

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE, HIGH COURT, CAPE TOWN)

CASE NUMBER:

12262/07

5 DATE:

14 JUNE 2010

In the matter between:

CELLULAR INSURANCE MANAGERS

(PTY) LIMITED

Applicant

and

10 **FOSCHINI RETAIL GROUP (PTY) LIMITED**

Respondent

JUDGMENT

(Application for Leave to Appeal)

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FOURIE, J:

Applicant seeks leave to appeal against the whole of my judgment and orders made on 11 May 2010. The application is
20 opposed.

It is trite to succeed in an application of this nature, the applicant has to show that it has a reasonable prospect of success on appeal.

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I have considered the grounds of appeal relied upon by applicant, as well as the submissions made on behalf of both parties. I am not persuaded that applicant has shown that there is a reasonable prospect that another Court may come to a different conclusion on the defence based on Section 48 of the Short Term Insurance Act, No. 5 of 1998.

In regard to the contractual claim on which I found in favour of the respondent, I believe that I have come to the correct decision. However, I cannot rule out the possibility that another court may reasonably come to a different conclusion on this issue. In the result I am persuaded that leave to appeal should be granted on this issue. In my view, the matter merits the attention of the Supreme Court of Appeal.

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In the result the following order is made:

1. The applicant is granted leave to appeal to the Supreme Court of Appeal against my judgment and orders made on 11 May 2010, on the grounds set forth in paragraphs 8 to 23 of its notice of application for leave to appeal dated 20 May 2010;

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2. The costs of the application for leave to appeal will be costs in the appeal.

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FOURIE, J