

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

**25 March 2010**

STATUS: Immediate

***VIV'S TIPPERS v PHA PHAMA STAFF SERVICES (132/09) [2010] ZASCA  
(25 March 2010)***

*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*

The Supreme Court of Appeal today dismissed an appeal against a decision of the North Gauteng High Court which held that the owner of a vehicle, stolen from premises protected by a guard employed by a security firm at the instance of the owner of the premises, did not have a claim in delict against the security firm for the loss of its vehicle as a result of theft in circumstances where the security firm had contracted out of liability towards the owner of the premises for any damage or loss incurred.

The SCA confirmed the decision of the high court that the terms of the contract between the owner of the premises and the security company should play a role in assessing what the convictions of the community would be in relation to affording a claim for compensation to a non-contracting party, and therefore whether the conduct of the security firm in allowing the vehicle to be removed from the site was wrongful. The SCA held that the community convictions would not permit the undermining of the contract between the

owner of the premises and the security firm in allowing a claim by a third party in circumstances where the owner of the premises was contractually precluded from claiming from the security company. Allowing such a claim could lead to limitless liability.

The SCA found also that there was not enough evidence on which to make a finding as to negligence.