THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

JUDGMENT

Case No: 123/08

In the matter between:

CHECKERS SUPERMARKET **APPELLANT**

v

ESME LINDSAY **RESPONDENT**

Neutral citation: *Checkers Supermarket v Lindsay* (123/2008) [2009] ZASCA 26 (27 March 2009).

Coram: Navsa, Brand et Mlambo JJA
Heard: 27 February 2009
Delivered: 27 March 2009

Summary: Negligence – what constitutes – customer slipping on supermarket floor – cleaning system inadequate – supermarket negligent.

ORDER

On appeal from: High Court, Natal Provincial Division (Van der Reyden J sitting as court of first instance).

The following order is made:

'The appeal is dismissed with costs.'

JUDGMENT

MLAMBO JA (NAVSA, BRAND JJA CONCURRING)

[1] On 16 September 2005 the respondent was injured when she slipped on a patch of oil and fell whilst shopping at the appellant's supermarket at St John's Avenue, Pine Town, KwaZulu-Natal. She sued the appellant for damages in the Pietermaritzburg High Court alleging that her fall was attributable to the appellant's negligence. The matter came before Van der Reyden J who, pursuant to an agreement between the parties, ordered in terms of uniform rule 33(4), that the trial first focus on the issue of liability and that quantum be stayed. At the conclusion of the trial the high court ruled in favour of the respondent. See *Lindsay v Checkers Supermarket* 2008 (4) SA 634 (N). This appeal against the judgment and order of the high court is before us with the leave of that court.

[2] The appellant's supermarket floor covers an area of some 2971.72 square metres[1] consisting of 22 aisles. The respondent had entered the appellant's supermarket just before 18h00 to make certain purchases. After

[1] This evidence was received by this court pursuant to the grant of the appellant's application, to have the evidence admitted on appeal to correct evidence led in the court a quo that the floor area was approximately 15.000 square metres.

she had selected her purchases she walked towards a till point to pay, and as she made her way past a fruit gondola she slipped on an oily substance on the floor, lost her balance and fell injuring herself. After her fall, the appellant was attended to by Mrs Sharleen Gobichand, who at the time was a back administrative manager at the supermarket. Mrs Gobichand's evidence was that when she arrived at the area where the respondent had fallen she noticed an oil patch around the respondent covering an area she estimated to be between 45 to 48 cm and that it was still spreading. Throughout the respondent's ordeal, including the time she was assisted and taken away, no cleaner arrived at the scene. The fruit and vegetable section is a known high risk area where spillages which caused the floor to be slippery, always occurred. It is common cause that the respondent's fall was the third in approximately a year in that supermarket.

[3] The evidence adduced in the court below shows that the appellant had awarded a cleaning contract to a company, Super Care Cleaning (Super Care). Super Care was responsible for cleaning the entire supermarket before the store opened in the mornings. After the supermarket opened, from 9 am to 2 pm two Super Care cleaners maintained the floors by sweeping, mopping and going up and down the aisles checking for spillages. After 2 pm one cleaner was responsible for minding the floor and aisles until the supermarket closed. The appellant's employees were instructed that when they saw a spillage the area was to be delineated and a cleaner/s summoned.

[4] The court below, after analyzing all the evidence came to the conclusion that the system the appellant had in place on the day of the incident was inadequate to deal timeously with hazardous spillages.

[5] In our law liability for negligence arises if it is foreseen that there is a reasonable possibility of conduct causing harm to an innocent third party, and where there is an omission or failure to take reasonable steps to guard against such occurrence.[2] The duty of a supermarket owner/keeper to

[2] *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430E-G.

persons entering its supermarket at all times during trading hours is aptly espoused by Stegmann J[3] as follows:

'The duty on the keeper of a supermarket to take reasonable steps is not so onerous as to require that every spillage must be discovered and cleaned up as soon as it occurs. Nevertheless, it does require a system which will ensure that spillages are not allowed to create potential hazards for any material lengths of time, and that they will be discovered, and the floor made safe, with reasonable promptitude.'

[6] The issue is therefore whether, on the particular facts of this matter, the appellant had in place a reasonably adequate and efficient system, in relation to discovering and removing dangerous spillages on the supermarket's floor, to safeguard persons who frequented the supermarket from harm. In other words was harm to the respondent reasonably preventable.[4]

[7] Properly considered the *res ipsa loquitur* doctrine is irrelevant in this matter to the issue that called for determination. The high court, quite properly, posed the correct question after considering the evidence led: whether the appellant 'had a proper system in place to deal with promptitude with spillages'.[5] It was thus unnecessary to engage in any discussion about the *res ipsa loquitur* doctrine.

[8] The court below reasoned amongst others that emphasis on the length of time the spillage remained undetected without consideration of the adequacy of the cleaning system was an artificial and unrealistic test.[6] The court went further and reasoned that the adequacy of the system had to be considered against the number of cleaning staff allocated to deal with spillages, the floor area and number of shopping aisles. Moreover the court went on to state that since experience had shown that spillages do occur, the

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[3] *Probst v Pick 'n Pay Retailers (Pty) Ltd* [1998] 2 All SA 186 (W) at 200F; See also *Brauns v Shoprite Checkers (Pty) Ltd* 2004 (6) SA 211 (E) at 218B-D; *Gordon v Da Mata* 1969 (3) SA 285 (A) at 289H.
[4] *Brauns v Shoprite Checkers* (supra) at 218D.
[5] At 637G-F.
[6] It is in any event abundantly clear that the spillage did not occur moments before the incident in question.

system could only respond with promptitude if a cleaner was stationed at the potential hazardous zones. In this regard the high court stated that it was obviously impossible for one cleaner and six staff members otherwise engaged to deal timeously with hazardous spillages between 2 pm and 6 pm in a supermarket of that size. We know, in this regard, that the respondent slipped on a spillage in the fruit and vegetable section, a known high risk spillage area, and that there was no dedicated attention, in the appellant's cleaning system, to that section. The conclusion of the high court, that the appellant's system was woefully inadequate, is also borne out by the fact that no cleaner showed up throughout the respondent's ordeal, at the section where she fell.

[9] The high court was correct in concluding that the respondent's fall was due to the negligence of the appellant on the basis that it did not have an adequate cleaning system in place that was geared to discovering and responding with reasonable promptitude to dangerous spillages whenever they occurred on the supermarket floor. The findings of the high court are, in my view, beyond reproach.

[10] The following order is made:

'The appeal is dismissed with costs.'

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D MLAMBO

JUDGE OF APPEAL

APPEARANCES:

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