



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY: JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 4 June 2021

STATUS Immediate

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

Ingosstrakh v Global Aviation Investments (Pty) Ltd and Others (934/2019) [2021] ZASCA 69 (4 June 2021)

Today the Supreme Court of Appeal (the SCA) dismissed with costs, the appellant's (Ingosstrakh) appeal against an order of the Gauteng Division of the High Court, Johannesburg (the high court) which dismissed Ingosstrakh's application for condonation of the late filing of its plea. The SCA also upheld with costs, the respondent's (Global) appeal against the order of the high court dismissing their application for default judgment against Ingosstrakh. The SCA set aside the order of the high court and replaced it with an order granting default judgment against Ingosstrakh in favour of Global.

The dispute arose from an insurance policy concluded between Global and companies associated to it, on the one hand, and Ingosstrakh, a Russian company, on the other. In terms of the policy, Ingosstrakh undertook to indemnify Global against all risks associated with a specified aircraft. The risk insured against occurred and a dispute arose as to Ingosstrakh's liability to pay in terms of the policy. Global issued summons against Ingosstrakh, which failed to plead and was placed under bar. Upon expiry of the bar, Global applied to the high court for default judgment. Ingosstrakh opposed the application and counter-applied for the lifting of the bar. The high court dismissed both applications but subsequently granted leave to the SCA.

The SCA concluded that the order of the high court was untenable to the extent it failed to resolve the disputes between the parties. With regard to Ingosstrakh's application for the lifting of the bar, the SCA concluded that since there was no appeal against an earlier high court order dismissing a similar application, its appeal had to fail on the basis that the issue was *res judicata*. The SCA further concluded that in any event, Ingosstrakh had failed to show good cause for the lifting of the bar.

The SCA also considered Ingosstrakh's submission that the high court did not have jurisdiction to determine the dispute as it, Ingosstrakh, and the second respondent, were both foreign peregrini in South Africa, and that in terms of the policy, jurisdiction was governed by the laws of the Virgin British Islands, the second respondent's country of domicile. The SCA considered the leading authority on this issue, namely *Veneta Mineraria SPA v Carolina Collieries (Pty) Ltd (in liquidation)* 1987 (4) SA 883 (A), as well as *Hay Management Consultants Ltd v P3 Management Consultants (Pty) Ltd* [2005] 3 All SA 119 (SCA). The court distinguished *Veneta* on the following basis: in *Veneta*, the plaintiff was a foreign peregrinus and the defendant a local peregrinus of Natal, but an incola of the Transvaal. Although the defendant had submitted to the jurisdiction of the Durban and Coast Local Division, there was no other jurisdictional connecting factor linking the defendant to the Natal Court. Consequently, such submission to jurisdiction did not suffice to clothe the Natal court with jurisdiction. In the present case, the SCA found, on a consideration of a number of factors, that Ingosstrakh had submitted to the jurisdiction of the high court, and in addition, there was a ground of jurisdiction that linked the subject matter of the

litigation to the high court, ie that the insurance policy was concluded in Johannesburg. Accordingly, the SCA concluded that the high court had jurisdiction in the matter.

The Court considered Ingosstrakh's various other defences and found no merit in any of them.

In the circumstances, the Court (per Makgoka JA) with Mbha and Dambuza JJA and Mabindla-Boqwana and Unterhalter AJJA concurring, dismissed with costs, Ingosstrakh's appeal against an order of the high court dismissing its application for condonation of the late filing of its plea. It upheld with costs, Global's appeal against the order of the high court dismissing Global's application for default judgment. The SCA set aside the order of the high court and replaced it with an order granting default judgment against Ingosstrakh in favour of Global.

END