



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 8 June 2022

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Capital Appreciation Ltd v First National Nominees (Pty) Ltd and Others (280/2021)

[2022] ZASCA 85

(8 June 2022)

MEDIA STATEMENT

The Supreme Court of Appeal (SCA) today dismissed the appeal of Capital Appreciation Ltd (Capital Appreciation) against First National Nominees (Pty) Ltd (First National), Nedbank Ltd (Nedbank) and Rozendal Partners (Pty) Ltd (Rozendal).

Capital Appreciation announced by way of a circular to shareholders that it planned to repurchase 245 million of its shares from certain of its shareholders. The circular informed shareholders that because the repurchase involved more than five percent of the issued share capital, ss 48, 114, 115 and 164 of the Companies Act 71 of 2008 applied to the transaction. Section 164 allows for the shares of dissenting shareholders to be bought out by the company at fair value, and creates a mechanism for a court to appraise the fair value of the shares.

First National objected to the repurchase and voted against the resolution. It asserted a right, in terms of s 164 of the Act to have its shares in Capital Appreciation bought by the latter at fair value. Capital Appreciation made an offer for First National's shares but the offer was rejected. First National, Nedbank and Rozendal then launched an application for an order for the appraisal of the value of the shares. At this point, for the first time, Capital Appreciation changed tack. It asserted that ss 114, 115 and 164 did not apply to the repurchase transaction, with the result that no appraisal right arose for dissenting shareholders. The court below rejected this argument and made a detailed order pertaining to the appraisal of the fair value of the shares.

On appeal, the SCA identified the proper starting point to be the interpretation of s 48, along with ss 114, 115 and 164. It held that a repurchase of shares by a

company above the five percent threshold mentioned in s 48(8)(b) of the Act was regarded as a fundamental transaction. This triggered ss 114 and 115. Section 115 prescribes how fundamental transactions such as the share repurchase in issue are to be approved. And s 115(8) makes provision for dissenting shareholders to enjoy the benefit of an appraisal right in terms of s 164 and thus to opt out of the company. The appeal was accordingly dismissed with costs.