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 10 September 2015

STATUS Immediate

***Minnaar v Van Rooyen NO* [2015] ZASCA 114**

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.

In 2012, the North Gauteng High Court, Pretoria granted an order by default against Mr Minnaar that he was liable, in terms of s 424(1) of the Companies Act 61 of 1973, for the liabilities of a company in liquidation because of his reckless conduct of the business of the company. No evidence of reckless conduct was led before the court.

Mr Minnaar applied to that court (at that stage the Gauteng Division) for the rescission of the order on the basis that it was erroneously given under rule 42(1)*(a)* of the Uniform Rules of Court. The application was dismissed as the court a quo found that there was prima facie proof of the allegations made against Mr Minnaar before the court when it gave default judgment, and that Mr Minnaar had been in wilful default.

The Supreme Court of Appeal today upheld the appeal against the decision of the court a quo. It held that there must be evidence establishing on a balance of probabilities that a former director of a company has acted recklessly before such an order can be granted. In the absence of that evidence an

order granted under s 424(1) of the Companies Act is erroneously made, and had to be set aside.