

TORT

Negligence – Duty of care – Breach of duty of care – Disappearance of MH370 – Whether link between party and cause of action exists – Malaysian Airline System Berhad (Administration) Act 2015, section 29(1)

Malaysia Airlines Bhd (according to Malaysian Airline System Berhad (Administration) Act 2015) v Tan Wei Hong (a child suing through his guardian ad litem and next friend, Chuang Yin E) & Ors

[2017] 2 MLJ 507, Court of Appeal

Facts The appellant is Malaysia Airlines Bhd, a company, while the respondents are relatives of the three deceased persons who had boarded MH370 (“the missing aircraft”), operated by Malaysian Airline System Berhad (“MAS”). The aircraft had never arrived at its destination and to date, the aircraft, its passengers and crew personnel have not been located. The respondents commenced an action at the High Court against the appellant on the basis of breach of contract and breach of duty of care. The respondents claimed that the appellant, pursuant to the Malaysian Airline System Berhad (Administration) Act 2015 (“the Act”), was deemed to have and will be taking over all liabilities of MAS. The appellant filed a claim to strike out the action, arguing that the appellant is an entity incorporated eight months after the disappearance of the aircraft, that it is not referred to as a successor company of MAS under the Act, and that assets and liabilities which were agreed to be transferred from MAS to the appellants did not include liabilities arising from the missing aircraft. The High Court dismissed the application. Hence, this appeal.

Issue The main issue was whether the appellant has any nexus or link, in law or in fact, to any of the causes of action pleaded by the respondents, in connection with the missing aircraft.

Held In allowing the appeal, it was held that there was no nexus both in law and in fact, and that the claim was unsustainable. This is because the appellant was not in existence at the time of the disappearance of the aircraft. Thus, the appellant could not have assumed any responsibility or liability or owed any duty of care in law to the deceased persons at the material time, nor could there be any transfer of liability which had not yet been established against MAS to the appellant. Even if liability against MAS is eventually established, both MAS and the appellant by agreement had agreed that any claim, action or liabilities in connection with the missing aircraft will remain with MAS and will not be assumed by the appellant. Further, section 29(1)¹ of the Act provides that the vesting of any rights and liabilities from MAS to the appellant be done *via* vesting order, and such vesting order does not vest or transfer any liability in connection to the missing aircraft, to the appellant.

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¹ Vesting provisions