prejudice the rights of the third party creditors.

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