



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

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SA MOHAIR BROKERS V LOUW

The Supreme Court of Appeal (SCA) today dismissed an appeal by SA Mohair Brokers (the appellant) against an order of the Eastern Cape High Court (Port Elizabeth) setting aside its special resolution in terms of section 228 of the Companies Act 61 of 1973 (the Act) to dispose of its main asset.

The appellant wished to dispose of its main asset, 66 per cent of the entire issued share capital of its operating company, CMW Operations (Pty) Ltd to Oos-Vrystaat Kaap Operations Ltd, is the owner of the remaining 34 per cent in CMW. It required a special resolution in terms of section 228 of the Act in order to achieve this goal and called a meeting of shareholders which was scheduled to be held on 4 December 2009. In an effort to thwart the passing of the special resolution, BKB Ltd, the appellant's competitor in the mohair industry, purchased a sufficient number of shares in the appellant from some of its shareholders and obtained proxies from them to defeat the proposal. The proxies were

lodged with the appellant prior to the meeting but the chairman, acting on legal advice that the sale of the shares was null and void as it had been concluded without the prior approval of the directors as required by clause 15.2 of the articles of association, and that the resultant proxy was also void as it formed part and parcel of the void agreement, ruled that the proxies were invalid and refused the proxy holders permission to speak or vote at the meeting.

In dismissing the appeal the SCA held that the sale of the shares to BKB without the prior approval of the directors was not void. The only effect was that the appellant was not obliged to register BKB as shareholder. The sale was binding between BKB and the shareholders. The reasons or motives of the shareholders in giving proxies did not concern the appellant from a legal or administrative perspective. Therefore, the SCA held, the appellant was obliged to accept proxies that were on their face valid because they were given by the sellers who, as at that date, were still shareholders. Having held that the rejection of the proxies was unlawful, the SCA found that the equitable jurisdiction under section 252 of the Act did not arise.