



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Nova Property Group Holdings v Cobbett (20815/2014) [2016] ZASCA 63 (12 May 2016)

MEDIA STATEMENT

Today, the Supreme Court of Appeal (SCA) dismissed the appeal by Nova Property Group Holdings Limited (Nova), Frontier Asset Management & Investments (Pty) Limited (Frontier), and Centro Property Group (Pty) Limited (Centro) (the Companies) against a judgment of the Gauteng Division of the High Court, Pretoria (the court a quo) in an interlocutory application lodged by the Companies, in which it was found that the Companies were not entitled to an order to compel Moneyweb (Pty) Ltd (Moneyweb), a publisher of business and financial news, to provide the Companies with certain documents. The Mail & Guardian Centre for Investigative Journalism NPC, commonly known as amaBhungane, were admitted as an amicus curiae in the appeal. The appeal arose from the attempts of Moneyweb and Mr JP Cobbett (Cobbett) to exercise their statutory right in terms of s 26 of the Companies Act 71 of 2008 (the Companies Act) to access the securities registers of the Companies.

Cobbett is a financial journalist who specialises in the investigation of illegal investment schemes. Moneyweb, had on-going investigation into the controversial Sharemax property syndication scheme and it commissioned Cobbett to investigate and write articles for publication in Moneyweb, on the shareholding structures of the Companies which were purportedly linked to the syndication scheme. On 24 July 2013, Cobbett sent a request to the Companies for access to their securities registers, in terms of s 26(2) of the Companies Act. The Companies refused him access. As a result, Moneyweb launched an application, in the court a quo, to compel the Companies to provide access to it within five days of the date of the order (the main application). For purposes of providing them with a defence in the main application, the Companies then sought to be furnished with documents referred to in Moneyweb's founding affidavit, as well as other documents which they claimed were relevant to an anticipated issue in the main application. Displeased with Moneyweb's refusal to provide them with

the requested documents, the Companies launched an application to compel them to do so under rule 35(14) of the Uniform Rules of Court (the interlocutory application).

The court a quo compelled Moneyweb to furnish the Companies with the documents referred to in its founding affidavit, but in respect of the other documents requested, it found that the Companies had failed to prove that they were relevant to an issue in the main application. Although the court a quo had not decided the main application, it nevertheless pronounced on the interpretation of s 26(2) of the Companies Act, in deciding whether to grant the interlocutory relief sought by the Companies. It concluded that s 26(2) did not confer an absolute right to inspection of the documents envisaged in the subsection, but that the court retained a discretion to refuse to order access.

Before the SCA, the issues were two fold. Firstly, the court had to determine whether the order of the court a quo, due to its interlocutory nature, was appealable. Secondly, whether the documents sought by the Companies in the application to compel were relevant to a reasonably anticipated issue in the main application, which concerned the proper interpretation of s 26(2) of the Companies Act and, in particular, whether it confers an unqualified right of access to the securities register of a company .

In relation to the appealability of the order, the SCA held that it is appealable; in the interest of justice. On the second issue which concerned the proper interpretation of s 26 (2) of the Companies Act, the SCA held that the section confers an unqualified right of access to the securities register of a company, and that such right is essential for effective journalism and an informed citizenry. In doing so, it rejected the Companies' contention that the right of access is subject to the provisions of the Promotion of Access to Information Act, 2000 (PAIA) and found that the requestor's motive for seeking access to a company's securities register is irrelevant.

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