Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 27 March 2008

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 27 March 2008 the Supreme Court of Appeal, in the case of *Mercurius Motors v PAP Lopez*, dismissed an appeal against a judgment of the Johannesburg High Court, in terms of which Mercurius Motors, a motor dealer, was ordered to pay the respondent, Mr Lopez, an amount of R245 000 with interest *a tempore morae* at the rate of 15.5 per cent per annum from 13 January 2004 to date of payment. Mercurius was also ordered to pay Mr Lopez's costs.

Mr Lopez had sued Mercurius for the value of his Jeep Cherokee motor vehicle which went missing from Mercurius allegedly as a result of a robbery. The vehicle had been brought in for warranty repairs and for the installation of spotlights. It appeared that the keys to the Jeep had not been safeguarded. Mercurius had relied

on an exemption clause which it contended exempted it from liability. The Johannesburg High Court held that the exemption clause was printed and located in such a way so as not to draw the reader's attention to it. It held that the form in which the exemption clause appeared was unclear and confusing. Furthermore, the Johannesburg High Court held that in respect of the keys to the vehicle, Mercurius had been negligent. Consequently Mercurius was ordered to pay Mr Lopez the amount referred to above.

This court held that an exemption clause such as that relied on by Mercurius which undermines the very essence of the contract in terms of which a motor vehicle dealer could rightly be expected to take reasonable care of the vehicle entrusted to it for repairs should be clearly and pertinently brought to the attention of a customer who signs a standard instruction form. It held that the form in question was misleading and that it directed a person's attention away from the important provisions contained in small print. It agreed that the failure by Mercurius to safeguard the keys to the vehicle amounted to negligence. In the result the appeal was dismissed with costs.

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