



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

30 May 2011

STATUS: Immediate

CHARTER HI (PTY) LTD V THE MINISTER OF TRANSPORT (155/10)

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 Court of Appeal (the SCA) today dismissed the appeal with costs.

The appeal arose from an aircraft accident that occurred north of Cape Town on 13 December 1996. The appellants shared a financial interest in the aircraft. The pilot was being examined so as to be certified competent for instrument flying. The official flight examiner, Mr Grinstead, was appointed for that purpose by the Commissioner for Civil Aviation. The appellants sued the state – nominally represented by the Minister of Transport – in the North Gauteng High Court (Pretoria) for the loss sustained in consequence of the destruction of the aircraft, alleging that the accident was caused by the negligence of Mr Grinstead, for which the state was alleged to be vicariously liable.

The claim was dismissed by Sapire AJ in the North Gauteng High Court (Pretoria).

The issues before the SCA were whether the appellants proved that Mr Grinstead had acted negligently after he had simulated an engine failure as part of the test, and if so, whether his negligence had caused the accident; and whether the Minister was vicariously liable for Mr Grinstead's conduct. The SCA accepted that Mr Grinstead was in overall command of the flight and was responsible for its safety. The SCA stated that the standard of diligence that applied to Mr Grinstead was that of the reasonable official flying examiner placed in the 'exact position' in which he found himself. The appellants submitted that a reasonable official flight examiner in the position of Mr Grinstead, particularly having jeopardised the flight by simulating the engine failure, could and would have intervened to ensure that the simulated failure did not progress to endangering the aircraft. They maintained that the fact

alone that the aircraft crashed established that Mr Grinstead negligently failed to do so. The SCA stated that no inference of negligence can be drawn from the mere fact of the crash. The inference of negligence sought to be drawn was not inevitable and in this case one was entering into the realm of pure speculation. The law does not call for perfection, not even on the part of official flight examiners. The appellants bore the onus of establishing that Mr Grinstead had negligently failed to intervene, and the SCA stated that this onus was not discharged. Even if there was negligence on the part of Mr Grinstead, the appellants bore the onus of establishing that it was the cause of the accident. This they also failed to do. As to the Minister's vicarious liability: the SCA stated that there was no contractual relationship between Mr Grinstead and the Department, whether in the nature of an employment contract or one of principal and agent. He was simply designated as a person whose expert judgment the Commissioner for Civil Aviation would accept for purposes of determining the competence of pilots. The relationship did not give the Commissioner control over Mr Grinstead. Consequently, even if the appellants had proved that a negligent act or omission on the part of Mr Grinstead had caused the destruction of the aircraft, there was no merit in the argument that the Minister was vicariously liable for the damage.

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