



INSOL
INTERNATIONAL



The status of property interests during the business rescue process

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Introduction - Balancing Rights



1. Section 134(1)

Regulates the disposal of property

- What is “Property”?
- What is “Dispose”?
 - Ordinary Course
 - Bona fide and ...
 - Via an adopted BR plan
- Who may Dispose?
 - Consider the impact of the recent SCA judgment *Ragavan v Optimum Coal*

1. Section 134(1)

Continued

Sub - 1(b) Protect 3rd Party

- Confirms common law status
- Possession not impacted - compare to liquidation

Sub - 1(c) Protects company against 3rd parties -

- Where company is in legal possession in spite of contractual terms

2. Section 134(2)

Not in the notes

- Seems straight forward
 - Recent practical example
- When is it reasonable to refuse?
- When is it no longer reasonable?

3. Section 134(3)

- Security Interest v. Title Interest
- Concepts clarified by our courts:
 - “In writing” - Section 134(1)(a)(ii) *Cloete Murray v FirstRand*
 - “Prompt Payment” - Section 134(3)(b) *Louis Pasteur Holdings v ABSA*
 - “Security” v “PCF” - *NUM v VR Lazer*

Talking Points

- GNB - status?
- Debtors
 - *Kritzinger v Standard Bank*
 - *van den Heever v van Tonder*
- Security v. Adopted BR Plan
 - *Redpath Mining v Marsden*