



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Technology Corporate Management (Pty) Ltd and Others v De Sousa and Another (613/2017)
ZASCA 29 (26 March 2024)

The SCA today upheld an appeal from the Gauteng Provincial Division, Johannesburg in *De Sousa and Another v Technology Corporate Management (Pty) Ltd and Others* 2017 (5) SA 577 (GJ). In doing so it set aside the High Court's order that Technology Corporate Management (Pty) Ltd (TCM) purchase the shares of two minority shareholders Messrs Luis de Sousa and Jose Diaz.

Mr de Sousa and Mr Andrea Cornelli had established TCM in 1987 as a business providing computer repair services. It had been successful and the company grew and obtained a number of major clients. During this period Mr de Sousa and Mr Cornelli were the sole shareholders holding equal shares in the business although minor shareholdings had been promised to two other employees. In 2004 with a view to addressing BEE issues faced by the company a new shareholder was introduced on the basis that he would acquire a 25.1% shareholding in the company. This was a successful move and the company prospered. However, the relationship between the shareholders was no longer based on the personal relationship between the original shareholders but was governed by a formal shareholders agreement between the shareholders now numbering five as the two employees had acquired small stakes in the company.

The relationship between the original shareholders deteriorated markedly from November 2007 and Mr de Sousa, together with Mr Diaz, commenced efforts to exit the company and realise their shareholdings in it. In early 2009 Mr de Sousa was first suspended from employment and then dismissed as a result of a formal independent disciplinary hearing. He appealed unsuccessfully against his dismissal and then challenged it before the CCMA. After an 11 day hearing his dismissal was held to be both procedurally and substantively fair. An application for relief in terms of s 252 of the Companies Act 61 of 1973 was dismissed on the basis that there was a dispute of facts on the papers. Mr de Sousa and

Mr Diaz then brought the present action claiming an order that the company, TCM, alternatively the other shareholders acquire their shares for a price they assessed at R160 million. After a trial that ran for 80 days they succeeded in obtaining an order that TCM purchase their shares at a price to be determined by a referee. Leave to appeal was refused but the SCA granted leave to argue the application for leave to appeal, and if successful, to argue the appeal.

The primary basis for the claim was a contention that TCM was a small domestic company of the nature of a partnership between the two founding shareholders. The High Court upheld this contention, but the SCA held it to be inconsistent with the changes brought about by the introduction in 2004 of an outside shareholder and the conclusion and terms of the shareholders agreement. No unfair prejudice was caused to the plaintiffs in their capacity as shareholders by conducting the affairs of the company in accordance with the shareholders agreement, which was inconsistent with the continuation of the suggested quasi-partnership between the founding shareholders. Nor was it unfair to the plaintiffs that the memorandum of association and the shareholders agreement did not afford them a right to exit the company and require the company or the other shareholders to acquire their shares so as to enable them to realise their capital.

In regard to Mr de Sousa's dismissal, the SCA held that the finding by the CCMA was prima facie evidence of the fairness of the dismissal and no evidence had been led to show that the commissioner's decision was wrong. A number of other grounds were advanced but the SCA held that they did not amount of unfair prejudice to the plaintiffs in terms of s 252. Given its conclusion on the merits the SCA held that it was unnecessary for it to express a final view on the defendants' contention that they had not been afforded a fair trial.

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