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1. INTRODUCTION

In this Sibergramme materials on civil procedure published during **April 2007** which have not been dealt with in previous Sibergrammes are considered.

2. PARTIES

Cabinet Minister

The Minister of Trade and Industry was held in ***Farocean Marine (Pty) Ltd v Minister of Trade and Industry*** **2007 (2) SA 334 (SCA)** to have locus standi to reclaim moneys paid to an exporter under the General Export Incentive Scheme (GEIS) notwithstanding that para 3.11 of the guidelines governing the operation of the scheme provides for such a claim to be made by the Director-General of the Department of Trade and Industry. Proceedings on behalf of the state, said Malan AJA (Farlam, Mlambo and Maya JJA and Combrinck AJA concurring), may be commenced both in the name of the state or government and in the name of a nominal plaintiff or applicant, usually the minister as the embodiment of a government department. Proceedings may also be commenced by the administrative head of a department. Where proceedings are initiated by the Minister of Trade and Industry in his official capacity as the member of the Cabinet who has overall control, authority and responsibility for the Department of Trade and Industry, the question is not whether the minister is authorized to do so, but whether the minister has set out the necessary requirements for liability. It is not a question of whether the minister has locus standi (para 8 at 338G—339B).

The respondent minister had expressly alleged that the Director-General of the Department of Trade and Industry had decided to recover from the appellant the full amount of the GEIS benefits paid. While it was correct that '[p]ower is not conferred upon "the administration" generally, and any power which is conferred may be exercised by the office holder or body upon which it was conferred alone' (Lawrence Baxter *Administrative Law* (1984) 426), the facts founding a cause of action based on para 3.11 of the GEIS guidelines had been expressly alleged. **It was thus not a question of the minister exercising the powers of the director-general but of the minister instituting action to put before court the case of the department on whose behalf it was decided to recover the benefits paid**. That was permissible, and an objection to the locus standi of the minister was therefore correctly dismissed by the court a quo (para 8 at 339C—F).

Company director and shareholder

The respondent on appeal in ***Greaves & others v Barnard*** **2007 (2) SA 593 (C)** (applicant in the court a quo) was held to have locus standi in judicio to institute spoliation proceedings on the ground that he was entitled to occupy an office in certain business premises from which the appellants were attempting to exclude him. His right of occupation rested on the fact that **he was an executive director and shareholder in the third appellant, a company run by him together with the other appellants**. Accordingly, held Blignault J (Desai and Veldhuizen JJ concurring), the respondent's interest in his possession of the property materially transcended that of a mere agent or employee of the company, who normally would not have locus standi to bring a spoliation application (para 21 at 598H—I; see also para 17 at 598A—B). The respondent clearly performed his work and occupied his office with the intention of securing some benefit for himself in his capacity as one of the three shareholders in the company, which itself stood to benefit from the business activities carried on by the respondent in his office (para 21 at 598I—J, read with para 17 at 598B). It was not, added Blignault J, helpful to refer to the theoretical position in other companies which featured in earlier reported cases, and the court had to have regard to the respondent's position in this particular company (para 18 at 598B—C).

Government department

See ***Farocean Marine (Pty) Ltd v Minister of Trade and Industry*** **2007 (2) SA 334 (SCA)**, which is surveyed under 'Cabinet Minister' above.

Pension Funds Adjudicator

In ***Old Mutual Life Assurance Co (SA) Ltd v Pension Funds Adjudicator & others*** **[2007] 2 All SA 98 (C)** Fourie J held that **the Pension Funds Adjudicator appointed in terms of s 30C of the Pension Funds Act 24 of 1956 has no locus standi to intervene in a dispute between other parties after he has made a determination in the matter**, which then becomes the subject of attack in proceedings in the High Court (para 18 at 103*g—h*). As was held in *Orion Money Purchase Pension Fund (SA) v Pension Funds Adjudicator & others* [2002] 9 BPLR 3830 (C), the function of the Adjudicator is to dispose of complaints lodged in terms of the Pension Funds Act, and after making his determination he has no further function to fulfil. He should therefore not file opposing papers in an application to set aside his determination, save for the 'rare cases' in which the Adjudicator may be required to file an affidavit in proceedings under s 30P of the Pension Funds Act, to provide information which may assist the court in its adjudication of the matter (para 9 at 101*c—e*; see also para 16 at 103*d—e*). Cf *Pretoria Portland Cement Co Ltd & another v Competition Commission & others* 2003 (2) SA 385 (SCA), where it was held that there are good reasons of policy why judges should not be joined as parties in appeal proceedings against their judgments, since it would be improper for judges to participate in any stage subsequent to their judgments in order to defend their

decisions, except in those rare cases where an obligation to provide information to the court of appeal arises. It is not in the public interest that judges should become embroiled in disputes between parties who have appeared before them, for judges should be seen as impartial (para 9 at 101*a—c* and para 16 at 103*c—d*, with reference to the *Pretoria Portland Cement* case para 38 at 402G—403B).

In issuing a determination, the Adjudicator performs a judicial function, since he resolves a dispute by the application of law in a fair public hearing in a court or other independent and impartial forum, as contemplated in s 34 of the Constitution of the Republic of South Africa, 1996. This conclusion is confirmed by s 30O of the Pension Funds Act, which provides that the Adjudicator's determination shall be deemed to be a civil judgment of any court of law, on the strength of which a warrant of execution may be issued (para 12 at 102*b—d*). On a proper construction of the relevant provisions of the Pension Funds Act, **it is clear that the legislature did not intend to afford the Adjudicator the right to become a party to a s 30P application and to oppose it**. On the contrary, the Act shows that the Adjudicator is not a party to the complaint as defined in s 30G, nor is he entitled to receive notice of an aggrieved party's intention to approach the High Court under s 30P(1) (para 13 at 102*d—f*).

The Adjudicator also could not rely on s 34 of the Constitution, since that provision affords the right to a party to have a dispute resolved. The Adjudicator was not a party to the dispute and was therefore not entitled to invoke the right enshrined in s 34 to appear in the proceedings in order to defend his determination. Nor did s 38 of the Constitution avail the Adjudicator, since that provision applies only in cases of infringements, or threatened infringements, of the rights enumerated in Chapter 2 of the Constitution. Nowhere was there any allegation that there had been an infringement, or a threat of infringement, of such a right, entitling the Adjudicator to approach a court for relief. There was accordingly no basis on which the Adjudicator could rely upon s 38 to oppose the attack on his determination (para 14 at 102*f—i*). There was also no need to develop the common law as contemplated in s 39 of the Constitution, since s 38 already allowed anyone acting in the public interest to approach a competent court for relief, alleging that a right in the Bill of Rights had been infringed or threatened (para 15 at 103*a—c*).

Finally, the fact that the Adjudicator was cited as a respondent in the application to the High Court did not make him a party to the underlying dispute between the other litigants. This was so as the Adjudicator had no interest in the right which was the subject matter of the dispute between the other litigants (para 17 at 103*e—f*).

Section 74 administrator

A creditor is entitled to be heard in proceedings before a magistrate aimed at the appointment of an administrator to the estate of a debtor in terms of s 74 of the Magistrates' Courts Act 32 of 1944: *Foschini Retail Group (Pty) Ltd v Zietsman & another* [2007] 2 All SA 93 (C) paras 16—17 at 95*i—j*. This is because creditors have a 'substantial interest' in who is appointed as administrator (para 16 at 95*i*). In view of the important functions assigned to a s 74 administrator, there must of necessity be potential prejudice to creditors if they are not heard on the question of who is appointed as administrator. The right to object alone without the concomitant right to be given an

opportunity to ventilate the nature and basis of the objection renders the effective utilization of the right to object nugatory (para 18 at 96*c—d*). The purpose of participatory rights is to ensure that decisions made through the exercise of a statutory discretion are arrived at in a manner that is fair and transparent. Those affected by such decisions must also be afforded an opportunity to present all the (relevant) evidence. The decision-maker must then arrive at a decision after due consideration of all the evidence presented before him or her (para 19 at 96*d—f*). The fact that s 74E(1) is silent on who is to be appointed as administrator is all the more reason for requiring strict compliance with procedural safeguards. The choice of how the right to be heard in regard to the appointment of an administrator is to be given effect to has been left to the discretion of the magistrate, by virtue of whose position it is assumed that he or she has the expertise to determine what procedures would be fair, appropriate and expedient (para 20 at 96*f—g*; see also paras 13—14 at 95*f—h*).

In the circumstances, it could not be said that the magistrate had exercised his discretion properly and judiciously, since the applicant creditor was held not to have locus standi to object to the appointment of a particular person as administrator. The appointment had therefore to be set aside and the matter remitted for the appointment of an administrator in terms of s 74E(1) by another magistrate (para 24 at 97*a—b* read with para 25 at 97*d—e*).

Trustee

A trustee with 'bare ownership' ('nudum dominium') of immovable property registered in the name of 'the trustee for the time being' of the particular trust was held in ***Yarram Trading CC t/a Tijuana Spur v Absa Bank Ltd*** **2007 (2) SA 570 (SCA)** to have locus standi to evict a lessee from the property despite the fact that the provisions of the Collective Investment Schemes Control Act 45 of 2002 and the trust deed in question conferred exclusive power of control over the property of the scheme on the 'manager' of the scheme. Exclusive control of the property by the manager, said Brand JA (Mpati DP, Mthiyane JA and Malan and Theron AJJA concurring), was not incompatible with the trustee's locus standi to recover possession of the property by way of vindication or ejectment from a third party, albeit for the sole purpose of restoring the property to the manager's control (para 14 at 577J—578B). One of the common-law incidents of ownership was that the owner 'may claim his property wherever found, from whomsoever [is] holding it' (para 13 at 577F—G, citing *Chetty v Naidoo* 1974 (3) SA 13 (A) at 20B—C). This applies, said Brand JA, even where the owner holds only legal ownership or bare dominium in the property. **A trustee in whom ownership vests accordingly has standing to apply for ejectment and to vindicate the property even though the trustee is not beneficially interested therein**. In fact, this holds true even where the trustee is not entitled to retain possession of the property at all, but seeks to vindicate it or to eject the lessee solely in order that he may put the beneficiaries in possession of the property (para 13 at 577G—I, with reference to *Moluele & others v Deschatelets NO* 1950 (2) SA 670 (T) at 678, *Mackenzie NO v Basha* 1950 (1) SA 615 (N) at 620 (per Carlisle AJP), and *Honoré's South African Law of Trusts* 5 ed (2002) by

Edwin Cameron, Marius de Waal, Basil Wunsh, Peter Solomon and Ellison Kahn para 163 at 270).

It was clear that neither the provisions of the Collective Investment Schemes Control Act nor those of the trust deed in question deprived the trustee of its common-law locus standi to vindicate the property held by the trust, either expressly or by necessary implication (para 14 at 577I—J). Indeed, clause 23 of the trust deed imposed the duty on the trustee 'to exercise all the powers necessary to protect the interests of investors' in the collective scheme administered by the trust. This indicated that **however wide the powers of control over the property conferred upon the manager of the scheme, the trustee did at least retain some of the common-law powers associated with ownership**. Having regard to the trustee's duty to protect, the most prominent among those retained powers would be the power to vindicate the property from the unlawful possession of third parties (para 15 at 578B—D; see also para 20 at 579D—E).

Furthermore, the law relating to ownership of immovable property held in trust (and to the powers of the owner) was not altered by s 4(4) or (5) of the Financial Institutions (Protection of Funds) Act 28 of 2001, whose provisions were incorporated by reference by s 71 of the Collective Investment Schemes Control Act. In terms of s 4(4) a trustee is obliged to keep trust property separate from its own assets in its books of account, while in terms of s 4(5) trust property does not form part of the assets of the trustee. Those provisions had to be understood with reference to common-law principles. Section 4(4), mirroring s 11 of the Trust Property Control Act 57 of 1988, was based on the common-law premiss that trust assets form a separate estate in the hands of the trustee, provided that they are identified as trust property and kept separate from the trustee's personal assets. Section 4(5), which mirrors s 12 of the Trust Property Control Act, in turn confirms the common-law rule that the trustee is not the beneficial owner of trust assets. The provisions of the Collective Investment Schemes Control Act and the trust deed were thus clear**:** upon registration in its name qua trustee, the respondent became the legal owner of the property and held it in trust for the investors in the collective scheme as 'beneficial owners' (sc those holding 'utile dominium') (para 10 at 576F—J).

An objection to the locus standi of the trustee to vindicate the property in question by seeking eviction of the lessee of that property was accordingly dismissed (para 15 at 578D).

3. SECURITY FOR COSTS

The decision in ***MV Gladiator: Samsun Corporation t/a Samsum Line Corporation v Silver Cape Shipping Ltd, Malta*** **2007 (2) SA 401 (D)** was previously reported sub nom *Samsun Corporation t/a Samsun Line Corporation v Silver Cape Shipping Ltd, Malta* in [2005] 1 All SA 67, and is surveyed in *Civil Procedure Sibergramme Yearbook 2005* (2006) 31—3.

4. APPLICATIONS

Dispute of fact

The rule in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E—635C was applied in ***De Villiers v Potgieter & others NNO*** **2007 (2) SA 311 (SCA)** inasmuch as the appeal was determined on the basis of averments contained in the affidavits of the respondent in the High Court (appellant on appeal) and those averments contained in the affidavits of the applicants in the High Court (respondents on appeal) which were admitted by the respondent in the High Court (para 14 at 317D—E).

In ***Yarram Trading CC t/a Tijuana Spur v Absa Bank Ltd*** **2007 (2) SA 570 (SCA)** the Supreme Court of Appeal held to be **immaterial in eviction proceedings a dispute of fact on affidavit as to the amount of rental owing by an evicted lessee to its lessor**, since the respondent (the lessor) was entitled to cancel the lease and to an order evicting the appellant (the lessee) as long as the respondent succeeded in establishing that some rental was owing to it (para 24 at 580C—D). It had been established on facts which were common cause that the appellant was indeed in arrears with its rental on the cancellation date, and the respondent was accordingly entitled to cancel the lease (para 28 at 581E—F). Turning to a further complaint that the appellant had failed to comply with a provision in the lease which required it to furnish the respondent with its turnover figures for the month of June 2004, Brand JA (Mpati DP, Mthiyane JA and Malan and Theron AJJA concurring) held that **the appellant's denial on affidavit** of the allegation that it had failed to furnish a June 2004 turnover statement **was so far-fetched and clearly untenable that it could be rejected merely on the papers**. The denial accordingly fell within one of the recognized exceptions to the general rule in the *Plascon-Evans Paints* case which 'essentially favours acceptance of the respondent's version in a factual dispute, where final relief is sought in motion proceedings'. In consequence, it had to be accepted that the appellant had never provided the June 2004 statement, which entitled the respondent to cancel the lease as and when it did (para 30 at 582A—D, with reference to 1984 (3) SA at 635C).

Replying affidavits

The rule that **an applicant may not make out a new case in replying affidavits** was held not to have been violated in ***Greaves & others v Barnard*** **2007 (2) SA 593 (C)**, where the applicant in spoliation proceedings had appended to his founding affidavit a shareholders' agreement which he contended entitled him to occupy an office in certain business premises from which the respondents were trying to exclude him (para 16 at 597G—H).

5. TRIAL ACTIONS

Plea

In ***Thebe Ya Bophelo Healthcare v Van der Walt NO & others*** **[2007] 2 All SA 211 (T)** Seriti J quoted with approval from the judgment of Tindall J in *Wildner v Compressed Yeast Ltd* 1929 TPD 166 at 170, where it was said that **a plea ought to state expressly the defences on which the defendant relies**, but it may happen to be so drafted that it indicates impliedly that the defendant intends to rely upon a certain defence. If the terms of the plea do indicate, by implication, that the defendant intends to rely upon a certain defence, then it is the duty of the defendant to state clearly and concisely the material facts on which that defence is based (at 222*a*—*c*). Seriti J referred also to uniform rules 18(4) and 22(2) in that regard (at 221*j*—222*a*, 222*c*).

Pleadings

In ***Thebe Ya Bophelo Healthcare v Van der Walt NO & others*** **[2007] 2 All SA 211 (T)** Seriti J reiterated, with reference to dicta in *Kali v Incorporated General Insurances Ltd* 1976 (2) SA 179 (D) at 182pr—A, that **the purpose of pleading is to clarify the issues between the parties, and that a pleader cannot be allowed to direct the attention of the other party to one issue and then, at the trial, attempt to canvass another** (at 222*d*—*e*). The whole purpose of pleading is to bring clearly to the notice of the court and the parties to an action the issues upon which reliance is to be placed (at 222*c*—*d*, with reference to *Imprefed (Pty) Ltd v National Transport Commission* 1993 (3) SA 94 (A) at 107C—E; see also *Durbach v Fairway Hotel Ltd* 1949 (3) SA 1081 (SR) at 1082).

6. JUDGMENTS AND ORDERS

Arbitration award

In terms of an arbitration agreement, an arbitrator was appointed to determine a dispute between the applicant and the fourth respondent in ***Thebe Ya Bophelo Healthcare v Van der Walt NO & others*** **[2007] 2 All SA 211 (T)**. The relevant provision of the arbitration agreement stated that the issues to be determined by the arbitrator were the issues contained in the pleadings filed in a High Court action which was pending between the applicant and the fourth respondent at the time when the agreement was entered into. None of the pleadings raised a defence of 'unanimous assent' to the action, which was canvassed only in the cross-examination of a witness during argument before the arbitrator after both parties had closed their cases and the applicant had been given leave by the arbitrator to reopen its case in order to lead evidence of the witness in question. An award made by the arbitrator in favour of the applicant was subsequently set aside by three appeal arbitrators (the first, second and third respondents) on the basis of the defence of unanimous assent, which was pertinently raised for the first time in the notice of appeal. The fourth respondent's appeal before the arbitration appeal tribunal would

have failed but for the defence of unanimous assent, and the appeal award would therefore have to be set aside if it was found that the principle of unanimous assent fell outside the jurisdiction of the appeal tribunal (at 218*c*).

Setting aside the award of the appeal arbitrators, Seriti J held that it was common cause between the parties that the defence of unanimous assent was not specifically pleaded by the fourth respondent as required by uniform rules 18(4) and 22(2) (at 223*b*—*d*). Cases relied on by the fourth respondent basically stated that **a court had a discretion to deal with an issue even if it was not mentioned in the pleadings if (1) no prejudice would be caused to any of the parties, and (2) there had been a full investigation of the matter or issue** (at 223*e*—*f*, with reference to *Shill v Milner* 1937 AD 101 at 105, *Collen v Rietfontein Engineering Works* 1948 (1) SA 413 (A) at 433, and *Middleton v Carr* 1949 (2) SA 374 (A) at 385—6). In the present matter, however, it could not be said in the circumstances that the issue had been fully canvassed (in accordance with requirement (2)), and the fact that the defence of unanimous assent was not pleaded and that it was raised at a very late stage of the proceedings invited an inescapable inference that it came to the mind of the fourth respondent, not at the time when the pleadings were drafted, but only when the applicant's witness was cross-examined after he was recalled. The applicant was accordingly not given an opportunity to prepare properly for the hearing and to call necessary witnesses to deal with the defence of unanimous assent. If the fourth respondent had raised the defence in its plea, the applicant would not have found itself in the uncomfortable position in which it was when the defence was first raised (at 223*f*—*j*). The submission on behalf of the fourth respondent that the arbitration appeal tribunal was entitled to deal with the defence of unanimous assent could accordingly not be sustained. If that defence was considered, the applicant would obviously be prejudiced. The conditions that had to exist prior to the appeal arbitrators dealing with the issue of unanimous assent were therefore lacking in the present matter (at 224*a*—*b*).

It followed that the arbitration appeal tribunal had erred in dealing with the defence of unanimous assent, and had consequently committed an irregularity or exceeded its powers. The pleadings did not allow the arbitrator or the arbitration appeal tribunal to deal with the defence of unanimous assent. Since the arbitration appeal tribunal had found in favour of the applicant on all issues that were raised on appeal other than that of unanimous assent, the court was entitled to intervene (at 224*b*—*d*). If the fourth respondent had wanted to rely on the defence of unanimous assent, it should have amended its pleadings accordingly at the appropriate time, so that the issue could be fully ventilated. There was no reasonable explanation why the fourth respondent had not dealt with the defence timeously and appropriately, and (as in any litigation) there was a need for finality. Seriti J accordingly refused to remit the matter to the arbitrator so as to allow the fourth respondent to deal with the defence of unanimous assent, and substituted in place of the order made by the arbitration appeal tribunal an order dismissing the appeal by the fourth respondent against the award made by the arbitrator (at 224*e*—*i*).

7. APPEALS

New matter on appeal

See ***Thebe Ya Bophelo Healthcare v Van der Walt NO & others*** **[2007] 2 All SA 211 (T)**, which is surveyed more fully under '**JUDGMENTS AND ORDERS: *Arbitration award***' immediately above. In the course of his judgment, Seriti J quoted from the judgment of Selikowitz J in *Benjamin v Sobac South African Building and Construction (Pty) Ltd* 1989 (4) SA 940 (C) at 964A—D, where (with reference to earlier authorities) it was said that the court should be very chary of admitting fresh evidence after a case has been tried, more especially upon points which have been contested and decided at the trial. Guiding principles governing the admission of further evidence are the necessity for finality and its corollary that issues raised and decided should not normally be reopened, the need for the applicant to show that he could not by reasonable diligence have adduced the evidence in time, the requirement that the evidence must be weighty and material – 'evidence which would be practically conclusive', and the need to consider prejudice to the opponent (at 222*g*—223*a*).

8. COSTS

Pension Funds Adjudicator

A costs order, particularly a punitive one, should not be made against the Pension Funds Adjudicator appointed in terms of s 30C of the Pension Funds Act 24 of 1956. He is a public functionary whose office is funded by public funds, and a court should only in exceptional circumstances consider it necessary to mulct him in costs**: *Old Mutual Life Assurance Co (SA) Ltd v Pension Funds Adjudicator & others*** **[2007] 2 All SA 98 (C)** para 19 at 103*h*—*i*. A costs order was accordingly not made against the Pension Funds Adjudicator after the latter had intervened in a dispute, in which he had previously issued a determination, pursuant to (incorrect) legal advice to the effect that he had the necessary locus standi to intervene when the dispute was placed before the High Court (para 19 at 103*i*—*j*).

Reconsideration of costs order provisionally made

In ***De Villiers v Potgieter & others NNO*** **2007 (2) SA 311 (SCA)** the appeal was dismissed with costs by Mlambo JA (Streicher JA concurring, with Combrinck AJA dissenting). The matter was, however, determined on the basis of affidavit evidence which did not include evidence from two of the dramatis personae, who were not joined as parties and who did not file affidavits denying allegations of misconduct on their part. Since evidence which might be given in other, pending, proceedings in the High Court involving the parties might establish impropriety on the part of the successful respondents, Mlambo JA made an order declaring that **the respondents were not entitled to tax the costs of the appeal until the pending High Court proceedings had**

been finally determined by judgment or otherwise, and granted the appellant leave to apply to the Supreme Court of Appeal for an order setting aside or altering the order for costs made in the appeal provided that the application for such a variation or setting aside was filed with the Registrar of the Supreme Court of Appeal within 21 days of the final determination of the proceedings in the High Court by judgment or otherwise (para 15 at 317G—I read with para 24 at 319H—I). The order in the appeal in *De Villiers*, as Mlambo JA pointed out (in para 14 at 317F—G), was similar to the one made in *Sindani v Van der Merwe & others* 2002 (2) SA 32 (SCA), [2002] 1 All SA 311 para 18 at 38F—H (SA), 316*b—d* (All SA).

9. ADMINISTRATION ORDERS IN TERMS OF SECTIONS 74—74W OF ACT 32 OF 1944

Appointment of administrator

On the locus standi of a creditor to object to the appointment of a particular person as an administrator in terms of s 74E(1) of the Magistrates' Courts Act 32 of 1944, see ***Foschini Retail Group (Pty) Ltd v Zietsman & another*** **[2007] 2 All SA 93 (C)**, which is surveyed under '**PARTIES: *Section 74 administrator***' above. Goso AJ (Hlophe JP concurring) remarked in this regard that once an estate is put under an administration order, it is important that an administrator be appointed as soon as possible so that creditors receive their money without delay (para 18 at 96*d*).

Duty of administrator

The most important duty of an administrator is to collect payments made in terms of the administration order and to distribute such payments pro rata among creditors. In doing so, the administrator occupies a position of trust vis-à-vis creditors as well as the debtor. It is important that he be independent and impartial, carrying out his duties in the interests of debtor and creditors alike. He is required to take expeditious steps and to avoid unnecessary delays**:** ***Foschini Retail Group (Pty) Ltd v Zietsman & another*** **[2007] 2 All SA 93 (C)** para 12 at 95*e—f*; see also para 18 at 96*d*.

Purpose and scope of administration orders

By introducing administration orders, the legislature aimed at obtaining consensus from creditors easily, quickly and inexpensively about amounts to be paid in settlement of their debts and about payments in instalments where applicable. An added advantage to creditors is the appointment of an independent and impartial administrator who would afford them an opportunity to examine the affairs of the debtor with a view to determining whether it is to their best advantage to move an application for an order sequestrating the debtor's estate**:** ***Foschini Retail Group (Pty) Ltd v Zietsman & another*** **[2007] 2 All SA 93 (C)** para 11 at 95*c—e*.

10. CONSTITUTIONAL PRACTICE

Application for leave to appeal to Constitutional Court

The decision in ***Concerned Land Claimants' Organisation of Port Elizabeth v Port Elizabeth Land and Community Restoration Association & others*** **2007 (2) SA 531 (CC)** was previously reported in 2007 (2) BCLR 111, and was surveyed in **Civil Procedure Sibergramme 6 of 2007** (25 September 2007) 10—11.

Costs

The decision in ***Concerned Land Claimants' Organisation of Port Elizabeth v Port Elizabeth Land and Community Restoration Association & others*** **2007 (2) SA 531 (CC)** was previously reported in 2007 (2) BCLR 111, and was surveyed in **Civil Procedure Sibergramme 6 of 2007** (25 September 2007) 12.

Direct access to Constitutional Court

The decision in ***Concerned Land Claimants' Organisation of Port Elizabeth v Port Elizabeth Land and Community Restoration Association & others*** **2007 (2) SA 531 (CC)** was previously reported in 2007 (2) BCLR 111, and was discussed in **Civil Procedure Sibergramme 6 of 2007** (25 September 2007) 12—13.

11. LITERATURE

The **second edition** of **W A Joubert (ed)** ***The Law of South Africa*** **Volume 3 Part 1 (2007)** by I Ellis and M Dendy is devoted entirely to an exposition of the law governing **civil procedure in the superior courts**. It includes a section by the present author on constitutional matters, dealing with Constitutional Court procedure in civil cases.

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