



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

CASE NO: 2024-079984

- (1) REPORTABLE: **NO.**
(2) OF INTEREST TO OTHER JUDGES: **NO.**
(3) JUDGMENT : **28 AUGUST 2025**

Frank Snyckers
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In the matter between –

GLASFIT INTERNATIONAL (PTY) LTD

Applicant

and

WILKIN, BRADLEY JAMES

First Respondent

WILKIN, CHRISTELLE

Second Respondent

DELIA KRUGER ATTORNEYS

Third Respondent

BLIGNAUT, ROMANA

Fourth Respondent

REGISTRAR OF DEEDS JOHANNESBURG

Fifth Respondent

***By transmission of this judgment by email and uploading on Court Online /
Caselines the judgment is deemed to be delivered***

JUDGMENT

SNYCKERS AJ

INTRODUCTION

[1] This application concerns a claim for rectification of a deed registered by the fifth respondent, the registrar of deeds. The deed in question styles itself as a “*Borgverband*” (surety bond). The claim for rectification is to make it a first mortgage bond. In essence, the claim amounts to a contention that there had been an agreement that a first mortgage bond would be drawn and registered, that instructions had been given to an attorney to have this attended to, but, by mistake, what ended up being drawn and registered was this *Borgverband*, not a first mortgage bond. The rectification claim extends to seeking orders against the conveyancer who attended to the registration and against the registrar to see to it that the correct document, namely a first mortgage bond, be registered, once the deed was rectified to become such a bond.

[2] The application occurs against the backdrop of pending action proceedings under a different case number. This is an important, and ultimately decisive, dimension to the application.

[3] Mr Wilkin, the first respondent, was an employee of Glasfit. He wanted to buy a house, but could not get the required financing from a bank. His employer,

Glasfit, was willing to assist. The problem was that, in terms of the National Credit Act,¹ Glasfit was, at least according to Wilkin, not entitled to provide the kind of assistance to which the parties ended up agreeing, as what they agreed to was a credit agreement governed by the NCA, when Glasfit was not a registered credit provider.²

[4] Glasfit, via Mr Kluever, agreed with Mr Wilkin³ that it would finance the purchase of his house, with specific terms as to capital, interest, payments, escalations, draw-downs and repayment. In an email between the two, that captured the terms of what they agreed, Mr Kluever added the following term or condition:

“We will instruct Delia Kruger Attorneys to register a first mortgage bond in the amount of R2,200,000 as security for the above loan in favour of Glasfit International over the property [erf description]. The cost of drafting and registration of the bond will be for your account and can be capitalised to the loan. (We understand from Delia Kruger that it should take minima time to prepare the documents but have not had an indication of the fee they will charge.)”

[5] The funds were advanced and the house was purchased. A deed was executed via Ms Kruger and a conveyancer, Ms Blignaut (the fourth respondent), and

¹ Act 38 of 2005.

² It is not common cause between the parties that the loan agreement is contrary to the terms of the NCA, nor that it is void as a result – Glasfit in the action it instituted alleges that the NCA is not applicable to the transaction as the parties were not at arms’ length.

³ In the pleadings exchanged in the action, it is common cause that the loan agreement(s) were concluded with both Mr Wilkin and Mrs Wilkin. In the answering affidavit, Wilkin says the following in para 55: “I was informed that, because the Second Respondent [Mrs Wilkin] was not a party to the loan agreement, but the property would be purchased for the benefit of both me and the Second Respondent, and registered in both our names, the Applicant required a ‘joint suretyship’.” The notion that Mrs Wilkin was not a party to the loan agreement is inconsistent with the common cause pleadings in the action, and with the *ex facie* terms of the special power of attorney and the surety bond.

registered in the registry. This deed, drawn in Afrikaans, styled itself a ‘*Borgverband*’ (surety bond). It purports to be a deed of suretyship in which the principal debtors and the sureties are the same individuals, namely the Wilkins, in relation to the loan amount of R2,2m said to have been advanced to them. The surety bond does not purport to be a first mortgage bond, and Mr *Mundell*, who appeared for Glasfit, did not seek to submit that, on its terms, the deed could be read as in fact *being* a first mortgage bond. The deed does, however, record a declaration as to a first mortgage bond over the property properly identified in the deed, in the following terms:

“vir die behoorlike nakoming van alle voormelde verpligtinge het die Komparant [appearer] q.q. verklaar om spesiaal te verbind as EERSTE verband” [proper description of the property].

[for the proper fulfilment of all abovementioned obligations the appearer in such capacity declared to bind specially as first mortgage bond...]

[6] Again, before me, Mr *Mundell* disavowed any submission that this portion of the bond could stand as a first mortgage bond without the rectifications sought by Glasfit. I am not sure whether this concession was correctly made. Whether the deed required rectification before it could be accepted as a properly registered first mortgage bond is one thing. Whether the deed as it stood on its terms could be interpreted as purporting to be a first mortgage bond, with or without the nonsense self-suretyship it also contained, is another. Given my decision in this matter, I do not make any pronouncement on this issue.

[7] It may be noted that, prior to the execution and registration of the surety bond, the Wilkins had provided conveyancer Blignaut, the fourth respondent, with a special power of attorney, as the undersigned “*Mortgagor mentioned in the annexed draft Surety Bond (‘the Bond’) ... ‘to execute the surety bond ... in order to secure the payment of the indebtedness referred to in the Surety Bond of [Glasfit] specially hypothecating the property therein described.*”

[8] Whatever it was that was registered, and however this came about, Mr Wilkin was retrenched and, after a varying loan agreement was concluded relating to the terms of repayment, the Wilkins defaulted on their loan. Glasfit instituted an action on the loan, and also sought an order declaring the property executable. It attached the *Borgverband* to its particulars of claim and alleged it was a first mortgage bond. It also attached the special power of attorney and alleged it to be a special power of attorney “*to execute the mortgage bond*”.

[9] The Wilkins pleaded prescription. They also pleaded that the loan agreement should be voided for being contrary to the NCA. They pleaded this applied also to the “*surety mortgage bond*”, as they termed the instrument. In a counterclaim, they sought to have the loan agreement and the “*surety mortgage bond*” declared *void ab initio* and in the alternative alleged the loan to have been reckless as understood in the NCA.

[10] The plea and counterclaim were delivered in 2021. Nothing further happened in the action until this application was launched.

LIS PENDENS

[11] In the answering affidavit, Mr Wilkin says the following:

“I am advised that it would not be competent to apply for an order declaring the loan agreement and surety bond void in these proceedings, given that our counterclaim is still pending in the main action.”

[12] The answering affidavit in the very next paragraph states that *“in the result, the relief sought by the Applicant is not competent...”*. It is not clear whether this is said because of the pending action proceedings or because of all the preceding allegations relating to the alleged voidness of the loan agreement and the attending bond. It appears the latter, rather than the former.

[13] The answering affidavit does not go any further in raising a plea of *lis pendens*. It seeks the dismissal of the application with costs on a punitive scale, not the stay of the application pending the determination of the action, the order that would be appropriate if a plea of *lis pendens* were to be upheld.⁴

[14] In argument before me, Ms *Lombard*, for the Wilkins, made it clear that a plea of *lis alibi pendens* was in fact being advanced. Mr *Mundell* did not suggest I was precluded from upholding such a plea in light of the manner in which it was obliquely raised in the answering affidavit. In *Pink v Pink* 1957 (4)

⁴ See the discussion of the principles in the full bench decision of *Gerotek Test Facilities v New Generation Ammunition (Pty) Ltd* 2006 JDR 1009 (T) para [7].

SA 41 (T), Hiemstra J observed *obiter* that a court could take cognisance of parallel proceedings *mero motu* even in the absence of a plea of *lis pendens*.⁵

I don't think it matters here – the issue is raised squarely enough in the answering papers.

[15] This issue was one of several debated with counsel. My concern was that the question whether the loan agreement was invalid or not was live in the action and live before me. The question whether the surety bond should fall if the loan agreement fell, in terms of section 89(5) of the NCA, is live in the action and live before me. This includes the scope of the definition of 'mortgage agreement' in the NCA.

[16] We debated several interesting issues, the main one being whether the bond that ended up potentially being rectified ought to be rectified also to make it clear that it acted as a general covering bond that could also extend as security for an enrichment claim, and how far one could stretch the doctrine of mistake in seeking to 'rectify' a deed across principal parties, attorneys, conveyancers and the registrar, to turn it into that which it was alleged it should have been but mistakenly was not.

[17] I confess to some temptation to enter these debates in this judgment and to rule on them finally.

[18] Ultimately, however, I concluded that, as Mr *Mundell* had to concede, any findings I make on the issues that were live both before me and before the trial court would at least become the subject of *issue estoppel* in the action. I

⁵ At 42A.

cannot determine the issues in this application properly without entering, fully and with no clear sign of an exit, most of the issues that are live in the action, which remains pending and which Glasfit has not withdrawn. That leaves this application with no proper justification for having been brought in the teeth of the pending action, especially as it entails a factual dispute that would require addressing on the rules applicable to motion proceedings.

[19] Whatever one does with the rules of motion proceedings in assessing this dispute, there is a serious *lacuna* in the evidence on why it was that Ms Kruger drew the *Borgverband* and why it was that the power of attorney was given with express reference to a surety bond, and how it came that an animal that was legal nonsense was brought into this world. Any assessment of the evidence applying the rules of motion proceedings would, in light of my finding as to the appropriate relief, end up being inappropriate for me to undertake, in light of the fact that such evidence would end up being canvassed properly in the action, assuming the action to continue with the pleadings being amended as the parties see fit, and in light of the undesirability of suggesting factual findings based on the affidavits filed in this application.

[20] For this reason, it is inappropriate for me to rule in any way on any of these issues.

[21] In the circumstances, the usual order yielded by a successful plea of *lis pendens* should follow, and the applicant should bear the costs of the application.

[22] In the circumstances, the following order is made:

(a) The application is stayed pending the final resolution of the action instituted under case number 2021/16415.

(b) The applicant is to pay the costs, on scale B.

Frank Snyckers

FRANK SNYCKERS
ACTING JUDGE

Heard: 26 August 2025

Judgment: 28 August 2025

For the applicant: A R G Mundell SC

Instructed by: VDD Attorneys, Randburg

For first and second respondents: N Lombard

Instructed by: Stephanie Aproskie Attorneys, Randburg