

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

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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

Commissioner for the South African Revenue Service v Hawker Air Services (Pty) Ltd

In a judgment delivered today, the Supreme Court of Appeal has unanimously over-turned a judgment of the Pretoria High Court refusing to order the liquidation of a company (HAS) and the sequestration of the estate of a partnership in which HAS was a partner.

The applications by SARS were part of a long-running battle between it and Mr David King, the sole director of HAS. At the centre are tax debts of nearly R2.5 billion the Commissioner claims Mr David King, the sole director of HAS, and a number of parties connected to him owe – and the Commissioner's attempts over the last four years to ensure that HAS's principal asset, its interest in a Falcon 900B jet aircraft, remains available for the partial satisfaction of that and other tax debts. The SCA in previous litigation between Mr King's companies and SARS ruled that the Falcon should be brought back to South Africa from abroad.

The Pretoria High Court dismissed the present insolvency applications on the grounds that they had not been urgent; that the Commissioner had acted with an improper ulterior purpose in bringing them; that the applications constituted an impermissible collateral challenge to an earlier court finding; that the statutory tax judgment on which the Commissioner relied as constituting the debt rendering him an unpaid creditor of the company and the

partnership was invalid and therefore that the Commissioner could not apply for either liquidation or sequestration; that the sequestration application was fatally defective because it failed to embrace a liquidation application directed at the other corporate partner, ManCo; and that the applications should be refused in any event in the exercise of the court's residual discretion. The learned judge passed strong criticism on the conduct of SARS's officials. In addition he determined that certain statutory provisions were unconstitutional. He granted the respondents the costs of four counsel, and ordered the Commissioner to pay them, not on the party and party scale, nor even on the attorney and client scale, but on the 'attorney and own client scale'.

The SCA has reversed these findings. It has found that the criticism of the Commissioner of SARS and his officials is unjustified. The SCA has ordered the final liquidation of HAS, and the provisional sequestration of the partnership, which can furnish reasons on Tuesday 25 April why it should not be finally sequestrated.