IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION, CAPE TOWN

CASE NO:2026-045648

In the matter between:

SAM DALE TRADING (PTY) LTD	Applicant
t/a CONSUMER FRIEND	
and	
MBD LEGAL COLLECTIONS (PTY) LTD	First Respondent
RCS CARDS (PTY) LTD	Second Respondent

Delivered: This 28th day of July 2026 by email to the parties

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REASONS FOR ORDER

NDITA, J

[1] This application was brough on urgent basis for final relief arising from an attempt by the First Respondent, to unilaterally instruct payment distribution agents and debt counsellors to reroute payments of "*Paying Matters*" portfolio away from the Applicant. The portfolio was historically administered by Applicant under a written service agreement concluded

between the Applicant and the Third Respondent. The relief that was sought was couched in the following terms:

1. The Applicant's failure to abide by the rules pertaining to time periods, filing service and compliance with the rules of this Court is condoned and this application is dealt with as one of urgency in accordance with Uniform Rule 6 (12).
2. It is declared that, in relation to the portfolio acquired by the first respondent from the second respondent ('the portfolio'), the first respondent is bound by the service agreement concluded between the applicant and the second respondent on 26 October 2022 (effective from 1 October 2020) ('the Consumer Friend Agreement') as the second respondent's "permitted assign" and/or "other legal successor") for purposes of clause 1.4 thereof.
3. The first respondent is directed to comply with the Consumer Friend agreement in relation to the portfolio, including (without limitation) clause 13.1 thereof, by recognising and giving effect to the applicant's entitlement to retain and administer Paying Matters (as defined therein) until they are paid in full.
4. Directing the first respondent, within 24 hours of service of this order, to take all steps within its power (including issuing written instructions to all relevant payment distribution agents ('PDA's) and any third party administrators and/or service providers utilised by the first respondent in relation to the portfolio) to ensure that payments in respect of the portfolio (and, in particular, Paying Matters) are routed for onward transmission to the applicant in accordance with existing administration and payment-flow arrangements contemplated by the Consumer Friend agreement within 24 hours of service of this order.
5. The first respondent is interdicted and restrained, pending full compliance with

paragraphs 3 and 4 above, from:

5.1 instructing any PDA, debtor, debt counsellor, or third party administrator or service provider to route payments away from the applicant in respect of the the portfolio;

5.2 receiving, retaining applying appropriate or dealing with payments in respect of the portfolio otherwise than as contemplated by the Consumer Friend agreement; and

5.3 interfering. directly or indirectly, with the applicant's administration of the portfolio.

6. The first respondent is further directed, within 5 court days of service of this order, to furnish the applicant with a schedule certified by a duly authorised representative of the first respondent reflecting, in respect of the portfolio:

6.1 the account identifiers;

6.2 the relevant PDAs and/or payment channels; and

6.3 All receipts collected from 1 February 2026 to date.

7. The first respondent is ordered to pay costs of two counsel on scale C.

[2] On 23 March 2026, I issued an order granting the Applicant the above relief as prayed for in the notice of motion. These are the reasons for the order.

The Parties

[3] The Applicant, Consumer Friend (PTY) Ltd ("Consumer Friend") a

private company duly incorporated in accordance with the laws of the Republic of South Africa with its registered address at […], The C[…] E[…], Westway Office Park, Westville, KwaZulu-Natal. It conducts its business as a “credit agent” performing outsourced debt review administration services on behalf of various credit providers.

[4] The First Respondent, MBD Legal Collections (Pty) Ltd (“MBD”) is a private company duly incorporated with the Laws of the Republic of South Africa with its registered address at 1[…] W[…] Street, Sandown, Sandton, Gauteng.

[5] The Third Respondent RCS CARDS (PTY) Ltd (“RCS”) is also a private company duly incorporated in accordance with the laws of the Republic of South Africa with its registered address at M[…] P[…], J[…] S[…] Drive, Pinelands, Western Cape.

Factual background

[6] On 26 October 2022, Consumer Friend and RCS concluded a written service agreement for debt collection services. During 2024, RCS conducted a procurement process a Request for Information) (“RFI”) followed by a request for proposals (‘RFP’) relating to the sale of certain debt review portfolios, including the portfolio which is the subject matter of this application (‘the portfolio’). The RFI and RFP documentation

recorded that the acquisition of the portfolio would “come with Consumer Friend as the managing agent” and that Consumer Friend would retain the right to collect on debt review “Paying matters”.

[7] MBD participated in the RFI/RFP process and thereafter, with the full knowledge of the Consumer Friend agreement, acquired the portfolio from RCS in terms of a “*Sale of Book Debts Agreement*” dated 25 September 2025. In the founding affidavit deposed to by the Applicant Chief Executive Officer, Mr Laszlo Istvan Toth (“Mr Toth”), the Applicant alleges that by acquiring the portfolio (and the associated administration or payment-flow arrangements)MBD stepped into RCS’s position in relation to the portfolio as RCS’s “*permitted assign*” and/or other “legal successor”.

[8] In terms of the Consumer Friend agreement, RCS appointed Consumer Friend to administer its debt review portfolio “on its behalf” with commission of 13% payable by RCS. Mr Toth avers that the Consumer Friend agreement is binding to on an enforceable against by the trustees, permitted assigns, liquidators or other legal successors of the parties as fully and effectually as if they had signed the agreement.

[9] Clause 13.1 of the Consumer agreement provides that in the event of withdrawal of debts by RCS under clauses 3.4 or 3.5, or termination

on 3o days written notice under clause 11.1, "*all Paying Matters shall be retained by [Consumer Friend] until such time as these Debts have been paid in full"* and that the necessary provisions survive termination in respect of Paying Matters. "*Paying Matters*" are defined (in clause 1.1.14) as debts under debt review where either the debtor or its PDA has made payment to RCS or Consumer Friend as at the date of withdrawal of debts by RCS or termination of the Consumer Friend agreement.

[10] The parties undertook to observe the utmost good faith and warranted that in their dealings with each other they would refrain from doing anything which might prejudice or detract from the rights, assets or interest of either party. In addition, in the event that RCS sells its business or any part thereof to which or in respect of which Consumer Friend renders services, RCS is entitled to cede, assign and/or transfer its rights and obligations under the Consumer Friend agreement to the purchaser of such business without notice to Consumer Friend.

[11] Against this backdrop, on 16 July 2024, RCS invited selected industry participants to participate in a RFI relating to the potential sale of portions of its debts review portfolio. The RFI included the following:

11.1 Under the "*General Requirements*" in paragraph 3, it was recorded that the bidder had to “showcase previous transactions and demonstrate how they ensure that that customers will continue to enjoy the benefits and regulated treatment of Debt Review after the acquisition from RCS. The respondent will also demonstrate any previous relationship with Consumer Friend if applicable and how operationally there is no confusion to customer or debt counsellor who owns the account in question. … A solution should also highlight any market related insights that has been learned from similar transactions with other credit providers”.

11.2 Under the “*Commercial and contractual requirements*” in paragraph 4 it was recorded that *“Consumer friend [sic] will retain as per agreement the right to collect on debt review paying matters. If an accounts exits DR[debt review] the exclusivity falls away*.”

11.3 Under evaluation in paragraph 5, it was recorded that the evaluation would be based on a balanced scorecard, which included the *“[v]endors current relationship with Consumer Friend”*, which carried a weighting of 30%.

[12] As part of the RFI process, RCS conducted bidder question-and-answer sessions and circulated a consolidated question-and-answer

document to participants via email on 25 July 2024. Several questions were directed concerning Consumer Friend agreement and/or Consumer Friend's involvement. It is necessary to set out the relevant questions; ,they are as follows:

12.1 Question 4: "Details of Consumer Friend process/agreement and their anticipated involvement in the 'Monthly Inflow' process?" Answer: We provide shortlisted candidates the redacted agreement on confirmation from CF".

12.2 Question 8*:"Pleased [sic] confirm the commission rate that Consumer Friend will earn on paying accounts. This is a critical input into our cost assumptions."* Answer: *"At he shortlisted round this will be discussed, RCS will not share details of contract and commercials at this stage".*

12.3 Question 9: *"Please also confirm if Terminated Debt Review accounts are also contractually obligated to be manages by Consumer Friend, and if so, what is the commission rate?"* Answer: *"No non-paying matters are requited (sic) to be worked by CF."*

[13] In addition, the RFP included the following:

13.1 Under current stock "(*once off sale*)"- a subheading under

Debt Review – in paragraph 2 it was recorded that the acquisition of this book comes "*with Consumer Friend as the managing agent".*

13.2 Under "General Requirements" in paragraph 3 it was recorded that the "respondent will also demonstrate any previous relationship with Consumer Friend if applicable and how operationally there is no confusion to customer or debt counsellor with who owns the account in question.

[14] Mr Toth avers that shortly after the acquisition by MBD and in 21 November 2025, he had a Microsoft Teams call with Messrs John Garde and Graeme Fourie of MBD. He states that he was informed that there may not be a binding agreement between Consumer Friend and MBD, a suggestion he claims he rejected.

[15] During a follow up meeting of the parties on 21 November 2025, the parties had discussions around operational requirements, going forward. It was recorded that MBD was "*not amiable to the continuance of the status quo"* regarding pricing. MBD also reaffirmed its initial stance to the effect that there may not be an agreement between it and Consumer Friend post the acquisition of the portfolio. In an email dated 29 January 2026 MBD unequivocally stated *inter alia*, that:

15.1 There was no formal agreement in place between MBD and Consumer Friend in relation to the portfolio Consumer Friend historically managed for RCS, which had been acquired by MBD.

15.2 MBD intended to conclude a formal written agreement with Consumer Friend that would include defined service levels and a market related commission structure.

15.3 MBD wanted all payments received by PDAs and Consumer Friend to be redirected to MBD's "rights under all credit agreements assigned to MBD and which "*are managed by Consumer Friend*".

15.4 In a meeting held on 14 November 2025, and in an email of 27 November 2025, it had been indicated that the commission structure was under consideration by Consumer Friend, but MBD had not received any meaningful feedback and the "*status quo cannot continue*".

15.5 Since MBD acquired the portfolio there had been a tacit, month-to-month agreement to continue to pay Consumer Friend commission for services rendered on the RCS portfolio at the rate equal to what RCS paid Consumer Friend.

15.6 The letter served as 30 days written notice of termination of the alleged tacit agreement, which constituted reasonable notice. The tacit agreement would therefore terminate on 28 February 2026.

15.7 MBD's operational team would be in contact with Consumer Friend's operational team to facilitate the orderly handover of all "the relevant data, documents, and information applicable to the RCS Portfolio, and manage communication with the PDAs, debt Counsellors and consumers".

15.8 Following termination, no collection services would be rendered by Consumer Friend in relation to the portfolio and no further commission is to be payable to Consumer Friend,

15.9 Contemporaneously with this letter, notice was given to all PDAs and debt counsellors that, with effect from 16 February 2026, all payments received in relation to the affected MBD debts were to be paid directly to MBD, with PDAs and debt counsellors instructed to inform debtors accordingly. Consumer Friend was requested to do the same.

[16] In response to this letter, Consumer Friend disputed the absence

of a formal agreement. Consumer Friend sought to be furnished with the MBD agreement with RCS, a request which was refused by the former. Consumer Friend requested a copy of the agreement from RCS. RCS too was unable to supply it but confirmed that the "*condition of the RFP i.e. the obligations to continue using Consumer Friend, was a term*

of the agreement, per the RFT". On 11 February 2026, Ms Marine van Brakel of RCS sent an email to both MBD and Consumer Friend wherein she recorded inter alia that:

16.1 It was RCS's '*intention during RFP process and communicated agreed by all as much throughout the process, … Consumer Friend would continue to service the debt review accounts ('the "paying matters") that was sold to MBD"*.

16.2 It was crucial that an agreement and necessary arrangements were agreed to between MBD and Consumer Friend to ensure the continued servicing of the accounts and it was her understanding that this was not yet in place.

16.3 RCS would facilitate the process as both parties are *"valuable partnerships"* in RCS's business.

[17] On 12 February 2026, Consumer Friend became aware of an RCS

notice dated 10 February 2026 distributed by MBD to the following effect:

> **"NOTICE OF ASSIGNMENT (CESSION) OF CERTAIN DEBT REVIEW ACCOUNTS: RCS CARDS (PTY) LTD.**

The notice recorded that the relevant debt review accounts would be "administered by MBD", provided Capital data contact details for future correspondence and directed that "all future payments" be made into a nominated Capital Data bank account, with queries directed to Capital Data. The matter was brought to the attention of RCS . RCS distributed a "corrected letter (V2)" wherein the latter recorded that the accounts "will be owned by MBD and will continue to be administered by Consumer Friend" and that all queries relating to those accounts *"should be directed to Consumer Friend*". Pursuant to RCS's corrective letter, MBD ON 10 February 2026 issued and urgent circular addressed to **"*ALL PAYMENT DISTRIBUTIONB AGENTS AND DEBT COLLECTORS*"** wherein MBD inter alia:

> 17.1 asserted that any payment to Consumer Friend after 16 February 2026 would not discharge the debtor's obligations.
>
> 17.2 warned that payment to Consumer Friend may result in

"liability" (financial and regulatory) for the recipients; and

17.3 called for written confirmation by 13 February 2026 that payments would be made to MBD in accordance with its directions with effect from 16 February 2026.

[18] In light of the impasse, a virtual meeting with a view to resolve the issue, was held between MBD, RCS and Consumer Friend on 16 February 2026. According to the Applicant, MBD highlighted that the MBD agreement with RCS contains a clause to the effect that Consumer Friend would not be ceded and/or assigned to MBD and that MBD and Consumer Friend would agree to new terms and conditions between them. In addition, MBD also confirmed that it had not transmitted the revised RCS letter to the industry, despite having been instructed to do so by RCS. The Applicant further avers that in view of the confirmation by MBD that it had not transmitted the revised or corrected RCS to the industry as instructed by RCS, and the ongoing reputational harm caused by the letter disseminated by MBD, it approached this court for urgent relief.

[19] Justifying its entitlement to the relief sought, Mr Toth states that the relief sought by the Consumer Friend is premised on the express terms of the Consumer Friend agreement read with the procurement process

by which MBD acquired the portfolio in question. More specifically, the Applicant relies on clause 1.4 of the agreement which it claims extends the binding effect of the agreement to the *"permitted assigns"* and other "*legal successors*" of the parties. According to the Applicant, the aforesaid permitted assigns fully and effectually bound themselves to the terms of the Consumer agreement as if they had signed it. Therefore, MBD's attempts to reroute payments and remove Consumer from administration constituted ongoing unlawful interference with Consumer Friend's entitlement to retain and administer Paying Matters until they are paid in full. This is particularly so because the Consumer Friend agreement is binding on, and enforceable on MBD as a "permitted assign" or "*legal successor*". Second, RCS's disposal of the portfolio to MBD, coupled with MBD's insistence on a unilateral switch-over and rerouting, constitutes, in substance a withdrawal of the relevant debts or portfolio for purposes of clauses 3.4 or 3.5, which triggers clause 13.1. Clause 13.1, according to the Applicant, affords protection to Paying Matters which cannot be defeated by a change in ownership and the conduct of MBD erodes that very protection.

[20] The Applicant avers that the harm that Consumer Friend is suffering is continuous and the only effective remedy is the stopping of MPD's conduct and the restoration of its right to administer the portfolio

until Paying matters are paid in full.

The First Respondent's Answering Affidavit

[21] The First Respondent, in an affidavit deposed to by its manager director, Mr Jon Garde, avers that the Applicant's application must fail on the basis that the Consumer Friend Agreement was never assigned to MBD and MBD never became the legal successor to RCS. Furthermore, Consumer Friend has no legal duty to insist on receiving payment from any debtors. Additionally, Consumer Friend is not the creditor under the various payment plans and as such has no contractual rights against debtors in the RCS portfolio, nor is there a legal nexus between Consumer Friend and the debt counsellors and PDA's as far as the RCS portfolio is concerned. According to the First Respondent, for the Applicant to succeed in the application, it must prove that the rights and/or obligations established by the Consumer Friend Agreement was assigned or otherwise transferred to MBD. In other words, MBD cannot become the legal successor to RCS other than through a valid assignment or transfer of such rights, something that did not happen.

[22] The First Respondent further avers that in terms of Clause 1.4 of the Consumer Friend Agreement, it is only binding on and enforceable by the trustees, permitted assigns, liquidators and other permitted

assigns whilst Clause 25.4 provides that in the event that RCS sells its business, or in respect of which Consumer Friend renders services, RCS would be entitled to cede, assign and/or transfer its rights and delegate its to the purchase of such business without notice to Consumer Friend. The First Respondent reiterates that whilst in terms of the already mentioned provision, the Consumer Friend could become binding upon permitted assigns, RCS must actually cede, assign or transfer its obligations under the Consumer Friend Agreement to the purchaser to give effect thereto.

[23] Mr Garde further explained that the negotiations between RCS and MBD concerning the acquisition of the RCS portfolio culminated in the conclusion of a written Sale of Books Agreement on 25 September 2025 in terms of which:

23.1 RCS, with effect from the determination date, ceded to MBD all Claims, including without limitation all right of recourse, against the Debtors; and

23.2 RCS cedes to MBD all RCS rights, title and interest and the Key Information (as defined in clauses 1.2.15 and 4.2);

23.3 MBD acknowledged that Claims as set out would in the

Computer File were at the time serviced in the form of debt collection by Consumer Friend, and with regard to Paying Matters:

23.2.1 MBD would be liable for all commissions and/or fees applicable as agreed by MBD and Consumer Friend from the Effective date; and

23.2.2 RCS would not incur any liability in respect of the agreement and/or agreement between MBD and Consumer Friend following the Effective date;

[24] The First Respondent further states that in terms of Clause 16.10 of the Agreement, the parties waived right to rely on any alleged express provision not contained in the Agreement and no party may rely on any representation which allegedly induced that that party to enter into the agreement unless the representation is recorded in the Agreement. In the same vein, the parties agreed that no contract varying, or adding to, or cancelling the agreement, and no suspension of any right under the agreement would be effective unless reduced to writing and signed by or or on behalf of the parties.

[25] Flowing from the aforegoing, so further avers the First Respondent through Mr Garde, it is clear that the RCS did not assign any rights to

and obligations derived from the Consumer Friend Agreement. Instead, the parties envisaged that MBD would conclude a new agreement with Consumer Friend concerning its services and the commission to be charged in respect thereof. This is particularly so because even the Sale of Book Debts Agreement recorded the factual possession concerning Consumer Friend's role pending conclusion of a possible agreement between MBD and Consumer Friend as confirmed by Mr Robert James Amolis who signed the Sale of Book of Debts Agreement on behalf of MBD.

[26] Mr Garde averred that following the acquisition of the RCS portfolio, he and Mr Graeme Fourie met with Mr Toth (the Chief Executive Officer of Consumer Friend) on 13 November 2025 via Microsoft Teams. During that meeting, they initiated a negotiations towards an agreement with Consumer Friend and proposed an appropriate and market related commission structure for the services which would be rendered by Consumer Friend. However, Mr Toth refused to accept the proposal stating that according to him, MBD had stepped into the shoes of MBD. Mr Garde states that they (he and Mr Fourie) informed Mr Toth that no such contract existed between Consumer Friend and RCS.

[27] Mr Garde however, acknowledged that following the acquisition of

the RCS portfolio, Consumer Friend continued to render administration services for that portfolio and MBD continued to pay it commission purely as an interim measure while it sought to negotiate a formal agreement. According to Mr Garde, on 27 November 2025, Mr Toth advised that he would refer the disagreement concerning the existence of an agreement to Consumer Friend's legal advisors and would revert. He however did not revert, and it became clear to MBD that Consumer Friend was not prepared to negotiate an agreement, as envisaged by the Book of Debt Agreement.

[28] Consequently, on 29 January 2026, MBD addressed a letter to Consumer Friend wherein it recorded what is already set out in Mr Toth's founding affidavit.

[29] According to Mr Garde, MBD never became a permitted assign or legal successor to RCS under the Consumer Friend Agreement and after the termination of the tacit agreement, MBD became entitled to receive payment from its debtors and to direct the PDAs to pay directly to it. Neither does Consumer Friend have any right to receive payments from the PDA. Furthermore, without any agreement between Consumer Friend and MBD, the former is unlawfully processing the debtor's

personal information.

[30] As to the procurement process conducted by RCS during 2024 and 2025 relating to the sale of certain debt review portfolios, the First Respondent asserts and reiterates that it is non-binding. Whilst it so that the RFI/RFP culminated in the in the conclusion of the Sale of the Book of Debts Agreement, MBD is not bound to any terms or conditions, representations or the like not recorded therein. In addition, so continues the averment, MBD never had “full knowledge” of the Consumer Friend Agreement with RCS as Consumer Friend have declined to provide MBD with annexures “B” and “C” which are integral to the Consumer Friend’s obligations. MBD did not take, and would not have taken, assignment of, or agreed to be bound by, an agreement containing terms which were not disclosed to it.

The Third Respondent’s Affidavit

[31] Despite no relief being sought against it, and notwithstanding its non-opposition to the application, the Third Respondent, filed an affidavit depose to by its Chief Executive Officer Marine van Brakel. Ms Brakel states and affirms RCS’s position, which is that the obligations and liabilities arising out of the Consumer Friend Agreement were in fact assigned to MBD in terms of the MBD agreement. According to her,

MBD was well aware of and accepted the continued role that Consumer Friend would play as the managing agent and the commercial terms of Consumer Friend's involvement, when acquiring these portfolios under the MBD agreement. Accordingly, it RCS's position that Consumer Friend is entitled to remain as the managing agent in respect of the claims sold by RCS to MBD, all of which are the subject of debt review.

[32] Proving the contextual facts which led to the conclusion of the MBD agreement, Ms Brakel confirms that the MBD agreement was preceded by RFI (Request for Information) and RFP (Request for Proposal). According to RCS, during this process, it (RCS), repeatedly conveyed to prospective purchasers that Consumer Friend would have an ongoing role as managing agent of the Paying matters. She further explained that the Paying Matters which were sold by RCS to MBD comprised in excess of 44,000 debt review accounts, all of which had been under debt review for nine months or longer, and a significant number of which had reached an advanced stage in the debt review process and which were Paying Matters. Consumer Friend, as the management agent of these debt review accounts played a key role in progressing the aforesaid accounts in the debt review process, and ultimately collecting funds to be distributed as part of that process. Ms Brakel states that this has been achieved as part of a strategic

commercial partnership between RCS and Consumer Friend.

[33] The Second Respondent further states that in formulating the MBD proposal it is clear that the latter dated 7 August 2025 references the following:

33.1 its existing relationship with Consumer Friend as a means to mitigate risk and provide a seamless transition;

33.2 In motivating for its acquisition of the debt review accounts, MBD lays the following basis;

33.2.1 it has built an excellent commercial partnership with Consumer Friend over the past three years;

33.2.2 it has acquired six portfolios with over 18,000 similar accounts which continue to be managed by Consumer Friend post sale; and

24.2.3 these were seamlessly integrated to the acclaim of the industry.

[34] Ms Brakel states that RCS's understanding of the MBD agreement is that the relevant obligations from the Consumer Friend agreement insofar as they relate to Paying Matters, have been assigned to MBD

and that the portfolio was acquired by MBD subject to Consumer Friend's ongoing role as managing agent. To this end, so continues RCS, the following facts appearing from the MBD agreement demonstrate this assertion:

34.1 Clause 7.2 provides that all obligations and liabilities of the Seller in relation to the Debtors and the Claims on or after the Determination date (being 29 June 2025) would pass to MBD on determination date;

34.2 The External Debt Collector ("EDC") is defined in clause 1.2.12 to be Consumer Friend.

The Replying Affidavit

[35] In the replying affidavit, Mr Toth re-emphasises that on the facts of this matter MBD falls within clause 1.4 in relation to the portfolio (as "other legal successor"), alternatively, as "permitted assign" and is accordingly bound by the Consumer Friend agreement in relation to the portfolio.

Issues for determination

[36] The core issue for determination in this application is whether the

relevant obligations and liabilities arising from the Consumer Friend Agreement and RCS have been assigned to MBD upon the acquisition by MBD of certain debt review portfolios from RCS in terms of the MBD agreement on 25 September 2025 and whether MBD is obliged to continue using Consumer Friend as a managing agent thereof. Put in another way, the question is to be answered is whether MBD became a permitted assign or legal successor. More specifically, the issue is whether MBD is bound by the Consumer Friend agreement by operation of clause 1.4 and must give effect to clause 13.1 in relation to the Paying Matters portfolio.

Analysis

[37] The matter at hand turns primarily on the interpretation of the Consumer Friend Agreement and whether it is binding on MBD.

[38] In *Natal Joint Municipality Pension Fund v Endumeni Municipality* 2012(4) 593 SCA Wallis JA restated the present state of the law regarding interpretation thus:

> "Interpretation is the process of attributing meaning to words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular 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 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 and 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."

[39] In *Comwezi Security Services (Pty) Ltd v Cape Empowerment Trust Ltd* [2012] ZASCA 126 (SCA) where the Court held thus:

"In the past, where there was perceived ambiguity in a contract, the courts held that subsequent conduct of the parties in implementing their agreement was a factor that could be taken into account in preferring one interpretation to another. Now that regard is had to all relevant context irrespective of whether there is a perceived ambiguity, there is no reason not to look at the conduct of the parties in implementing the agreement. Where it is clear that they have both taken the same approach to its implementation, and hence the meaning of the provision in dispute, their conduct provides clear evidence of how reasonable businesspeople situated as they were and knowing what they knew, would construe the disputed provision."

[40] Counsel for the Applicant contended that the Consumer Friend agreement, in particular clause 1.4 read with clause 25.4, contains express provisions extending its binding effect beyond the original signatories and expressly contemplates the transfer of RCS's contractual position upon sale of the relevant business or part thereof. According to this contention, Clause 1.4 is applicable in circumstances where (i) RCS sold the portfolio; (ii) the RFI/RFP process recorded that the portfolio came with Consumer Friend as managing agent and Consumer Friend retains Paying Matters; and (iii) MBD acquired the portfolio with knowledge of this.

[41] Furthermore, so continued argument for the Applicant, Clause 1.4 operates to treat references to RCS in the Consumer Friend agreement as including that successor, with the consequence that MBD is bound "*as fully and effectually as if* [it] *had signed this Agreement in the first instance*", including being bound to give effect to the clause 13.1 Paying Matters regime. Even if MBD is not characterised as RCS's "*permitted assign*" for purposes of clause 1.4, MBD falls within the further category

of “*other legal successors*” contemplated in that clause. On this approach, so goes the argument, the question is not whether there was a formal assignment of the Consumer Friend agreement to MBD, but whether, by acquiring the portfolio in the manner and on the terms recorded in the RFI/RFP process, and thereafter acting consistently with Consumer Friend’s continued administration, MBD became RCS’s legal successor in respect of the portfolio for purposes of clause 1.4, with the consequence that it is bound to the Consumer Friend agreement in relation to the portfolio.

[42] Counsel for the Respondent argued that there are no facts to support the contention that MBD was the assignee of the Consumer Friend obligations. Furthermore, there too is no contractual nexus between MBD and Consumer Friend. It was further contended that the Applicant brought this application without recourse to the MBD Sale agreement and was unaware of its terms as it was not in possession of a copy thereof. Those short-comings notwithstanding, the applicant seeks a final declaratory order that RCS had assigned its obligations in terms of the Consumer Friend Agreement to MBD and that, in relation to all of the assets forming the subject matter of the MBD sale agreement (which the applicant describes as “*the portfolio*”), MBD must comply with the Consumer Friend Agreement in RCS’s stead. According to the

Respondent the ultimate purpose, of this application is an attempt to retain the applicant's claims to substantial commission on each instalment paid by a debtor under debt review.

[43] In this matter, the legal conclusion sought to be drawn is that MBD became bound to the Applicant, either as a "*permitted assign*" or as some "*other legal successor*". In considering the issue of assignment and/or delegation, I first record the undisputed facts. They are:

43.1 RCS sold the portfolio to MBD (that is common cause);

43.2 the RCS procurement process which preceded any agreement between MBD and RCS notified potential purchasers that the portfolio "*came with the applicant as the managing agent*" (that recordal is not disputed, but its contractual relevance is);

43.3 Consumer Friend retains Paying Matters (that recordal does not appear in the June 2025 RFP);

43.4 MBD acquired the portfolio with knowledge of these preceding facts.

[44] Ordinarily contractual rights and obligations are enforceable only between the contracting parties. Christie[1] explains this principle as follows:

> "The basic idea of contract being that people must be bound by the contracts they make with each other it would obviously be ridiculous if total strangers could sue or be sued on contracts with which they were in no way connected. The doctrine that prevents this ridiculous situation arising is usually known as the doctrine of privity of contract: parties who are not privy to a contract cannot sue or be sued on it."

However, privity of contract is, subject to the parties' express agreement as to successors or assigns for a contract could be delegated, ceded or assigned to a party that was not initially privy to it. Christie explains that (i) delegation occurs when the debtor is replaced by a third party but the creditor remains the same, (ii) cession occurs when the creditor is replaced by a third party but the debtor remains the same and (iii) a combination of delegation and cession – also referred to as assignment – occurs when a third party entirely replaces one of the parties to the contract.[2]

[45] In assessing whether a successor may be bound, the starting point is that succession alone is not necessarily sufficient. Some further

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1 R H Christie: *The Law of Contract in South Africa*, 7th Edition, p 302.

2 R H Christie: *The Law of Contract in South Africa*, 7th Edition, p 521-522.

agreement, conduct, or other legal basis must link the successor to the obligation in a manner that requires it to comply with the original party's rights.[3] In the present matter, that additional legal basis is present as the portfolio was sold through an RFI/RFP process recording Consumer Friend's ongoing role as managing agent, MBD acquired the portfolio with knowledge of this and of the terms of the Consumer Friend agreement and acted consistently with that position by receiving performance and paying commission post-acquisition.

[46] I now turn to examine the clauses of the Consumer Friend Agreement relied upon by the Applicant.

[47] Clause 13 regulates termination of the Consumer Friend Agreement and provides thus:

> "13.1 In the event of withdrawal of Debts by RCS in terms of clauses 3.4 or 3.5 or termination in terms of clause 11.1 then and in such an event:
>
> > 13.1.1 all Paying Matters shall be retained by the Debt Collector until such time as these Debts have been paid in full;
> >
> > 13.2 all necessary and relevant provisions are intended by clause 1,12, shall survive the termination of this Agreement with regard to Paying Matters."

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3 This is consistent with the approach in *Dyayanundh v Narain* [1983] 1 All SA 68 (N) at 73.

[48] It cannot be disputed that the Consumer Friend agreement is performance-based and not a once-off claim for money. Properly construed, the retention in clause 13.1 is not limited to internal accounting between Consumer Friend and RCS. Its commercial purpose is to secure Consumer Friend's continued administration of, and remuneration stream arising from, "*Paying Matters*" until they are paid in full. Where a third party becomes RCS's successor or assign in relation to the portfolio, clause 1.4 operates to prevent the Paying Matters protection from being defeated by the change in ownership of the portfolio.

[49] MBD contended that the Consumer Friend agreement could only become binding upon permitted assigns if RCS ceded, assigned or transferred its obligations under the Consumer Friend Agreement to the purchaser to give effect thereto as envisaged in Clause 25 of the Consumer Friend Agreement which reads as follows:

> **"25 NO ASSIGNMENT**
>
> 25.3 RCS shall be entitled to sell, ceded assign delegate or in any other way alienate or dispose of any or all of rights and obligations under the terms of this Agreement to any other company in the RCS Group without prior consent of the Debt Collector.

> 25.4 in the event that RCS sells its business or any part thereof ("the business") to which or in respect of which the Debt Collector renders the Services, RCS shall be entitled to cede, assign and/or transfer its rights and delegate its obligations under this Agreement to the purchaser of such business without notice to the Debt Collector.

[50] In *Simon NO v Air Operations of Europe and Others* 1999 (1) SA 217, the Court held that the word 'assignment' in our law was generally used to denote a transfer of both rights and obligations, but its precise meaning in a given case might depend on the context in which it was used. I do not agree that RCS must cede, assign or transfer obligations under the Consumer Friend agreement for the purchaser to give effect thereto. 'Assignment' may be established from the facts. Besides, *MTK Saagmeule (Pty) Ltd v Killyman Estates (Pty) Ltd* 1980 (3) SA 1 (A). demonstrates how, "*even in the absence of the necessary consent, the contract between the party stepping out of the original contract and the party stepping in may be enforceable*."

[51] The RFP unequivocally records that the acquisition of the Book of Debts comes "*with Consumer Friend as a managing agent*". To my mind, this declaration, read with all the facts relating to procurement, establishes without a doubt the requisite "assignment" of MBD. It in my opinion, the facts establish that MBD falls into the category of a "legal successor".

[52] I now turn to consider clause 1.4. It provides as follows:

> "The Agreement shall be binding on and enforceable by the trustees, permitted assigns, liquidators or other legal successors of the Parties as fully and effectually as if they signed the Agreement in the first instance and reference to any Party shall be deemed to include such Party's trustees, permitted assigns, liquidators or other legal successors, as the case may be."

[53] In my view, clause 1.4 operates independently and is framed in broad terms. It emphasises that the Consumer Friend Agreement is "*binding on and enforceable by*" the "*permitted assigns"* and/or *"other legal successor"* of the parties *"as fully and effectually as if they had signed"* it and that reference to a *"party"* are deemed to include such successors or assigns. Besides, this provision must be considered, in line with the light of the procurement process. It will be recalled that the Respondent in its bid capitalised on its relationship with Consumer Friend and acclaim and achievements flowing therefrom. More specifically MBD stated that:

53.1 it has built an excellent commercial partnership with Consumer Friend over the past three years;

53.2 it has acquired six portfolios with over 18,000 similar accounts which continue to be managed by Consumer Friend post sale; and

55.3 those were seamlessly integrated to the acclaim of the industry.

[54] Additionally, Ms Brakel in her affidavit (also referred to by the Respondent) states that:

> "[18] Consumer Friend's continued role in managing the debt review accounts is clear from the documentation attached to the founding affidavit in the RFI and RFP process and was expressly disclosed to potential bidders. MBD clearly appreciated the significance of Consumer Friend's anticipated ongoing role in managing the debt revie accounts. It was for this reason that it requested and was supplied with the Consumer Friend Agreement by RCS during September 2024in the context of formulating a bid/offer and arriving at the proposed sale price. It thus had full knowledge of all the terms of the Consumer Friend agreement and what obligations would be taken over.
>
> [19] MBD clearly considered this role and the Consumer Friend agreement when formulating the MBD proposal. This is evident from inter alia, the following references in the MBD proposal (which is dated 7 August 2025, a month before the MBD agreement was signed)."

[55] Based on the aforegoing facts, it is my judgment that MBD is bound by the Consumer Friend agreement as RCS's assign or legal successor as contemplated in Clause 1.4. It follows that MBD is bound to the Consumer Friend agreement in relation to the portfolio, including the Paying Matters regime in clause 13.1 and cannot remove Consumer

Friend from the administration and payment-flow arrangements by unilateral rerouting.

[56] I am fortified in so holding by the fact that MBD has recognised Consumer Friend's continued management (i) before MBD 's acquisition of the portfolio during the RFI/RFP process and (ii) post-acquisition through the implementation and operation of the payment-flow arrangement (See *Comwezi Security Services, supra).* Even if I may wrong finding that in finding that MBD is bound by the Consumer agreement as a "legal successor", Consumer Friend's case is not founded on succession alone. The link is (i) MBD's acquisition of the portfolio through an RFI/RFP process that recorded the continued operational arrangement (Consumer Friend retains Paying Matters); (ii) MBD's knowledge of and reliance upon this when it submitted its bid and pricing; and (iii) MBD's post-acquisition conduct in receiving the benefit of Consumer Friend's administration and paying commission. That conduct provides the basis on which MBD is obliged to comply with Consumer Friend's rights under the Consumer Friend agreement.

[57] It remains to be said that the Respondent relied primarily on the fact that Consumer Friend was not a party to the MBD agreement. Reference was made to certain clauses of that agreement. I do not deem it necessary in this judgment to make any reference to the MBD

and RCS agreement because the Applicant, sensibly made it clear from the outset that it places no reliance on an agreement it was not part of. Consequently, nothing turns on the fact that the Applicant moved this application without having had recourse to the MBD Agreement. This is so because the MBD agreement cannot deprive Consumer Friend of its rights in terms of the Consumer Friend agreement, including clause 1.4 and Paying Matters regime in clause 13.1. I have already found that those provisions bind MBD in relation to the portfolio because MBD falls within clause 1.4 as RCS's "*permitted assign*" and/or "*legal successor*".

Conclusion

[58] I have in this judgment held that MBD is bound, in relation to the portfolio, by the Consumer Friend agreement by operation of clause 1.4 of the Consumer Friend agreement, properly construed in the factual circumstances of (i) the RFI/RFP process and the terms on which the portfolio was marketed and sold, (ii) MBD's knowledge of Consumer Friend's continuing role and the commission and "*evergreen*" contract reflected in MBD's own bid materials and (iii) MBD's post-acquisition conduct in permitting Consumer Friend to continue servicing and in paying commission. In consequence, MBD is obliged to give effect to the clause 13.1 "*Paying Matters*" regime and may not resort to self-help by rerouting payments and removing Consumer Friend as the

administrator. I am also satisfied that the hearing of the matter on an urgent basis was justified.

[59] For all these reasons, I issued the order in paragraph 2 of this judgment.

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NDITA, J