



## SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal

**DATE** 25 March 2013

**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.***

*Tsung v IDC (173/12) [2013] ZASCA 26 (25 March 2013)*

The Supreme Court of Appeal today upheld the decision of the Western Cape High Court (Davis J) that the appellants, a father and son, had conducted the business of a company for fraudulent purposes, and were liable for the payment of some R32 million to the Independent Development Corporation in terms of s 424(1) of the Companies Act 61 of 1973. The section imposes personal liability for the debts of the company on persons who have recklessly or for fraudulent purposes conducted the business of a company.

The appellants were the directors of a company that ran a textile manufacturing business in Atlantis in the Western Cape. The company borrowed substantial sums of money from the IDC to set up the business. The appellants had also invested in the company through a company, Lio Ho, incorporated in Hong Kong.

The business foundered when the global economy, and the downturn in the South African textile industry, adversely affected it. The company was unable to pay its debts, and in particular could not pay what it owed the IDC. By the end of 2003 it was both factually and commercially insolvent. Despite this, the appellants concluded several transactions which had the effect of recovering their investment (through Lio Ho) in the company at the expense of the IDC. They knowingly made payments to reduce their liabilities, ignoring the separate corporate identity of the company. Moreover, they paid their personal expenses from the company's bank account. The SCA accordingly concluded that they should be held liable for what the company owed the IDC.

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