

REPUBLIC OF SOUTH AFRICA



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

Case Number: **55015/2021**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YE
19 November 2025 _____	
DATE	SIGNATURE

In the matter between:

MOONSTONE PROPERTIES (PTY) LTD

Applicant/Plaintiff

and

BILLION GROUP (PTY) LTD

Respondent/Defendant

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

Introduction

- [1] The applicant prays for an order granting it leave to amend its Particulars of Claim. The parties will be referred to herein after as cited in the pleadings.

Pleadings

- [2] The plaintiff's claim against the defendant is based on a written lease agreement concluded between the parties on 16 March 2018. The terms of the agreement, the fact that the defendant breached the agreement by failing to pay the monthly rent and that the plaintiff cancelled the agreement is not in dispute between the parties. The consequences that flow from the defendant's breach is in dispute.
- [3] The plaintiff's claim is in respect of holding over charges for the period 1 April 2020 to October 2020 (claim 1); reinstatement costs (claim 2); costs occasioned by the defendant's failure to reinstate the premises to the satisfaction of the plaintiff, calculated from November 2020 to September 2021 (claim 3) and for the period October 2021 until the date that the premises is reinstated (claim 4).
- [4] The proposed amendment seeks to amend the year in which the lease agreement was concluded from 2008 to 2018. The defendant does not object to this amendment.
- [5] The plaintiff also seeks leave to amend claim 2 and claim 4 of its particulars of claim. The defendant objects to the proposed amendments on the ground that it would render the claims excipiable.

Claim 2

- [6] As stated *supra*, claim 2 pertains to the costs for the reinstatement of the leased premises. Prior to the proposed amendment, the claim was based on a quotation

in the amount of R 689 057,58 obtained by the plaintiff for the restoration of the premises.

- [7] The proposed amendment introduces a further claim based on the defendant's failure to reinstate the premises and reads as follows:

“
25.1

Subsequent to the Defendant failing or neglecting to pay the sum of R 689 057,58 (..) and the Plaintiff was unable to reinstate the building itself and could accordingly not secure a new tenant to occupy the building in the un-reinstated condition that it was left by the Defendant.

25.

The Plaintiff, after failing to secure a new tenant, listed the premises for sale in the open market with Renprop Commercial property brokers in an endeavour to mitigate its loss.

25.3

The property was listed at a market related value of R 30 million rand. The property was however sold at a reduced price of R 28,5 million rand to compensate for the building not being reinstated. Written confirmation from Renprop is attached as “POC4.1”.

25.4

Due to the Defendant failing or neglecting to reinstate the premises and failing or neglecting to pay the sum of R 689 057,58 to enable Plaintiff to reinstate the building, the aforementioned conduct of the Defendant was the cause of the Plaintiff having to sell the property at a reduced price, resulting in the Plaintiff suffering a R 1,5 million loss.

25.5

Accordingly, the Defendant is liable for the loss that the Plaintiff suffered in the amount of R1,5 million rand.”

- [8] The defendant's objection to the proposed amendment is, first of all, premised on clause 8.6 (j) of the lease agreement that reads as follows:

“In the event that the Tenant continue to remain in occupation of the Premises after the Termination of this Lease for the purpose of undertaking the reinstatement of the

Premises, or should the Landlord be required to effect repairs or renovations by reason of a failure of the Tenant to carry out the obligations imposed upon the Tenant in terms of this Lease, then the Tenant shall be liable to the Landlord for the monthly Rental of the Premises until the Tenant or the Landlord completes the reinstatement of the Premises.”

[9] According to the defendant clause 8.6 (j) places an obligation and/or duty on the plaintiff to reinstate *alternatively* to effect repairs and/or renovations to the premises as the defendant did not reinstate the premises. In failing to reinstate the premises, the plaintiff breached the terms of the lease agreement, and the defendant is not liable in law for the alleged damage that was caused by the plaintiff's breach.

[10] Secondly, the alleged damages suffered by the plaintiff does not flow naturally from the defendant's failure to reinstate the premises or pay the amount of R 689,58 *alternatively* the damage is too far removed from the breach, and in the premises the element of legal causation is absent.

[11] In the result, the proposed amendment renders the particulars of claim excipiable.

[12] The plaintiff in reply, denied that the clause places an obligation on the plaintiff. According to the plaintiff, the objections raised by the defendant are in fact possible defences available to the defendant, which is better suited to be decided by the trial court.

[13] Whether clause 8.6 (j) can be interpreted in the manner suggested by the defendant cannot be adjudicated on the pleadings. This much is clear from the principles of interpretation discussed in *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 SCA at para [18]:

“The present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary

rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made.

The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document." (Footnotes excluded)

[14] It is clear from *Endumeni* that evidence may be led in respect of the purpose of the clause and the material known to the parties when the leased agreement was entered into. The dispute in respect of the correct interpretation of clause 8.6(j) can, as a result, only be determined at trial and the defendant's interpretation of the clause does not render the particulars of claim excipiable.

[15] The second objection, to wit that the damages claimed by the plaintiff does not flow naturally from the defendant's failure to reinstate the premises or to pay the amount of R 689 057,58 or whether the damage is too far removed from the breach depends on the classification of the damages, to wit general damages or special damages.

[16] The difference between the two concepts was explained in *Shatz Investments (Pty) Ltd v Kalovyrnas* 1976 (2) SA 545 (A) at 550C-E as follows:

"According to these particulars plaintiff's claim was not for (a) 'general damages', but was for (b) 'special damages'. Sometimes the corresponding terms 'intrinsic' and 'extrinsic' damages are used (see Pothier, Obligations, (Evans' translation, paras. 161 and 162), and Whitfield v. Phillips and Another, [1957 \(3\) SA 318 \(AD\)](#) at p. 329D - E). I use the former terms here as well known, convenient labels to respectively differentiate, broadly and without any pretence at precision, between (a) those damages that flow naturally and generally from the kind of breach of contract in question and which the law

presumes that the parties contemplated would result from such a breach, and (b) those damages that, although caused by the breach of contract, are ordinarily regarded in law as being too remote to be recoverable, unless, in the special circumstances attending the conclusion of the contract, the parties actually or presumptively contemplated that they would probably result from its breach (see Lavery, and Co. Ltd. v Jungheinrich, 1931 AD 156)."

[17] In the result, the fact that the damages may not flow naturally from the breach in question is not the end of the matter. Special damages can still be claimed, and the success of the claim will depend on the evidence let at the trial to determine whether "*the parties actually or presumptively contemplated that they would probably result from its breach*".

[18] Consequently, the second ground of objection also stands to be dismissed.

Claim 4

[19] Claim 4 is based on the allegations contained in paragraph 31 of the particulars of claim which reads as follows:

" 31.

In terms of clause 8.6 (j) of the Terms and Conditions of annexure "POC1" as pleaded in paragraph 6.9 above, the Defendant continues to be liable to the Plaintiff for an amount equivalent to last month's rental payable by the Defendant plus an escalation of eight percent (8%) until the premises is completely reinstated to the reasonable satisfaction of the Plaintiff."

[20] Clause 32 is a computation of the claim as pleaded in paragraph 31. The proposed amendment amends the computation of the claim, to wit:

" 32.

Accordingly, the Defendant will continue to be so liable for such rental in the amount of R 150 581,35 for each month from October 2021 to the date of transfer and registration of ownership of the premises from the Plaintiff to the current new owner same being 17 August 2023, which amounts to the total sum of R 3 395 366,57 (..)."

[21] The defendant's objection to the amendment of paragraph 32 is not aimed at the computation of the claim but is in respect of the allegations contained in paragraph 31.

[22] The objection is therefore ill-founded as it is, firstly not directed at the proposed amendment and secondly, the defendant has already pleaded to the allegations contained in paragraph 31.

[23] In the result, the defendant's objection to the proposed amendment is dismissed and costs should follow the cause. The complexity of the matter justifies counsel's fees on scale B.

Order

[16] The following order is granted:

1. The applicant/plaintiff is granted leave to amend its particulars of claim in accordance with the plaintiff's notice of amendment in terms of rule 28 dated 8 October 2024.
2. The respondent/defendant is ordered to pay the costs of the application. Counsel's fees on scale B.



JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION

DATE HEARD:

21 September 2025

DATE DELIVERED:

19 November 2025

APPEARANCES

Counsel for the Applicant: Adv C.G Olwagen-Meyer

Instructed by: Kamal Natha Attorneys

Counsel for the Respondents: Dr G J Ebersohn

Instructed by: Ebersohns Attorneys

