



Suretyships by spouses married in community of property

IN TERMS of Section 15 (1) of the Matrimonial Property Act 88 of 1984 ("the MPA"), both spouses have equal powers to deal with the assets of the joint estate, without the consent of the other spouse.

This power is limited in terms of sections 15(2) and 15(3) of the MPA. It is a requirement that the consent of the other spouse be obtained before certain transactions may be entered into.

Section 15(2)(h) of the MPA specifically prohibits a spouse from standing surety without consent of the other spouse.

However, this does not apply where a spouse is acting in the ordinary course of their profession, trade or business.

In the case of *Strydom v Engen Petroleum Limited* [2013] 1 All SA 563 (SCA), the Supreme Court of Appeal ("SCA") reinforced the position regarding when a spouse married in community of property is required to obtain the consent of the other spouse if they wish to sign a suretyship.

In this case, Strydom, who was a director of a company, signed an unlimited suretyship in favour of Engen, binding himself as surety for the debts of the company. The company was later liquidated.

At that time, the company owed approximately R25 million to Engen.

Engen obtained judgment against Strydom in the North Gauteng High Court in terms of the suretyship.

Strydom appealed the judgement to the SCA on the basis that he was married in community of property and his wife had refused to consent to him signing the deed of suretyship. Accordingly, the suretyship was invalid.

The SCA held that the sections of the MPA could not be read in isolation.

Accordingly, the requirement that a spouse consents to the other spouse

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signing of a suretyship cannot be read separately from the proviso that this does not apply in circumstances where the suretyship is signed in the ordinary course of the spouse's business.

For that reason it is not sufficient for a person to merely state that they are married in community of property and their spouse did not consent to the suretyship. They have to demonstrate that the suretyship was not signed in the ordinary course of their profession, trade or business.

The SCA held that, on the facts, Strydom was unable to prove that he was not acting in the ordinary course of his trade or business.

Accordingly, he could not rely on the restriction set out in Section 15(2)

of the MPA. The SCA thus dismissed the appeal.

This case is a further illustration that if a person is married in community of property and signs a suretyship they may be binding the joint estate if the suretyship is not signed in the ordinary course of the spouse's business, even if the other spouse has withheld their consent.

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