

SCHINDLERS

attorneys - conveyancers - notaries

Case Note: G4S Cash Solutions v Zandspruit Cash & Carry (Pty) Ltd [2016] ZASCA 113 (12 September 2016)

by magnesium - Mon, Jun 12, 2017

https://www.schindlers.co.za/2016/g4s-cash-solutions-v-zandspruit-cash-carry-pty-ltd_trashed/

Summary

The Appellant is G4S Cash Solutions (SA) (Pty) Limited (formerly known as Fidelity Cash Management Services (Pty) Ltd), a company conducting the business of collecting, conveying, storing and delivering money on behalf of clients requiring such services (hereinafter referred to as “the Appellant”). The Respondents are retailers (hereinafter referred to as “the Respondents”) who concluded ‘cash management and ancillary services agreements’ with the Appellant on 6 April 2005 and 6 December 2006, respectively. The issue in this appeal is whether a time-limitation clause in written agreements concluded by the parties precluded the Respondents from instituting delictual claims for damages against the Appellant. The High Court, Gauteng Local Division (“the court a quo”) dismissed the Appellant’s special plea based on the time-limitation clause. This was taken on appeal to the full bench of that division, but the decision was confirmed. The present appeal against the judgment of the full court is with the special leave of this court.

The events giving rise to the Respondents’ claims against the Appellant are set out in their particulars of claim and are summarised as follows: On 3 April 2010 and 12 March 2011, respectively, the Respondents fell victim to thefts perpetrated by unknown third parties. Third Parties deceived the Respondents into believing that they were dealing with employees of the Appellant by utilising vehicles, personnel uniforms, collection boxes and identification cards identical to that used by the Appellant. Thus, utilising the exact procedure employed by the Appellant in conducting collections of cash for purposes of cash in transit collections and deposits from the Respondents’ premises, the perpetrators collected amounts of R265 465,25 and R641 744 from the Respondents and appropriated same.

The Respondents served summons on the Appellant more than 12 months after the alleged events giving rise to the claim against the Appellant. The Appellant raised a special plea alleging that the Respondents’ claims were time-barred by virtue of the provisions of clause 9.9 of the agreements concluded by the parties. Van Oosten J, in the court a quo held that the time-limitation in clause 9.9 of the agreements did not apply to the Respondents’ delictual claims. The Appellant’s subsequent appeal was dismissed by the full bench of the court a quo. Clause 9.9 provides as follows: ‘The Client shall notify Fidelity immediately of the discovery of a loss, which notification shall be confirmed in writing within 24 hours. Fidelity shall not be liable in respect of any claim unless written notice of the claim has been given within

three (3) months and summons has been issued and served within 12 months from the date of the event giving rise to the claim.’

These delictual claims arose in circumstances where the Respondents handed over the money to unknown third parties. Had the Appellant intended the time-limitation in clause 9.9 to also apply to delictual claims of this nature, it could have drafted the agreements to include such claims. Its failure to do so justifies the inference that the parties did not intend clause 9.9 to encompass the Respondents’ delictual claims. The Court dismissed the Appeal based on the fact that the Appellant failed to discharge the onus of proving the special defence.

Value

Delictual claims are not subject to time limitation clauses in a contract, unless the contract concluded provides specifically therefore.