



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Case no: 739/2007

In the matter between:

ATM SOLUTIONS (PTY) LTD

APPELLANT

and

OLKRU HANDELAARS CC AND ABSA BANK LIMITED

RESPONDENTS

From : The Registrar, Supreme Court of Appeal
Date: 26 November 2008
Status: Immediate

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

The Supreme Court of Appeal today upheld a decision of the Cape High Court (Griesel J) that the disconnection, removal and storage of an automated teller machine, installed and connected by the appellant in a convenience store in Worcester, Kwikspar Breedevallei, by the owner of the store, did not amount to spoliation – the unlawful dispossession of property or a right to use property.

The SCA confirmed that the appellant's right to have the machine in place, and electrically connected, in terms of a contract with the store owner, was purely contractual and that the relief sought amounted to an order for performance of the contract. A spoliation order – requiring restoration of possession or control of property before any right is determined – is not available for the enforcement of a contractual right. A spoliation order will be granted only where a litigant is deprived

of actual possession or control of property, or of a right to use property or an incident of the right to use it.

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