

## SECURITY GUARDS' DUTIES TO PROTECT YOU & YOUR HOME – TO WHAT EXTENT?

*In a recent judgment by the Supreme Court of Appeal, the Court investigated the question whether a private security guard company can be held liable for a client's damages that arose after its employee allowed robbers entry to that client's family home, believing them to be police officers. Our law acknowledges that in such a relationship, the guard has a duty of care with regard to the client, his home and property; but what is the extent of this duty?*

The facts that gave rise to the matter can briefly be summarized as follows: On the evening of 22 January 2009, burglars gained entry to the property of the Loureiro family, held them at gunpoint and robbed them of valuables to the tune of some R11 million. It is a top-end property and the owners employed a private security firm to provide a security guard to man the property's entrance gates. As the robbers were dressed as police officers, showing police badges and driving a car with a blue light, the guard let them in, believing them to be nothing other than real policemen.

After the incident, the Loureiro family sued the security company that employed the security guard for the damages they sustained during the robbery. The South Gauteng High Court found in their favour and held the security company liable. The company then appealed to the Supreme Court of Appeal ('the SCA') against this decision.

The SCA overturned the decision of the South Gauteng High Court. It noted that the main issue to be determined was whether or not the security guard on duty that evening acted negligently (and breached the duty of care owed) by not taking reasonable steps to prevent the robbers from gaining access to the property. In this regard, the Court explained that it can only find that the security guard was negligent in opening the gate to the robbers if:

- a reasonable person in the position of the security guard would have foreseen the reasonable possibility that the persons who approached him at the gate were not genuine policemen; and
- having so realised, failed to take steps to prevent them from gaining access to the premises.

In performing this enquiry, the Court noted that it cannot approach the case as an arm-chair critic with the benefit of hindsight. Viscount Simonds articulated this perfectly in 1961

when he said:

*“After the event, even a fool is wise. But it is not the hindsight of a fool, it is the foresight of the reasonable man which alone can determine responsibility.”*

After considering the facts, the SCA found that the guard was not negligent as:

- He acted in good faith at all times and had no reason to believe that the 'policemen' were imposters. In this regard it was relevant to note that in terms of the *Code of Conduct for Security Service Providers, 2003*, private security guards are obliged to co-operate with the members of State security services. Clause 7 of the Code specifically requires a security guard to "render all reasonable assistance and co-operation to the members and employees of the Security Services to enable them to perform any function which they may lawfully perform".
- On the facts of the matter, the security guard acted reasonably in believing the intruders to be policemen and as a result, acting in terms of the Code of Conduct, he could not lawfully refuse them entry.

The judgment makes it clear that a security guard, while under an obligation to take reasonable precautions to protect the person and property of the client, is not required to go beyond what is reasonably expected of him. The question as to what exactly is reasonable in a particular case, will depend on the circumstances of that case. In the circumstances of this matter, the security guard acted reasonably by letting the robbers, convincingly dressed as police officers, in through the gate.

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