



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: 24 March 2023
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.

Strategic Partners Group (Pty) Ltd and Others v Liquidators of Ilima Group (Pty) Ltd (in liquidation) and Others [2023] ZASCA 27

Today the Supreme Court of Appeal dismissed with costs an appeal from a judgment of Maier-Frawley J in the Gauteng Division of the High Court, Johannesburg (the high court). The appeal arose from a dispute over the documents to which the liquidators of Ilima Group (Pty) Ltd (Ilima) were entitled. Ilima had been liquidated and held some 11 percent of the shares (the Ilima shareholding) in Strategic Partners Group (Pty) Ltd (Strategic). The liquidators were obliged to value and sell the Ilima shareholding. They requested a valuation from Strategic, which procured one from an accounting firm. It had been performed on the basis of a disputed shareholders' agreement and the liquidators rejected it. A further valuation was procured by Strategic from PriceWaterhouseCoopers but had been done on the same, disputed, basis.

The liquidators convened an insolvency enquiry and subpoenaed directors from Strategic as well as their auditors to produce documents concerning the value of the shareholding at the enquiry. Undertakings were given to provide such documents. Some documents were provided but not sufficient in the opinion of a person who had

been requested by the liquidators to perform a valuation. This situation persisted until Strategic launched an application (the main application) to declare that the liquidators were entitled to no more documents than are provided for in ss 26 and 31 of the Companies Act of 2008 (the new Act), alternatively, s 113 of the Companies Act of 1973 (the old Act).

Negotiations continued but an impasse was reached. In a separate application, the disputed shareholders' agreement was set aside on the basis that it had not been agreed to by all of the shareholders. This meant that the basis on which the previous valuations had been conducted was incorrect. Apart from that, certain events took place which affected the value of Strategic. After further pressure was brought to bear on Strategic to produce documents, it called a special general meeting to amend the Memorandum of Incorporation so as to introduce a clause providing for a forced sale of the shareholding of a shareholder which had been liquidated on a certain basis. This prompted the liquidators to launch a counter-application requesting that the clause in question not apply to the Ilima shareholding on the basis that the introduction of the clause fell foul of s 163 of the new Act. This allows a court to grant relief if the act of a company has a result that it 'oppressive or unfairly prejudicial to, or that unfairly disregards the interests of' a shareholder.

The high court dismissed the main application and granted the relief sought in the counter-application. In the Supreme Court of Appeal, Strategic abandoned its contention that the liquidators were limited to documents to which a shareholder would be entitled under the three sections mentioned above. This left the counter-application. The Supreme Court of Appeal held that the high court could not be faulted when it found that the provisions of s 163 of the new Act applied and could also not be faulted in directing that the offending clause would not apply to the Ilima shareholding. The order of the high court directing delivery to the liquidators of the document sought was also not subject to being set aside on appeal. As a consequence, the appeal was dismissed with costs, including those of two counsel where so employed.