

**G Walker Engineering CC t/a Atlantic Steam Services v First Garment Rental (Pty) Ltd
(2011 (5) SA 14 (WCC)) [2011] ZAWCHC 261; 7405/2006 (9 June 2011)**

The plaintiff, a close corporation had been deregistered as a consequence of its failure to file its annual return and as such it had been finally deregistered.

The deregistration of close corporations is effected by the registrar of close corporations in terms of s 26 of the Close Corporations Act 69 of 1984. The provision is plainly modelled on s 73 of the old Companies Act, Act No. 61 of 1973 (the currently applicable provisions of ss 82 and 83 of the Companies Act 71 of 2008 provide for a somewhat different regime). The effect of deregistration was that the corporation's existence as a legal person ceased. The "non-existence" of the plaintiff precluded reliance by the defendant on rule 39(3) of the uniform rules of court finds application when there is a plaintiff in existence who is in default of appearance. A non-existent person cannot be in default of appearance, nor could the defendant in the circumstances seek judgment in terms of the second part of the sub-rule.

The effect of re-registration was that the corporation would from the date of the restoration of its registration continue to exist and be deemed to have continued in existence as from the date of deregistration as if it were not registered. The potential restoration of the registration of the corporation entailed that the action might be resumed at any time in the future and the defendant would have had to continue to provide for that eventuality. The effect of s 15 of the Prescription Act 68 of 1969 was that the running of prescription against the corporation was interrupted when it served summons claiming payment of the alleged debt on the defendant. If the registration of the corporation were to be restored at any time in the future the plaintiff could, by reason of the deeming effect of s 26(7) of the Close Corporation and notwithstanding the intervening passage of time, resume the prosecution of the action. It was pointed out that deregistration of the corporation had occurred as consequence of its member's neglects.

When application for the restoration of the registration of a company was made under the 1973 Companies Act it was required as a matter of practice that notice of the application be given to the Minister of Finance and the head of any other department which might have any interest by virtue of the vesting of the company's assets in the state as *bona vacantia* upon the company's deregistration. If in such a case the state fails to take action to prosecute the action when the matter is called for trial an order for absolution from the instance might properly be sought in terms of rule 39(3).

The course described in the preceding paragraph was not followed in this matter.

The effect could as effectively and more cheaply be achieved by postponing the trial with a direction to the defendant, if it wishes in the event of a non-appearance by or on behalf of the plaintiff on that date to seek absolution from the instance, to give reasonable notice to the Minister of Finance, substituting him as the plaintiff in place of the deregistered close corporation. The notice should be served by the sheriff and accompanied by copies of the pleadings and any other relevant documents comprehended by rule 15(2).

The matter was postponed for the trial to be called again in the Third Division on the understanding that if there was no appearance for the plaintiff at that time - as seems likely - an order for absolution from the instance may be taken; alternatively, if there was an appearance, the judge presiding in the Third Division could give directions for the further disposal of the action in the Fourth Division.