



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPETOWN**

CASE NO: 2025 - 222577

In the matter between

AAA CONSORTIUM PTY LTD

Applicant

And

AMK CONSTRUCTION (PTY) LTD

First Respondent

(Company Registration No. 2015/034801/07)

THE CITY OF CAPE TOWN

Second Respondent

(Department of Housing Infrastructure and Social Development)

FIRST NATIONAL BANK LTD

Third Respondent

Corum: PETERS AJ

Heard: 17 April 2026 – 6 August 2026

Delivered electronically: 20 August 2026

JUDGMENT

ORDER

INTRODUCTION

[1] The Applicant seeks interim interdicts against the Second and Third Respondents on the following terms:

(i) As against the Second Respondent from making any payments to the First Respondent and/or any other third party and/or directors of the First Respondent, for any work undertaken by the First Respondent with the Second Respondent in fulfillment of any work or services rendered to the Second Respondent. In the alternative, the payments be made into the trust account of the Applicant's attorneys. In the further alternative, the payments be held in reserve by the Second Respondent until the finalisation of the dispute between the Applicant and the First Respondent.

(ii) As against the Third Respondent, the bank account of the First Respondent be frozen pending finalisation of the dispute between the Applicant and the First Respondent.

[2] The Applicant is a venture capital entity. On or about 20 November 2023, the Applicant and the First Respondent entered into a Joint Venture Agreement, whereby the First Respondent would apply for and acquire tenders and projects as advertised by various government institutions. The Applicant would provide the necessary finances to deliver on said tenders and projects. The Applicant held 35% interest and the First Respondent 65% interest in the Joint Venture Agreement.

[3] During the conclusion and fulfillment of the Joint Venture Agreement, the Applicant was represented by Ruan Fourie (the managing director of the Applicant) and the First Respondent was represented by Alfred Mzinkhulu Klaasen (the sole

director of the First Respondent). Monies were then indeed provided to the First Respondent by the Applicant in terms of the Joint Venture Agreement.

[4] At some stage the First Respondent did not meet payments to the Applicant. The parties then entered into a written settlement agreement, dated 4 June 2025, in terms of which the First Respondent undertook to repay the amounts owing to the Applicant by way of a monthly installment of R2 500 000.00 until the full debt was paid. The First Respondent defaulted on the written settlement agreement. The Applicant alleges that all monies due and owing to it by the First Respondent is R116 869 419.98.

[5] The First Respondent denies same and specifically puts the amounts owed into dispute. The Applicant, with reference to clause 11 of the Joint Venture Agreement (dealing with the settlement of disputes), states that it has approached a commercial arbitrator, who is an advocate at the Cape Bar Society of Advocates, as a potential arbitrator in the dispute between the Applicant and the First Respondent. With reference to clause 11.3, the Applicant argues that upon reliance on this clause it brings this application on an urgent basis pending the decision of the arbitrator.

POINT IN LIMINE: MISJOINDER OF THE SECOND AND THIRD RESPONDENTS

[6] The First Respondent claims that the joinder of the Second and Third Respondents are legally unsustainable and constitutes a misjoinder. The First Respondent argues that the dispute (the underlying accounting dispute) between the Applicant and the First Respondent arises exclusively from the Joint Venture Agreement concluded between them, to the exclusion of the Second and Third Respondents.

[7] The First Respondent then makes reference to *Amalgamated Engineering Union v Minister of Labour*¹ where the following was held:

¹ 1949 (3) SA 637 (A) at 659

‘ The question of joinder should not depend on the nature of the subject-matter of the suit but on the manner in which, and the extent which, the Court's order may affect the interests of third parties.’

[8] In answer to this argument the Applicant makes the valid point that the Second and Third Respondents are not cited as parties to the dispute between the Applicant and the First Respondent, but rather as affected parties. It is clear from the papers that the interim interdict, if so granted, would have the effect of forcing the Second and Third Respondents to withhold payment of any monies to the First Respondent, until the finalisation of arbitration proceedings between the Applicant and the First Respondent.

[9] The reliance by the First Respondent on the Amalgamated Engineering Union decision, is misplaced. In that matter, the court held that it will not decide a matter if a third party has a direct and substantial interest in the outcome, unless that third party is joined in the proceedings or given notice. The Second and Third Respondents indeed have a direct and substantial interest in the outcome of this application. It follows that the point in limine should be rejected.

INTERIM INTERDICT

[10] It is trite law that the requirements for the granting of an interim interdict are as follows:

- (a) a prima facie right, though open to some doubt,
- (b) a reasonable apprehension of harm,
- (c) the balance of convenience, and
- (d) the absence of any other satisfactory remedy.

[11] The Applicant argues that the prima facie right it relies on is mentioned in clause 11.3 of the Joint Venture Agreement. Clauses 11.1 to 11.3 of the Joint Venture Agreement, under the heading "11. Settlement Of Disputes", reads as follows:

‘11.1 Should any dispute arise between the Parties in connection with the interpretation or application of the provisions of this agreement or its breach or termination or the validity of

any documents furnished by the Parties pursuant to the provisions of this agreement that dispute may, unless resolved between the Parties, be referred to and be determined by arbitration in terms of this clause and as expediently as may be reasonably possible.

11.2 Either Party to this agreement may demand that a dispute be determined in terms of this clause by written notice to the other Party.

11.3 This clause will not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.'

[12] The First Respondent argues that the Applicant failed to establish a prima facie right due to the fact that the indebtedness in the amount of R116 869 419.98 is disputed by the First Respondent, based on disputes concerning payments, liabilities and commercial obligations arising from the Joint Venture Agreement between the parties. It is, however, clear that the First Respondent does not dispute the fact that money is owed and payable to the Applicant. The amount thereof to be determined during arbitration.

[13] The correct approach to deciding whether a prima facie right was established, is to consider the Applicant's version of the facts together with those facts put up by the Respondents, which the Applicant cannot dispute. On the combined versions, and having regard to the inherent probabilities, the question is whether the Applicant would be entitled to final relief. This approach with the principles articulated in *Spur Steak Ranches Ltd and others vs Saddles Steak Ranch, Claremont and another*². The Applicant asserts that it has the right to, pending the decision of the arbitrator, approach this court for the interim relief sought. The First Respondent does not deny indebtedness, but rather disputes the amount of the indebtedness. It is clear therefore that the purpose of arbitration will be to determine the amount of indebtedness. The Applicant will thus be entitled to some or the other form of final relief.

[14] The court finds that a prima facie right, though open to some doubt, has been established.

² 1996 (3) SA 706 (C) at 714

[15] The Applicant alleges that it has a reasonable apprehension that the First Respondent has dissipated, is dissipating and will continue to dissipate income derived from the Joint Venture as the First Respondent is clearly not abiding by the terms and conditions of the Joint Venture Agreement. It is clear from the relief sought, that the Applicant is seeking the granting of an anti-dissipation interdict.

[16] In *KSL v AL*³ in paragraph [15] the court held as follows:

‘ An anti-dissipation interdict may be granted where a respondent is believed to be deliberately arranging his affairs in such a way so as to ensure that by the time applicant is in a position to execute judgment, he will be without assets or sufficient assets on which the applicant expects to execute. Its purpose is to preserve an asset which is in issue between the parties. This onus is on the applicant for such an interdict to establish the necessary requirements for the grant of the interdict.’

[17] After restating the requirements for an interdict the court went further in paragraph [16] and held as follows:

‘ In *Knox D'Arcy Ltd and Others v Jamieson and Others* this court went further and held that an anti-dissipation interdict provides a remedy where an applicant has shown on the established basis of an interim interdict; (a) a claim against a respondent and (b) that the respondent is [intentionally] secreting or dissipating assets, or is likely to do so with the intention of defeating the applicant's claim.’

[18] The Applicant in its Founding Affidavit, at paragraph 10.1.4, states as follows:
" It has come to the Applicant's attention during the month of September 2025 that the First Respondent is now drawing all the revenue/income so paid by the Second Respondent for the projects so delivered by the Joint Venture as between the Applicant and the First Respondent and which they Applicant has financially funded." This allegation is, however, not supported by bank statements and/or other documents, and is speculative. The Applicant provided no evidence that the First Respondent has, is, will or intends dissipating income mentioned.

³ 2024 (6) SA 410 (SCA)

[19] The Applicant has thus failed to establish a reasonable apprehension of harm.

[20] The Applicant contends that the balance of convenience favours it, due to the fact that the First Respondent, if the interim interdict is not granted, will be in a position to make all withdrawals to the prejudice of the Applicant. The First Respondent, on the other hand, contends that the balance of convenience favours it, based on the fact that the granting of the interim interdict will have the effect of freezing its banking facilities. The First Respondent will be unable to service its contractual obligations, pay its employees, suppliers and subcontractors, continue municipal infrastructure work and maintain ongoing commercial operations.

[21] The court has already found that the Applicant has failed to establish a reasonable apprehension of harm. It would indeed be counter-productive to now find that the balance of convenience, in granting the interim interdict, favours the Applicant. The court agrees with the First Respondent that the effect of granting the relief sought would be catastrophic to it and far outweighs any speculative prejudice alleged by the Applicant. The absence of any other satisfactory remedy. Even if the court were to accept that the only way to prevent the dissipation of assets or monies, by the First Respondent, was through the relief sought, that would be meaningless due to the fact that the court already found that the Applicant is not entitled to such a relief.

[22] The court is furthermore of the view that the Applicant does have alternative remedies available to it. Such being mediation, arbitration and/or issuing summons for breach of contract. This could have happened during the latter part of 2025 already.

ORDER

1. The interdict sought cannot be granted.
2. The First Respondent was unsuccessful in the point in limine, pertaining to the misjoinder of the Second and Third Respondents.
3. The First Respondent is ordered to pay the costs occasioned by the determination of the point in limine.

4. The Applicant is ordered to pay costs of the application.

K PETERS AJ
WESTERN CAPE HIGH COURT

APPEARANCES: