

REPUBLIC OF SOUTH AFRICA



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

Case Number: **128479/23**

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
5 December 2025 _____	
DATE	SIGNATURE

In the matter between:

BUSINESS PARTNERS LIMITED

Applicant/Plaintiff

and

LYNWOOD ROAD DEVELOPMENT (PTY) LTD

First Respondent/Defendant

JAN HENDRIK DU RAAN

Second Respondent/Defendant

BARBARA NOLA ERASMUS

Third 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.

Particulars of Claim

- [2] The plaintiff's claim against the first defendant is based on three written agreements, to wit a Loan agreement concluded on 11 November 2020; a Royalty agreement also concluded on 11 November 2020 and an Addendum to the Loan Agreement concluded on 11 December 2020.
- [3] The second and third defendants are cited in their capacities as sureties for all amounts owed by the first defendant to the plaintiff.
- [4] The plaintiff alleges that the first defendant breached the agreements and claim in respect of the loan agreement the full balance of the loan agreement still owing and in terms of the Royalty agreement a royalty fee.

Proposed amendment

- [5] The *crux* of the dispute between the parties in respect of the proposed amendment is the fulfilment of clause 8.4.6 of the Loan Agreement. Clause 8.4.6 is a condition precedent and without the fulfilment of the clause, the Loan and Royalty Agreements did not come into being and has no force and effect.
- [6] The clause reads as follows:

"8.4 OTHER CONDITIONS PRECEDENT

The borrower shall also furnish Business Partners with:

- 8.4.6 *Confirmation by the relevant conveyancer that he/she has confirmed with the relevant Regional Land Claims Commissioner that no claim in terms of The Restitution of Land Rights Act, 1994 has been lodged against any property that is to be bonded in favour of Business Partners."*

- [7] It is common cause between the parties that land claims have been lodged against the property. The plaintiff alleges that it has, in concluding the Addendum, waived its right to rely on compliance with clause 8.4.6. The relevant portion of the Addendum reads as follows:

“3. The Parties wish to amend conditions to the Loan Agreement.

4. The parties wish to record the change in writing”.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. Loan Agreement

1.1 That the land claim on Portion 141 of the Farm the Willows 340 JR to be noted.”

- [8] The waiver is pleaded as follows in the proposed amended particulars of claim:

“7.2 By entering into the addendum, **Annexure “A3”**, the Plaintiff to the extent necessary and by agreement with the First Defendant, thereby elected to proceed with the relevant Loan and Royalty Agreements notwithstanding non-fulfilment of the condition contained in clause 8.4.6 of the loan agreement.”

“8.3 The parties, in terms of **Annexure “A3”**, had noted the pending land claim/s on the property and elected to proceed with the Loan and Royalty Agreements.”

“9.1 In the alternative to paragraph 8.3 above, and on a proper interpretation of **Annexure “A3”**, the Plaintiff by concluding the addendum had in its sole discretion, without prejudice to its rights, waived in writing and in terms of clause 35.2 of **Annexure “A2”**, recorded in paragraph 3.12 above, the right to rely on the fulfilment of the condition found in clause 8.4.6 of **Annexure “A1”**, as recorded in clause 1.1 of **Annexure “A3”**, signed by both Plaintiff and First Defendant.

9.2 The condition found in the referred clause 8.4.6 was included in **Annexure “A1”** for the sole benefit of Plaintiff, who was therefore entitled to waive the condition as provided for in clause 35.2 of **Annexure “A2”**.”

10. In the further alternative and on a proper interpretation of the addendum to the Loan and Royalty Agreements, **Annexure “A3”**, the parties by entering into

the aforesaid addendum intended to and thereby revived the Loan and Royalty Agreements.”

Objection

- [9] The defendants maintain that the plaintiff’s proposed amendment does not comply with the provisions of clause 35.2 of the Standard Terms and Conditions of the Agreement. Clause 35.2 reads as follows:

“If the Borrower fails to fulfil any term or condition of this Agreement, Business Partners may in its sole discretion, without prejudice to its rights, waive the right to rely on the fulfilment of the term or condition.”

- [10] The election to proceed with the agreements notwithstanding the non-compliance with the condition as pleaded in paragraphs 7.2 and 8.3 *supra* does, therefore, not constitute a waiver as contemplated in clause 35.2. Due to the fact that the “*waiver*” of the non-compliance with the condition has been pleaded in the alternative, it is not prudent to consider the relevant allegations in isolation.

- [11] The allegations in the alternative contained in paragraphs 9.2 and 10 should also be considered. Insofar as the proper interpretation of clause 1.1 of the Addendum is concerned, the defendants maintain that a proper interpretation entails attributing meaning to the word “*noted*”. “*Noted*” used in light of the ordinary rules of grammar and syntax does not mean waiver but simply refer to the fact that the existence of land claims has come to the attention of the plaintiff and the first defendant. That should, according to the defendants, be the end of the interpretation exercise.

- [12] In support of the aforesaid contention, the defendants rely on the principles of interpretation crystallised 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)

- [13] In the result, the defendants contend that the suspensive condition in clause 8.4.6 has not been fulfilled and neither the Loan Agreement nor the Royalty Agreement came into effect. The amended particulars of claim, therefore, does not disclose a cause of action and the amendment should be refused with costs.

Discussion

- [14] I do not agree with the defendants’ interpretation of *Endumeni*. *Endumeni* is the first in a line of authorities that changed the notion of strict adherence to the words used in a contract to establish the intention of the parties. The development in the interpretation of contracts has more recently been articulated in *Capitec Bank Holdings Ltd and another v Coral Lagoon Investments 194 (Pty) Ltd and others* 2022 (1) SA 100(SCA) at para [46], as follows:

“[46] The Constitutional Court has rejected the idea of the plain meaning of the text or its primacy, since words without context mean nothing, and context is everything. It has given a wide remit to the admission of extrinsic evidence as to context and purpose so as to interpret the meaning of a contract. Reasonable disagreements as to the

*relevance of such evidence should favour admitting the evidence and the weight of the evidence may then be considered*¹.

- [15] Without the benefit of evidence to establish the context and meaning of clause 1.1, it is not possible to determine what the parties intended in concluding the Addendum. The defendants contention to the contrary cannot be upheld and the objection stands to be dismissed with costs. The complexity of the matter justifies counsel's fees on scale C.

Order

- [16] The following order is granted:

1. The applicant/plaintiff is granted leave to amend its particulars of claim to read in accordance with the notice of amendment in terms of Rule 28(1) dated 6 December 2024, within 10 days from date of this order.
2. The respondents/defendants are ordered to pay the costs of the application. Counsel's fees on scale C.



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

DATE HEARD:

09 September 2025

DATE DELIVERED:

5 December 2025

APPEARANCES

¹ Capitec Bank Holdings Ltd and another v Coral Lagoon Investments 194 (Pty) Ltd and others 2022 (1) SA 100(SCA) at para [46]

Counsel for the Applicant: Adv M.T Shepherd

Instructed by: Strydom Britz Mohulatsi Inc

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Adv M Jacobs

Instructed by: Prinsloo Bekker Attorneys

