



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

MEDIA SUMMARY

1 June 2011

STATUS: Immediate

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

Stand 242 Hendrik Potgieter Road Ruimsig Pty) Ltd v Göbel NO (246/10) [2011]
ZASCA 105 (1 June 2011)

The Supreme Court of Appeal today dismissed an appeal against the judgment of the South Gauteng High Court (Lamont J) in which it was held that the Turquand rule does not apply to a failure to comply with s 228 of the Companies Act 61 of 1973. Section 228 provides that the directors of a company may not dispose of the sole, or the major part of its assets, without the consent or ratification of the shareholders. Such consent, since an amendment to the Act, must be embodied in a special resolution. The effect of the Turquand rule is that a person dealing with a company in good faith is entitled to assume that the company has complied with its internal rules and procedures.

The appellant had bought immovable property for a considerable amount from a company, the seventh respondent. The company was represented by its two directors, who signed a document stating that the shareholders had consented to the disposal of the property or that it was not a major part of the company's assets. Neither statement was true. And there was no special resolution passed by the shareholders as required by s 228.

The appellant, having discovered that the property had been let to a third party after the sale had been concluded, and believing that the seller would not perform in terms of the contract, brought an urgent application in the South Gauteng High Court against the company, prohibiting the alienation of the property to any third party pending litigation about the sale. The interdict was granted, but no reasons were given for the decision. The shareholders of the company are two trusts. The respondents, trustees of the trusts, were not joined as parties to the urgent application. They brought an application, in the same court, for the setting aside of the interdict, on the basis that they had not, on behalf of the trusts, given consent, let alone passed a special resolution, authorizing or ratifying the sale of the property.

The appellant argued that the shareholders were precluded by the Turquand rule from relying on the failure to comply with s 228, or, alternatively, estopped from claiming that the sale was enforceable. The high court held that the Turquand rule could not allow the circumvention of the requirements of s 228 of the Act. It also held that the requirements for a successful defence of estoppel had not been met – the shareholders had made no misrepresentations – and that estoppel could not be used to avoid a statutory requirement.

The SCA confirmed these findings and dismissed the appeal.
