



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 1 June 2009

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

On 1 June 2009 the Supreme Court of Appeal handed down judgment in *Lombard Insurance Company Limited v Landmark Holdings (Pty) Ltd and two others* and upheld an appeal, with costs, against a judgment of the Cape High Court. That court had dismissed an application by a short-term insurance company in which it sought payment from three respondents who had provided it with an indemnity in the event that it met its obligations in relation to a construction guarantee.

The appellant, Lombard Insurance Company Limited, had undertaken to pay an outstanding balance upon a liquidation order being granted against the contractor whose responsibility it was to build a two-storey training centre for the South African Maritime Training Academy. A liquidation order was granted and Lombard paid the balance outstanding to the Academy. Lombard, in turn, looked to payment from the three respondents in this appeal who had all provided it with the indemnity

referred to above.

The three respondents refused to pay on the basis that the principal agent in terms of the construction agreement had perpetrated a fraud in the presentation of the claim. It was common cause that Lombard was not party to the fraud.

The Cape High Court had dismissed Lombard's claim on the basis that a guarantee provided by it had to be read in conjunction with the construction agreement and that Lombard was only obliged to pay if the claim was within the terms of the construction agreement. The three respondents had submitted that if Lombard was not obliged to pay neither was any one of them.

The SCA held that the guarantee was self-contained and created obligations distinct from those created by the construction agreement. Lombard had undertaken to pay upon the occurrence of an event that had materialised, namely, the liquidation order against the contractor. The SCA held that there was no obligation on Lombard to investigate the propriety of the claim. The guarantee itself recorded that the construction agreement was referred to only for convenience and that there was no intention to create an accessory obligation or suretyship.

The SCA held that the guarantee by Lombard was not unlike irrevocable letters of credit issued by banks and used in international trade, the essential feature of which is the establishment of a contractual obligation on the part of a bank to pay the beneficiary (seller). This obligation is wholly independent of the underlying contract of sale and assures the seller of payment of the purchase price before he or she parts with the

goods being sold.

It was held by the SCA that the same applied to the undertaking by the three respondents. They undertook to indemnify Lombard in the event that it paid a claim based on the guarantee provided by it. That event occurred and the respondents were thus likewise liable.