THE SUPREME COURT OF APPEAL OFSOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM	The Registrar, Supreme Court of Appeal
DATE	30 November 2020
STATUS	Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

SA AIRLINK v SAA & OTHERS (238/2020) [2020] ZASCA 156 (30 November 2020).

MEDIA STATEMENT

On 02 March 2020 the Gauteng High Court, Johannesburg dismissed an application by the SA Airlink in which it sought to have certain revenue held by South African Airways (SAA) released to it. Today the Supreme Court of Appeal handed down a judgment dismissing an appeal against the order of the high court.

On 5 December 2019 SAA was placed under business rescue. At the time conducting business as air transportation provider in alliance with Airlink. This arrangement was regulated by an Alliance Agreement together with several other related agreements concluded between SAA and Airlink about twenty years ago. In terms of these agreements, Airlink's passengers could book and buy their flight tickets through SAA operated platforms. SAA would pay over to Airlink revenue received for these ticket sales on the 7th working day of the month following the purchases.

When SAA was placed under business rescue on 5 December 2019 it had not yet paid over to Airlink the funds received for ticket sales for the preceding month. When Airlink demanded payment SAA's business rescue practitioner, Mr Matuson

expressed the view that the funds could not be paid over to Airlink as they constituted a pre-commencement debt (ie debt that preceded commencement of business rescue).

Airlink instituted proceedings in the high court seeking an order that the amount of R430 000 838.80 be released to it because SAA had merely been acting as its agent in receiving the funds; therefore they always belonged to it. The high court dismissed Airlink's application, finding that Airlink had not made out any case for lifting of the moratorium imposed under the Companies Act on legal proceedings against businesses in business rescue. That court further found no evidence of an agency relationship between Airlink and SAA.

In dismissing the appeal against the judgment of the high court, the Supreme Court of Appeal held that the moratorium on legal proceedings against companies in business rescue applies in respect of all legal proceedings except in instances set out in s133(1) of the Companies Act 71 of 2008. Airlink was therefore precluded from instituting legal proceedings without either consent of the business rescue practitioner or leave of the court. Airlink had not made out any case for the lifting of the moratorium in this case. The SCA confirmed the findings of by the high court that there was no agency relationship between Airlink and SAA. It also confirmed the finding of the high court that the two companies were in a mutually supportive relationship. The SCA also found that the funds received by SAA were deposited in SAA's general bank accounts together with its other funds. They were never kept into a special account as belonging to Airlink. The court rejected Airlink's alternative argument that SAA's liability for the funds was a post-commencement debt and held that on receipt of the funds by SAA a liability immediately arose for it to account to Airlink in respect thereof at the agreed time. The fact that the agreed accounting day fell on a date subsequent to commencement of business rescue did not alter the date on which the liability arose.

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