

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*

**CLUTCHCO (PTY) LTD v ANDREW CHRISTOPHER DAVIS**

The Supreme Court of Appeal today allowed the appeal of Clutchco (Pty) Ltd against an order granted in the Cape High Court that it should give the respondent, a 30% shareholder, access to its accounting records of first entry.

Company law does not permit such access to a shareholder unless the articles of association so provide, which was not the case here. The application was accordingly brought in terms of Part 3 of the Access to Information Act 2 of 2000, which was enacted pursuant to s 32 of the Constitution.

The appeal was unopposed. Without the benefit of opposing argument the SCA declined to rule on the ambit of the underlying rights protected by Part 3. It assumed that the right asserted by the respondent – to place a value on his shareholding for the purposes of sale – was such a right.

The SCA held, however, that company law provided shareholders with extensive protection with regard to accounting records and annual financial statements. This included the important role played by auditors. Parliament could not have intended that the books of a company, great or small, should be thrown open to members on a whiff of impropriety or on the ground that relatively minor errors or irregularities have occurred.

The SCA held on the facts that the respondent had failed to make out a case that the information which he sought was required for the exercise or protection of the right which he asserted.