



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

30 March 2012

STATUS: Immediate

Hentiq 1320 (Pty) Ltd v Mediterranean Shipping Company (166/11)

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 an appeal from the KwaZulu-Natal High Court, Durban finding that the appellant, *Hentiq 1320 (Pty) Ltd* could not recover damages from the respondent, *Mediterranean Shipping Company* in respect of the appellant's moral liability to a third party.

The appellant had concluded a contract with a third party, White Fields, to ship rice from India through three ships belonging to the respondent. The appellant had used another third party, Kingsburg, to finance the deal. The contract of purchase and sale for the shipped rice was concluded between White Fields and Kingsburg. Kingsburg on-sold the same cargoes of rice it bought from White Fields to the appellant. It was subsequently discovered on delivery of the rice that the cargoes of rice that had been shipped were different from what the respondent had recorded on the bill of lading it issued. The appellant nevertheless felt morally obliged to pay Kingsburg for the cargoes of rice because according to the appellant, Kingsburg only financed the deal and was not the true supplier.

The high court held that since the contract of sale was concluded between Kingsburg and White Fields, the appellant could not establish any recoverable loss against the respondent as Kingsburg was the party that had suffered a recoverable loss.

On appeal, it was argued on behalf of the appellant that it was probable that the respondent's agent in India was complicit in the fraud committed by White Fields to deliver the wrong goods. It was argued that the true substance of the agreement between Kingsburg and the appellant was different from the form as set out in the documents which made Kingsburg the purchaser of the goods. The appellant relied on the decision of *Par Excellence Colour Printing (Pty) Ltd v Ronnie Cox Graphic*

Supplies (Pty) to argue that a party which had settled a damages claim against it and agreed to pay an amount set forth in the settlement agreement, was entitled to recover the settlement figure from the party responsible whose actions had led to its having to pay the damages.

The SCA held that for the appellant to succeed in either of its claims, either in contract or in delict, it had to show that it had suffered damages in consequence of either the breach of contract or the delict it complained of. The SCA held that in the light of the evidence given on behalf of the appellant, there was no basis to hold that the relationship between the appellant and Kingsburg was not what it purported to be. The court also held that this case was distinguishable from the *Par Excellence* decision on the basis that legal liability on the part of the appellant to Kingsburg had not been proven.

The appeal was consequently dismissed with costs.

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