



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

**Case no: 739/2007**

**In the matter between:**

**ATM SOLUTIONS (PTY) LTD**

**APPELLANT**

**and**

**OLKRU HANDELAARS CC AND ABSA BANK LIMITED**

**RESPONDENTS**

**From :       The Registrar, Supreme Court of Appeal**  
**Date:         26 November 2008**  
**Status:       Immediate**

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

The Supreme Court of Appeal today upheld a decision of the Cape High Court (Griesel J) that the disconnection, removal and storage of an automated teller machine, installed and connected by the appellant in a convenience store in Worcester, Kwikspar Breedevallei, by the owner of the store, did not amount to spoliation – the unlawful dispossession of property or a right to use property.

The SCA confirmed that the appellant's right to have the machine in place, and electrically connected, in terms of a contract with the store owner, was purely contractual and that the relief sought amounted to an order for performance of the contract. A spoliation order – requiring restoration of possession or control of property before any right is determined – is not available for the enforcement of a contractual right. A spoliation order will be granted only where a litigant is deprived

of actual possession or control of property, or of a right to use property or an incident of the right to use it.

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