

Durr vs ABSA Bank

The appellant (Durr) sought to recover from the respondents (ABSA Bank & others) the sum of R99500 which she & her family had invested in Supreme Holdings & Supreme Investments. Stuart (S), the regional manager of the 1st respondent's financial institution, described the investment as "very solid", "very secure", "~~very~~ safe" & "very sound" investment. Durr had lost her investment when Holdings & Supreme were liquidated in 1992. Her claim was dismissed by the Provincial Division. It was the appellants' case that owing to the respondents' negligent failure to exercise the degree of skill & care that she expected from someone in (S)'s position & for which failure the first respondent as his employer should be held vicariously liable. Her claim was dismissed by the Provincial Division.

Just about anything (S) told Durr about the investment was wrong - not that he knew about it but because he allowed himself to be misled by a series of deceptions.

The Judge ruled that (S) was seen by Durr as a man skilled to advise her on such matters and especially as he was employed by a major bank. The Judge found that Stuart did not perform his duty & consequently negligent because he told his clients that he had investigated Supreme but was driven to concede that he did not establish a single fact ^(besides conversations with colleagues and reading some journal articles) about Supreme. He therefore had no right to make recommendations until he had satisfied himself that the companies were safe. ABSA negligence follows, as it is accepted that it is vicariously liable for his actions. ABSA had been sought to be held in delict ^{on} one or two bases: 1) as vicariously liable for Stuart's conduct 2) for exposing Stuart to the public with proper training and supervision. In the appeal the result was upheld with costs.