

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA STATEMENT – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

LOMBARD INSURANCE COMPANY LIMITED v CITY OF CAPE TOWN

From: The Registrar, Supreme Court of Appeal

Date: 21 September 2007

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.

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On 21 September 2007 the Supreme Court of Appeal handed down judgment in Lombard Insurance Company Ltd v City of Cape Town. The appellant's appeal against a judgment of the Cape High Court, in terms of which the appellant was ordered to pay the respondent the sum of R297 806.16, was upheld with costs.

The appellant had issued an institutional guarantee in favour of the respondent. The guarantee covered various eventualities provided the contract was concluded between the respondent and Labor ('the contractor'). The respondent, however, concluded a contract with a joint venture of which Labor was a partner.

Labor was placed under provisional liquidation whereafter the respondent instituted an action against the appellant claiming payment of the guaranteed sum. The Cape High Court found in favour of the respondent stating that the wording of the guarantee was more than capable of a construction to the effect that the intention of such an agreement was to indemnify the obligations of Labor and consequently the guarantee was to be construed in respect of the obligations of the joint venture.

This court in upholding the appeal disagreed with that conclusion and held that the guarantee covered Labor as a sole entity, and that the cause of action was based on a guarantee being claimable in the event that Labor concluded a contract with the respondent. The Court accordingly held that the appellant cannot be liable for the obligations of a joint venture and thus allowed the appeal.