



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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Edward Nathan Sonnenberg Inc v Judith Mary Hawarden (Case no 421/2023) [2024] ZASCA 90 (10 June 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal, with costs, against an order of the Gauteng Division of the High Court, Johannesburg (the high court). The order of the high court was set aside and replaced with an order that: 'The Plaintiff's claim is dismissed with costs, such costs to include the costs of two counsel where so employed.'

The core issue before the SCA was whether Ms Hawarden (the respondent) had satisfied the wrongfulness element for a delictual claim arising out of pure economic loss.

On 23 May 2019, the respondent purchased a property from the Davidge Pitts Family Trust in the amount of R6 million, in terms of which a deposit of R500 000 was payable into the trust account of Pam Golding Properties (Pty) Ltd (the estate agent). The respondent received a request from the estate agent via email, enclosing their banking details and further contained a warning regarding the ever present-risk of cybercrime, email hacking, phishing and cyber scams. She was advised to verify their banking details, which she confirmed telephonically and she successfully effected payment.

During August 2019 communication ensued between the respondent and the authorised employees of Edward Nathan Sonnenberg Inc (the appellant), who was appointed to effect the transfer and registration of the property into the name of the respondent, regarding payment of the balance of the purchase price. The respondent was provided with banking details in a similar fashion while unbeknown to both parties, the respondent's email account had been intercepted by a cyber criminal days prior. Their email communication was intercepted by the cyber criminal, who fraudulently manipulated and altered the banking details of the appellant to their own, in addition to removing a warning letter from FNB. This led to the respondent effecting payment of the balance of the purchase price into the banking account of the fraudsters. The respondent subsequently instituted action against the appellant in the high court for the recovery of the R5.5 million claiming that the appellant and its authorised employees or representatives owed her a legal duty of care to warn her of the dangers of business email compromise (BEC) as well as advise her on the various methods to employ to avoid falling victim to BEC. The high court granted the order sought and held the appellant liable in delict for the pure economic loss suffered by the respondent, based on an omission. The high court granted the appellant leave to appeal to the SCA.

The SCA found that our common law does not generally render people liable in delict for the loss that they have caused others by omission. The SCA held further that respondent's loss occurred at a time

when there was no attorney client relationship between herself and the appellant and further that the loss did not occur as a result of any failing of the appellant's system but as a result of her email account having been compromised.

The SCA found further that the respondent was aware of the risk of BEC as she had been previously made aware thereof by the estate agent and had various options available to verify the banking details of the appellant, however she failed to take reasonable steps to do so. The SCA held further that the respondent was obligated to take responsibility for her failure to protect herself against a known risk and found no reason to shift the responsibility for the respondent's loss to the appellant.

As a result, the SCA upheld the appeal.

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