



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

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Grancy Property Limited and Another v Dines Chandra Manilal Gihwala and Others (Case no 512/2022) [2024] ZASCA 144 (23 October 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment, in which it partially upheld an appeal against an order of the Western Cape Division of the High Court, Cape Town (the High Court). The case concerns a contractual dispute arising from two investments in Spearhead Property Holdings Ltd (Spearhead) and Scharrig Mining Ltd (Scharrig).

These two investments resulted in over 16 years of litigation brought by Grancy Property Limited (Grancy), a company with its principal place of business in Lichtenstein, against Mr Dines Gihwala (a former attorney who has been struck from the roll of attorneys) the Dines Gihwala Family Trust (DGFT), and Mr Lancelot Manala (the respondents). Grancy and the DGFT participated with others in the Scharrig investment, in terms of which Grancy would participate equally with the DGFT in acquiring shares in Scharrig. Under the Spearhead investment, Mr Gihwala, through the DGFT, Mr Manala and Grancy acquired linked units in Spearhead. These investments were managed by the respondents, who were in a fiduciary relationship with Grancy; owed it a duty to exercise good faith; and had to account to Grancy for their stewardship of its investments. However, they breached these duties and Grancy obtained a court order directing the respondents to provide a full account to show how its investments were used and to quantify the claims it had against them.

The High Court granted most of Grancy's monetary claims under the Spearhead investment, but dismissed others, notably its claim for the disgorgement of a secret profit of R3 million which Mr Gihwala/the DFGT obtained from a property investment, using Grancy's funds in the Spearhead investment. The High Court also made an order directing the Gihwala defendants to pay Grancy R5 401 908.51 plus interest, being the economic benefit of shares that it failed to pay over to Grancy in respect of the Scharrig investment. Grancy appealed against the order dismissing its claim for the disgorgement of the secret profit of R 3 million, and the order made in the Scharrig investment. Grancy claimed that it was entitled to some R82 million for 3 679 754 additional shares in Scharrig that the Gihwala defendants had not allocated to it, and which it would have sold at about R25 per share in October 2007. It also

appealed against the High Court's dismissal of its claim that Messrs Gihwala and Manala be held in contempt of a court order issued in February 2016; and that they should pay costs on an attorney and client scale.

Mr Gihwala and the DGFT cross-appealed against the order directing them to pay R5 401 908.51 plus interest to Grancy, contending that it was not entitled to any additional Scharrig shares. They, together with Mr Manala, also cross-appealed against most of the monetary orders granted in relation to the Spearhead investment.

The SCA partially upheld the appeal with costs. Regarding the Scharrig investment. The Court found that Mr Gihwala and the DGFT breached the Scharrig agreement by failing to secure Grancy's entitlement to one-half of 7 359 508 additional option shares, and that it was entitled to the economic benefit of half of those shares, ie 3 679 754 shares. The additional option shares were allocated to give the empowerment partners in the Scharrig investment, specifically Mr Gihwala/the DGFT, in total a 15% stake in Scharrig. However, the SCA rejected Grancy's argument that it would have sold its additional option shares at the peak market price of R25 per share in October 2007. It held that Grancy would have disposed of the 3 679 754 additional shares, when it sold its initial shares at R5.75 per share in January 2006.

Concerning the Spearhead investment, the SCA set aside the High Court's order refusing to disgorge the secret profit of R3 million, and replaced it with an order declaring that Mr Gihwala and the DGFT were liable, jointly and severally, to pay the sum of R3 million plus interest, to Grancy. The SCA held that in making this profit, Mr Gihwala had breached his fiduciary duty to Grancy.

The SCA held that the High Court was correct in dismissing Grancy's claim that the respondents were guilty of contempt of court: it failed to prove non-compliance with, or wilful disobedience of, the order. The SCA also held that the High Court was correct in making the costs orders that it did.

The Gihwala respondents were ordered to pay 50% of the costs of the appeal, and Mr Manala 50%, including the costs of two counsel. The SCA dismissed the respondents' cross-appeals with costs, including the costs of two counsel.

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