



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: 17 July 2009
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.

* * *

P A CRONJE NO & OTHERS v HILLCREST VILLAGE (PTY) LTD & ANOTHER

The appellants appealed against an order made in the High Court, Pretoria in terms of which the High Court, after the liquidation of a company Waterkloofspruit Projects (Pty) Ltd, declared the dissolution of the company void, ordered the re-opening of the liquidation and distribution account and ordered the Master to appoint new liquidators.

The company purchased Erf 1856 Waterkloof Ridge from the City Council of Pretoria and proceeded with the development of a security village, Waterkloof Boulevard, consisting of 113 residential stands and 107 cluster stands. However, because of financial difficulties the company was liquidated before the completion of the development but after some of the stands had been sold. The remainder of the stands was offered for sale on an auction. When no other bids were received the liquidators accepted a bid by BOE, the bondholder, and sold the property to BOE for the nominal amount of R100 000.

At the time of the liquidation the balance owing by the company to BOE in terms of the bond was approximately R29,3m and in its application for the liquidation of the company BOE had stated that the value of the property was R26,702m. It would

have been obvious to potential purchasers that a sale at a price substantially lower than the value of R26,7m would not be confirmed and that explains why no bids exceeding R100 000 were received at the auction. The liquidation of the company was thereafter finalised, a liquidation and distribution account was confirmed and the company was dissolved. BOE had before the auction settled the company's debts and was the only creditor who proved a claim against the company.

Some five years after the auction, more than three years after the confirmation of the liquidation and distribution account and almost two years after the dissolution of the company the respondents applied for the dissolution to be avoided. The court had a discretion to do so on an application by a person who appeared to have an interest. The SCA held that the only interest that the respondents could have was the entitlement of the second respondent, as cessionary of the rights of the sole shareholder of the company, to a surplus upon completion of the winding-up of the company.

The High Court referring to the respondents' allegations that BOE had acted fraudulently and that the conduct of the liquidators was inexplicable in the absence of them having colluded with BOE stated that the allegations of fraud and collusion required to be investigated and declared the dissolution to have been void.

The Supreme Court of Appeal held that the liquidators owed a duty to the company to see to it that its assets were realised to the best possible advantage of the company. It should have been obvious to them that the property was much more valuable than R100 000 and that a much higher price could be obtained for it. In these circumstances the offer of R100 000 by BOE should not have been accepted. BOE was not entitled to preferential treatment as a buyer and an offer which would not have been acceptable if made by another buyer should not have been acceptable if made by BOE.

In the light of this irregularity and others the SCA was satisfied that in the event of the dissolution of the company being avoided the company may well have a claim against the liquidators in respect of the dereliction of their duty to act in the best interests of the company. However, the SCA considered the chances of an avoidance of the dissolution of the company yielding any financial benefit to the shareholder of the company to be remote and for this reason, as also the inaction of the shareholder for several years held that the dissolution should not have been avoided by the High Court.

For these reasons the SCA upheld the appeal and set aside the order by the High Court.