

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



Case number: 2022-049109

Date of hearing: 27 July 2026 to 29 July 2026

Date delivered: 7 September 2026

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO	
(2) OF INTEREST TO OTHERS JUDGES: YES /NO	
(3) REVISED	
7/9/26	[REDACTED]
DATE	SIGNATURE

In the application of:

SETTLERS MOVIE (PTY) LTD

Plaintiff

and

**DIRECTOR-GENERAL OF THE DEPARTMENT
OF TRADE, INDUSTRY AND COMPETITION
THE MINISTER OF TRADE, INDUSTRY
AND COMPETITION**

First Defendant

Second Defendant

JUDGMENT

SWANEPOEL J:

[1] The plaintiff was created as a special purpose corporate entity to produce a movie named Settlers, which was set on Mars, and which documented the adventures of three refugees from Earth, Reza, Lisa and their daughter Remmy.

[2] In order to partially fund the production, the plaintiff's director, Mr Johan Kruger, applied for funding through an incentive project administered by the Department of Trade, Industry and Competition ("the Department"). Having considered the application, the Department approved an incentive to a maximum of R 11 199 538. The movie was produced, but the incentive was not forthcoming. The plaintiff now sues for payment of the incentive amount in the sum of R 11 199 538, interest thereon and costs.

[3] Having first submitted a premature application, a successful application was submitted to the Department on 12 August 2019, and receipt thereof was acknowledged by the Department on 13 August 2019. The application, and the approval was based upon the plaintiff's projected expenditure and income. The application was considered on 26 September 2019, and the plaintiff was notified of the grant of the incentive on 29 October 2019.

[4] By then events had overtaken the approval of the application. The plaintiff was ready to commence filming on 16 September 2019. It had secured the services of actors, technical staff and all personnel that are

necessary for a production such as this. Any delay in commencing with filming would have caused substantial financial loss, and may even have led to the departure of some of the actors. The plaintiff therefore took a decision to commence filming on 16 September 2019, notwithstanding that the incentive had not yet been approved. Principal photography was completed on 25 October 2019.

[5] In its letter of approval, the Department advised the plaintiff that the terms and conditions under which the incentive was granted were contained in the letter of approval, in the application form, the Department's Programme Guidelines, and in Annexure "E", a document that set out the Department's terms and conditions. In order to understand the contractual matrix, it is necessary to refer to the relevant passages in those documents:

[6] The letter of approval: The letter recorded that:

"The approved amount in terms of The South African Film and Television production Incentive shall be disbursed in accordance with actual South African expenditure incurred in respect of the approved production (up to a maximum of the approved amount) provided that the Beneficiary complied with the completion of the relevant forms and other information require, within the stipulated timeframes, as depicted in the table below."(sic)

[7] Principal photography was to commence on 26 September 2019, and had to be completed by 26 December 2019. A Form B was required

to be submitted within three days of photography having commenced, confirming that photography had in fact commenced. A Form C, the final application for payment, was to be submitted within three months of the completion date, namely 26 December 2019. It was to be accompanied by 18 different documents, one of which was an audited summary and detailed expenditure report.

[8] The approval would automatically lapse if:

[8.1] the plaintiff failed to file Form B within three months of the letter of approval; or,

[8.2] the intended date for completion changed without the Department's prior written consent.

[9] The Programme Guidelines: Clause 4.3 is relevant hereto and reads as follows:

"4.3 The principal photography must not commence until an approval letter has been received from the dti.

4.3.1 The approved applicant is provided with an additional three (3) months to commence with principal photography from the confirmed commencement date as per application,

4.3.2 The applicant must complete and submit the Confirmation of Principal Photography Form within three (3) working days after the first day of principal photography;

4.3.3 The applicant's failure to adhere to these stipulated timeframes will automatically terminate the approval."

[10] And, clause 4.5:

"The final claim with audited or independently reviewed financial statements must be submitted to the dti within twenty-four (24) months from receiving an approval decision from the dti."

[11] Annexure "E": Clause 4.6 reads:

"The Beneficiary is not automatically entitled to the full amount of the incentive offered. The dti further reserves the right to correct any actual calculation error at any stage before or after approval/payment. A further calculation will be made based on figures set out in the claim form. The calculation may result in an amount that is less than the maximum amount, but can never be more than the offered maximum amount."

[12] The contractual framework is clear: The initial approval of the incentive was based on projected figures provided by the plaintiff. Once the production had been completed, the plaintiff was to deliver a Form C, together with the prescribed documents, including a breakdown of the amounts actually spent on the movie. Based on those figures, the Department would calculate how much of the approved incentive amount should be paid to the plaintiff.

[13] It is also beyond doubt that strict adherence to the timeframes set out in the approval letter was required. More particularly, principal photography was not to commence before written approval was received, although the evidence of the Department's Mr. Kgomo suggested that it would have been acceptable to the Department had photography commenced once approval had been granted on 26 September 2019, even though approval had not yet been conveyed to the plaintiff in writing. Mr. Kgomo's concession matters little. The fact is that photography commenced ten days before the application was considered and approved. That, in my view, triggered the automatic cancellation of the agreement.

[14] On 31 October 2019 Mr. Kruger had a telephonic conversation with Mr. Eliya Ndou, an employee of the Department. Although there is no evidence on what they discussed, a letter written by Mr. Kruger on 4 November 2019 suggests that they discussed the premature commencement of photography. Mr. Kruger explained in the letter that the plaintiff had found itself between the proverbial financial rock and a hard place. It was aware of the prohibition on early commencement, but had no alternative but to start shooting. Mr. Kruger testified that the plaintiff had accepted that there was a risk attached to its decision, and that the incentive may have been placed in jeopardy. Mr. Kruger also recorded in his letter that Form B would be forwarded to the Department within days, and the Department indeed acknowledged receipt of the form on 7 November 2019. Form B was thus delivered out of time.

[15] The defendants say that due to the plaintiff's non-compliance with the timeframes, the Department cancelled the agreement by notice on 27 November 2019. There is some difficulty with the so-called termination letter. It is uncontested that the plaintiff never received the cancellation letter. Furthermore, the Chief Director: Product Development, Ms. Shareen Osman, only approved the cancellation of the incentive on 2 December 2019, five days after the cancellation letter was allegedly sent.

[16] The defendants' plea is somewhat confusing. On the one hand they plead that the incentive was cancelled by letter, whilst at the same time pleading that the agreement lapsed automatically for non-adherence to the stipulated time frames. The defendants also say that there was only an attempt made at reaching agreement, but that it was cancelled, alternatively, that the agreement was void ab initio. The plea is inherently contradictory, but what is clearly pleaded, is the averment that the agreement automatically lapsed due to the plaintiff's non-compliance with the specified time frames.

[17] In my view there is no other interpretation to be placed on clause 4.3 of the Guidelines. It's intention is clear, that if photography commences before an approval letter is received, or if Form B is not completed and submitted within three working days after commencement of principal photography, the approval (and the agreement) would automatically lapse. The approval letter also spelt out the time frames within which photography should take place, and it confirmed that unless the time frames were adhered to, the approval would lapse.

[18] In my view, therefore, despite having sympathy with the difficult situation in which the plaintiff found itself at the time, the plaintiff's failure to comply with the time frames are fatal to its case.

[19] A further aspect that is fatal to the plaintiff's case is its failure to prove the quantum of its claim. The plaintiff seemed to proceed from the premise that it was automatically entitled to claim the entire approved incentive amount. That is not the case. The approval letter, the guidelines and Annexure "E" make it clear that before the incentive is paid, there is a process of verification of the actual amounts expended in manufacturing the movie. It is on that figure that the amount to be paid is calculated.

[20] Upon my enquiry on this aspect the plaintiff's counsel argued that the plaintiff had led evidence that Form C that had been delivered to the Department in support of the plaintiff's claim. I re-read a transcript of the matter and I could not find any evidence led by the plaintiff regarding Form C. I could only find reference to page 206 of the bundle by the defendant's counsel in cross-examination, which seems to be the first page of Form C, and to page 209, which is the last page thereof. The relevance of these two pages to the cross-examination lay in the dates on which the forms were completed, namely 10 September 2021. Mr Kruger did not testify on the final calculations or on the financial figures, nor on the quantum of the claim.

[21] At the outset I enquired from counsel as to the status of the documents in the bundle, and I was told that the documents were what

they purport to be and that the contents were admitted. However, at a pre-trial meeting held on 23 June 2026 the parties agreed that *“Only documents referred to in evidence may be relied upon by the parties and all other documents in the bundle will be deemed not to be before the Court.”*

[22] I can, therefore, not take cognizance of the calculations contained in documents on which no evidence was led. The plaintiff’s quantum has, consequently, not been proven.

[23] For the sake of completeness, I must add that the defendants raised a special plea, to the effect that notice had not been given to the Department in terms of The Institution of Legal Proceedings against Certain Organs of State Act, 2002. The defendant’s counsel abandoned the special plea, wisely I believe, and no more has to be said on that issue. However, the special plea has a costs implication which I shall address.

[23] For the above reasons I make the following order:

[23.1] The claim is dismissed with costs on Scale B;

[23.2] The defendants shall pay the costs arising from the special plea on Scale B.


SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

Counsel for the plaintiff:	Adv. R Sikhosana
Attorney for the plaintiff:	Edward Nathan Sonnenbergs Inc
Counsel for the defendant:	Adv L Pretorius
Attorney for the defendant:	The State Attorney
Heard on:	27-29 July 2026
Judgment on:	7 September 2026