

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

FROM: The Registrar, Supreme Court of Appeal

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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

The Supreme Court of Appeal today allowed an appeal brought by a Rustenburg businessman, Ivan Saincic, his wife, Sharon Saincic, and their close corporation, Crism Water Systems CC, against an order made against them on 12 August 2004 by Mr Justice DA Basson sitting in the Pretoria High Court.

In the order appealed against Mr Justice Basson ordered the appellants to pay R572 507.98 to a Honeydew company Industro-Clean Pty Ltd, which carried on business as a supplier and distributor of cleaning machinery, equipment and consumables. The judge held that Mr Saincic, who had been the sole director of Industro-Clean Pty Ltd's North-West subsidiary, Mrs Saincic and their close corporation had knowingly been parties to the carrying of the subsidiary's business fraudulently and recklessly. The amount he ordered them to pay was the sum by which the debit balance on the subsidiary's trading account with Industro-Clean (Pty) Limited had increased during the period from 1 March 2002 to 19 March 2003, the day on which Mr Saincic resigned as director of the subsidiary.

The judge had also ordered Mr Saincic to pay R148 665.92 to the subsidiary as damages for the breach of the fiduciary duties he owed to it as a director. This was because he had made secret profits totalling that amount by permitting the subsidiary to sell its products at cost price to his close corporation, which then on-sold them at a profit. This part of Mr Justice Basson's order was not attacked on appeal.

The Supreme Court of Appeal held that the evidence led at the trial was not sufficient to establish why, over and above the amount to be paid by Mr Saincic to the subsidiary as damages for loss of profits, it was just and equitable that any further amount be paid to Industro-Clean (Pty) Ltd. The appeal was accordingly allowed with costs.