



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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STATUS Immediate

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

Apco Africa (Pty) Ltd and Arcay Communications Holdings (Pty) Ltd
v
Apco Worldwide Inc (Case No 372 / 07)

Media Statement

Today the Supreme Court of Appeal ('SCA') dismissed an appeal by Apco Africa (Pty) Ltd ('the Company') and Arcay Communications Holdings (Pty) Ltd ('Arcay') against an order of the Johannesburg High Court that the Company be wound up on the ground that such course is just and equitable within the meaning of Section 344(h) of the Companies Act.

The winding-up application was launched by Apco Worldwide Incorporated ('Apco'), a US-based company. Apco, an international group of companies with 24 operating entities across the globe, provides its clients with strategic advice on how to conduct their business affairs in the world political and economic environment. In order to meet the needs of its clients who sought exposure to the African continent, Apco entered into a joint venture-partnership type of arrangement with Arcay, a private Johannesburg company, during 2000. Apco and Arcay decided to formalise their working arrangement by concluding a shareholders' agreement. They accordingly incorporated the Company as a private company.

During 2006, the relationship between Arcay on the one hand and Apco on the other became strained. Asserting that there had been a breakdown in their business relationship and that attempts to amicably negotiate the termination of that relationship had proved unsuccessful, Apco applied to the Johannesburg High Court for an order winding-up the Company. Arcay and the Company opposed the application in the High Court contending that there was a carefully planned strategy by Apco to destroy the Company and that Apco was accordingly approaching the Court with unclean hands, which it should not be permitted to do.

The High Court held that there was a literal deadlock which could not be resolved and which was not affected in any way by the clean hands principle upon which Arcay relied. The SCA agreed. It accordingly dismissed the appeal.

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