

Supreme Court of Appeal of South Africa

MEDIA STATEMENT

From: The Registrar, Supreme Court of Appeal

Date: Wednesday 29 March 2006

Status: Immediate

On 29 March 2006 the Supreme Court of Appeal delivered judgment in the matter of *The City of Johannesburg v Kaplan NO and First National Mortgages Nominees (Pty) Ltd.*

The respondents in the appeal were, respectively, the liquidator of a close corporation (Krokipark CC) and the holder of a participation mortgage bond over an immovable property owned by the corporation. (The liquidator had from the outset abided the judgment of the court.)

When the liquidator came to transfer the property out of the estate he first paid the arrear rates and service charges etc to the municipality as he was obliged to do in terms of s 118(1) of the Municipal Systems Act 32 of 2000 in order to obtain a clearance certificate. After that payment the estate remained indebted to the municipality in respect of like municipal debts which had become due before the start of the two year period covered by the certificate. Section 118(3) of the Act confers in favour of a municipality a preference on all such municipal debts which is secured by the property and operates above the indebtedness secured by any mortgage bond over the property but not limited to any period. The municipality contended that the benefits of s 118(3) extended to such claims against the insolvent estate and that the bondholder had no right to be paid out of the proceeds of the property until the

municipal debts had been discharged. The bondholder contended in turn that s 118(2) of the Act subjected the municipality's claims to the terms of s 89(4) of the Insolvency Act 24 of 1936 and that the consequence was to defeat the municipality's preference.

In upholding the appeal the court found that s 89(4) did apply to such claims of the municipality as fell within the definition of a 'tax' in s 89(5) of the Insolvency Act. The effect was to limit the preference in respect of such claims to a period of two years prior to the liquidation of the close corporation. That period is longer than the two year period (from the date of application for a clearance certificate) in respect of which the municipality had already been paid for the issue of the certificate. Because s 89(4) does not relate to claims for debts which are not taxes it does not limit the preference conferred by s 118(3) in favour of such claims.

In the result the municipality was substantially successful and the bondholder was ordered to pay the costs of the proceedings in the Johannesburg High Court and on appeal.

--ends--

