



## 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** 27 March 2015  
**STATUS** Immediate

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

***Kilburn v Tuning Fork (Pty) Ltd (211/2014) [2015] ZASCA 53***

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#### **MEDIA STATEMENT**

Today, the Supreme Court of Appeal (SCA) upheld the appeal by Ian Kilburn (the appellant) and set aside the order of the Gauteng Local Division, Johannesburg. The issue before the SCA was the correct interpretation of a deed of suretyship, executed by the appellant for the due fulfilment by the principal debtor, Kilburn Auto Enterprises (Pty) Ltd t/a Johannesburg Yamaha (Kilburn Auto), of its obligations to the creditor, Tuning Fork (Pty) Ltd (the respondent).

The respondent operated under a number of business divisions. The trading divisions operate distinct businesses in the sense that they sell and market different products. Each division is run by its own general manager, credit controller, sales personnel and employees. Separate contracts are concluded, distinct bank accounts are operated, invoices issued and stationery used. Kilburn Auto had independent dealings with two of these divisions, being the Yamaha Distributors division and the After Market Products division. Kilburn Auto failed to pay an amount of around R800 000 owing in respect of invoices issued by the Yamaha Distributors division. The respondent sued for breach of contract, citing both Kilburn Auto as the principal debtor, and the appellant as surety. The appellant denied liability on the basis that the suretyship did not cover this debt.

The SCA held that when effect is given to all the words in the deed of suretyship, and account is taken of the circumstances in which it came into existence, the liability of the appellant as surety is limited to those debts incurred by the principal debtor, Kilburn Auto, in its purchases from the respondent's After Market Product's division. The deed of suretyship came into existence only because security was required for Kilburn Auto to buy goods on credit from the After Market Products division.

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