



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

Date: # DECEMBER 2022

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Cenprop Real Estate (Pty) Ltd v Holtzhauzen (Case no 520/2021) [2022] ZASCA 183 (19 December 2022)

Today, the Supreme Court of Appeal (SCA) handed down judgment dismissing an appeal against a decision of the Western Cape Division of the High Court, Cape Town (the high court).

The issues before the SCA were whether the respondent was negligent; whether the appellants had discharged their duty of care that the premises were safe, by the employment of independent contractors (the *Chartaprops* defence); and whether a disclaimer or display of a disclaimer notice indemnified the second appellant from liability of the respondent's injuries.

On the rainy morning of Saturday, 1 June 2013, the respondent, Nicolene Holtzhauzen, a 31-year-old woman, went to the Goodwood Mall (the mall) in Voortrekker Road, Goodwood to draw money from the ATM. On her way to the ATM, she slipped and fell on the tiled floor inside the mall and suffered a fracture on the elbow. She instituted a claim in the high court for damages arising from her injury against the management company in charge of the mall and its owner.

The first appellant, Cenprop Real Estate (Pty) Ltd (Cenprop), managed the mall on behalf of the second appellant, Naheel Investments (Pty) Ltd (Naheel), which was the owner of the mall at the time of the incident, in terms of a management agreement concluded with Naheel. The appellants denied negligence and/or causation. They pleaded that the incident was caused solely by the respondent's own negligence in that she did not keep a proper lookout and did not take reasonable care. Naheel pleaded further that it had employed Cenprop as a competent independent contractor, specialising in property management, to manage and physically inspect the premises on a regular basis. Therefore, Cenprop was at all material times in control of the premises. The appellants further pleaded that Cenprop appointed a professional cleaning company, JKL Cleaning Solutions CC (the cleaning company) to, inter alia, spot clean daily any spillage in walkways with warning signage. By appointing these independent contractors, the appellants pleaded that they took adequate steps to ensure safety of members of the public and prevent the respondent, in particular, from slipping and falling as alleged.

On the issue of negligence, the SCA found that the respondent's evidence that on the morning of the incident the floor she slipped on was wet as a consequence of the rain remained uncontroverted. The respondent's evidence that she proceeded slowly along the tiled corridor but slipped and fell due to the wet tiles that were slippery and posed danger to her was unimpeachable. Under the circumstances, there was no basis to find the respondent in any way negligent. As to the *Chartaprops* defence, the

SCA rejected the appellants' defence on the basis that the system put in place to regulate the cleaning and removal of water caused by wet weather conditions was deficient. Lastly, the SCA rejected the appellants' disclaimer defence on the basis that there was no evidence that the disclaimer notice was there during the period of the incident.

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