



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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AIG South Africa Limited v 43 Air School Holdings (Pty) Ltd and Others (640/2023) [2024] ZASCA 97 (13 June 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal against the decision of the Gauteng Division of the High Court, Johannesburg (the high court). The high court granted AIG South Africa Limited (AIG) leave to appeal to the SCA. The high court essentially found in favour of the respondents, declaring that AIG was liable to indemnify them for their losses and directing AIG to engage them meaningfully in respect of the quantification of those claims. The SCA upheld the appeal insofar as it relates to the third claim of the second respondent and the claims of the third and fourth respondents and dismissed the appeal in respect of the first and second claims of the second respondent. It, nevertheless, ordered the parties to bear their own costs.

The matter involved AIG South Africa Limited (AIG) which allegedly provided business interruption insurance cover to 43 Air School Holdings (Pty) Ltd, 43 Air School (Pty) Ltd, PTC Aviation (Pty) Ltd, and Jet Orientation Centre (Pty) Ltd (JOC) (collectively referred to as '43 Air School Group' and 'the respondents') under a policy that covered losses resulting from the interruption of business due to a notifiable disease occurring within 25 km of the Insured's premises.

43 Air School submitted two claims to AIG in May and June 2020 for business interruption losses allegedly caused by the COVID-19 outbreak within 25 km of its premises in Port Alfred, Eastern Cape. AIG repudiated those claims. In response 43 Air School, PTC and JOC brought an application in terms of which 43 Air School sought relief in respect of those claims and further sought to hold AIG liable for a third claim. This third claim was related to the period after the COVID-19 outbreak within 25 km of the business premises of 43 Air School's subsidiary, 43 Advanced, in Lanseria and within 25 km of the business premises of PTC and JOC in Gqeberha and assumed that the policy in question was a joint policy.

PTC and JOC brought separate claims for losses they alleged they suffered because of the outbreak of COVID-19 within the agreed radius of their business premises.

AIG disputed the validity of all the claims. It alleged that the initial claims of 43 Air school were bad in law because their character had changed since the respondents wrongly assumed that the policy was joint, and that 43 Air School did not prove that their losses were caused by the outbreak of COVID-19 within the agreed radius of its premises. AIG alleged that the third claim was based on the erroneous assumption that the policy was joint. AIG also denied liability on the basis that the respondents did not comply with their reporting obligations in terms of the policy in respect of 43 AIR School's third claim and the claims of PTC and JOC. AIG further denied that PTC was an insured in terms of the policy.

The SCA found that the high court erred in its approach. It found that the policy at least in respect of the business interruption cover, was a composite, as opposed to a joint policy, meaning that even if there was one policy document for all the insured, effectively it consisted of a bundle of separate policies between AIG and the various insured. The SCA, relying, inter alia, on *General Accident Fire and Life Assurance Corporation, Limited, and another v Midland Bank Limited and others*, where it was found that in determining whether a policy is joint, or composite is a matter of its interpretation and of the nature of the interest(s) of the insured, found that the mere fact that there were several persons or entities insured under one policy does not make that policy one of joint insurance.

Relying on *Russel Loveday NO v Collins Submarine Pipelines*, the SCA held that the policy's reporting clause was a condition precedent to AIG's liability. The SCA held that, the 43 Air School Group failed to comply with the reporting clause by not giving notice of its third claim before instituting litigation and that PTC and JOC similarly failed to comply in respect of their claims. The SCA further found that PTC was not an insured under the policy.

The SCA provided clarity on the interpretation of business interruption insurance policies, emphasising the importance of complying with policy conditions and the distinction between composite and joint policies. The SCA findings highlighted the need for insureds to promptly report claims and for courts to interpret insurance contracts based on their specific wording and context.

The SCA considered the question of causation in light of decisions of the high court and the SCA and concluded that 43 Air School in respect of its first two claims established the required link between its losses and the outbreak of COVID-19 within the agreed radius of its premises in Port Alfred.

As a result, the SCA amended the high court's order and replaced it with an order declaring AIG liable for 43 Air School's first two claims for the periods of 26 April to 30 April 2020 and 1 May to 31 May 2020. Further, the SCA directed AIG to engage with 43 Air School to quantify the monetary value of those claims.

The SCA dismissed the application in all other respects and ordered each party to bear its own costs.

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