



**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 3rd day of September 2026

JUDGMENT

NDITA, J

[1] This is an application for leave to appeal against the whole judgment and order I issued on 28 July 2026, in terms of which I issued, *inter alia*, a declaratory order to the effect that the Respondent is a legal successor or assignee of the Second Respondent and was as such bound by the terms of the agreement between the Applicant and the

Second Respondent. More specially, the order that I issued is couched in the following terms:

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).

1. 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.
2. 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.
3. 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.
4. The first respondent is interdicted and restrained, pending full compliance with paragraphs 3 and 4 above, from:
 - 4.1 instructing any PDA, debtor, debt counsellor, or third party administrator or service provider to route payments away from the applicant in respect of the portfolio;
 - 4.2 receiving, retaining applying appropriate or dealing with payments in respect of the portfolio otherwise than as contemplated by the Consumer Friend agreement; and

4.3interfering. directly or indirectly, with the applicant's administration of the portfolio.

5. 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:

5.1the account identifiers;

5.2 the relevant PDAs and/or payment channels; and

5.3All receipts collected from 1 February 2026 to date.

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

The Parties

[2] 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.

[3] 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.

[4] 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[...] Park, J[...]

S[...] Drive, Pinelands, Western Cape.

[5] The parties are referred to in the same way as in the main judgment notwithstanding the fact that the First Respondent is the Applicant in the present application.

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] It is undisputed that 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. According to the Applicant 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 had appointed Consumer Friend to administer its debt review portfolio "on its behalf" with commission of 13% payable by RCS. The Applicant's version was that the Consumer Friend agreement is binding to and 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. It is common cause that on 12 February 2026, Consumer Friend became aware of an RCS notice dated 10 February 2026 distributed by MBD to the effect 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 notice obviously ousted Consumer Friend as the administrator of the concerned debt review accounts. RCS then issued a rectifying notice stating that Consumer Friend would continue administering the relevant debt review accounts. The parties were unable to resolve the impasse, hence the Applicant brought the application in respect of which judgment was granted in its favour.

Findings

[9] In my judgment I found that even though MBD was not a party to the Consumer Friend agreement with RCS, it was bound to the aforesaid agreement by virtue of being an assignee or legal successor pursuant to its agreement with RCS notwithstanding that there was no such formal agreement. In my judgment, the assignment or transfer obligations in the present matter have been established by the facts. I held that it was clear from the RFP preceding the conclusion of the contract that Consumer Friend was to remain the managing agent as envisaged in clause 1.4 of the Consumer Friend Agreement. This is also based on MBD's post-acquisition conduct in permitting Consumer Friend to continue providing the services and MBD in turn continued with paying the commission.

[10] I also found that the Consumer Friend agreement is binding and enforceable on MBD as a "permitted assign" or "*legal successor*". Furthermore, 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.

[11] Additionally, I held that the MBD agreement is irrelevant in considering whether the MBD was a permitted assign or legal successor, as a result of which in reaching the conclusion that MBD was a n assignee, I drew an inference from the common cause facts and the conduct of the parties.

Grounds of appeal

[12] In the grounds of appeal, the Respondent raises several points on the basis of which it alleges that I erred and/or misdirected myself in concluding that MBD as a permitted assign was bound by the Consumer Friend Agreement. In a nutshell, the Respondent state that:

12.1 The MBD sale agreement which the court ought to have had recourse to precludes the assignment or legal succession which gave rise to the declaratory relief;

12.2 There is no evidence of an agreement between Consumer Friend and RCS in respect of the defined portfolio and that Consumer Friend failed to establish such an agreement.

12.3 The court should have found that the express terms of the MBD Sale Agreement precluded the assignment or legal succession which gave rise to the declaratory relief in paragraph 2

of the order;

12.4 subsequent to such finding, the court should have found that there is no basis for relief sought in prayers 3 to 7 of the Notice of Motion granted in those terms.

12.5 The court should have found that the Applicant had failed to establish any of the requirements for the interdictory relief in paragraphs 3 to 6 of the order.

Analysis

[13] In terms of 17 (1) of the Superior Courts Act 10 of 2013:

Leave to appeal may only be given where the judge or judges concerned are of the opinion that:

- (a)(i) the appeal would have reasonable prospects of success: or
- (ii) there is some compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[14] In *Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para [6] Bertelsmann J held as follows:

“It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a

different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA (T) at 345 H. The use of the word “would” in the new statute indicates a measure of certainty that another court will differ the court whose judgment is sought to be appealed against.

The test on an application such as the present is whether there is a reasonable prospect of success on appeal. Stated differently, the question is whether there is a reasonable prospect that another court might come to a different conclusion. (See *Van Heerden v Cronwright and Others* 1985 (2) SA 342 (T) and *S v Sikosana* 1980 (4) SA 559 (A).”

[15] In *Ramakatsa v African National Congress and Another* [2021] ZASCA 31, Dlodlo JA, explained the application of section 17 (a)(i) thus:

“I am mindful of the decisions at high court level debating whether the use of the word ‘would’ as opposed to could possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. . . . The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal would reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.”

[16] It is trite that in considering whether another court would reach a different conclusion, I must do so dispassionately.

[17] In the matter at hand, I am of the view that some of the grounds of appeal raised by the Applicant lack merit as it is implicit in the judgment that the Applicant established a clear right to the relief sought and that an inference that MBD was a legal successor or permitted assign of RCS's obligations to Consumer Friend is justified. However, I am of the view that another court might come to a different conclusion when regard is had to the terms of MBD Agreement notwithstanding the fact that the Applicant's application was premised on the Consumer Friend Agreement. I am therefore inclined to grant leave to appeal to the full court of this division.

[18] In the result, the following order is issued:

18.1 Leave to appeal is granted to the Full Court of this division.

18.1 The costs of the application for Leave to Appeal are costs in the appeal.

NDITA; J