



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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IMVULA QUALITY PROTECTION (PTY) LTD v LICINIO LOUREIRO & OTHERS

The Supreme Court of Appeal (SCA) today by a majority upheld an appeal against an order of the South Gauteng High Court, Johannesburg declaring that the appellant (Invula Quality Protection (Pty) Ltd) was liable to the respondents in both contract and delict for the loss they had suffered as a result of a robbery that had occurred at their family home. The SCA held that the respondents had failed to prove both the contractual and delictual claims.

The appellant had provided a 24-hour guarding service at the respondents' home pursuant to an agreement concluded by the appellant's representative and the first respondent's nephew. The service was paid for by a close corporation of which the first respondent, his nephew and his father were members. The guards provided by the appellant were placed at a guardhouse at the entrance of the respondents' home. Subsequent to the conduct of the

guards in opening the main driveway gate to visitors without the first respondent's prior approval, the intercom was partially disabled so that the guards would not be able to open and close the main gate. The first respondent then gave the key to the pedestrian gate to the guards which, he said, was for purposes of shift changes only.

On the day of the robbery, a vehicle flashing a blue police light arrived at the respondents' home and stopped near the guardhouse. A passenger wearing what appeared to be a police uniform, including a reflective vest marked 'Police', alighted and approached the bullet-proof glass of the guardhouse. He showed the guard on duty what appeared to be a police identity card. The guard testified that he did not have sufficient opportunity to inspect the card, nor did he see the photo thereon to compare it to the man before him. To him, the card looked like a valid police identity card. The guard had difficulty establishing communication with the man and as result decided to open the pedestrian gate to assist what appeared to him to be a policeman, as he was obliged to do so by law. It later transpired that he had opened the gate to robbers who overpowered him at gunpoint. As a result of gaining entry to the respondents' house, the robbers stole belongings valued at R11 million, including jewellery. The first respondent was paid a certain amount of money by an insurer in respect of the value of part of the jewellery that had been stolen.

The respondents then instituted proceedings against the appellant for the loss they had suffered. Their claims, based both in contract and delict, were upheld by the high court. While the high court held that the guard could not be criticised for believing that he was dealing with a genuine policeman, it nevertheless held that he was negligent in failing to take reasonable steps to prevent the harm from happening and that his conduct resulted in the robbery. The court held that the appellant was liable to the respondents. Aggrieved by the order of the high court, the appellant then appealed to the SCA.

Before the SCA there were four issues. The first was whether on a proper interpretation of the written 'agreement of loss' the first respondent had concluded with the insurer, the first respondent had ceded his entire right to claim from the appellant to the insurer. The appellant contended that the first respondent had ceded his right to the insurer. In rejecting

this argument the SCA held that the agreement expressed a cession of the claim in relation to a limited loss and not the full loss. Thus, the first respondent was not precluded from claiming the difference between the total value of the alleged loss and the amount paid out by the insurer. The second issue related to the identity of the parties to the guarding services agreement. The appellant argued that the close corporation, and not the first respondent, was a party to the agreement, and that the first respondent had no locus standi to claim from the appellant. The argument was premised on the fact that the guarding services were paid for by the close corporation. The SCA did not agree with this argument. It held that the invoices relating to the agreement referred to the first respondent and that the appellant did not adduce any evidence to contradict the evidence of the first respondent's nephew that he had acted as a family member and not as a member of the close corporation.

The third issue was whether the appellant or its employee, the guard, had breached the contract. The first respondent contended that the appellant had breached the contract in that the guard had opened the gate contrary to instructions not to do so. The SCA stated that the evidence of what happened at the gate was crucial to the determination of the alleged breach and the alleged liability in delict. This was so as the court was required to consider the reasonableness of the guard's conduct in both legs of the respondents' claim. The SCA held in respect of the contractual claim that no reasonable person in the position of the guard could have believed that he was not dealing with a genuine policeman. The respondent had therefore failed to prove blameworthy conduct on the part of the guard, and had also failed to prove the alleged breach of the contract. The first respondent's instruction that the guards should not open the pedestrian gate for any purpose other than shift changes could not have been intended to apply to police officers performing official duties.

The fourth issue related to the second to fourth respondents' delictual claims and was based on the vicarious liability of the appellant for the conduct of the guard. It was whether the conduct of the guard in opening the pedestrian gate constituted negligence and was causally connected to the damages suffered by the respondents. The SCA stated that the second to fourth respondents could only succeed if they could prove that the guard had acted

unlawfully and breached the legal duty owed to them. The circumstances under which the guard had opened the gate were also relevant in determining this issue. With regard to those circumstances and the fact that the guard was by law required to assist members of the police, the SCA held that the guard could not be held to have acted unlawfully when he opened the gate. It followed that the respondents had failed to prove the legal duty owed to them and that the appellant was not vicariously liable for the loss and/or damages they had suffered as a result of the robbery.

The minority held that the guard had been negligent and that the respondents' claims should succeed.

Having answered the last two issues in favour of the appellant, the majority upheld the appeal.