

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 055056 / 2023

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: YES

DATE: 3 March 2025

SIGNATURE OF JUDGE:

In the matter between:

PIONEER DRILL AND BLAST (PTY) LTD

Applicant

(Respondent in the leave to appeal)

and

CORNELIUS JOHANNES DEYSEL

Respondent

(Applicant in the leave to appeal)

JUDGMENT – LEAVE TO APPEAL

Woodrow, AJ:

[1] The respondent in the main application, applicant in the application for leave to appeal, (“**Mr Deysel**”) seeks leave to appeal to the full court of this Division against the whole of the judgment and order granted on 4 November 2024 in terms of which Mr Deysel was directed to pay to the applicant (“**Pioneer**”):

- a. the sum of R3,661,455.25;
- b. interest on the sum of R3,661,455.25 calculated at the rate of 10,75% *per annum a tempore morae* to date of final payment;
- c. the costs of the application on the attorney and client scale.

[2] Pioneer opposes the application.

[3] Both parties filed heads of argument.

[4] Counsel for Mr Deysel, Mr Botes SC, confirmed in argument that the point raised in the leave to appeal in respect of non-joinder ought to be disregarded by the court. I agree. The point bears no prospect of success on appeal. (See: Judgment par [21] – [30])

[5] Mr Botes SC focused his argument on two main points in contending that leave to appeal ought to be granted and that another court would come to a different conclusion, namely:

- a. An argument in respect of the suretyship agreement;
- b. An argument in respect of the interpretation of the cession agreement.

[6] Closely linked to the first argument (which I shall refer to for ease of reference as the “*suretyship argument*”) is an argument raised regarding ‘dispute of fact’, and the applicable ‘*Plascon Evans*’ rule. The court was referred to paragraphs 26.1 to 26.4 of the answering affidavit in support of the *suretyship argument*. In these paragraphs, Mr Deysel states as follows:

- 26.1. I cannot recall that I have bound myself, in my personal capacity, as surety, towards the Applicant, as alleged by Mr Potgieter in this paragraph.
- 26.2. I am, however, convinced that the legal consequences of the suretyship upon which the Applicant relies were not explained to me at all.
- 26.3. I have limited legal knowledge or experience and I would not have bound myself as a surety in the prevailing circumstances. Mr Potgieter and the Applicant were duty bound to at least direct my attention to the legal consequences of a suretyship, which they have not done.
- 26.4. In the event that it is found that I have executed the deed of suretyship upon which the Applicant relies, I respectfully submit that I should not attract any liability therefrom, by virtue of the fact that I was totally

unaware of the nature of the document and the legal consequences thereof.

- [7] When asked by the court what relevant disputes arise from the aforesaid, it was submitted on behalf of Mr Deysel that the disputes that arise are **(a)** whether or not Pioneer pointed out the consequences of the suretyship agreement to Mr Deysel and **(b)** whether there was a duty on Pioneer to point out such consequences.
- [8] In my opinion, the argument is without merit. There was no legal duty on Pioneer to point out the consequences of the suretyship agreement.
- [9] Further, as addressed in the judgment, the facts demonstrate that Mr Deysel knew he was signing a suretyship agreement and the consequences thereof. (Judgment, par [34]) Further, as pointed out in footnote 11 of the judgment, the suretyship document cannot be described as a “*trap for the unwary*”, and a reasonable person would not have been misled thereby. (Cf. the very different document in **Brink v Humphries & Jewell (Pty) Ltd** 2005 (2) SA 419 (SCA) par [10] – [12]). Mr Deysel makes out no case for a defence based on *iustus error*. (Cf. **Tesoriero v Bhyjo Investments Share Block (Pty) Ltd** 2000 (1) SA 167 (W) at 175 – 180. See also: **Slip Knot Investments 777 (Pty) Ltd v Du Toit** 2011 (4) SA 72 (SCA) at par [9]; **Hartley v Pyramid Freight (Pty) Ltd t/a Sun Couriers** 2007 (2) SA 599 (SCA) at par [9].)

[10] In my opinion, there is no reasonable prospect that another court would uphold the suretyship argument.

[11] The second main argument advanced by Mr Botes SC concerns the interpretation of the cession agreement (which I shall refer to for ease of reference as the “*cession interpretation argument*”). With reference to the ‘cession interpretation argument’, I was referred to paragraph 36 of the answering affidavit, and specifically to paragraphs 36.3 and 36.4 thereof which read as follows:

36.3. Deymine, in any event, ceded its right to claim payment from IPP to the Applicant, which had the effect that Deymine could no longer demand from IPP to make any payment to it, as IPP was liable and responsible towards the Applicant.

36.4. On a proper interpretation and analysis of the cession agreement, the Applicant had every right in law to claim payment directly from IPP. Deymine was therefore absolved from any further responsibility or liability towards the Applicant.

[12] The submission on behalf of Mr Deysel is that on a proper interpretation and construction of the cession agreement, the liability of Deymine ‘shifted’ to IPP.

[13] However, the express terms of the cession agreement (“**FA5**”, CaseLines 01-52) do not support the argument. The written terms do not state or provide for that which Mr Deysel contends for.

- [14] Moreover, insofar as this may be of any relevance, Mr Deysel's own conduct is inconsistent with the interpretation which is now sought to be advanced – the cession was concluded in May 2022 (CaseLines 01-54), but Mr Deysel proposed a repayment plan on behalf of Deymine in November 2022. **(Phoenix Salt Industries (Pty) Ltd v The Lubavitch Foundation of Southern Africa** (330/2023) [2024] ZASCA 107 (03 July 2024) par [25] – [26])
- [15] The fact that in terms of the cession agreement, Deymine ceded to Pioneer its right to demand payment from IPP does not release Deymine from its liability or obligation to make payment to Pioneer (nor does this 'shift' the liability of Deymine to IPP).
- [16] I dealt with the argument in respect of the interpretation and consequence of the cession agreement in paragraphs [40] – [46] of the judgment. In my opinion, there is no reasonable prospect that another court would conclude that the cession agreement absolved Deymine of its liability to Pioneer.

Conclusion and order

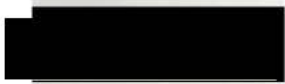
- [17] Having perused the application for leave to appeal, and having considered the grounds raised therein and the arguments advanced by the parties, in my opinion an appeal would not have a reasonable prospect of success. Furthermore, there are no other compelling reasons why the appeal should be heard.

[18] The application for leave to appeal ought accordingly to be dismissed.

[19] Both parties made submissions in respect of costs. In my view the application for leave to appeal does not raise issues of significant complexity. However, the value of the claim is not insignificant, and the relief claimed is quite clearly important to both parties. In my view, having considered all factors raised by the parties in this regard, an order in respect of costs of counsel on scale B is appropriate.

[20] Accordingly, an order is granted in the terms set out below.

1. The application for leave to appeal is dismissed with costs, such costs to include the costs of counsel on scale B.



WOODROW AJ

ACTING JUDGE OF THE HIGH COURT

This Judgment was handed down electronically by circulation to the parties and / or parties' representatives by e-mail and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on this 3RD day of March 2025.

Appearances

Counsel for the Applicant: C Bester

Instructed by: Fluxmans incorporated

Counsel for the Respondent: FW Botes SC

instructed by: Macintosh Cross & Farquharson Attorneys

Date of Hearing: 28 February 2025

Date of Judgment: 3 March 2025