

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN 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

MELVIN PETER PAARWATER v SOUTH SAHARA INVESTMETNS (PTY) LTD

Mr Paarwater obtained a provisional order winding up the company South Sahara Investments (Pty) Ltd. On the return day he sought an order finally winding up the company. This was refused by the Cape High Court and the provisional order discharged.

The company is an investment holding company. Its only asset is a 90% shareholding in a meat processing company – South African Beef (Pty) Ltd.

Mr Paarwater now owns 25% of the shares in the company. When the company was formed he owned 50,1% of its shares and the Bothma Trust, controlled by Mr Gideon Bothma the balance of the shares. Mr Paarwater subsequently sold a portion of his shares to the Trust thereby reducing his shareholding to 25%.

Mr Paarwater sought the winding up of the company on the grounds that the behaviour of Mr Bothma was prejudicial to the company and himself rendering it “just and equitable”, in terms of the Companies Act, that the company be placed into final liquidation. The application was opposed by Mr Bothma acting on behalf of the company.

Mr Paarwater stated, amongst other matters, that he and Mr Bothma, who are the only directors of the company, are at loggerheads and that mutual trust and confidence between them had broken down. He also accused Mr Bothma of misappropriating funds of the company and of wrongly removing his name as one of the signatories to the company's bank account. All these allegations were denied by Mr Bothma.

After a careful analysis of all of Mr Paarwater's allegations and Mr Bothma's explanations the High Court found that Mr Paarwater had failed to establish, upon a balance of probabilities, as he was obliged to do, that it was indeed "just and equitable" to wind up the company.

The Supreme Court of Appeal in considering Mr Paarwater's appeal to it, again examined all of the evidence and the arguments advanced by the parties and concluded that the High Court had correctly refused to confirm the provisional winding up order.

The Supreme Court of Appeal (Judge Zulman with Judge Farlam and Acting Judge Maya concurring) accordingly dismissed the appeal with costs.