



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 27 May 2011

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.

CIM v FOSCHINI

The Supreme Court of Appeal today dismissed an appeal by Cellular Insurance Managers (Pty) Ltd against the judgment of the Western Cape High Court ordering it to pay to Foschini Retail Group Ltd an amount of some R 6 million with interest, being administration fees collected by CIM in respect of cellular phone insurance sold by Foschini to its customers; to provide a monthly accounting to Foschini; and to pay the costs. Foschini's claim was based on an oral agreement concluded in 2001 pursuant to which Foschini would market insurance policies covering cellular phones to its customers on behalf of CIM. The premiums due under the policies were to be paid by debit order by the customer to CIM.

CIM was obliged to pay the monthly administration fee in respect of each and every policy sold to Foschini if and when it received the premiums from the customers. When Foschini terminated the oral agreement in 2007 the question arose whether it remained entitled to the administration fees after termination. The Western Cape High Court held that it was on two grounds: the first is that a court would not import a term into a contract if it would be in conflict with the express terms of the contract. The term CIM relied upon was a term implied by law and it was in conflict with the express term relating to payment of the administration fees. The other basis of the judgment was that Foschini had acquired rights to the administration fees that survived the termination of the agreement. The Supreme Court of Appeal dismissed the appeal and confirmed the judgment and order of the Western Cape High Court.