



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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STATUS Immediate

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

CHARTAPROPS 16 v SILBERMAN
Case No : (300/07) [2008] ZASCA 115 (25 September 2008)

Media Statement

Today the majority of the Supreme Court of Appeal (SCA) upheld an appeal by Chartaprops 16 (Pty) Ltd (Chartaprops) which carries on business as the Killarney Shopping Mall (the Mall) in Johannesburg and dismissed an appeal by Advanced Cleaning Services (CC) (Advanced Cleaning) with whom the former had contracted to provide cleaning services at the Mall.

What gave rise to the appeal was an action instituted by Ms Michelle Silberman, a conference tele-marketer, who slipped on a gel-like substance and fell in the pedestrian passage on the upper level of the Mall during the course of the afternoon of 14 December 2000. In consequence of the fall, she sustained fractures to both elbows, as well as certain abrasions and soft tissue injuries. She accordingly sued both Chartaprops and Advanced Cleaning in the Johannesburg High Court. The issues of liability and quantum were separated and the trial proceeded solely on the former. The High Court held both Chartaprops and Advanced Cleaning jointly and severally liable to her for such damages as may in due course be agreed upon or proved.

On appeal, the majority of the SCA re-affirmed the general principle in our law that a principal is not liable for the wrongs committed by an independent contractor or its employees. As Chartaprops was obliged to take no more than reasonable steps to guard against foreseeable harm to the public, which it had done by engaging a competent contractor, it could not be held liable to Ms Silberman. Insofar as Advanced Cleaning was concerned, the damage complained of was caused solely as a result of the defective performance by one of its employees of the work entrusted to it. The majority accordingly held that the finding by the High Court that Advanced Cleaning was liable, could accordingly not be faulted and its appeal thus had to fail.

The minority judgment held that the duty cast upon Chartaprops in this case was not capable of being delegated to Advanced Cleaning. It accordingly held that it would have dismissed the appeal by Chartaprops and upheld the appeal by Advanced Cleaning.

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