



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  
Date: 11 March 2009  
Status: Immediate

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

mCUBED INTERNATIONAL (PTY) LTD  
mCUBED LIFE LIMITED

FIRST APPELLANT  
SECOND APPELLANT

and

LEON JOHN SINGER NO  
ANDRIES OLIVIER NO  
FRANK WILLIAM MUGGLESTON NO

FIRST RESPONDENT  
SECOND RESPONDENT  
THIRD RESPONDENT

1. The two appellants in this appeal are companies in the mCubed Group. The respondents are the trustees of the Leon Singer Family Trust ('the Trust'). During March 2002 the Trust made an offshore investment of R10m through the agency of mCubed, which was then converted into US Dollars. Subsequently it became apparent that all the elements of the offshore investment structure proposed by mCubed could not be lawfully implemented in accordance with Exchange Control Regulations. In June 2005 the Trust then terminated the investment. By that time the Rand value of the investment had, however, diminished from R10m to slightly more than R6m. The reason was that, in the interim, the Rand had strengthened against the US Dollar.

2. The Trust then sued mCubed for its capital loss of about R4m together with the interest it had paid to finance the investment. The cause of action relied upon by the Trust was a negligent misrepresentation by mCubed to the effect that the investment scheme it proposed was capable of lawful implementation in accordance with the Exchange Control Regulations, whereas it was not. The claim was upheld by the High Court in Cape Town, albeit for the capital loss only.

3. On appeal the SCA found that the negligence misrepresentation relied upon by the Trust had been established. It also found that, on balance, the Trust would not have the investment if it had known the true facts. Nevertheless the SCA held that since the real cause of the loss suffered by the Trust was the strengthening of the Rand against the US Dollar and not the misrepresentation, it would be unjust and unfair to hold mCubed liable for that loss. In the event mCubed's appeal against the judgment of the High Court was upheld with costs.