



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

**JUDGMENT**

Case no: 14246/2018

In the matter between:

**PLUMINEX (PTY) LTD**

**PLAINTIFF**

**AND**

**ST JOHANNIS ORGANISATION**

**DEFENDANT**

**Coram: Justice J Cloete**

**Heard: 10, 11, 12, 24 February 2026, 13 April 2026, 4 June 2026**

**Delivered electronically: 20 August 2026**

---

**ORDER**

---

- 1 The plaintiff's claim is dismissed.
- 2 The plaintiff shall pay the defendant's costs on scale B (party and party), and including the costs of counsel.

---

## JUDGMENT

---

**Cloete J:**

### **Introduction and relevant background**

[1] This is an action in which the plaintiff claims payment from the defendant of R3 518 976.58 plus interest and costs on the scale as between attorney and client. After various amendments to both parties' pleadings, abandonment during argument of one special plea, and an agreement reached in respect of quantum in the event of entitlement to the full amount of the claim being proven, the only issues for determination are whether: (a) a written service agreement (contract), squarely relied upon by the plaintiff, is enforceable; and (b) if so, the plaintiff is nonetheless limited to receiving payment of R1 255 024.15 as reflected in a written cession agreement dated 19 June 2020.

[2] The plaintiff sues in its capacity as cessionary of the claim of International Utility Brokers (Pty) Ltd (since placed in liquidation). The latter entity was previously Greystone Trading 1237 CC trading as International Utility Brokers (Greystone), until it was converted on 14 December 2016. At all material times, Mr Gerrit Germishuys represented it in its dealings with the defendant. For convenience I will refer to Greystone and International Utility Brokers (Pty) Ltd collectively as 'IUB'. The plaintiff is effectively the 'new' IUB.

[3] IUB conducted the business of utility auditing. This involved providing a service to clients in respect of their utility bills invoiced by local authorities,

with the specific purpose of identifying billing errors as well more favourable tariffs, to achieve cost savings for the client. The defendant is a non-profit organisation which conducts business as a large retirement facility in Parow, a suburb of Cape Town.

[4] During the trial Mr Germishuys, Mr Nieuwoudt Heerschap, IUB's director at the time, and the attorney who drafted the cession, Mr Gabriel Jordaan, testified for the plaintiff. The defendant called two witnesses, namely Mr Otto Gertholtz, the current chairperson of the defendant's management committee, and who was also a committee member at the time the contract was allegedly concluded with IUB, and Sister Marina Basson, whose signature appears on the contract and other documents.

[5] However, this case is unusual in the sense that, as will be seen from what follows, the testimony in chief of the plaintiff's first and pivotal witness, Mr Germishuys, was destructive of the essential elements of its own pleaded case. There is accordingly no point in dealing at any length with all the other evidence presented during the trial.

[6] The contract upon which the plaintiff relies was signed on 7 June 2017 by Mr Heerschap and Sister Basson above the words "properly authorised". The relevant provisions of the contract are as follows:

"5.1 Clause 1: the defendant appointed IUB to audit its utility accounts, which included the compilation of a report, highlighting specific cost savings and recommendations in monetary value, and presentation thereof to the defendant;

5.2 Clause 2: the contract period was 4 years, commencing when IUB's recommendations were implemented by it for the defendant, with the utility accounts to be audited monthly by IUB;

5.3 Clause 3: the defendant was under no obligation to accept IUB's recommendations, but if accepted, IUB would be entitled to 35% of any resultant savings to the defendant, to be invoiced at the end of each month and payable within 30 days; and

5.4 Clause 5.3: the contract ‘and all the annexures hereto’ contained the entire agreement between the parties, and neither party would be bound by any undertakings, representations, warranties, promises or the like not recorded therein.”

[7] On the same date Sister Basson signed both a “negotiation mandate” and “schedule of instruction” in favour of IUB. They reflect that she did so in her capacity as general manager on behalf of the defendant. Mr Heerschap later signed the negotiation mandate on behalf of IUB. On 9 June 2017, Sister Basson also signed a document(s) authorising IUB to access the defendant’s records with the local authority.

### **Summary of the amended pleaded cases**

[8] The plaintiff pleaded that the contract was concluded on 7 June 2017 between IUB, represented by Mr Germishuys and the defendant, represented by Sister Basson. After the contract was signed, Mr Germishuys conveyed IUB’s recommendations to the defendant, which were accepted by Sister Basson on its behalf. The plaintiff alleged that she also instructed IUB to proceed to implement the recommendations, as a result of which the parties, represented as aforesaid, also signed the negotiation mandate, which authorised IUB to negotiate on the defendant’s behalf with the local authority. On 9 June 2017, Sister Basson signed the local authority document(s).

[9] The defendant pleaded the following defences. First, Sister Basson signed the contract in the mistaken belief “that she was entitled to sign ... and that in any event there would first be recommendations made, which had to be agreed to by the defendant before the services to be provided by IUB were to commence”. The defendant also alleged that Mr Germishuys did not convey any recommendations to the defendant on 7 June 2017 but only on 28 June 2017.

[10] Second, Sister Basson was not authorised to sign because: (a) decisions in respect of contractual obligations “of this nature” are taken by the defendant’s management committee; (b) she was only, as general manager, responsible for the day-to-day operational management of the old age home and frail-care divisions of the defendant, including the management of nursing, administration and human resources, but did not sign contracts with suppliers without prior budget approval or express authority from the management committee; and (c) the contract was only tabled at the management committee meeting on 20 June 2017 and was not accepted or approved by it.

[11] The defendant also relied on its constitution in this regard; and further pleaded that Mr Germishuys knew, or ought to have known, that the defendant is a non-profit and public benefit organisation with a governing body which has authority to enter into such contracts, and also that the defendant only employs “consultants” for reasonable remuneration and must ensure that a fee structure meets this requirement.

[12] Third, after having met with the defendant’s representatives on 28 June 2017, and having been informed that the committee did not approve IUB’s fee structure, Mr Germishuys presented an “amended contract” with a reduced fee of 25%, but was informed during July 2017 that IUB should not commence rendering services, and on 1 August 2017 that the defendant “did not consider the contract binding”. The defendant, which has not paid a single invoice issued by IUB, denied that, in the circumstances, it is indebted to the plaintiff in the amount claimed or at all.

[13] In its replication, the plaintiff pleaded that in the event of the court finding that Sister Basson was not duly authorised, the defendant is estopped from denying such authority by virtue of the following: (a) Sister Basson was general manager and indicated that she had authority to conclude service agreements on the defendant’s behalf; (b) the general manager of a facility such as that of the defendant usually has the authority to conclude such agreements;

(c) by appointing her as general manager and permitting her to conduct the business of the facility as she did, the defendant represented to third parties wishing to enter into such a contract with the defendant that Sister Basson would be the authorised person with whom to negotiate and conclude same; (d) ‘acting as aforesaid’ the defendant made such representation to IUB; and (e) acting on the belief of the correctness of such representation, IUB was induced to do so to its detriment.

[14] The plaintiff admitted that a meeting was held on 28 June 2017, but pleaded that this was in respect of settlement negotiations after a dispute was raised in relation to the 35% fee, and as such privileged. It was further alleged that the cost savings report furnished by Mr Germishuys to the defendant’s management committee on 28 June 2017 contained exactly the same recommendations as those provided on 7 June 2017.

[15] From the plaintiff’s pleadings, and the terms of the contract itself, there were thus two foundational pillars which the plaintiff was required to prove in order to discharge its onus that an enforceable contract came into existence with the defendant. First, that Sister Basson was either duly authorised by the defendant to conclude it on her own, or that by virtue of the position she held with the defendant, the latter was estopped from denying her authority to do so. Second, that at the meeting of 7 June 2017, Sister Basson not only accepted, but also instructed, IUB to implement its recommendations.

[16] The importance of pleadings should not be underestimated. This has been repeatedly stated by our courts, and was aptly encapsulated by the Constitutional Court in *SATAWU and Another v Garvas and Another*<sup>1</sup> as follows:

“Holding parties to pleadings is not pedantry. It is an integral part of the principle of legal certainty which is an element of the rule of law, one of the values on which our Constitution is founded...”

---

<sup>1</sup> *SATAWU and Another v Garvas and Another* 2013 (1) SA 83 (CC) para 114.

**The relevant evidence in support of the plaintiff's pleaded case and evaluation thereof**

[17] Mr Germishuys testified as follows. In 2017, IUB had a number of retirement facility clients. He had previously approached the defendant during 2012, and was given access to its local authority records, seemingly under a written mandate. After conducting research, he reported back to the defendant, but it was not interested in IUB's services at that stage.

[18] He again approached the defendant in 2017, during the time of water restrictions due to the ongoing drought in the Western Cape. He still had access to its records as a result of the 2012 mandate, and considered this to be a mutually beneficial opportunity since higher water tariffs were being imposed by the local authority. He made a 'cold call' at the defendant's premises on 2 June 2017. He met with Ms Lindy La Grange and explained to her what IUB could offer by way of utility auditing. He asked for the manager's details, which Ms Le Grange provided in the form of Sister Basson's business card.

[19] He telephoned Sister Basson the following day. Again, he explained what IUB could offer and requested a meeting. Sister Basson responded that she would need to speak to either the treasurer or head of the finance committee (he could no longer recall which) in order to set up a meeting. The meeting took place on 7 June 2017. Present, along with himself, were Sister Basson, Ms La Grange (who he came to learn was the defendant's bookkeeper) and Mr Uwe Voigt, the head of the finance committee.

[20] By the date of the meeting he had obtained from the local authority the defendant's previous 12 months consumption figures for water and electricity. Based on that information he had already prepared a composite cost savings report to be presented to the defendant's three representatives at the meeting, where he explained to them why the utility bills had increased, as he put it,

“exponentially”. Thereafter he presented them with a copy of the draft contract with IUB and explained its terms to them.

[21] He was referred to two cost savings reports, one dated 27 June 2017 (for water) and the other dated 28 June 2017 (for electricity) which apparently comprised one comprehensive report. According to him, although the dates were different to that presented at the 7 June 2017 meeting, they were in fact the same. His explanation was that the dates of these reports were automatically updated when they were printed again for purposes of the 28 June 2017 meeting. The composite report allegedly bearing the date of 7 June 2017 was not discovered by either party.

[22] Mr Germishuys’ evidence was further that the composite cost savings report (which also contained recommendations) was presented to the defendant’s representatives at the same time as the proposed contract on 7 June 2017. This changed when he stated that he first presented them with the draft contract, and only once it was signed, the composite cost saving report, followed by the negotiation mandate and schedule of instruction, the latter because the local authority “occasionally requires” an updated instruction.

[23] Crucially however, he testified that Sister Basson only signed the contract *after* she asked Ms La Grange and Mr Voigt if they were in agreement that she could, or should, do so: “Sister Basson asked the other two people present that I mentioned earlier as well if they are in agreement for her to sign the service agreement. All three of them agreed ... and the service agreement was signed, and then this cost-savings report was presented to them, to the three of them present at that meeting”.

[24] He later repeated this as follows: “She asked then are you guys in agreement that we sign this service agreement? That was now Lindy La Grange and Uwe Voigt that was also present at the meeting ... they said yes... and she signed the service agreement”. (Mr Heerschap, who was not present, appended his signature at IUB’s offices in Somerset West later the same day, and this appears to be the extent of his involvement in relation to the contract itself).

[25] This evidence goes directly to the first foundational pillar of the plaintiff's pleaded case, namely that Sister Basson was authorised, without reference to anyone else, to conclude a valid and binding agreement on the defendant's behalf, alternatively that the defendant was estopped from denying this, given her position as general manager. In complete contradiction, it was the testimony of Mr Germishuys himself that Sister Basson: (a) informed him that she required permission from other representatives of the defendant (Ms La Grange and Mr Voigt) to engage with him at all; and (b) did not sign anything before asking them whether she could do so. This evidence is destructive of that pillar.

[26] When asked what he had explained about savings at the 7 June 2017 meeting, given that he only presented the cost savings report once Sister Basson had signed the contract, Mr Germishuys replied: "I told them we are in possession of the cost savings report that will indicate a clear saving ... or clear saving as to how the savings can be achieved", but that the contract would have to be signed before he would disclose its contents.

[27] Despite his testimony in chief that Sister Basson needed the consent of both Ms La Grange and Mr Voigt for her to sign the contract, Mr Germishuys' evidence was that it was only during the later meeting with the defendant's management committee on 28 June 2017 that he heard, for the first time, that Sister Basson was not authorised in her sole discretion to sign the contract on the defendant's behalf. He later contradicted himself:

"My understanding was of my meeting which was held on 7 June, that the people representing St Johannis Organisation had the authority to sign. Especially the fact that Sister Basson was not alone in signing ...our service agreement, two other people were present. She consulted them before signing it. All three of them were in agreement...So according to myself and [IUB], the service agreement was in place."

[28] He was referred to a report prepared by Sister Basson on 19 June 2017 for purposes of the defendant's management committee meeting to be held on 20 June 2017, in which the following appeared:

"IUB-International Utility Brokers

Work in three different phases in order to achieve savings:

1. Firstly, they do an audit of the utility accounts ... in order to determine if the client has been charged correctly in the past.
2. Once this has been completed, IUB will check if the client is on the most optimal tariff available for the particular accounts.
3. Lastly, they can make technical recommendations regarding operational equipment in order to reduce usages.

If they find that a more optimal tariff is available, they will compile a savings report which is then presented to us, which they did. *If we accept IUB's recommendations, we and IUB share in savings and or refunds exclusively resulting from these implementations for a set amount of time. In the event we decide not [to] accept any of IUB's recommendations, we are under no obligation to do so and therefore do not owe anything to IUB.*"

[my emphasis]

[29] When asked to comment on the above, Mr Germishuys replied:

"This is basically a summary of our meeting that we had when I presented the cost-savings report. She basically translates everything that was conveyed to her together with the cost-savings report as to how IUB goes about our business, what has happened up to this particular date, and the recommendations that we have made, plus where those recommendations currently stand, *plus what will happen if those recommendations are implemented ...*" [my emphasis]

[30] Mr Germishuys' evidence on this score was thus also destructive of the second foundational pillar of the plaintiff's pleaded case. As set out above, the plaintiff had specifically pleaded that at the meeting of 7 June 2017, Sister Basson had both *accepted* the recommendations and instructed IUB to *implement* them. On Mr Germishuys' own version under oath, she had not done so.

[31] Moreover, the minutes of the meeting of the defendant's management committee meeting of 20 June 2017, to which Mr Germishuys was also referred, supports the defendant's assertion that no enforceable contract was concluded. The minutes read in relevant part that:

"4.2 IUB: company that specialises in assisting companies with municipal bills and proposing cost reductions was discussed.

Concern was expressed by MC members over the 4 years contract during which IUB would share 35% of the savings. This would mean a sizeable amount which could be saved if either a once-off payment would be made or direct representation by the St J Org. would be done at the municipal authorities.

It was agreed that J.H. will look into finding an alternative to dealing with municipality that does not entail the costing that would be incurred by IUB."

[32] Mr Germishuys himself commented that: "Okay, in a nutshell it would seem that this – that the *proposal* was presented and discussed with the MCO. I assume that is the management committee members. And they decided that they would rather try to negotiate with the municipality on their – to do it themselves". [my emphasis]

[33] He was also referred to an email sent to him on the day after that meeting, i.e. 21 June 2017, in which Ms Heike Nel of the defendant, writing on behalf of Sister Basson, informed him that: "She has asked for our agreement to be put on hold, as it is currently under discussion with the board of the organisation...". He confirmed that a meeting was then arranged for 28 June 2017 in which IUB and the defendant attempted to reach agreement, particularly in relation to the 35% fee proposed, but nothing came of it. (It was at the same meeting that, according to him, he also presented the same cost-savings report to the representatives of the defendant.)

[34] It is against this testimony that all the evidence of the steps allegedly taken by Mr Germishuys thereafter in relation to cost savings for the defendant could not, and did not, advance the plaintiff's case. The plaintiff's claim was

based upon an enforceable contract, not enrichment of the defendant at its expense. It was for the plaintiff to prove that such a contract came into existence. Regrettably for the plaintiff, the testimony of their pivotal witness, Mr Germishuys, demonstrated the contrary.

[35] For sake of completeness I will touch on other parts of his evidence since they are relevant to credibility. In cross-examination Mr Germishuys, in response to a question from the court, altered his version once again. He claimed that acceptance of IUB's recommendations occurred by signature of the negotiation mandate and the document(s) for the local authority. This too changed when he answered, in response to questions by counsel for the defendant, that it was the signature of the negotiation mandate, schedule of instruction *and* the local authority document(s) which constituted acceptance of the recommendations. He conceded however that the contract itself made no mention of this. Moreover, there are no annexures to the contract and, as previously stated, clause 5.3 expressly recorded that its terms were the sole memorial of the contract between the parties.

### **Brief overview of the other evidence**

[36] Mr Heerschap testified in relation to the corporate history of IUB, its general business *modus operandi*, its liquidation, and how the cession came about. This evidence did not impact on the plaintiff's case concerning the allegedly enforceable contract with the defendant, which was fact specific, and in respect of which Mr Heerschap confirmed he had no direct involvement. Mr Jordaan testified about the cession, but given the evidence of Mr Germishuys, it is not necessary to consider whether the plaintiff's claim is limited to the amount reflected therein.

[37] Mr Gertholtz gave evidence about how decisions such as the contract with IUB had to be taken at management committee level. This would have been relevant if the plaintiff had advanced a cogent and potentially sustainable

case in respect of an enforceable contract, but it did not. It was also of no assistance to the plaintiff to attempt to construct a case through cross-examination of Mr Gertholtz on issues about which he clearly had no direct knowledge, or which amounted to propositions of law.

[38] Sister Basson testified that at the time she signed the contract she was employed as the defendant's nursing services and general manager. She did not make what she called "financial decisions". In her understanding she was involved in such decisions, but she prevaricated, first stating that such decisions were made by the bookkeeper and the treasurer, and subsequently that generally speaking: "Decisions were made always through the chairperson. I can also have input, mainly it goes through the chairperson and then it goes to the board for further discussion and the board is the management committee members". She confirmed that she was required to submit a written report on items for discussion at management committee meetings.

[39] Sister Basson had almost no independent recollection of what had transpired in relation to the contract, given the passage of time (of some 9 years). Her employment with the defendant had also since terminated under seemingly fraught circumstances. What she could independently recall was that at the meeting of 7 June 2017 it was discussed "how much we can save, how much they can save on the water issue", but not that she had been presented with any cost savings report.

[40] Sister Basson confirmed that her signature appeared on the contract and other documents. Her evidence was first that she had assumed she had authority to sign them since a board member, the treasurer Mr Voigt, had been present. When asked what she thought would happen thereafter, she replied: "Well as this is the first meeting I mean surely they [IUB] should go and investigate all our documents from the municipal accounts to show what they had to offer before we can proceed".

[41] When asked in cross examination about her assumption that she was authorised to sign, she responded: “[it] was that if the board member is present and it is your treasurer that it would be right to start off by signing for them to start the investigation...”. However, she then testified that she did not recall discussing the contract with anyone before she signed it, and to her “it made no sense” that she would have, but immediately thereafter she said that she would not have decided to sign anything on her own, and there probably would have been a discussion with Mr Voigt before signing. After the court requested clarification, she responded that: “Maybe I was wrong. Can I rephrase my answer ... surely there was a meeting so we had to talk, so there probably was a discussion”.

[42] She was asked about the reference in her report to the management committee that a cost savings report had been presented at the meeting with Mr Germishuys. She replied that if she had received one she would have attached it to her report, and that she must have incorrectly worded it: “My sentence is wrong”. She also testified that at the time of preparing and submitting her report to the management committee her understanding was that the contract “was still open for acceptance”.

## **Summation**

[43] During argument it was submitted on behalf of the plaintiff that, because it was undisputed that Sister Basson’s signature on the contract appeared above the words “properly authorised”, and that she was general manager at the time, this constituted *prima facie* evidence that she was indeed authorised. It was also submitted that this placed an evidentiary burden on the defendant to adduce evidence in rebuttal (and which it had not discharged).

[44] I disagree. In my view this fundamentally misconstrues the evidence of Mr Germishuys, with which I have already dealt in some detail, and which contradicted the essentials of the plaintiff’s pleaded case. There was no

evidentiary burden on the defendant to assist the plaintiff by plugging the holes in his testimony.

[45] The same applies to the submissions made concerning “acceptance” of the recommendations and the consequent enforceability of the contract. At best for Mr Germishuys he did not know what constituted acceptance, since he gave various different versions, which I have also dealt with above; but more particularly, he confirmed, with reference to the defendant’s own documents, that upon conclusion of the meeting of 7 June 2017 no recommendations had been accepted by the defendant. The contract is clear on this score – only once the recommendations were accepted would an enforceable contract come into existence, and there is no evidence that the defendant subsequently accepted them.

### **Conclusion and costs**

[46] Having regard to the foregoing, the plaintiff’s claim must fail. There is no reason why costs should not follow the result. Counsel for the plaintiff sought costs on scale C as an alternative to attorney and client costs in the event of the plaintiff succeeding. Counsel for the defendant asked for costs on scale C, alternatively on scale B. I do not believe that costs on scale C for a matter of this nature is warranted. Costs of the amendment applications during the trial were ordered to be costs in the cause, so they too follow the result.

### **Order**

[47] The following order is made:

- 1 The plaintiff’s claim is dismissed.**
- 2 The plaintiff shall pay the defendant’s costs on scale B (party and party), and including the costs of counsel.**

---

**J I CLOETE**  
**JUDGE OF THE HIGH COURT**

Appearances

For plaintiff: Mr J Tredoux  
Instructed by: Jordaan & Ferreira Inc

For defendant: Mr D van Reenen  
Instructed by: Hildebrand Attorneys