



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

Date: 1 December 2017

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

City Capital SA Property Holding Ltd v Chavonnes Badenhorst St Clair Cooper NO (85/2017) [2017] ZASCA 177 (1 December 2017)

Section 20(9)(a) of the Companies Act 71 of 2008 (the Act) allows a court to disregard the separate juristic personality of a company where the use of, or an act by or on behalf of, the company, constitutes an unconscionable abuse of the juristic personality of the company as a separate entity.

In 2014 a business rescue practitioner successfully applied to the Western Cape High Court, Cape Town, for an order declaring five companies as a single entity, known as the ‘Dividend Investment Scheme’, in terms of s 20(9)(a) of the Act. The five companies were part of an unsustainable syndication scheme which had engaged in reckless trading and defrauded members of the public who had invested some R140 million in a shopping centre in Pretoria, worth only R45 million, leaving investors with a loss of about R100 million. The High Court also appointed the liquidators of the Dividend Investment Scheme.

Today the Supreme Court of Appeal delivered a judgment in which it was held that a court which makes an order under s 20(9)(a) of the Act, is not permitted to appoint a liquidator: that power is vested solely in the Master of the High Court by s 367 of the Companies Act 61 of 1973. Consequently the High Court’s order appointing the liquidators of the Dividend

Investment Scheme was a nullity. That finding, however, had no practical effect because the Master, presumably to regularise the liquidation of the Dividend Investment Scheme, had in fact appointed liquidators of the single entity, which appointment is valid unless and until it is reviewed and set aside. The appeal was therefore dismissed with costs.

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