

THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Minister for Safety and Security v Scott (969/2013) [2014] ZASCA 84 (30 May 2014)

The Supreme Court of Appeal handed down judgment today in an appeal from the North Gauteng High Court. The first respondent, Scott, had together with the second respondent, Scottco, instituted action against the appellant, the Minister for Safety and Security, for payment of damages arising from the alleged unlawful arrest and detention of Scott. This included a claim by Scottco for loss of contractual profits.

On the evening of 10 June 2004 Scott had been arrested for handling a firearm whilst under the influence of alcohol, pursuant to the Arms and Ammunition Act 75 of 1969, and detained throughout that night and into the next day. He argued that this was wrongful as while he had a firearm in his possession at the time of his arrest, he had not ‘handled’ it and thus did not meet the constituent elements of the statutory offence.

Scottco, of which Scott is the chief executive officer, conducts hunting safaris from its ranch near Musina, Limpopo. It had contracted to advertise its safaris in Field & Stream, a popular American hunting and fishing magazine, from February 2004. The parties had also concluded an agreement in terms of which Scottco would host annual hunting trips for American game hunters, coordinated by the associate publisher of Field & Stream magazine. The first such

trip was scheduled for June 2004. Unfortunately however, the Americans arrived at the ranch on the same night that Scott was arrested, and no one was present to welcome them or coordinate the hunt. Consequently, the hunting permit expired before it could be utilised, and the hunters returned to America dissatisfied. Field & Stream then purported to cancel the agreement with Scottco as a consequence of the failed hunting trip.

The high court had separated the determination of liability from that of the quantum. On liability, the high court (du Plessis J) had found that the arrest and detention was unlawful and accordingly held the Minister liable to both Scott and Scottco for damages flowing therefrom. Vorster AJ, determining the quantum of damages, had then awarded Scott R75 000 for general damages in respect of the unlawful arrest and detention and R577 610 being wasted advertisement costs, and had further awarded Scottco damages in the amount of R49 268 289 in respect of the loss of contractual profits.

The Minister, with the leave of this court, now appeals against both damages awards.

Regarding the Minister's liability to Scott, this court upheld the finding of wrongful arrest as against the Minister, and, in surveying the circumstances of this case and damages awards in similar matters, awarded Scott R30 000. This is so startlingly disparate from the high court's award that it justifies interference by this court. In addition, the court held that there was no basis to compensate Scott for the money spent on the advertisement as this claim did not form part of his pleaded cause of action.

With regard to Scottco's claim, the Minister disputed that the high court had in fact decided the question of his liability to Scottco, and thus this court proceeded to do so. This court held that, despite the respondents' particulars of claim appearing to be fatally defective for failing to allege wrongfulness on the part of the Minister and thus disclosing no cause of action, any such determination would be futile at this later stage. In any event, Scottco's claim falls down on various other grounds, and thus cannot be upheld.

The deficiencies in Scottco's case include the following: Our law only recognises limited bases on which a claim for *negligent* interference with a contractual relationship can be founded, which bases do not encompass the facts of the instant matter, and their extension is constrained by good reasons of policy; in the absence of any allegation and proof of intent on the part of the Minister, the claim must fail. In addition, while it is in any event doubtful that Scottco can prove negligence on the part of the Minister in respect of itself (as distinct from

Scott), policy considerations militate against his conduct being deemed to be wrongful as regards Scottco; in particular, the wrongfulness of Scott's arrest is grounded in a technicality, and any imposition of liability on the Minister is likely to create an unascertainable class of potential claimants. Furthermore, the damage suffered by Scottco is too remote to be recovered, with remoteness serving as an additional limit to prevent the imposition of indeterminate liability; in this regard the arresting officers cannot be said to have known of the contract between Scottco and Field & Stream Magazine. The imposition of liability on the Minister will have 'unmanageable' consequences as it will open the door for indeterminate or limitless liability, and it would thus be untenable to hold the Minister liable to Scottco in the circumstances of this matter.

Put simply, to have damages imposed on the police for loss of contractual profits in relation to a contract they were unaware of and in circumstances where the arrest of Scott was effected on the basis of him having been the aggressor in a drunken brawl, and where the justification for the arrest can rightly be said to have been merely technical in error, is to cast the net too wide and to land the police with liability for loss that is too remote. It follows, for all these reasons that Scottco's claim against the Minister fails.

In the result the appeal was upheld with costs including the costs consequent upon the employment of two counsel, and the order of the high court was set aside and replaced.