



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 10 May 2013
STATUS Immediate

Grancy Property Limited v Manala
(665/12) [2013] ZASCA 57 (10 May 2013)

Media Statement

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

Today the Supreme Court of Appeal (SCA) delivered judgment upholding the appeal and setting aside an order of the Western Cape High Court, Cape Town, and ordered the first and third to seventh respondents to pay the costs of the application jointly and severally, the one paying the others to be absolved, including the costs of two counsel.

The issue on appeal was whether the appellant had made out a case – on the facts presented by it in the court below against the respondents – entitling it to relief under s 163(2)(f)(i) of the Companies Act 71 of 2008 (the Act).

The dispute between the parties arose in 2011, when the appellant brought an urgent interlocutory application under rules 6(11) and (12) of the Uniform Rules of Court, in the high court. The appellant sought an order, inter alia, for the appointment of 'objective and independent' directors of Seena Marena Investments (SMI), of which it was a minority shareholder; arising from its allegations of malfeasance and moral turpitude against the first respondent (Lancelot Lenono Manala) and the third respondent (Dines Chandra Manilal Gihwala), who were the directors of SMI. The appellant's case was further predicated upon allegations of misconduct against the first and third respondents which, inter alia, entailed alleged breaches of fiduciary obligations, misappropriation and misuse of assets,

misrepresentations, fraud, unauthorised use of company funds and denying the appellant its entitlements as a shareholder of SMI.

The litigation in the court below was as a sequel to the decision of the first and third respondents to resign as directors of SMI, entailing that the latter was left without directors. This state of affairs prompted the appellant to invite the first respondent and the Dines Gihwala Family Trust, represented by the third respondent, as shareholders of SMI, to consent to a mechanism in terms of which the appointment of two independent directors to the board of SMI could be made. This invitation elicited no response from the first and third respondents and precipitated the application by the appellant in the court below, which dismissed the application with costs holding that the appellant had not established entitlement to the relief sought. It subsequently granted leave to appeal to this court.

The SCA held that it was satisfied upon the evidence adduced by the appellant in the court below that it had made out a case under s 163 of the Act.

The SCA held further that it was satisfied that the court below erred in holding that the appellant had failed to make out a case for the relief it sought.

The SCA also held that that it was only fair that all of SMI's shareholders should be allowed the right to nominate one director to serve on the Board of Directors, in collaboration with the two independent and objective directors appointed by the court.

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