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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case no: 4735/2024

In the matter between:

JOHANNES JURGENS BEZUIDENHOUT N.O

First Applicant

NICOLAAS JOHAN STEENKAMP N.O.

Second Applicant

WILHELM ARNOLD STEENKAMP N.O

Third Applicant

(cited in their capacities as trustees of the
ARNO STEENKAMP TRUST, I[...])

And

ENABLE CAPITAL ENTERPRISE (PTY) LTD

Respondent

(Registration number: 2021/56840/07)

IN RE (“The main application”)

ENABLE CAPITAL ENTERPRISE (PTY) LTD

Applicant

And

WILHELM ARNOLD STEENKAMP

First Respondent

WILHELM ARNOLD STEENKAMP N.O.

Second Respondent

MELANIE WAIT N.O.

Third Respondent

HERCULES VILJOEN HUGO N.O.

Fourth Respondent

NICOLAAS JOHAN STEENKAMP N.O.

Fifth Respondent

(in their capacities as trustees of the
ARNO STEENKAMP TRUST, I[...])

Coram: **JUSTICE J CLOETE**

Heard: 14 August 2025, applicant's supplementary note delivered 19 August
2025

Delivered: 18 September 2025 (electronically / via email)

ORDER

1. The default judgment granted on 22 April 2024 in the main application under the above case number against the second, third, fourth and fifth respondents therein in their capacities as the trustees for the time being of the Arno Steenkamp Trust, I[...] (the 'Trust') is rescinded and set aside;
2. The Trust is granted leave to oppose the main application;
3. The costs of the application for rescission, including any reserved costs orders relating thereto, shall be costs in the cause of the main application; and
4. The costs incurred by the Trust in respect of the withdrawn counter-application in the rescission application shall be paid by the applicant in the main application (Enable Capital Enterprise (Pty) Ltd in business rescue) on party and party scale B, and including the costs of senior and junior counsel where so employed.

JUDGMENT

CLOETE J:

[1] The applicants are cited as the trustees of the Arno Steenkamp Trust ('the Trust'). They seek rescission of a default judgment granted inter alia against the Trust in favour of the respondent ('Enable') on 22 April 2024. The rescission application, which is opposed, is brought under the common law, and was issued by the registrar on 20 August 2024. In turn, Enable also brought a counter-application on 11 October 2024, seeking to have seven farms in the Karoo, registered in the name of the Trust, declared to be the personal property of Mr Wilhelm Steenkamp ('Wilhelm') as well as specially executable in its favour.

[2] However Wilhelm's estate was provisionally sequestrated by order of this court on 16 October 2024, which order was made final on 27 November 2024, and Enable failed to take any steps to join the trustees of Wilhelm's insolvent estate despite them having a direct and substantial interest in the outcome of the counter-application. This resulted in Enable withdrawing the counter-application at the hearing. Enable also tendered costs as a result of such withdrawal and left the scale thereof for determination by the court, although it was submitted that scale A was appropriate. Further, since the proceedings were launched Enable has been placed in business rescue. At the commencement of argument, counsel for Enable handed up the written consent of its business rescue practitioner, Mr Tumisang Kgaboesele, to continue with the proceedings (now only its opposition to the rescission application) in terms of s 133(1)(a) of the Companies Act¹.

[3] The history of the litigation giving rise to the rescission application is as follows. On 7 March 2024, Enable brought the main application against Wilhelm personally as first respondent, and the Trust purportedly represented by Wilhelm, Ms Melanie Wait, Mr Hercules Hugo and Mr Nicolaas Steenkamp in their capacities as 'trustees' as second to fifth respondents, for payment, jointly and severally, of R20 882 272.61 plus interest and costs on the attorney and client scale. In the founding affidavit its deponent, Mr Johannes Coetser, one of Enable's directors,

¹ No 71 of 2008

alleged that the chosen domicilium citandi et executandi of both the Trust and Wilhelm personally was 1[...] R[...] Street, Amandelrug, Malmesbury.

[4] The application was served by the sheriff at this address on 13 March 2024. The returns of service reflect that service was effected in the following manner: (a) on Wilhelm, in both capacities 'by affixing a copy thereof to the outer principal door ... the premises occupied by the respondent. Remarks: Nobody on the premises. Affixed to door of dwelling garage/building as per attorney'; (b) on Ms Wait and Mr Hugo in the same manner, but without any accompanying remark by the sheriff; and (c) on Mr Nicolaas Steenkamp in the same manner, but including the words 'or sliding a copy under the door'.

[5] The dies induciae expired on 28 March 2024, ie. after the elapse of 10 court days, in terms of rule 6(5)(b)(iii) of the uniform rules of court, although the notice of motion was defective in that it only afforded the respondents in the main application 5 court days in which to deliver notice of intention to oppose. However, nothing turns on this for present purposes. On 12 April 2024 the matter was enrolled on the unopposed motion court roll for hearing on 22 April 2024. A copy of the notice of set down was emailed to 'a[...] ' which, according to the candidate attorney who deposed to the service affidavit, was the email address of Wilhelm. On 22 April 2024 the Judge presiding in motion court granted the order in the terms sought, save that costs were awarded on the party and party scale.

[6] On 23 July 2024 the sheriff attended at the Trust's farms with a warrant of execution against movable property to make an attachment pursuant to the default judgment granted in Enable's favour. He attached the Trust's movable property to a total value of R 3 234 500. According to the deponent to the Trust's founding affidavit in the rescission application, Mr Nicolaas Steenkamp ('Nicolaas'), this was the first occasion that the Trust became aware of the main application or that judgment had been granted against it. The rescission application was launched within a reasonable time thereafter, on 20 August 2024, and enrolled, again in the motion court, for hearing on 19 September 2024. Given Enable's opposition, it was postponed to the semi-urgent roll for hearing and after two further postponements for reasons that are not apparent, was allocated to me for hearing on 14 August 2025.

[7] The Trust seeks rescission on the basis that: (a) it did not receive notice of the application as service took place at an unauthorised address which was not its chosen domicilium citandi et executandi and where none of the ‘trustees’ were present; (b) the Trust did not authorise Wilhelm to conclude either of the two agreements which Enable relied upon for its cause of action; and (c) in the circumstances the trustees did not act jointly, as required by law, and cannot be bound to those agreements. Enable opposes the rescission application on the grounds that: (a) the Trust is estopped from denying that Wilhelm was not duly authorised; and (b) the consent of Wilhelm’s co-trustees authorising him to conclude the agreements was an act of the Trust’s internal management, which Enable was entitled to assume had been duly and properly performed in terms of the Turquand rule.

[8] The test for rescission at common law is trite, and was succinctly restated in the minority judgment of the Constitutional Court in *Government of the Republic of South Africa v Fick*² as follows:

‘[85] At common law the requirements for rescission of a default judgment are twofold. First, the applicant must furnish a reasonable and satisfactory explanation for its default. Second, it must show that on the merits it has a bona fide defence which prima facie carries some prospect of success. Proof of these requirements is taken as showing that there is sufficient cause for an order to be rescinded. A failure to meet one of them may result in a refusal to rescind.’

[9] Before turning to deal with whether the Trust has met these requirements, it is appropriate to briefly set out some undisputed background pertaining to the Trust. It was established in 2009, with the donor being Wilhelm and the initial trustees being Wilhelm, his father Nicolaas, and Mr Dabrie Saayman. On 8 March 2012, after Mr Saayman resigned as trustee, Ms Wait (Wilhelm’s then wife) and Mr Hugo were appointed as additional trustees by the Master. On 22 March 2023, Mr Hugo

²2013 (5) SA 325 (CC)

resigned as trustee, followed by Ms Wait on 24 January 2024. In terms of clause 6.6.1 of the trust deed, a written notice of resignation ipso facto results in a trustee ceasing to act as such. By the time Ms Wait resigned, the Trust had already applied to the Master during July 2023 for the addition of Mr Johannes Bezuidenhout as trustee. However, the Master only appointed him on 9 July 2024. The upshot of this is that when Enable launched the main application on 7 March 2024, neither Ms Hugo nor Ms Wait were trustees in terms of the trust deed.

[10] The dispute between Enable and the Trust arises from the conclusion of two agreements, namely a deed of settlement signed on 8 and 12 December 2023, respectively and a deed of suretyship executed on 8 December 2023. Wilhelm was previously the sole director and controlling mind of Route2Fruit (Pty) Ltd ('the Company') which conducted business at the address at which the main application was served. On 1 August 2022 the Company concluded a bridging finance agreement with Enable, in terms of which the latter advanced large sums of money to the Company on certain terms and conditions. In concluding the bridging finance agreement the Company was represented by Wilhelm who also bound himself personally as surety and co-principal debtor. The Company failed to meet its payment obligations under the bridging finance agreement, and following negotiations between these parties, the deed of settlement and suretyship were concluded.

[11] In terms of the deed of settlement of 12 December 2023, the Company acknowledged its liability in the sum claimed in the main application and in respect of which Enable obtained default judgment. Wilhelm bound himself as first surety and co-principal debtor. However, at the same time Wilhelm purported to bind the Trust as second surety and co-principal debtor for the due discharge of the Company's obligations to Enable arising from the deed of settlement, both in the deed of settlement itself and in the separate deed of suretyship. About a week later, on 18 December 2023, the Company commenced voluntary winding-up (at Wilhelm's instance) in terms of s 352(2) of the Companies Act³ by lodging a special resolution

³ No 61 of 1973, read with item 9 of Schedule 5 to the Companies Act 71 of 2008

to that effect at the CIPC⁴, with the result that its status was changed to voluntary liquidation on 19 December 2023. It was for this reason that Enable proceeded against the Trust and against Wilhelm in his personal capacity.

[12] As far as the first requirement for rescission of the default judgment is concerned, the following. In the main application, Mr Coetser alleged that 'notwithstanding various demands, the respondents failed/refused to effect payment'. In the rescission application, Nicolaas made clear that to the extent this included a reference to the Trust, he had received no such demand. This was not denied in Enable's answering affidavit and accordingly Nicolaas' allegation stands uncontested. Also uncontested are the Trust's allegations that, as a fact, the main application did not come to its notice before default judgment was obtained, and that the Company and Wilhelm vacated the premises in question during January 2024. That they were vacant when the sheriff 'served' the main application accords with the relevant returns of service. Neither Nicolaas nor Ms Wait ever occupied those premises either. There is also no suggestion that Wilhelm brought the notice of set down emailed on 12 April 2024 to the attention of Nicolaas, his only co-trustee at the time in terms of the trust deed.

[13] Enable's only retort of substance on this score is that the address at which service was effected is the same as that chosen as *domicilium citandi et executandi* by the Trust 'in clause 2.4 of the deed of settlement'. It is noted that clause 3 of the deed of suretyship contains the same provision. Enable does not assert that the main application did, or should have, come to the notice of the Trust in any other manner, save for the notice of set down having been sent only to Wilhelm's email address. There can be little doubt in these circumstances that the Trust has established the first requirement, namely a reasonable and satisfactory explanation for its default.

[14] Turning now to the second requirement. In the main application Mr Coetser stated he was placed in possession of the letters of authority and trust deed in order to draft the deed of settlement and suretyship. He annexed the letters of authority

⁴ Companies and Intellectual Property Commission

issued by the Master way back in 2012. Of course, Mr Coetser cannot be blamed for assuming they were a reflection of the true position. As previously stated, Wilhelm signed both the deed of settlement and suretyship on behalf of the Trust purportedly on the basis that he was duly authorised to do so. What is significant for present purposes is that the exchange of correspondence in the main application papers demonstrates unequivocally that Enable required a resolution of the trustees (at the time Wilhelm, Nicolaas and Ms Wait) as proof that Wilhelm was indeed authorised to conclude these agreements prior to signature thereof by Enable. It is not necessary to refer to all the correspondence but as late as 28 November 2023, Enable's attorney communicated to Werksmans attorneys that 'we are all aware of the stringent requirements where trusts are involved and our client requires strict compliance thereof'.

[15] This continued right up until 12 December 2023 when the last signature was placed on the deed of settlement Mr Coetser, still without the 'properly signed' resolution. There is a related dispute about whether or not Werksmans attorneys were representing only Wilhelm at the time or both Wilhelm and the Trust, and whether to the extent that it purported to represent the Trust as well it was authorised to do so. On 12 December 2023, a Ms Haynes of Werksmans attorneys advised Enable's attorney that 'we note the trust resolution was incorrectly signed. As such, and in excess of caution, the trustees and client will be resigning all documents at our offices between tomorrow and Thursday ... our further email with full set of resigned documentation will follow soon'. The promised resolution was, however, not forthcoming and a few months later on 20 February 2024, a Mr Boshoff of Werksmans advised Enable's attorney that 'as you are aware, Route2Fruit (Pty) Ltd has been liquidated. The ... Trust is not prepared to sign any form of security in favour of the company in liquidation, and our instructions are to proceed to close our file herein'.

[16] According to Nicolaas, he was not aware that Wilhelm had purported to bind the Trust in respect of either the deed of settlement or suretyship. The Trust's attorney, Mr Pieters, deposed to an affidavit confirming he had sent a draft affidavit to Ms Wait's attorney in which Ms Wait confirmed her position was the same, but she declined to sign it. In a supporting affidavit filed by Wilhelm he confirmed that Ms

Wait was unaware at the time, and that when he subsequently told her he had done so and requested her to sign a resolution authorising conclusion of the agreements she refused. Also important for present purposes is that Enable admitted that in terms of clause 6.10 of the trust deed, and save as provided to the contrary therein, valid decisions can only be taken by agreement between a majority of trustees. There are no contrary provisions which appear to be relevant to the issue before me. It is undisputed that both the deed of settlement and suretyship bear only Wilhelm's signature 'on behalf of' the Trust. It is accordingly the Trust's contention that although Wilhelm held himself out to be authorised, as an objective fact he had no such authority.

[17] The Trust also subsequently obtained a copy of the so-called incorrectly signed resolution sent by email on 8 December 2023 by Ms Haynes to Wilhelm along with the deed of settlement and suretyship. It was annexed to Nicolaas' founding affidavit. It is clear that this resolution is in truth no resolution at all, but a document signed only by Wilhelm, and providing space for Ms Wait and Mr Saayman (who had long since resigned as trustee) to sign. Nicolaas' name is not mentioned at all. The Trust's undisputed allegations are further that it had no interest in the bridging finance provided by Enable to the Company, and that no general Trust authorisation exists for Wilhelm to bind the Trust as surety for the debts of the Company.

[18] In his affidavit Wilhelm confirmed that neither Nicolaas nor Ms Wait were aware that he had signed the deed of settlement and suretyship purporting to bind the Trust in favour of Enable on 8 December 2023; the first Nicolaas knew thereof, or of the default judgment, was when the sheriff arrived at the farms to execute the warrant on 23 July 2024; and he had not discussed either agreement with them before appending his signature. He also disclosed that at the time he and Ms Wait were contemplating divorce, and they were subsequently divorced on 28 March 2024. The first time Ms Wait became aware of the agreements was when he approached her a few days after signature and requested her to sign the resolution. On 13 December 2023 they attended at Werkmans where a draft resolution was presented to her by his former attorney, Mr Boshoff. Ms Wait stated she was not prepared to sign it and subsequently resigned as trustee in January 2024. Wilhelm

accepted he represented to Enable that he was duly authorised to conclude the agreements on behalf of the Trust but knowingly misrepresented this to be the true position. According to him, he was 'desperate and overwhelmed' by the dire financial position in which the Company found itself at the time although he still had some hope, albeit slim, that it might be possible to rescue the Company and was trying to buy himself time. In turn, time will tell whether or not he was being candid about this slim hope, given the special resolution lodged with the CIPC a mere 10 days later.

[19] In the answering affidavit, Mr Coetser pointed out that Wilhelm admitted having acted fraudulently in his dealings with Enable. He also alleged that Wilhelm acted in the same manner in relation to the trust assets. He asserted that on the other hand Enable at all times acted in a bona fide manner, and relied on the fraudulent misrepresentation to its detriment, hence the opposition to rescission based on estoppel. He also contended that when regard is had to clause 6.13 of the trust deed Wilhelm in any event had actual authority to have the final say over any of the Trust's dealings. This clause is to the effect that any decision of the trustees taken without Wilhelm's approval is not binding on the Trust. But as I see it, and for purposes only of the application before me, that does not translate into actual authority in the sense that Wilhelm can take decisions unilaterally, but rather a veto right since otherwise clause 6.10 would be rendered superfluous. Mr Coetser further maintained that Wilhelm also has ostensible authority to bind the Trust because he created that impression in his dealings with Enable (it is unclear whether this is an alternative ground of opposition). Finally, he contended that Wilhelm abused the Trust form.

[20] The Trust's counter to this is that: (a) on Enable's own version, it was aware a trust resolution was required for purposes of the deed of settlement and suretyship, which should put paid to the estoppel issue; (b) at rescission stage the court does not determine the merits of the Trust's defence (which is correct); (c) a trust estate cannot be bound by the conduct of a trustee or trustees which goes beyond the provisions of the trust deed⁵; (d) trustees must act jointly for the trust estate to be bound thereby (although as I understand it, this applies in the absence of any

⁵ *Land and Agricultural Development Bank of SA v Parker and Others* 2005 (2) SA 77 (SCA) at para 10

contrary provision in the trust deed⁶); and (e) the Turquand rule does not arise, since on its own version, Enable did not rely on any internal Trust management rule. It was aware that a properly concluded trust resolution was required for purposes of the deed of settlement and suretyship, even if the Turquand rule applies to trusts.⁷

[21] Having regard to the parties' competing contentions taken together with the affidavit evidence, the Trust has clearly also met the second requirement for rescission, particularly given that Enable elected to sue for final relief on motion rather than by way of action, and the Plascon-Evans rule thus applies. There is however one further aspect to deal with. Regarding Wilhelm's intentional misrepresentation, Enable relied on *Absa Bank Ltd v Moore and Another*⁸ and *Moraitis Investments (Pty) Ltd v Montic Dairy (Pty) Ltd and Others*⁹. In *Moore* it was held that:

'[39] ... Brusson cannot avoid being bound by relying on its own fraud to invalidate the loan agreement. Still less can a third party - the Bank [*which had provided the funds to settle the loan*] - disregard the loan agreement because of Brusson's fraud. The maxim is not a flame-thrower, withering all within reach. Fraud unravels all directly within its compass, but only between victim and perpetrator, at the instance of the victim. Whether fraud unravels a contract depends on its victim, not the fraudster or third parties.'

[22] In *Moraitis* it was reiterated that an applicant seeking rescission of an order cannot rely on the possible fraud of its representative which led to it being granted.¹⁰ On the strength of these decisions, counsel for Enable submitted that the Trust cannot avoid liability under the deed of settlement and suretyship. However, I am of

⁶ *Land and Agricultural Bank* above at para 15; *Nieuwoudt NO and Another v Vrystaat Mielies (Edms) Bpk* 2004 (3) SA 486 (SCA) at para 16

⁷ Although the Turquand rule was held applicable to trusts in *MAN Truck & Bus (SA) Ltd v Victor en Andere* 2001 (2) SA 562 (NC), the Supreme Court of Appeal in *Nieuwoudt* (see fn 6 above) declined to confirm this to be correct, finding on the facts of the case before it that it was not required to do so (at para 9): 'In my view, however, whether or not the Turquand rule should be applied to trusts-particularly business trusts- a matter on which I express no opinion- it cannot be applied on the present case.' The *MAN* decision has also been the subject of some academic criticism: see Cameron et al *Honore's South African Law of Trusts 5ed* at para 198 where it is stated that the ambit of authority conferred by a trust deed is not a matter of 'internal management'.

⁸ 2017 (1) SA 255 (CC)

⁹ 2017 (5) SA 508 (SCA)

¹⁰ At para [11]

the view that, for purposes of this application, whether or not the Trust falls within the 'compass' of the misrepresentation is currently far from clear. Moreover, in *Moraitis* the court made the point that:

'[17] ...in regard to *[the appellants']* contentions based on Mr Moriatis' alleged lack of authority to conclude the settlement agreement on behalf of Moraitis Investments and the Moraitis Trust, another principle comes into play. This is that the court can only grant a consent judgment if the parties to the litigation consented to the court granting it. If they did not do so, but the court is misled into thinking that they did, the judgment must be set aside. This is something different from avoiding a contract on the grounds of fraud, duress, misrepresentation, or the like. In those cases, the injured party has an election to abide by the agreement. When one is concerned with an absence of authority to conclude the agreement in the first place, that is not a matter of avoiding the agreement, but of advancing a contention that no agreement came into existence.'

[23] As I see it, and only for purposes of the present application, this is the Trust's defence viewed from a different angle, namely, that it too was an injured party insofar as Wilhelm's misrepresentation is concerned. It thus does not seek to avoid the agreement as the party which made the misrepresentation but rather advances the defence that the absence of Wilhelm's authority to bind the Trust means that no agreements came into existence between Enable and the Trust. This too is a bona fide defence which prima facie carries some prospect of success.

[24] In all the circumstances, the application for rescission of the default judgment granted against the Trust must succeed. As far as costs are concerned, given the history of the matter and the fact that Enable is presently in business rescue, it is prudent not to mulct it with costs at this stage, but rather to order they be costs in the cause. In respect of the costs attendant upon the withdrawal of Enable's counter-application, scale B is appropriate.

[25] **The following order is made:**

5. The default judgment granted on 22 April 2024 in the main application under the above case number against the second, third, fourth and fifth respondents therein in their capacities as the trustees for the time being of the Arno Steenkamp Trust, I[...] (the 'Trust') is rescinded and set aside;
6. The Trust is granted leave to oppose the main application;
7. The costs of the application for rescission, including any reserved costs orders relating thereto, shall be costs in the cause of the main application; and
8. The costs incurred by the Trust in respect of the withdrawn counter-application in the rescission application shall be paid by the applicant in the main application (Enable Capital Enterprise (Pty) Ltd in business rescue) on party and party scale B, and including the costs of senior and junior counsel where so employed.

J I CLOETE

Judge of the High Court

Appearances

For applicants: Adv Pieter van Eeden SC

Adv Joseph R Whitaker

Instructed by: TSP Inc – Jean Pieters

For respondent: Adv Xavier T Van Niekerk

Instructed by: Mills & Groenewald Inc – Barry Mills