

# SUMMARY OF THE JUDGMENT

www.stbb.co.za

>> PROPERTY LAW UPDATE

## DEVELOPER AND HOA LIABLE FOR GUEST'S INJURY?

### P v Projectprop (Pty) Ltd and Another (838/2013) [2014] ZAGPPHC 1004 (28 November 2014)

*Accidents happen and as this judgment illustrates, an injured person may seek to reclaim costs incurred in respect of the injury from those in charge of the premises, if it appears they were negligent in not cordoning off an open manhole.*

The Judgment can be viewed [here](#).

#### FACTS

On 31 December 2011, Pepermans and his two minor children attended a new year's eve party at Leloko Estate, Hartbeespoortdam (the estate). Projectprop (Pty) Ltd, the first defendant, was the developer of the estate and the second defendant was the estate's homeowners' association.

At approximately 23h00 that evening, Pepermans fell into an open manhole on the property where certain building work was still being finalised, and sustained injuries. He instituted a claim against the developer and the homeowners' association as he alleged they were negligent in not covering the manhole and ensuring that it was cordoned off.

The developer and the homeowners' association denied liability and testified that the area was adequately cordoned off with danger tape and that there was, in any event, an indemnity at the entrance to the estate preventing a claim for injuries in circumstances such as the present. They suggested that Pepermans was intoxicated, which caused him to fall in the manhole and that he was to blame for the injuries he sustained.

The question before the court was (i) whether the developer and the the homeowners' association were exempted from liability due to the disclaimer notice present at the entrance to the estate on the night in question; and if not, (ii) whether the negligence of the developer and the homeowners' association, if any, caused Pepermans' damages.

#### HELD:

##### **Disclaimer notice**

- The developer and homeowners' association did not proceed with this argument as they conceded that an open manhole would create a risk situation, which would not be covered by a general disclaimer notice, such as the one posted at the entrance to the estate.

### ***Negligence***

- Pepermans and his witness testified that a manhole lined with bricks was left uncovered on a portion of grass close to the swimming pool area where the new year's eve function was held. This was disputed by the developer and HOA. However, after examining the evidence, the court found that the testimony of Pepermans and his witness had to be preferred. It was also not shown that Pepermans was intoxicated. In fact, the doctor that treated him after the incident testified that he appeared sober, though in shock.
- As such the conclusion was that on the new year's evening, the manhole was not covered or marked with danger tape.
- Our law holds that where a person creates a situation which could cause a foreseeable injury to another person's property or person, reasonable steps should be taken to guard against such occurrence. Once a party fails to take such reasonable steps, such party is negligent and liable for the damages suffered by the injured person.
- In view of the factual findings, the court was satisfied that Pepermans proved on a balance of probabilities that the developer and homeowners' association were negligent in that they failed to take reasonable precautionary steps.

They were accordingly held liable for the damages proved by Pepermans.

### CONTACT US

■ CAPE TOWN  
Tel: 021 406 9100

■ SOMERSET MALL  
Tel: 021 850 6400

■ TYGER VALLEY  
Tel: 021 943 3800

■ FOURWAYS  
Tel: 010 001 2632

■ CLAREMONT  
Tel: 021 673 4700

■ STELLENBOSCH  
Tel: 021 001 1170

■ MENLYN  
Tel: 012 348 1682

■ CENTURION  
Tel: 012 001 1546

■ FISH HOEK  
Tel: 021 784 1580

■ TABLE VIEW  
Tel: 021 521 4000

■ ILLOVO  
Tel: 011 219 6200

■ BEDFORDVIEW  
Tel: 011 453 0577