



THE SUPREME COURT OF APPEAL  
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE  
SUPREME COURT OF APPEAL

23 November 2011

STATUS: Immediate

**GAZIT PROPERTIES (PTY) LTD V D M BOTHA N.O. AND OTHERS**

*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 (SCA) today upheld with costs an appeal against a judgment of the North Gauteng High Court which upheld the respondents' (as plaintiffs) claim and set aside certain payments made by an insolvent company to the appellant.

The respondents sued as liquidators of the insolvent company. The high court had set aside the payments as voidable dispositions in terms of s 29(1) of the Insolvency Act 24 of 1936 (the Act), having found that the payments had not been made in the ordinary course of the company's business. The high court found that the company's business had been tainted by illegality and that the payments had been made from a tainted source.

The SCA held that the high court had erred in misapplying the provisions of s 29(1) by focusing on the 'tainted' nature of the company's general business model, instead of scrutinising the payments themselves against the background of the underlying cause for the payments. The SCA held that since the company made the payments in accordance with underlying loan agreements with the appellant, such payments were made in the ordinary course of the company's business. The SCA accordingly upheld the appeal, substituting the high court's order with one dismissing the plaintiffs' claim with costs.

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