



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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From: The Registrar, Supreme Court of Appeal
Date: 17 March 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

The Supreme of Court of Appeal today upheld an appeal against a judgment of the South Gauteng High Court which upheld a special plea of prescription and dismissed the claim of Aeronexus (Pty) Ltd against FirstRand Bank. The claim was based on damages arising from monies due for services rendered for goods sold and delivered to Million Air (Pty) Ltd in respect of aircraft owned by the bank.

The action was initiated by way of a simple summons which did not mention the fact that the bank's liability arose from a written guarantee it had issued in favour of Aeronexus undertaking to pay the amount claimed if Aeronexus was able to prove the debtor and creditor liens it alleged it held against Million Air in respect of the aircraft. The bank gave the guarantee in order to secure the release of the aircraft's logbooks which Aeronexus held in the exercise of its liens.

Aeronexus then sought to amend its summons to include that the bank's liability was based on the guarantee but the bank objected on the ground that the amendment was out of time as the prescriptive period of three years had elapsed. The bank contended that the original summons did not interrupt prescription as the debt claimed in it was not the same or substantially the same as that claimed in the amendment.

The SCA disagreed with this contention and held that although the allegations or cause of action upon which the relief claimed is based in the amendment differs from the allegations or cause of action set out in the original summons, the relief claimed, i.e the 'debt', remained the same in the broad meaning of the word and that the original summons therefore in interrupted prescription. The Court held that the special plea should have been dismissed.

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