IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable

Case no: 5292/2021

In the matter between

K2011148986 (SOUTH AFRICA) PTY LTD **PLAINTIFF**
t/a NASHUA BETHLEHEM
[Registration number: 2011/148986/07]

and

COUNTRY MEAT MARKET (PTY) LTD **FIRST DEFENDANT**
[Registration number: 2013/071707/07]

HAROLD ADRIAN LEACH **SECOND DEFENDANT**

STEFAN SMIT **THIRD DEFENDANT**

Neutral citation: *K2011148986 (South Africa) Pty Ltd t/a Nashua Bethlehem v Country Meat Market Pty Ltd* (5292/2021) [2025] ZAFSHC 353 (10 November 2025)

Coram: DANISO, J

Heard: 3 & 4 June 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII and Caselines. The date and time for hand-down is deemed to be 14h00 on 10 November 2025.

Summary: Rectification of a master rental agreement - common mistake between the parties relating to the description of the contracting party proven - rectification granted - liability of sureties for a liquidated company established - plaintiff's claim upheld.

ORDER

1 The master rental agreement concluded by the parties and the deed of suretyship executed by the third defendant on 24 June 2020 is rectified by the deletion of the words 'Country Meat Market CC registered under 2000/075457/83' and replaced with the words 'Country Meat Market (Pty) Ltd with registration number registration number: 2013/071707/07' wherever they appear.

2 The second and third defendants are ordered jointly and severally, one paying the other to be absolved, to pay the plaintiff:

2.1 R312 341.00 (THREE HUNDRED AND TWELVE THOUSAND THREE HUNDRED AND FORTY-ONE RAND) together with interest at the rate of 6% interest above prime rate per annum calculated from the date which the plaintiff acquired the right to claim from the defendants until date that payment is received.

2.2 R1 000 455.92 (ONE MILLION FOUR HUNDRED AND FIFTY-FIVE RAND AND NINETY-TWO CENTS) together with interest at the rate of 6% interest above prime rate per annum calculated from the date which the plaintiff acquired the right to claim from the defendants until date that payment is received against delivery by the plaintiff to the defendants of the repossessed goods.

2.3 Costs of suit on attorney and client scale.

3 Contingent upon the second and third defendants satisfying the judgment debt as set out in paras 2.1 and 2.2 above, the ownership of the goods as specified under paragraph E1 of the particulars of claim shall be transferred to the second and third defendants.

4 In the event that the second and third defendants fail to satisfy the judgment debt (paras 2.1 and 2.2 above) and to the extent that the second and third defendants have not done so already, the second and third defendants are ordered to immediately return to the plaintiff the goods as specified under paragraph E1 of the particulars of claim.

5 The plaintiff is granted leave to approach the court to quantify any damages to the rented goods that may be discovered upon their return to the plaintiff.

JUDGMENT

Daniso J

[1] On 9 March 2017, the second defendant as the director of the first defendant signed a master rental agreement (the 2017 MRA) pertaining to the rental of various office equipment from the plaintiff for a period of sixty (60) months at a monthly rental amount of R15 800.40. Additionally, he signed a deed of suretyship in terms of which he bound himself personally as co-principal debtor with the first defendant in respect of the latter's obligations under the 2017 MRA.[1] The agreement was due to expire in 2022, however, in 2020 the first respondent breached the terms of the agreement by failing to pay the installments. Consequently, on 24 June 2020, the third defendant as first defendant's financial manager signed another MRA (the 2020 MRA) for the rental of office equipment comprising of nine IM350 printers, a Nashua PABX and CCTV cameras (the goods) from the plaintiff for a period of sixty (60) months at a monthly rental of R17 250.00. The third defendant stood surety for the first respondent's debt.[2] About six months later, the first defendant fell into arrears with the monthly rentals and subsequently stopped further installments. As of 31 August 2021, the amount due by the first defendant was R312 341 00.

[2] Clause 9 of the 2022 MRA entitles the plaintiff to claim all arrears including damages for the unexpired term of the agreement and take to possession of the goods in the event of breach of any of the terms of the agreement. It is in that regard that the plaintiff has instituted this action against the defendants jointly and severally for the payment of R312 341. 00 as arrear rentals, R1 000 455.92 future rentals and the return of the rented goods. The plaintiff also seeks rectification of the 2022 MRA and the deed of suretyship consequent thereon to reflect the correct description of the first defendant by deleting the words 'Country Meat Market CC registered under 2000/075457/83 and replacing it with 'Country Meat Market (Pty) Ltd with registration

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[1] Exhibit 'A1'.
[2] Exhibit 'B'.

number registration number: 2013/071707/07'.

[3] In the plea, the claim is resisted on the grounds that the 2022 MRA was concluded with a different entity as it refers to the first defendant as a close corporation instead of a company. The quantum claimed as damages is disputed on the grounds that the amount has not been properly calculated and the plaintiff has also failed to mitigate its damages.

[4] At the commencement of the proceedings, plaintiff's counsel Mr. Van Aswegen rose to state that the first defendant has since been liquidated and as a result, plaintiff will only be proceeding against the second and third defendants as sureties for the first defendant's unpaid debts and a judgment by default will be sought against the third defendant as he was absent. The third defendant was duly served with the notice of setdown of the trial, he informed the plaintiff's attorney that he will not be appearing in court.

[5] The second defendant appeared in person. On his request, the matter stood down for the purpose of either a settlement or an application for a postponement. On resumption of the proceedings, the parties indicated that a settlement could not be reached with the result that second defendant applied for the postponement in order to apply for legal aid. It was the second defendant's submission that his erstwhile attorney only informed him on 30 May 2025 that he will no longer be representing him due to his (the second defendant's) lack of funds.

[6] The application was opposed on the grounds that it was brought very late and this is despite the fact that the second defendant has been representing himself since 2 November 2022 when the defendants' attorney withdrew as attorney of record. Following the withdrawal of their attorney, on 28 August 2023, the second and third defendants appeared in person for a pretrial conference. Since then, the second defendant did not seek alternate legal representation. The second defendant was served with the notice of setdown on 20 January 2025. He waited till the date of trial to apply for a postponement, at no stage before then did he inform the plaintiff of his intention to seek a postponement of the matter. On his own submission, he is not in a financial position to compensate the plaintiff for the inconvenience that will be

occasioned by a postponement.

[7] The principles applicable in the determination of applications of this nature are trite: postponements are not merely for the taking. The application must be made timeously and properly motivated, where the application is made late the delay must be explained with sufficient particularity to enable the court to assess whether it is bona fide or it is simply a delaying tactic. The second defendant's financial means to compensate the plaintiff for the prejudice caused by the postponement of the trial is also a factor that the court also takes into account including the second defendant's prospects of success in defending the action.

[8] Having heard the submissions by the respective parties, I held that there was an extreme and unexplained delay in bringing the application. The delay in not seeking legal aid for a period of over two years from the date of withdrawal of the erstwhile attorney is extreme and the period of over four months from the date of service of the notice of setdown on 20 January 2025, to the date of trial on 3 June 2025 provided the second defendant with ample time to seek alternative legal representation. The fact that the second defendant cannot compensate the plaintiff for the delay of the trial including the bare denials of liability as deliberated in the plea militated against granting of the postponement of the trial. Resultantly, the application for a postponement was dismissed with costs. The second defendant proceeded in person.

[9] Mr. Rikus Kruger gave evidence for the plaintiff's case. He testified about the circumstances under which the 2020 MRA was concluded. He testified that he is the plaintiff's sale director and he represented the plaintiff during the conclusion of the 2020 MRA. Pursuant to the first defendant's breach of the 2017 MRA, he tried to contact the second defendant over his telephone regarding payment of the arrears to no avail. Eventually on 27 May 2020, he transmitted an email to the third defendant and was informed that the first defendant could no longer afford the installments due to Covid-19 related financial difficulties. A request was made for the 2017 MRA to be reviewed to enable the first defendant to afford the installments. He was also informed that the first defendant's financial situation is due to improve as another branch has been opened in Mthatha. The third defendant's email in that regard followed on the same day stating the following:

'Hi

Adrian het gese hy sal met jou gesels oor die betaling.

Ons kan die kontrak hersien ek is net baie besig die week kans ons dalk volgende week n afspraak maak.

Dankie'

[10] In order to assist the first defendant, he proposed a review and replacement of the 2017 MRA with the 2020 MRA which entailed a settlement of the amounts due in the 2017 MRA, affords the first defendant with a three-month payment holiday and a saving of about R10 000. The third respondent confirmed the revised terms of the agreement in the email dated 18 June 2020 in which he wrote:

'Okay die nuwe kontrak lyk inorde ons kan hom teken'.

[11] It was his testimony that the second defendant was still away in George. He signed a resolution authorizing the third defendant to sign the 2020 MRA on behalf of the first defendant.

[12] He was adamant that the contracting parties in the 2020 MRA agreement are the plaintiff and the first defendant. The 2020 MRA is essentially an upgrade of the 2017 MRA which correctly refers to the first defendant as a company. He further stated that the goods were also delivered at the first defendant's address, the third defendant signed the delivery note confirming not only the delivery but also the installation of the goods at the first defendant's business premises. The reference to the first defendant as a close corporation 2020 MRA is simply an error, he has no knowledge how the error came about as the agreement was prepared by the plaintiff's administration staff.

[13] Under cross-examination he confirmed that the pursuant to the breach, 70% of the goods were returned to the plaintiff where they are kept until the case is finalized.

[14] The second defendant was the only witness who testified for the defendants' case. He admitted the terms of the conclusion of the 2017 MRA including the deed of suretyship. He denied liability in respect of the 2020 MRA on the basis that the first defendant is not a close corporation but a company. The description of the first defendant as a close corporation on the 2020 MRA is not a mistake common to the

parties but proof that the agreement involved a different entity.

[15] It was also his testimony that he was not present when 2020 MRA was negotiated and subsequently signed by the third defendant on behalf of the first defendant and stated that the third defendant probably used his electronic signature to sign the resolution authorizing the him to conclude the agreement in his absence as he only became aware of the 2020 MRA when he received the summons.

[16] Delivery of goods is also disputed because the goods were delivered at a close corporation's business. He pointed out that the plaintiff has also not lodged its claim against the liquidator and on Mr. Kruger's version 70% of the goods were returned to the plaintiff. Except to say that the goods are kept until the case is finalized Mr. Kruger was not clear about their whereabouts or whether they were rented to another customer or not.

[17] Under cross-examination, the second defendant confirmed that he was the sole director of the first defendant trading at the address indicated in the 2020 MRA. He explained that the first defendant previously traded as a close corporation until about the year 2013. In 2020 it had been closed and a company was formed. Regarding the deed of suretyship when he signed it, he was under the impression that he was binding himself for the amount owed by the first defendant in 2017 and not for future liabilities.

[18] That was in short, the summary of the evidence presented for the parties. There is no material or significant disagreement between the evidence tendered by the parties' witnesses on the essential terms of the 2020 MRA relied upon by the plaintiff.

[19] A mistake in drafting an agreement including the misdescription of a party can be cured with rectification to reflect the true agreement between the parties. The onus is on the party claiming rectification to adduce evidence on a preponderance of probabilities that through a mistake in the drafting of the agreement, the agreement does not reflect the common intention of the contracting parties.[3]

[3] Harms *Amler's Precedents of Pleadings* 6ed (2003) page 298-299 and the applicable authorities quoted therein.

[20] Mr. Kruger rendered a concise and convincing version regarding the circumstances under which the 2020 MRA was concluded. His testimony that the agreement arose from a clear intention between the parties to conclude the agreement is corroborated by the second defendant's own testimony that at the time the agreement was concluded the first defendant was no longer trading as a close corporation but a company including the undisputed facts that both parties performed in terms of the agreement in that the plaintiff delivered the rented goods to the first defendant's business premises the instalments were paid until the first defendant fell into arrears.

[21] Inexplicably, the second defendant sought to dispute the validity of the 2020 MRA and the plaintiff's performance whilst also asserting that he was not privy to the circumstances under which the agreement was concluded and the delivery of goods was acknowledged by the third defendant. The belated defence of not having signed the resolution also does not assist the second defendant as besides not having pleaded it, no evidence was adduced to prove the circumstances under which his signature was appended on the resolution.

[22] The bare denial of the existence of the mistake also does not assist the defendants' case as for the plaintiff to be successful in its claim for rectification it is also sufficient that the mistake might have been that of one party.[4] Taking into consideration the facts of this matter, I am satisfied that the plaintiff's claim for rectification has been established on a balance of probabilities.

[23] The issue of whether the first defendant is indebted to the plaintiff has also been resolved by Mr. Kruger's testimony duly corroborated by a certificate of balance which the parties agreed that it would constitute prima facie proof of the amounts due by the first defendant.[5] Except for the defendants' contradictory and untenable versions directed at the validity of the agreement, no facts have been set out upon which they contend that the arrears claimed are not due. A debt is after all, fulfilled and

[4] *Brits v van Heerden* 2001 (3) SA 257 (C) at 282C.
[5] Clause 11 of the 2020 MRA.

extinguished through payment.[6]

[24] Regarding the second and third defendant's liability, it is clear from the deeds of suretyships that they cover the first defendant's present and future obligations. The relevant parts read as follows:

'DEED OF SURETYSHIP

1. ...

2. The Surety/ies hereby bind himself/themselves, jointly and severally with the Principal Debtor; to the Creditor as Surety/ies and Co-Principal Debtor with the Principal Debtor/s for:

2.1. the due and punctual payment by the Principal Debtor of all monies of whatsoever; nature which may become due and owing from time to time by the Principal Debtor to the Creditor arising from any cause of whatsoever nature;

2.2. the due and proper performance by the Principal Debtor of all the Principal Debtor's obligations to the creditor of any nature whatsoever which the Principal Debtor may now or in the future be obliged to perform;

2.3. ...

3. This Deed of Suretyship is subject to the following terms and conditions:

3.1. the same shall operate as a continuing covering security for any present or future indebtedness of Principal Debtor to the Creditor and shall remain of full force and effect notwithstanding any fluctuation in, or even temporary extinction of, such indebtedness.

3.2. ...

5. The Surety/ies hereby renounces the benefits of the legal exceptions "non cause debiti", "errore calculi", "excussion", "division", "de duobus vel pluribus reis debendi", "no value-received" and "revision of accounts". The Surety/ies acknowledges that he is fully acquainted with the meaning and effect of all the abovementioned legal exception and that renunciations of the benefits of these exceptions is based upon full knowledge and understanding of the meaning of such exceptions and the consequences of renunciations of the benefits thereof.'

[25] There is no merit to the second defendant's contention that the plaintiff ought to have lodged a claim against the liquidators instead of pursuing the sureties. The law is trite on this aspect: the creditor can claim directly from the sureties when the company's debt becomes due without having to recover the debt from the company or in this case, its liquidators.[7]

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[6] *Brayton Carlswald (Pty) Ltd and Another v Brews* [2017] ZASCA 68;2017 (5) SA 498 (SCA) para 19.

[7] *Consolidated Textile Mills LTD v Weiniger* 1961 (3) SA 335 (O) at 338C; *BOE Bank Limited v Bassage* [2006] SCA 50 (RSA) 2006 (5) SA 33 (SCA); [2006] 4 All SA 105 (SCA) paras 3 and 11.

[26] With regard to the quantification of damages, it came to light during trial that the plaintiff has since recovered about 70% of the goods. It was submitted by Mr. van Aswegen that in the event that the court finds in favour of the plaintiff for payment of arrears and future rentals, the plaintiff tenders the ownership of the goods to the defendant's contingent upon the defendants satisfying the judgment debt otherwise, the defendants must be ordered to return the goods.

[27] Based on all these reasons above, I have come to a conclusion that the plaintiff has adduced sufficient evidence to prove its claim against the second and third defendants on a preponderance of probabilities. The defences raised by the defendants have been merely contrived as an afterthought to avoid liability. It follows therefore that the plaintiff's case ought to prevail.

Costs

[28] With regard to costs, there is no reason why the costs should not follow the result.

Order

[29] The order that I issue is the following:

1 The master rental agreement concluded by the parties and the deed of suretyship executed by the third defendant on 24 June 2020 is rectified by the deletion of the words 'Country Meat Market CC registered under 2000/075457/83' and replaced with the words 'Country Meat Market (Pty) Ltd with registration number registration number: 2013/071707/07' wherever they appear.

2 The second and third defendants are ordered jointly and severally, one paying the other to be absolved, to pay the plaintiff:

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4 In the event that the second and third defendants fail to satisfy the judgment debt (paras 2.1. and 2.2. above) and to the extent that the second and third defendants have not done so already, the second and third defendants are ordered to immediately return to the plaintiff the goods as specified under paragraph E1 of the particulars of claim.

5 The plaintiff is granted leave to approach the court to quantify any damages to the goods that may be discovered upon their return to the plaintiff.

[redacted]

NS DANISO

JUDGE OF THE HIGH COURT

The Honourable Justice

2025 -11- 10

N.S. Daniso

Appearances

For the plaintiff:	W A Van Aswegen
Instructed by:	Breytenbach Mavuso Inc, Bethlehem c/o Peyper Attorneys Bloemfontein
For the first defendant:	No appearance
For the second defendant:	In Person
For the third defendant:	No appearance