

The Duty of All Trustees to Sign Resolutions

Shepstone & Wylie Attorneys v Abraham Johannes de Witt N O & Others (1270/2021) [2023] ZASCA 74 (26 May 2023)

INTRODUCTION

In this case the court had to decide whether a resolution of a trust is regarded as void if it has not been signed by all trustees to the trust. It raises a question on the duty of Trustees to always act jointly and in the interest of the trust.

BACKGROUND

This matter concerns a trust known as the Penvaan Trust (the "Trust"). The Trustees of the Trust were Mr Volker, Mrs Volker and Mr de Witt. Mrs Volker, instituted divorce proceedings against Mr Volker and employed the services of Shepstone & Wylie Attorneys (the "Attorneys") to represent her. Mrs Volker was struggling financially and the Attorneys agreed to represent her if the Trust signed a deed of suretyship in their favour for Mrs Volker's indebtedness for legal costs.

Mrs Volker called a meeting of the Trustees to consider certain resolutions, including a resolution that the Trust resolves to sign the deed of suretyship in favour of the Attorneys for her legal fees and disbursements. Mr Volker indicated that the meeting date and venue (due to the distance) were not suitable to him and that he had other urgent meetings to attend. The meeting date and venue were rescheduled to accommodate Mr Volker. However, despite these adjustments, Mr Volker did not attend the meeting. At the meeting, the Trustees in attendance, namely Mrs Volker and Mr de Witt, passed the relevant resolution and signed the deed of suretyship in favour of the Attorneys.

Upon their failure to receive payment from Mrs Volker, the Attorneys instituted proceedings against the Trust for the payment of their legal fees. The Trust denied liability, on the basis that the suretyship was not signed by all the Trustees.

The court *a quo* found in favour of the Trust based on section 26 of the trust deed which states that decisions and resolutions ought to be taken unanimously by the Trustees acting jointly.

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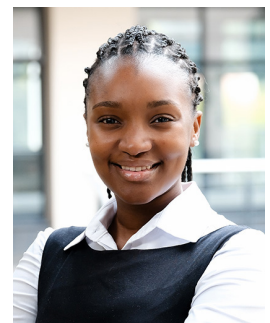
The matter was taken on appeal and the majority judgment in the SCA held that although there are certain clauses in the trust deed that allow for resolutions and votes to be taken with just 2 Trustees, the provision set out in clause 26 ought to be taken into consideration. The SCA found that while Trustees may disagree on matters internally, Trustees may not disagree on matters externally. The Court held that the suretyship agreement involves a third party who is external to the Trust and therefore requires all the Trustees to sign a resolution for its conclusion.

CONCLUSION

This matter highlights the importance of all trustees signing resolutions. The matter further highlights that the majority vote or agreement by the majority of the trustees is only relevant for internal matters and not external matters to the trust. What remains a question that ought to be answered is what happens if there is a trustee who refuses to be involved in an external resolution and how the trust approaches such an issue.



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