



## THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

**Liberty Group Ltd & others v Mall Space Management CC t/a Mall Space Management (644/18)**  
**[2019] ZASCA 142 (1 October 2019)**

**From:** The Registrar, Supreme Court of Appeal

**Date:** 1 October 2019

**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.***

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The Supreme Court of Appeal (SCA) today upheld an appeal by Liberty Group Limited & four others (Liberty Group) against a judgment of the Gauteng Division of the High Court, Johannesburg. In terms of that judgment the high court granted an order (a) directing the first to fourth appellants (Liberty Group) to permit the respondent, Mall Space Management CC t/a Mall Space Management (Mall Space) access to rental court space at the four Shopping Malls belonging to Liberty Group, so as to allow it to manage the promotional space on behalf of Liberty Group; (b) interdicting Liberty Group from terminating the agreement or mandate between Mall Space and Liberty Group for a period of six months from date of order; (c) interdicting the fifth appellant, Excellerate Brand Management (Pty) Ltd (Excellerate) from competing unlawfully with Mall Space by wrongfully interfering with its rights in the marketing, planning and co-ordination of promotional events and exhibitions at Liberty Group's Shopping centres.

Before the termination of its mandate Mall Space had for a number of years acted as Liberty Group's agent to facilitate the conclusion of rental agreements with the exhibitors at Liberty Group's shopping malls. The parties did not conclude a written agreement to regulate their relationship. As a result of a contractual dispute between Mall Space and Liberty Group, the latter on 29 August 2017 gave notice to terminate its mandate with effect from 4 September 2017.

Mall Space, contending that the termination of its mandate was unlawful, approached the high court on an urgent basis for an order essentially preventing Liberty Group from terminating its mandate; directing Liberty Group to allow it access to the four malls concerned for the purposes of performing

its work and preventing Excellerate from unlawfully competing with it in relation to facilitating the conclusion and rental agreement for exhibition space at the relevant malls. The question before this Court was whether the contract of mandate obliged Liberty Group to give Mall Space six months' notice before they could terminate the mandate. Put differently, the question is whether Mall Space had met all the requisite elements for the final interdict.

The SCA held that Mall Space failed to establish the three requisite elements for the grant of a final interdict. Under the common law Mall Space's mandate was terminable at the will of Liberty Group and there was no obligation on Liberty Group to have given Mall Space six months' notice before terminating it. Liberty Group had a valid reason to terminate the mandate. The SCA held that if Mall Space had incurred any expense or suffered any damage or was entitled to be paid commission before the revocation of the mandate, it was entitled to be indemnified because its right would have arisen while the mandate existed. Mall Space was therefore not without an alternative remedy. The SCA further held that it was wrong for the high court to have applied the constitutional value of Ubuntu, not the common law as a basis to grant the relief. Mall Space's cause of action against Excellerate based on unlawful competition should have failed because there was no case made out for it. The appeal was accordingly upheld with costs including the costs of two counsel where employed.