



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 13 August 2025

Case no: 026912/2022

In the matter between:

CALASCA TRADING 114 (PTY) LTD

First Plaintiff

GLEN ALAN FINE

Second Plaintiff

and

RONDO INDUSTRIAL (PTY) LTD

First Defendant

MYRON CYRIL BERGER

Second Defendant

JUDGMENT

WILSON J:

- 1 The second plaintiff, Mr. Glen Fine, is the sole director and shareholder of the first plaintiff, Calasca. The second defendant, Mr. Berger, was, until 30 November 2020, a director of Rondo Industro (Pty) Ltd, which is not a party to these proceedings. Mr. Glen Fine and Mr. Berger each involved themselves and their companies in a joint venture to source and supply personal

protection equipment to businesses in need of such equipment for their employees, and to retailers for onward sale to the general public.

2 Although Mr. Antonie, who appeared for the plaintiffs, did not explicitly concede this, it was obvious by the end of the trial that the first defendant, Rondo Industrial, had been erroneously joined to these proceedings in the mistaken understanding that it was involved in the joint venture. The reality, as all parties now accept, is that Rondo Industro was a party to the joint venture, but that Rondo Industrial, which is the first defendant in these proceedings, was not. As best as I can tell, the error is explained by the fact that Mr. Berger has had interests in both companies, and their similar names led to the misjoinder of Rondo Industrial.

3 This trial action concerns the fate of money owed as a result of the sale of defective thermometers to the joint venture, and the onward sale of those thermometers to Takealot, a well-known online retailer. In mid-2020, after the end of what has become known the “hard” lockdown, transmission of the Covid-19 virus was prevented, in part, by temperature screening at entrances to retail outlets, places of employment, and other venues where members of the public were likely to gather. As a result, demand for electronic thermometers spiked, and the joint venture sought to capitalise on the opportunity to meet this demand.

4 Accordingly, Rondo Industro, acting on behalf of the joint venture, purchased a large quantity of thermometers from a company known as Cardona (Pty) Ltd, which was controlled by a Mr. David Fine. The purchase price was in the region of R5.6 million. Calasca, also acting on behalf of the joint venture, then

sold the thermometers on to Takealot, for onward sale to the general public on Takealot's website.

- 5 It turned out that the thermometers were defective, because they did not meet the requirements the South African Health Products Regulatory Authority prescribed for such devices. Takealot returned the thermometers and demanded a refund from Calasca, which Calasca paid in the form of debits to its Takealot account. Calasca also refunded Rondo Industro for the amount Rondo Industro had paid to purchase the thermometers from Cardona.
- 6 The joint venture then sent the thermometers back to Cardona and sought to recover the purchase price from Cardona. This was easier said than done. Mr. David Fine was in the process of emigrating. Cardona had ceased trading and was an empty shell. If the money was to be recovered, then it would have to be recovered from Mr. David Fine, rather than Cardona itself. Eventually, on 12 May 2022, Mr. David Swartz, Mr. David Fine's attorney, transferred R2 million into Mr. Berger's personal bank account, in full and final settlement of the joint venture's claim for the return of the purchase price of the thermometers. Neither Mr. Glen Fine nor Calasca, it is common cause, received anything.
- 7 The question in this case is whether Mr. Berger was obliged to share the R2 million Mr. David Fine paid to him with Mr. Glen Fine. Mr. Glen Fine sues on the basis of an agreement he alleges he reached with Mr. Berger in late October 2021. The business and personal relationship between the two men had by that time soured. The joint venture had effectively ceased to operate

some months before. Immediately before the October 2021 meeting, each man claimed the other owed them money arising from the joint venture.

8 At the October 2021 meeting, Mr. Glen Fine and Mr. Berger settled their differences on the basis that neither owed the other any money arising from transactions undertaken as part of the joint venture. There is a dispute, however, about what the men agreed would be done to collect the money Cardona still owed to the joint venture. Mr. Glen Fine says that the agreement was that the parties would continue to co-operate to recover the amount Cardona still owed, by pursuing Mr. David Fine for that amount. Mr. Berger says that this was not the agreement. He says that the agreement was in fact that each man would endeavour to collect their own portion of what was owed, and that there was no agreement to share whatever had been collected.

9 The parties also disagree about the capacities in which the October 2021 accord was reached. Mr. Glen Fine says that all along, and in any event at least by that time, neither he nor Mr. Berger drew any distinction between themselves and the companies through which they operated the joint venture. The agreement was that each man would share whatever they collected from Cardona or Mr. David Fine with the other, whether or not the money was collected by or on behalf of either of the companies. Mr. Berger denies this. He says that he would never have entered into such an agreement in his personal capacity, and that whatever agreements passed between the two men, they could only have bound the two men's companies – Calasca and Rondo Industro. Mr. Berger also said that the joint venture was a creature of

those two companies, and that neither he nor Mr. Glen Fine were party to it in their personal capacities.

10 It seems to me that, if this trial action is to succeed, I must settle both of these disagreements in Mr. Glen Fine's favour. If I were to decide that the agreement was that any money recovered by either man would be shared, the claim would still fail if I also concluded that the agreement to collect and share what was owed was made by the two men acting only as representatives of the two companies that formed part of the joint venture. This is because the company on behalf of whom Mr. Berger would have received the money, Rondo Industro, is not a party to these proceedings, and cannot be ordered to pay the plaintiffs anything. If, however, I decide both that there was an agreement to share the proceeds of whatever was collected from Mr. David Fine, and that the agreement was reached by Mr. Glen Fine and Mr. Berger in their personal capacities, then the claim would succeed on the basis that Mr. Berger owes Mr. Glen Fine R1 million, and that Mr. Glen Fine is entitled to judgment for that amount.

11 I now turn to the first of these two issues: the true nature of the October 2021 agreement.

The October 2021 agreement

12 The October 2021 agreement was reached orally at a meeting between the two men which took place at Linksfield. It was later memorialised in an email Mr. Glen Fine sent to Mr. Berger on 4 November 2021. That email reads –

“Hi Myron
to ensure we [are] on the same page, the discussion was

1. Rondo and Calasca do not [owe] each other any money
2. Calasca will collect 50% of the settlement from David Fine
3. Rondo will collect 50% of the settlement from David Fine
4. Rondo will pay Macdonalds.

Please confirm points 1 to 4

thanks.”

- 13 The parties agree that Mr. Berger later confirmed the contents of this email over the telephone. Mr. Glen Fine says that the agreement is to be interpreted as meaning that each party would share half of whatever either of them ultimately collected from Mr. David Fine with the other. Mr. Berger adopts a more literal approach to the email. He says that the email means more or less what it said: each company would pursue its own half of whatever Mr. David Fine agreed to pay in settlement of the sum owed to the joint venture.
- 14 It is now well-established that the words in which the parties to a contract choose to express their accord are not to be treated as if they bear objective and immutable meanings independent of the circumstances in which the agreement was struck. While “the inevitable point of departure is the language” of the agreement itself, that language must be “read in context and having regard to the purpose of the provision and the background to the preparation and production” of the agreement (*Nation Joint Municipal Pension Fund v Endumeni Municipality* 2012 (2) SA 593 (SCA), paragraph 18). To put it another way: “words without context mean nothing” (*Novartis SA v Maphil Trading* 2016 (1) SA 518 (SCA), paragraph 28).
- 15 The contextual factors relevant to the interpretation of the agreement in this case all, in my view, point to the conclusion that the meaning of the 4

November 2021 email was that each party would receive half of whatever either of them collected from Mr. David Fine. The most obvious consideration in favour of that interpretation is the fact that the agreement was to pursue a “settlement” that neither party was able to quantify at the time it was reached. The maximum amount Mr. David Fine owed was probably the cost of the thermometers – about R5.6 million. But the amount for which the parties to the joint venture would “settle” their claims had not been quantified. If the idea was that each party would act independently of the other, that would entail the proposition that each party would quantify the total amount for which they were prepared to “settle” with Mr. David Fine, and then claim half of that amount. That, of course, would make no sense, since, acting independently, each party might “settle” in a different amount. In addition, if the parties were to settle separately with Mr. David Fine, neither party’s agreement to “settle” could realistically bind the other. The agreement to split a “settlement” only makes sense if the parties accepted that they would jointly settle with Mr. David Fine, and then share that amount equally.

- 16 It is, further, common cause that neither Mr. Glen Fine nor Calasca had any way of collecting money from Mr. David Fine on their own. They had either to do so on behalf of the joint venture or through Mr. Berger or Rondo Industro. The contract for the delivery of the thermometers had been entered into between Rondo Industro and Cardona. Only Rondo Industro had the standing necessary to collect the money Cardona owed, whether on behalf of the joint venture or otherwise. Had Mr. Glen Fine been left to his own devices, he would have had no basis on which to demand payment from Mr. David Fine, since Cardona’s contract was with Rondo. It is true that Rondo concluded the

contract pursuant to its role in the joint venture, but Mr. Glen Fine would clearly have created an extra hurdle for himself in collecting the money from Mr. David Fine if he agreed to do so without assistance from Rondo or Mr. Berger. Such an agreement would plainly have made very little business sense.

17 There is, in addition, Mr. Glen Fine's unchallenged assertion in his evidence that he drew no distinction between the individuals and companies who were party to the joint venture. They were, in his view, all in it together. The evidence of Mr. Glen Fine's conduct all accords with this approach. Shortly before the October 2021 meeting, Mr. Glen Fine had been contacted directly by Mr. David Fine. Mr. David Fine had asked him what he would settle for. Mr. Glen Fine's evidence, again unchallenged, was that he was reluctant to settle directly with Mr. David Fine without consulting with Mr. Berger, since he drew no distinction between the two men's interests in the debt Mr. David Fine owed. There is nothing in the evidence that suggests that Mr. Glen Fine's attitude suddenly changed in or about the late October 2021 meeting. There is similarly no objective indication that such a change of attitude would have done Mr. Glen Fine's interests anything but harm.

18 Also unchallenged is Mr. Glen Fine's version of what Mr. Berger himself proposed at the late October 2021 meeting. In response to a question from me, Mr. Glen Fine said that it was in fact Mr. Berger who proposed a "united front" to collect what Mr. David Fine owed, and that whatever was collected would be shared "50/50". That account of the late October 2021 meeting was never challenged. The 4 November 2021 email must be interpreted in light of it. I find it impossible to accept that, having been made that offer at the late

October 2021 meeting, Mr. Glen Fine would spontaneously have decided that the two men should go it alone. The true meaning of the 4 November 2021 email was clearly that the two men would pursue Mr. David Fine jointly for what Mr. David Fine owed and share whatever they got.

19 Mr. Glen Fine was in every respect a consistent, impressive and honest witness. He struck me as the more vulnerable and less weathered of the two men. He was perhaps trusting to the point of naïve in his dealings with Mr. Berger, but there was nothing in his evidence that suggested that his interpretation of the 4 November 2021 email was contrived or self-serving. He plainly genuinely believed that the email had the meaning he contended for.

20 I cannot say the same of Mr. Berger, whose attitude in the witness box did not inspire confidence. Mr. Berger's evidence was guarded and halting. He was unable to explain why Mr. Glen Fine would have agreed independently to pursue a debt that, at least on paper, he was not owed. He challenged the authenticity of emails that his legal representatives had conceded were authentic because, when they were put to him, they did not suit his version. There is also the fact, patent from those emails, that Mr. Berger did not tell Mr. Glen Fine about the amount he received from Mr. David Fine for weeks after he received it. This was despite the fact that Mr. Glen Fine regularly asked whether the amount had been recovered. Had Mr. Berger been telling the truth about the nature of the agreement, it would have been a small thing to say that he had received his share of the settlement that both men had agreed could be independently recovered. But he did not say that. In the emails that passed between the two men, Mr. Berger pretended not to understand what

Mr. Glen Fine was talking about. The probable inference from all of this is that Mr. Berger lied to Mr. Glen Fine for some time after he received his payment from Mr. David Fine, and that he lied to me in the witness box about the true nature of his agreement with Mr. Glen Fine. Accordingly, I find it impossible to rely on Mr. Berger's evidence on the points in dispute.

- 21 For all these reasons, I conclude that the more probable interpretation of the 4 November 2021 email and the agreement it memorialised was that each party would share equally anything either of them collected from Mr. David Fine.

The parties to the agreement

- 22 What remains is to decide whether the agreement recorded in the 4 November 2021 email was reached between Mr. Glen Fine and Mr. Berger acting as representatives of Calasca and Rondo Industro, or whether they intended to bind themselves personally to share with each other whatever they collected from Mr. David Fine.
- 23 The agreement to share the "settlement" referred to in the 4 November 2021 email initially struck me as an agreement between two companies. As Mr. Silver, who appeared for Mr. Berger, pointed out, it is expressed as an agreement between the two companies: "Calasca" and "Rondo". However, as I took the circumstances surrounding the email into account, that textual point became less persuasive.
- 24 In the first place, Mr. Glen Fine is the author of the email. Insofar as the joint venture was concerned, he plainly drew no distinction between himself and

Calasca on the one hand and Mr. Berger and Rondo on the other. Rondo had to be named, because it was to Rondo that the money was formally owed. But by the time of the late October 2021 meeting, Mr. Berger had long-since resigned as a director of Rondo. I heard no evidence, other than Mr. Berger's say-so, that Mr. Berger's efforts to recover the money Mr. David Fine owed the joint venture were undertaken strictly on Rondo's behalf. For the reasons already given, I decline to rely solely on Mr. Berger's word that this was so.

25 In addition, the amount eventually recovered from Mr. David Fine was not paid to Rondo, but into Mr. Berger's personal account. Had Mr. Berger really been pursuing Mr. David Fine on Rondo's behalf, he would likely have had the money paid to Rondo. There is also the fact that the money was not paid over by Cardona itself but by Mr. David Fine personally. This was after what Mr. Swartz, Mr. David Fine's attorney, called "extortion" – in that, as was never seriously disputed, Mr. Berger sent a debt collector to warn Mr. David Fine personally of the adverse consequences of failing to pay what Cardona owed the joint venture. All these contextual factors point to businessmen acting personally rather than on behalf of the entities they control. They tend strongly toward the conclusion that Mr. Berger was collecting the money for his own account, and that the agreement memorialised in the 4 November 2021 email from Mr. Glen Fine was an agreement between the individuals and not the companies they controlled.

26 To this must be added that the agreement was reached against the background of a family conflict. The two men were part of each other's extended family. It was common cause at trial that Mr. Glen Fine had refused

to invite Mr. Berger to his wedding because of the conflicts that had arisen from the joint venture. Mr. Berger ended up attending the wedding as a result of the détente that the two men had reached at the late October 2021 meeting. It is improbable that either man considered the accord to be solely in the interests of their two companies.

- 27 On top of all of this, the emails that passed between the two men leading up to the late October 2021 meeting and the 4 November 2021 email referred interchangeably to themselves as individuals and to their companies – with Mr. Berger almost exclusively referring to his share of the amount due from Mr. David Fine as a sum due to him personally rather than to Rondo. Throughout the joint venture, the two men had referred to each other as “partners”. They had seldom, if at all, taken care to refer to each other’s companies as the true collaborators. This was, from start to finish, a business affair between the two men rather than an exclusively corporate transaction.
- 28 For these reasons, I conclude that the agreement memorialised on 4 November 2021 was an agreement between the two men to share with each other whatever each of them managed to collect from Mr. David Fine.

The pleadings

- 29 It is finally necessary to deal with the argument, advanced by Mr. Silver in his written submissions, that the claim I have sustained was not pleaded. At paragraph 37 of his submissions, Mr. Silver contends that it was not pleaded that either Mr. Glen Fine or Mr. Berger were party to the joint venture or that either of the men would be personally liable to the other in the event that the joint venture suffered a loss.

30 This misses the point. In my view, the joint venture was more than an alliance between Calasca and Rondo, but that does not matter. The critical issue is whether the agreement to collect and share what Mr. David Fine owed the joint venture was reached between the two companies or between the two individuals. The conclusion I have drawn on the evidence – that it was an agreement between the two individuals, Mr. Glen Fine and Mr. Berger, the second plaintiff and the second defendant – is pleaded in paragraph 22 of the plaintiffs’ particulars of claim.

31 Mr. Silver poured scorn on that paragraph as pleading two mutually destructive factual versions – and perhaps it does. But that was an issue which the defendants could have dealt with by way of exception. Once the defendants went to trial on the pleadings as they stood, they must have known that the agreement really had to be established between Mr. Berger and Mr. Glen Fine acting in their personal capacities, because everybody knew that Rondo Industrial, the first defendant, had been misjoined, and was never a party to the joint venture in the first place.

32 In any event, there can be no suggestion that I have reached a conclusion that was not pleaded, and I reject Mr. Silver’s argument to the contrary.

Order

33 For all these reasons, I give judgment as follows –

33.1 The second defendant will pay the second plaintiff the sum of R1 million plus interest at the prescribed rate to run from 14 September 2023 to the date on which the judgment is satisfied.

33.2 The second defendant will pay the plaintiffs' costs of suit. Counsel's costs may be taxed on scale "B".



S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 13 August 2025.

HEARD ON: 27, 28, 29 May and 29 July 2025

DECIDED ON: 13 August 2025

For the Plaintiffs: M M Antonie SC
Instructed by Witz Inc

For the Defendants: M D Silver
Instructed by David Kotzen Attorneys