

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2025-219215

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
25 August 2026	
DATE	SIGNATURE

In the matter between:

SATL FREIGHT (PTY) LTD

Applicant

And

TRANSNET SOC LTD t/a TRANSNET

Respondent

NATIONAL PORTS AUTHORITY

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties / their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Caselines/CourtOnline by the Judge's secretary. The date of this order is deemed to be 25

August 2026.

J U D G M E N T

CORAM: LIEBENBERG AJ:

- [1] The plaintiff claims summary judgment for an agreed amount of compensation as a result of the early termination of two long-term leases. The defendant raises a special plea and three defences to the merits of the matter.
- [2] As a dilatory plea, the defendant contends that the claim must be stayed pending arbitration of the dispute between the parties. Both leases contain an arbitration clause in terms of which "*either Party shall have the right to submit the dispute to arbitration*". The plaintiff argued that objectively seen, no *bona fide* dispute existed at the time of institution of the action and accordingly the plaintiff was entitled to institute the action against the defendant. Furthermore it was contended that the arbitration clauses provide a right to refer to arbitration but does not compel either party to institute arbitration proceedings.
- [3] I am satisfied that at the time of institution of the action there was a dispute between the parties regarding the defendant's liability to make payment to the plaintiff which dispute either party had the right to submit to arbitration. In terms of both lease agreements, it states that if the dispute has not been resolved within a certain time period, then either party shall have the right (not must) to submit the dispute to arbitration. The arbitration clauses provide the right to elect to refer to arbitration. The arbitration clauses stand in contrast to

other clauses of the same agreements of lease which mandates the referral of a dispute to arbitration, such as in the event of the parties and their auditors failing to reach agreement on the amount of the compensation payable on early termination of the lease agreement concerned.

- [4] In the result, the special plea does not carry the day.
- [5] The plaintiff's claim for a fixed sum of R 29 721 731.24 is founded squarely on the email of 17 July 2025 (Annexure "VR6"), which the plaintiff terms the "Written Confirmation". That email, authored by the defendant's deponent, states in clear and unambiguous terms: *"This email serves to confirm that both parties ... have agreed to the following terms subject to governance approval ... TNPA team will proceed to obtain the necessary approvals as discussed."* (own emphasis).
- [6] The defendant argued that the parties did not intend to create a binding obligation to pay until that approval was obtained. Until then, any "agreement" was inchoate.
- [7] The legal consequences of a suspensive condition are settled. In *ABSA Bank Ltd v Sweet and Others*¹ Tebbutt J held that where a contract is subject to a suspensive condition, *"the rights of the parties created by the contract remain in abeyance pending the fulfilment of the condition"* and that *"there is a binding agreement between the parties, which neither can renounce pending fulfilment of the condition"* – but critically, the obligation to perform (here, to pay the compensation) does not arise until the condition is fulfilled.
- [8] In the present matter, it is common cause that the required governance approval

¹ 1993 (1) SA 318 at 322-323.

was never obtained. The defendant's Special Plea states that the Chief Executive: Transnet National Ports Authority has not approved the termination of the leases nor the compensation amounts. The plaintiff does not dispute this fact, it merely argues that such approval was unnecessary.

[9] Because the suspensive condition was not fulfilled, no binding obligation to pay the compensation amounts ever came into existence. The email of 17 July 2025 remained a provisional, in-principle agreement – not an enforceable debt.

[10] The alleged "Written Confirmation" was conditional, the condition (governance approval) was not fulfilled, therefore no binding obligation to pay the claimed amount arose. This is a triable issue that cannot be decided on summary judgment.

[11] The plaintiff argued that in terms of the duly concluded agreements of lease, the defendant reserved for itself a right to early termination. It did not require separate authorisation to perform its obligations or exercise its rights in terms of the agreements of lease. Invoking the Turquand rule, the plaintiff maintained that it cannot be expected from the plaintiff to have known of the internal arrangements of the defendant pertaining to the early termination of the agreements of lease and whether the person who terminated the leases had the authority to do so or not. Additionally, the defendant does not state what steps it took to obtain the required authority which militates against the bona fides of the defence raised.

[12] The defendant's Delegation of Authority Framework ("DoA"), effective 1 July 2024, sets out the levels of authority required for different decisions. In terms of

the DoA, revenue-generating leases up to a value of R 500 million fall within the delegation of the Chief Executive: Transnet National Ports Authority. Where such leases are amended, terminated, or otherwise materially varied, the approval of the same delegated authority is required. The defendant argued that the early termination of the two lease agreements and the payment of compensation totalling R 29 721 731.24 constitute a material variation and a significant financial commitment. The decision to terminate the leases and to agree on a compensation amount accordingly required the approval of the Chief Executive.

[13] The power to terminate revenue-generating leases and to authorise compensation of nearly R 30 million is vested in the Chief Executive personally. There is no evidence that this power was lawfully sub-delegated to the officials who corresponded with the plaintiff. The email of 17 July 2025 (Annexure “VR6”) expressly acknowledges this limitation by stating that the agreement is “*subject to governance approval*”. That statement is a clear recognition that the author of the email lacked final authority.

[14] The Turquand rule does not protect a third party who knew or ought reasonably to have known of the irregularity. The plaintiff was expressly put on notice by the email itself: the agreement was “*subject to governance approval*”. This phrase is a clear warning that the officials did not have final authority. In such circumstances, a third party cannot rely on the Turquand rule.

[15] The statutory Turquand rule in section 20(7) of the Companies Act² provides that a person dealing with a company in good faith is entitled to presume compliance with formal and procedural requirements “*unless, in the circumstances, the*

² Act 71 of 2008.

person knew or reasonably ought to have known of any failure by the company to comply with any such requirement." The express condition "*subject to governance approval*" placed the plaintiff on reasonable notice. The plaintiff cannot now claim that it was entitled to assume approval had been obtained.

[16] Finally, the defendant argues that the amount claimed is not a liquidated amount but one dependant on estimation, expert input and discretion. The plaintiff cannot convert an unliquidated amount into a liquidate one merely by relying on a figure in an email.

[17] I am satisfied that the amounts were calculated by the defendant using agreed formulae the end result of which calculation the plaintiff agreed with. The amount is thus an agreed amount, liquidated in nature,³ albeit that the amount so agreed is subject to governance approval.

[18] In the result, the defendant raised a triable issue and summary judgment is inappropriate in the circumstances. I grant the following order:

1. Summary judgment is refused.
2. The defendant is granted leave to defend.
3. Costs of the application shall be costs in the cause of the action.

³ *Oos-Randse Bantoesake Administrasieraad v Santam Versekeringsmaatskappy Bpk en Andere* 1978 (1) SA 164 (W) at 168 G-H.



SARITA LIEBENBERG

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

For the plaintiff: Adv Kairinos SC instructed by Noke Pillay Inc

For the defendant: Adv Motepe SC instructed by Malatji & Co Attorneys

Date of hearing: 17 August 2026

Date of judgment: 25 Augst 2026