



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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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

Bastian Financial Services (Pty) Ltd v General Hendrik Schoeman Primary School

The Supreme Court of Appeal (SCA) today upheld an appeal by Bastian Financial Services (Pty) Ltd (BFS) against a decision of the Pretoria High Court which held that the General Hendrik Schoeman Primary School (the School) was not liable to it for damages for breach of a contract allegedly entered into between them.

The School had leased photocopier equipment from BFS for a period of five years and failed to pay the instalments due under the lease agreement. BFS cancelled that agreement and sued the School, claiming return of the equipment and payment of the total rentals which would have been payable had the agreement run its course. The School opposed the action, denying that it was in breach of the contract and maintaining that it was BFS that had breached the contract. The School also raised a special plea to the effect that BFS had sued the wrong party. Its case was that, in terms of section 60(1) of the Schools Act 84 of 1996, the State was liable for claims for both delictual and contractual damages arising from acts or omissions in connection with any educational activity conducted by a public school. The School contended that it was therefore indemnified against BFS' contractual claim, which should have been instituted against the MEC for Education of the North West Province.

Both the magistrate's court and the High Court agreed with the School's interpretation of section 60(1) and upheld the special plea. On appeal to the SCA, the majority of this Court (four judges concurring, one judge dissenting) pointed out that a public school itself, and not the State, is liable for the performance of the school's contractual obligations – the other party to the contract cannot rely on some sort of 'warranty' by the State that the school will perform its obligations under contracts which have been lawfully entered into. The SCA held that it would be contrary to the purpose and scheme of the Schools Act as a whole to interpret section 60(1) in a manner so as to shift to the State liability for damages flowing from the breach of a

contract lawfully entered into by a public school. Section 60(1) must be interpreted to apply only to delictual claims and the special plea raised by the School should have been dismissed. For this reason, the appeal succeeded.

ends