



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL**

From: The Registrar, 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.

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ABSA BANK LTD v INTENSIVE AIR (PTY) LTD (IN LIQUIDATION) & OTHERS

The Supreme Court of Appeal today overruled a decision of the full court of the Gauteng North (Pretoria) Division.

The full court had held that the liquidators of the insolvent company Intensive Air (Pty) Ltd were entitled to claim a sum of R293 656.56 which had stood to the credit of an account held in the name of the company's sole director.

The account was opened before the company started its air passenger service operations. All moneys earned from ticket sales were paid into the director's personal account, who devoted the funds to the payment of company and personal expenses. The director was indebted to the bank for the sum of

R25m he had borrowed to purchase aircraft in his personal name, which aircraft he leased to the company.

When the company was liquidated, the bank appropriated the money in the director's account by set-off against the debts he owed to the bank taking place.

The full court was of the view that the money, having been earned by the company, should accrue to the company as it represented a company asset.

On appeal this finding was overruled. The general rule of banking law provides that money paid into a client's account becomes the property of the bank, subject to the client's claim to any credit in the account. Normally only the account holder is entitled to claim money in an account held in his or her personal capacity. A third party is only entitled to such funds if a special arrangement has been made with the bank that the money will be held on behalf of such third party; or in cases where the third party is able to show that money credited to another's account 'belongs' to the third party, for instance in cases where stolen funds can be traced to a credit in another's bank account. In the present instance no special arrangements had been made with the bank and there was no suggestion that the director's arrangements in respect of the company finances were in any way untoward. There was no evidence that the director's agreement with the bank was anything other than an ordinary banker-client relationship, with the result that the liquidator's claim had to be dismissed.