



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

Reportable/Not Reportable

Case no: 13272/2020

In the matter between:

CAPITEC RENTAL FINANCE (PTY) LTD

Plaintiff

formerly trading as

MERCANTILE RENTAL FINANCE (PTY LTD

(Registration Number: 2011/001582/07)

and

KUMBANA CONSULTANTS AND EVENTS

MANAGEMENT CC

First Defendant

(Registration Number: 2006/224449/23)

ELCARDO THEUNIS

Second Defendant

(Identity Number: 7[...])

Neutral citation: Mercantile Rental Finance (Pty) Ltd, Kumbana Consultants
and Events Management CC, Elcardo Theunis

Coram: MANGCU-LOCKWOOD J

Heard: 30 October 2025

Delivered: 11 December 2025

ORDER

In the circumstances, following order is made:

1. Judgment is hereby entered in favour of the plaintiff against the first and second defendants, jointly and severally, the one paying the other to be absolved, for the following:
 - a. Payment in the amount of R589,732.60.
 - b. Interest on the amount of R589,732.60, calculated at 6% above the prime interest rate as applicable from time to time, per annum, calculated from date of service of the summons, to date of final payment, both days inclusive.
 - c. Costs of suit on the scale between attorney and client, including the costs of counsel on scale B.

JUDGMENT

MANGCU-LOCKWOOD, J

A. INTRODUCTION

[1] The plaintiff, now called Capitec Rental Finance (Pty) Ltd¹, has brought an action against the first and second defendants for payment of arrear and future rentals in respect of office equipment which was rented out to the first

¹ The citation of the plaintiff was amended without any objection, on account of a name-change which was effected on 10 October 2020.

defendant. The second defendant stood as surety and co-principal debtor on behalf of the first defendant in terms of a suretyship agreement.

[2] The claim stems from three inter-related agreements:

2.1 On or about 18 April 2017 the first defendant entered into a written agreement with a company called Management Electronic Systems (Pty) Ltd t/a M E Systems (“MES”), in terms of which the first defendant rented office equipment from MES (“the Rental Agreement”).

2.2 On or about 18 October 2013 MES had concluded a master cession agreement with the plaintiff², in terms of which MES would, from time to time, cede all rights and obligations stemming from rental agreements with third parties to the plaintiff.

2.3 On or about 20 June 2017, MES ceded the Rental Agreement to the plaintiff by way of an Acceptance of Cession agreement.

[3] While the defendants initially opposed the main claim by denying liability, it appears that that challenge has since been abandoned³, although I do deal with the main defence later below. What the defendants persist with is a special plea challenging the *locus standi* of the plaintiff although even in that respect, the defendants’ defence has been significantly narrowed down.

[4] As pleaded, the special plea was initially that, at the time that MES concluded the Acceptance of Cession with the plaintiff it had no rights to cede because it had not yet concluded the Rental Agreement with the first defendant. This was based on an understanding that the Rental Agreement appears to have

² The plaintiff was then known as Mercantile Rental Finance (Pty) Ltd (Registration number 2011/001582/07).

³ See defendants’ heads of argument paras 2 – 5.

been signed in 2016, while the Rental Agreement was agreed in 2017. It appears from the defendants' heads of argument that this special plea has been abandoned, because they concede that it is possible for cession to take place in respect of future rights,⁴ although much time was spent on this issue in cross examination. To the extent still relevant, I will deal with this aspect when I consider the evidence led.

[5] In the alternative, the special plea was that the Rental Agreement had no rights which were capable of cession given its nature which is personal to the creditor - or *delectus personae*. This special plea has similarly since been abandoned.⁵

[6] The defendants' heads of argument raise a new argument for challenging the plaintiff's *locus standi*. They argue that, in order for the Acceptance of Cession to be valid - which they classify as an assignment as opposed to a cession or a delegation - the consent of the defendants was necessary and it was not obtained. Notably, this argument was not foreshadowed anywhere in the papers; nor in court during the proceedings, and as result, the plaintiff and its legal representative did not have opportunity to address it. It was only in the submissions filed after the leading of oral evidence that this argument was raised, which is very unfair towards the plaintiff and inappropriate, since it is an elementary rule of litigation that a party must know what case it is called upon to meet.

[7] Nevertheless, the new argument does not assist the defendants. Firstly, the general rule is that a creditor is free to cede its rights in whatever form it

⁴ See defendants' heads of argument paras 3 - 4.

⁵ See defendants' heads of argument para 5.

chooses and needs neither the debtor's consent nor to give it notice.⁶ That is, unless it has restricted this power by means of a contract to which the creditor is a party. No such restriction has been referred to in this case by the defendants.

[8] In fact, the Rental Agreement between the first defendant and MES indicates the opposite. Clause 10.2 thereof provides as follows:

“10.2 [MES] may cede any or all of its rights in terms hereof and/or transfer its ownership of the equipment, to any third party without prior notice to the [first defendant]. The first defendant agrees and undertakes that on receiving notice of any such cession and/or transfer, it will hold the equipment on behalf of the cessionary and/or transferee as the case may be, and wherever appropriate reference to [MES] in terms hereof shall thereupon be deemed to denote the said cessionary/ transferee.”

[9] Clause 10.2 expressly dispels any notion of a requirement to restrict MES's power to enter into a cession by first requiring it to obtain the first defendant's consent or to give it notice. The express terms of the provision are against such an interpretation.

[10] Still, the clause envisages that such notice may well come to the attention of the first defendant. The evidence led by Ms Cornelia Alita Rademan, the plaintiff's Head of Sales, was that on 24 May 2017 a letter of such notification was indeed sent to the second defendant. It is included in the trial bundle and recorded as follows:

“Dear [second defendant]

We are pleased to confirm that you have entered into a Rental Agreement with [MES] which has subsequently been ceded to [the plaintiff]. We confirm that pursuant to the cession of the Rental Agreement ... [the plaintiff] is authorized for collection against the below mentioned account.

⁶ *National Sorghum Breweries Ltd v Corpcapital Bank Ltd* (050/05) [2006] ZASCA 1; [2006] 2 All SA 376 (SCA); 2006 (6) SA 208 (SCA) (23 February 2006) para 1.

...

We record that you acknowledge that all payment instructions issued by [the plaintiff] shall be effected by your below mentioned bank as if the instructions have been issued by you personally. Furthermore you acknowledge that this Authority and Mandate may be ceded or assigned to a third party if the Rental Agreement is also ceded or assigned to that third party.

Enclosed below is confirmation of the debit order details that you have included in your signed Rental Agreement. Please note that the debit order reference will be reflected as '[plaintiff] - account number' on your bank statement.

...

If you are not in agreement with the contents hereof please provide us in writing within 21 days from the date hereof. We look forward to a long and mutually beneficial relationship with you..."

[11] Ms Rademan testified that this letter, which was addressed to the second defendant and signed by the then managing director of the plaintiff, is the standard welcoming letter issued by the plaintiff to notify clients that their contract has been bought by means of a cession. None of her evidence was challenged in cross-examination, and there was no suggestion that the second defendant did not receive the notification of cession. According to its contents, if the defendants wished to dispute any contents of the letter above, they were afforded 21 days to give indication thereof, and there is no indication that they did.

[12] I accordingly conclude that the defendants were made aware of the cession by means of the letter of 24 May 2017, even though there was no requirement upon either MES or the plaintiff to give such notice. And the defendants did not give any indication that they objected to the cession.

[13] I am also of the view, in any event, that the nature of the transfer of rights from MES to the plaintiff was a cession not an assignment. An 'assignment' denotes a transfer of both rights and obligation, while a cession involves

acquiring rights, which can be done without the debtor's consent.⁷ The hallmarks of a cession are the substitution of a new creditor (the cessionary) for the original creditor (the cedent), with the debtor remaining the same.⁸ That is what occurred in this case.

[14] The plaintiff stepped into the shoes of MES as the new creditor and acquired the latter's rights, while debtor remained unchanged, being the first defendant. This is what was confirmed by the contents of the notification of cession letter dated 24 May 2017, that change was only to the identity of the legal entity against whom the first defendant's rights were to be enforced and to whom the obligations were now owed. There was no change to the content of the first defendant's rights and obligations, or the character of its performance,⁹ and its position was neither weakened nor rendered more onerous.¹⁰

[15] There is accordingly no merit to the defendants' special plea.

B. THE MERITS

[16] At the trial, only the plaintiff led evidence, *via* two witnesses, namely Jaco Mostert, the CEO and Director of MES and Ms Rademan, the Head of Sales of the plaintiff and of its predecessor. Mr Mostert and Ms Rademan were the signatories to the Acceptance of Cession, on behalf of the MES and the plaintiff, respectively, and Mr Mostert also signed the Rental Agreement with the second defendant.

⁷ See *Securicor (SA)(Pty) Ltd and Others v Lotter and Others* 2005 (5) SA 540 (E) at 547D.

⁸ GB Bradfield, "Christi's Law of Contract in South Africa", 7th Edition pg 33.

⁹ See *Mercuria Energy Trading South Africa (Pty) Ltd v TSH Coal (Pty) Ltd* 2018 JDR 0573 (GP) paras 7 – 9.

¹⁰ See *Van Zyl v Credit Corporation of SA* 1960 (4) SA 582 (A) 588; *FW Knowles (Pty) Ltd v Cash-In (Pty) Ltd* 1986 (4) SA 641 (C) 651; Scott Cession par 10.3.1 fn 26.

[17] Mostert and Rademan confirmed that the relationship between MES and the plaintiff is governed by a Master Cession Agreement, in terms of which MES, would from time to time, cede rental agreements to the plaintiff by way of an Acceptance of Cession, in return for payment of capital amounts.

[18] In elementary terms, they explained that the agreements in question allowed the first defendant as a customer to acquire office equipment on a rental finance basis; while MES was the supplier who sourced and provided the equipment to the first defendant; and the plaintiff was the financier for the transaction.

[19] In compliance with those arrangements, Rademan testified that once the equipment was installed by MES, the plaintiff stepped into its shoes by collecting the instalments payable in terms of the Rental Agreement.

[20] As to the chronology of events, Mostert testified that it was after the defendants concluded the Rental Agreement that MES ceded its rights and obligations to plaintiff in terms of the Acceptance of Cession, of which he was a signatory.

[21] He explained that the date of 15 May 2016 which is reflected on the Acceptance of Cession is a typographical error because he signed that contract on the same date as Rademan the plaintiff's representative, which was 20 June 2017. This was after the date of conclusion of the Rental Agreement, which was 18 April 2017. He testified that he could never have signed the Acceptance of Cession prior to the date of the Rental Agreement because there was no agreement to cede to the plaintiff prior to the conclusion of the Rental Agreement. In this respect he was supported by the evidence of Rademan who testified that the Acceptance of Cession was only concluded between the plaintiff and MES after a Rental Agreement was in place. There was no serious

challenge to this evidence, save to state that the incorrect date was ‘one too many errors’ when one takes into account the discrepancy between the names of the MES entities which signed the Acceptance of Cession and the Rental Agreement, dealt with below.

[22] Whilst the Acceptance of Cession indicates that it was signed on behalf of an entity called MES Systems CC (i.e. a close corporation), the Rental Agreement indicates that it was signed on behalf of an entity called ME Systems (Pty) Ltd (i.e. a company). Mostert explained that MES traded as a close corporation until approximately 2015 and was thereafter converted to a private company after the necessary documents at the Companies and Intellectual Property Commission were completed. He testified that the close corporation and the private company were in fact the same entity. This evidence was supported by Rademan who remembered that, at some point, MES was converted from a close corporation to a private company.

[23] Mostert explained that the reference in the Acceptance of Cession to MES as a CC is a typographical or administrative error which was probably due to the use of a standard or pro-forma version of that agreement which had not been changed to reflect the conversion of the company to a private company. He offered the same explanation in respect of the incorrect date reflected on the Acceptance of Cession.

[24] As I have indicated, Mostert’s evidence was not contradicted or challenged in any serious way, and was, in material respects corroborated by Rademan. It is clear from his evidence that, whether referred to as a CC or a Pty Ltd, MES is the same entity. As CEO and Director of MES, Mostert was best-placed to have first-hand knowledge regarding the operations of the MES entities, including how any administrative errors may have crept up in their

paperwork. It has not been shown, in any event, that the errors somehow invalidated the document.

[25] Whilst I have no reason to reject his evidence that the date of 15 May 2016 appears on the Acceptance of Cession as a typographical or administrative error, I do observe that the notification of cession which was sent to the first defendant by the plaintiff is dated 24 May 2017, which suggests that some form of agreement had taken place by that date between the plaintiff and MES. It must be remembered that a cession generally does not require any formalities and may be validly made orally or tacitly even if the right ceded formed part of a written contract.¹¹

[26] Based on that objective evidence, it is possible that the Mostert may well have signed the Acceptance of Cession in May 2017 and not June 2017. However, this issue was not taken up during oral evidence. But whether Mostert signed the Acceptance of Cession in May or June 2017 does not materially change his evidence, supported by Rademan, that it was signed in the year 2017, after conclusion of the Rental Agreement of 18 April 2017, and not in 2016.

[27] Turning to the alleged breach of contract, Rademan testified that the first defendant breached the Rental Agreement by failing to make payment of rental amounts due. This was not disputed in the evidence.

[28] In the papers, the defendants claimed that they reached mutual agreement with MES, not with the plaintiff to cancel the Rental Agreement. They allege that this was in or about May 2018, when the first defendant informed MES that it no longer required the equipment, and that in or about January 2019 MES requested the return of the equipment. As a result, they claim that the Acceptance of Cession was terminated by mutual consent between MES and the

¹¹ See *Mercuria Energy Trading South Africa (Pty) Ltd v TSH Coal (Pty) Ltd* 2018 JDR 0573 (GP) para 8.

first defendant in May 2018, alternatively when the equipment was finally returned in January 2019.

[29] Before delving into this aspect, I note that the defendants did not pursue this aspect during oral evidence by leading evidence or cross examination. Neither is it mentioned in the defendants' submissions which were delivered after the leading of oral evidence. The defendants bore the onus to prove that the Rental Agreement was terminated by mutual agreement between them and MES¹². They led no such evidence.

[30] By contrast, both Rademan and Mostert strongly refuted these allegations in their evidence and were in fact not challenged in cross examination. Mostert testified that he did not have the authority to agree to the termination of the Rental Agreement because of the cession to the plaintiff which had taken place. He understood that its implication was that it was no longer his contract to cancel, or to give permission for cancellation.

[31] For her part, Rademan testified that, when the second defendant claimed that MES had cancelled the rental agreement with him, she took this very seriously because, similar to Mostert, her understanding was that the cession agreement precluded MES from cancelling the Rental Agreement which had now been sold to the plaintiff. She accordingly paid a visit to Mostert, intending to tell him to 'buy back' the Rental Agreement.

[32] At the meeting Mostert showed her the service logs and airtime logs relating to the rented equipment, and they indicated that the defendants were in fact still using the equipment that they claimed to have returned, or in respect of which they claimed the Rental Agreement had been terminated. Mostert had also showed her that, in fact, the defendants owed him money in terms of a

¹² *Pillay v Krishna* 1946 AD 946.

separate maintenance agreement relating to the same rented equipment. As I have indicated, none of this evidence was disputed, and it strongly refutes the defendants' unsupported allegations that the Rental Agreement was terminated by MES.

[33] Moreover, clauses 1.4 and 1.5. of the Rental Agreement contain the usual non-variation and whole agreement clauses, respectively, and the defendants led no evidence to show that these clauses were complied with. Mostert testified that no agreement to terminate in compliance with those clauses was ever concluded, while Rademan testified that she has never seen such an agreement in this case.

[34] Quite to the contrary, Mostert testified while referring to a supporting email dated 24 May 2019, that the second defendant had informed MES that the first defendant was forced out of business and was unable to maintain its obligations to make payment of the arrears and future rentals. This was after both of the dates of termination alleged by the defendants, namely May 2018 or January 2019. All of this evidence leads to the conclusion that there is no merit to the defendants' claim there was a mutual agreement to terminate the agreement between them and MES.

[35] As regards the outstanding amount due for payment, clause 7.9 of the Rental Agreement provides that a certificate of balance will be *prima facie* proof of indebtedness. The plaintiff produced two certificates of balance, the one being an updated one, and the accuracy of both was attested by Rademan. The plaintiff also led evidence to prove the capital amount stated in the updated certificate of balance, and there was no challenge to that evidence. The quantum of the plaintiff's damages was accordingly proved.

[36] In the pleadings the defendants claimed that the plaintiff failed to mitigate its damages by finding an alternative customer to lease the rental equipment. However, both Mostert and Rademan testified that only a few handsets were returned and recovered from the defendants and the main component of the system was not returned. While there was an attempt during cross examination to place doubt on the witnesses' evidence regarding what equipment was actually returned, the defendants did not lead evidence to lay a basis for what equipment they claim they did in fact return.

[37] Furthermore, the evidence of Mostert and Rademan was not disputed that the system had little to no value without the main component. Also, that it would cost more to sell the equipment that was returned, compared to the amount that may have been recovered from such sale. In other words, that the plaintiff would have incurred further losses if it tried to sell the equipment that was returned by the defendants. None of this evidence was challenged.

[38] The plaintiff has accordingly made out a case for the relief it seeks. There is furthermore no reason why costs should not follow the result. Clause 13.2 of the Rental Agreement provides for costs on an attorney and client scale, and no reason has been given for why that clause should not find application.

C. ORDER

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

1. Judgment is hereby entered in favour of the plaintiff against the first and second defendants, jointly and severally, the one paying the other to be absolved, for the following:
 - a. Payment in the amount of R589,732.60.

- b. Interest on the amount of R589,732.60, calculated at 6% above the prime interest rate as applicable from time to time, per annum, calculated from date of service of the summons, to date of final payment, both days inclusive.
- c. Costs of suit on the scale between attorney and client, including the costs of counsel on scale B.

N. MANGCU-LOCKWOOD
Judge of the High Court

Appearances:

For plaintiff : J. K. Felix

Instructed by: K. Leeuw, C & A Friedlander Inc.

For first defendants: A. Coetzee

Instructed by: S. Hangone, Hangone Attorneys