

KWV share ruling nod for activist

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Body

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High court decision against HCI-controlled La Concorde Holdings enforces minority shareholder rights after almost two-year battle

Writer at Large

Shareholder activist Albie Cilliers has secured a major victory over La Concorde Holdings, which is controlled by Hosken Consolidated Investments (HCI), in his almost two-year legal battle to get fair payment for his KWV shares.

In a decision that enforces minority shareholder rights, the high court ruled on Thursday that Cilliers did have appraisal rights due to the sale of KWV's liquor-based operational assets to Vasari Holdings in October 2016. The transaction left KWV, which was renamed La Concorde Holdings, with property, art and R1.2bn it received for the liquor assets.

Cilliers' appraisal rights mean he can oblige La Concorde to purchase his shares at a & fair value& He can now resume his section 164 battle to get & fair value& payment for the KWV shares. The battle has been on hold for almost a year as La Concorde challenged Cilliers's entitlement to appraisal rights. Cilliers said he was delighted with the court's decision and looked forward to resuming the appraisal action.

& I didn't do this for the money, I want to make a point. South Africa's minority shareholders have excellent rights but it's difficult to secure these rights when poorly resourced minority shareholders are up against well-resourced corporates. That can make a mockery of what the law intended.& Johnny Copelyn, CEO of HCI, said the judgment was & bad in law& and that La Concorde would appeal.

In 2016 La Concorde offered Cilliers R13.47 a share for his KWV stake.

Cilliers rejected the offer, which was based on a valuation done by KPMG. Cilliers slammed the KPMG valuation pointing out the R1.2bn paid for the liquor assets alone was equivalent to almost R17 a share. The property and art assets push this to more than R20 a share.

HCI's own accounts attribute a value of about R25 a share to KWV.

Because he exercised his appraisal rights in terms of section 164 Cilliers had to hand over his KWV shares to La Concorde without receiving any payment.

In addition to legal costs he has been deprived of the R3.63 a share in dividends paid out since the 2016 transaction.

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The ruling will help to close a potential loophole in a provision of the act that was intended to ensure minority shareholders have the right and entitlement to be paid fair value for shares. A year after Cilliers launched his legal action La Concorde challenged his entitlement to the right to be paid out. La Concorde argued that KVV's assets were held in a wholly owned subsidiary and that Cilliers's shares were in KVV Holdings, which owned 100% of the subsidiary. On this basis, Cilliers was not a shareholder in the company that had sold the liquor assets, and so had no appraisal rights.

A leading corporate adviser said if La Concorde had won the court case it would have encouraged companies to rearrange their assets to avoid having to deal with the appraisal rights of minority shareholders.

Jacqueline Yeats, associate professor in the department of commercial law at UCT, welcomed the judgment. & It brings clarity and certainty on this particular point, which will have a definite impact on future s115(2) transactions [fundamental transactions] that are structured along similar lines,& Yeats said.

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