

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Reportable/Not reportable

Case no: 2025-146990

In the matter between:

HALFGEWAAGD BOEDERY (PTY) LTD	Applicant
and	
HERMAN BESTER N.O.	First Respondent
DALLIE VAN DER MERWE N.O.	Second Respondent
(in their capacities as the joint liquidators of	
LAMOLOR (PTY) LTD (IN LIQUIDATION)	

Heard: 26 October 2026

Delivered: 29 October 2026

Summary: Winding up - Executory contract not terminated by liquidation - liquidator must decide whether it is to the general benefit of the body of creditors to continue to perform the insolvent company's inherited obligations - election to abide by the contract - election to abide by contract unequivocal and consistent with all proved facts. Property had vested in the company before the concursus.

Occupational interest related to use of the property sold and not a new lease agreement.

ORDER

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1. The application succeeds.

2. That the Respondents are ordered to comply with the obligations of Lamolor (Pty) Ltd (in liquidation) in accordance with the provisions of the deed of sale and the addendum thereto dated 29 September 2022 and 27 March 2023 respectively, by giving vacant occupation to the Applicant of the property referred to in the deed of sale by evicting the occupiers of the property and to demolish the dwellings on the property in compliance with the provisions of clause 17.8 of the deed of sale.

3. The Respondents are ordered to pay costs on Scale B.

JUDGMENT

NDITA, J

[1] In this matter the Applicant bought a farm from Lamola (Pty) Ltd ("Lamolor") for an amount of R30 million. It paid the full price into the conveyancer's trust account, took transfer on 29 March 2023 and has farmed the land ever since. In 2025, Lamolor was liquidated. The Applicant now seeks an order directing the liquidators to comply with the

obligations of Lamolor to give vacant possession by evicting about fourty people from nine farm dwellings from the land, to demolish those dwellings.

[2] The order sought by the Applicant is couched in the following terms:

2.1 That the Respondents be ordered to make payment to the conveyancer, PR Nabal Incorporated t/a Nabal Attorneys of R5 000 000.00 (five million Rand) to be held in trust by the conveyancer;

2.2 That the Respondents be ordered to comply with the obligations of Lamolor (Pty) Ltd (in liquidation) in accordance with the provisions of the deed of sale and the addendum thereto dated 29 September 2022 and 27 March 2023 respectively, by giving vacant occupation to the Applicant of the property referred to in the deed of sale by evicting the occupiers of the property and to demolish the dwellings on the property in compliance with the provisions of clause 17.8 of the deed of sale.

2.3 That pending such vacant occupation, the conveyancers be authorised and directed to release to the Applicant the amount of outstanding occupational rent, in the sum of R2 622 388.75 plus VAT and interest on the prime lending rate.

2.4 That the Respondents be ordered to pay the costs of this application on the attorney and client scale.

3. That such further and/or alternative relief be granted to the Applicant as this honourable court may deem fit.

Factual Background

[3] The factual background germane to the determination of this matter is largely uncontested and may be summarised as follows: The Applicant, Halfgewaagd Boedery (Pty) Ltd ("Halfgewaagd") purchased ten portions of land, collectively known as farm Bosplaas ("the farm") from a company known as Lamolor (Pty) Ltd (now in liquidation) ("Lamolor"). In terms of the agreement Halfgewaagd purchase the farm as a going concern for a purchase price of R30 million (R25 million for the immovable property and water rights and R5 million for moveables). It was payable as follows:

3.1 a deposit of R3 million into the trust account of Nabal Attorneys ("Nabal"), the conveyancer appointed under the agreement, which amount was in terms of clause 3.2.1 of the agreement may be paid directly to the seller;

3.2 the balance of R27 million, on registration of transfer directly into the trust bank account of the Conveyancer without deduction and/or set-off of any nature;

3.3 in terms of clause 3.2.3, if the seller had not vacated the property by transfer date, the amount of R5 million, referred to as "the Balance Purchase Price", was to be held by the conveyancer in an interest-bearing account pending such vacation, *"and of which balance, after occupational rent and interest have been reconciled, shall be paid to the Seller upon vacation*".

[4] Clause 4.1.3 provides that if the seller had not vacated the whole of the property by the transfer date, “occupational rent” of R100 000.00 plus VAT per month, pro rata, would be payable by the seller monthly in advance, and that seller was, in any event to vacate by no later than 30 April 2023; and that if it did not, the purchaser would remain entitled to payment, notwithstanding the fact that the seller’s right of occupation had lapsed, without any new right of occupation arising.

[5] Clause 17.8, as substituted by clause 2 of the addendum of 27 March 2023, recorded that there were no established occupiers on the property and that the seller would ensure that the property was handed over free of occupation on the transfer date and that the houses by the station would be demolished by 30 April 2023, subject to that date being extended by agreement.

[6] Clause 11.3 provided that the purchaser’s remedy for the seller’s non-performance namely, issuing of written notice to remedy within ten days, failing which the purchaser, could claim performance and damages, or to cancel and claim damages.

[7] Transfer was registered on 29 March 2023, and the Applicant took possession of the farm. The full purchase price was paid into Naba’s trust account and the R3 million was paid to Lamolor on 2 November 2022. R22 million of the balance was paid to Lamolor after registration and R5 million was retained by Nabal in an interest bearing account opened in the name of Lamolor.

[8] It is undisputed that the Applicant took partial occupation as it was not given vacant occupation of the farm because the “houses at the station” remained occupied. More specifically, nine dwellings at the station remain occupied by some forty persons, including elderly

persons and children who work in neighbouring farms or are unemployed; a further dwelling on the werf is occupied by a Mr Vlotman and others.

[9] From transfer until liquidation, the parties effected the provisions of clause 4.1.3 through direct payment: the Applicant tendered invoices of R115 000.00 to Lamolor, and Lamolor paid them, up to about January 2025 whilst the Applicant continued to invoice Lamolor until May 2025.

[10] Lamolor was place under provisional winding-up on 7 February 2025 and a final winding-up order was issued on 2 June 2025. It is not disputed that shortly after the provisional winding-up order was issued, the liquidators called upon Nabal to pay over the R5 million standing to Lamolor's credit. Nabal believed that it held the money for Lamolor and thus paid over the aforesaid amount into the estate's bank account.

[11] The Applicant's attorneys requested that it (the Applicant) be listed as a claimant in the liquidation, and to this end, the liquidators' report to creditors of 19 September 2025 records the Applicant as a concurrent creditor for unpaid occupational rent.

[12] On 21 July 2025, the Applicant demanded repayment of the R5 million. The liquidators declined but confirmed that the money was held in the estate account and would not be dealt with prior their final appointment, and that after the final appointment, they had no right to dispose of any funds and no intention of paying dividends before a liquidation and distribution account had been confirmed by the Master.

[13] On 21 September 2025, the liquidators wrote to the Applicant's attorneys recording that vacant occupation had not been given and that the obligation to pay occupational rent was not being continued with.

The liquidators further invited the Applicant to prove its claim for arrear rent at the second meeting of creditors and undertook to include in the liquidation and distribution account the rent payable to the Applicant from the date of liquidation to 22 September 2025 as administration rent. In the answering affidavit, the liquidators assert that the statutory remedy for the eviction of the occupiers lies with the Applicant as owner of the property.

[14] In its response of 25 November 2025, the Applicant demanded that the liquidators repay the R5 million to Nabal, evict, the occupiers and demolish the dwellings, failing which it would amend to seek specific performance *"with damages as an alternative, being the costs occasioned by compliance"*. The Applicant indeed amended its notice of motion to include prayers 2.1. and 2.4.

[15] The addendum dealt with several practical issues, which included the sheds, fixtures and fittings, dams, fencing and the Eskom connections on the farm. It also dealt with the established occupiers who were still living on the farm. The addendum also provided that Lamolor had to give Halfgewaagd, the final vacant occupation of the farm by 30 April 2023.

[16] The facts establish that from transfer until liquidation the parties operated clause 4.1.3 by direct payment, not through the retained fund: the applicant rendered monthly invoices for R115 000 to Lamolor, and Lamolor paid them, to approximately 2025: the Applicant continued to invoice Lamolor until May 2025. Clause 4.1.3 of the addendum provides that:

> "If the Seller has not on the date of transfer vacated the whole of the Property, occupational rent at R100 000.00 (One Hundred Thousand) plus VAT per

month pro rata, shall be payable in advance by the Seller to the Purchaser. The Seller shall however by no later than 30 April 2023 vacate the whole of the Property, on the understanding that, if it does not happen, the Purchaser shall still be entitled to the payment of occupational rent, notwithstanding that the Seller's right to occupation of the Property lapsed, and such payment obligation does not create any new right to occupation of the Property."

[17] In terms of clause 3.2.3 of the addendum:

> "if the Seller has still not vacated the property by the transfer date, an amount of R5 000 000.00 (Five Million Rand) ("the Balance Purchase Price") shall be held in trust by the transfer by the transferring attorney pending such vacation, and of which the balance, after reconciliation of occupational rent and interest, shall be paid to the Seller upon vacation." (Translation provided by the Applicant's legal representative)

[18] On 18 August 2025, the Applicant's attorneys of record wrote to the Respondents requesting an undertaking in the following terms:

18.1 That the retention amount is to remain in the insolvency banking account of the liquidated company, upon the appointment of the Respondents as final liquidators; and

18.2 That the final liquidators will not make payment of the retention amount to a third party, or appropriate retention amount for administration purposes, pending a final order in the aforesaid proceedings, or an agreement with the liquidators.

[19] The Applicant's claim to the retention amount is premised on the fact that the Applicant was holding back a portion of the purchase price back on the date of the concursus and could therefore not be considered to have been a debtor to Lamolor. According to the Applicant, it is the

owner of the amount of R5 million notwithstanding acknowledging that the money belongs to the bank, in whose account it was deposited by the transferring attorney. Furthermore, the amount was mistakenly paid into the liquidators' account on the basis of their insistence and stands to be refunded in terms of the *condictio indebiti.* Because the Respondents refused to furnish the Applicant with the undertaking it sought, the latter brought the present application.

The answering affidavit

[20] The Respondents aver that the amount of R5 million was kept by Nabal attorneys as security for occupational rent and interest thereon would be retained in the trust of the already mentioned attorneys. The Respondents further allege that upon a proper construction of the provisions of clause 4.1.3, read with 3.2.3 of the sale agreement, a lease agreement came into existence between Lamolor and the Applicant in terms of which Lamolor was obliged to pay occupational rental to the Applicant for so long as the dwellings described by the Applicant as the houses at the station remained occupied and with the amount of R5 million serving as security.

[21] According to the Respondents in terms of section 37(1) read with section 37(2) of the Insolvency Act 24 of 1936 the lease agreement was brought to life by the provisions of the agreement and came to an end at midnight on 4 November 2025. The Applicant's claims for rental are therefore limited to a claim for rental and/or loss of against the estate arising from Lamolor's breach of the lease portion of the agreement. Additionally, the Applicant's claim is concurrent claim, but the latter is further entitled to a claim for occupational rental for the period of three months since the appointment of the liquidators. In any event, so

continue the Respondents the Applicant's claim is included in the costs of the liquidation of the estate. And the claim for the payment of R5 million is not justifiable in law.

[22] The Respondents further aver that in accordance with the provisions of clause 17.8 and 4.1.3 of the agreement, the envisaged date for the final vacation of the farm by Lamolor, through eviction of the occupiers and the demolition of the houses at the station, was 30 April 2023. Furthermore, the Applicant delivered monthly invoices for the payment of occupational rental to Lamolor up to May 2025. Regarding dealing with unlawful occupiers, the Respondents aver that as the owner of the property, the Applicant is at liberty to invoke the Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 ("PIE") and Extension of Security of Tenure Act 62 of 1997 ("ESTA").

The replying affidavit

[23] Retorting to the Respondents' averments, the Applicant reiterate that in circumstances where vacation has not been achieved, and a reconciliation not done the Respondents were never entitled to be paid monies held in trust by the conveyancer. In the result, the conveyancer wrongly considered herself to be bound to comply with the Respondents' request for payment.

Issues for determination

[24] Flowing from the aforegoing summary of substantial facts, the following issues fall to be determined:

24.1 whether the Respondents made an election to abide by or resile from the contract.

24.2 whether the liquidators can be compelled to procure vacant occupation of the farm by evicting the occupiers and demolishing the dwellings;

24.3 whether the Applicant is entitled to an order that its claim for "occupational rent" be paid to it out of the estate funds, outside the statutory process for the proof of and payment of claims.

Evaluation

[25] In these proceedings, the Applicants seeks final relief. Although the applicable principles are trite, I deem it necessary to restate them. In *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) at para [26], this test is restated and affirmed as follows:

> "Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless circumstances are special, they cannot be used to resolve factual disputes because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings dispute of facts arise on the affidavits, a final order can granted only if the facts averred in the Applicant's (Me Zuma) affidavits, which have been admitted by the Respondent (the NDPP) together with facts alleged by the latter, justify such order. It may different if the Respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers."

[26] The applicable principles applicable to contracts such as the present, namely, executory contracts, are explained in *Ellerine Brothers (Pty) Ltd v McCarthy Ltd* 2014(4) SA 22 SCA the Supreme Court of Appeal held as follows:

"[10] Following insolvency of the lessee the position is governed by the ordinary principles of the common law which may apply when a party to an executory contract goes insolvent. As in the case of any other uncompleted contract, the liquidator inherits the lease in its entirety. The creation of the concursus creditorium therefore does not terminate the continuous operation of a lease agreement to which the insolvent is a party. The parties thereunder and the liquidator, as the universal successor, steps into the shoes of the insolvent and does not acquire any rights greater than those of the insolvent. This means that the liquidator must perform whatever is required in the insolvent in terms of the lease, including unfulfilled past obligations of the lease."

[27] In *Frank v Premier Hangers CC* 2008 (3) SA 594 (CPD) following was said:

"[17] In this regard, it has long been recognised that executory contracts do not terminate automatically when a company is wound up. Instead, a liquidator has an election whether to enforce or to repudiate the relevant contract, The legal position is summarised in Nedcor Investment Bank v Pretoria Belgrave Hotel:

> 'A trustee in insolvency, and thus a liquidator of a company in liquidation is invested with a discretion whether to abide by or terminate an executory contract not specifically provided for in the Insolvency Act which had been concluded by the company in liquidation before. Such an agreement does not terminate automatically on the company being placed in liquidation. The liquidator must make an election within a reasonable time. Should he elect to abide by the agreement the liquidator steps into the shoes of the company in liquidation and is obliged to the other party to the agreement whatever counter-prestation is required of the company in terms of the agreement, Once the liquidator has accepted the benefits of the contract, he cannot limit the other party to a concurrent claim against the free residue then lies against the trustees who must meet it is an expense incurred in the estate's administration since his decision to abide by the contract is reached for the purpose of the administration of the estate.'

[18] The question as to whether or not a liquidator has elected to abide by a particular contract is a question of fact and not a question of law."

At para 30, the Court further explained as follows:

"[30] The question as to whether or not a liquidator has elected to abide by a particular executory contract is a question of fact and not a question of law. If that question of fact is to be decided by a process of inference, the conclusion drawn must be consistent with all proved of facts. Insofar as reliance is placed upon the conduct of a liquidator as constituting an election to abide by the relevant executory contract, that conduct must be unequivocal."

[28] Against this backdrop of these principles, I turn to consider the party's competing submissions,

[29] The Applicants in the founding affidavit aver the R5 million "*remained the Applicant's money*" and did not accrue to Lamolor. According to the Applicant, it is clear from the conduct of the Respondents that they elected to be bound by the terms of the agreement, and for this reason, they are obligated to give vacant occupation of the farm to the Applicant and must proceed with the eviction of the occupiers and the demolition of the houses.

[30] The Applicant further dispute the Respondent's reliance on section 37 (10) and 37(2) of the Insolvency Act as having no legal basis. This, according to the Applicant is so because the parties to an agreement of sale stand in relationship of purchaser and seller towards each other which endures until the sale is fully given effect to.

[31] According to the Applicant, this contention is in line with the pronouncement of the Supreme Court of Appeal in *Thompson v Scholtz* 1991(1) SA 232 SCA where Court confirmed that occupational interest is the return which the seller of immovable property earns by permitting his

purchaser, pending payment, to occupy the property sold. Likewise, in *Sidali v Mpolongwana* 1990 (4) SA 212 (C) at 216 E, the Court explained that "*the occupational interest is related not to the use of the property sold but to the purchase price, which is again related to the value of the property and not its temporary use*."

[32] It must be stated from the outset that during argument, Counsel for the Respondents indicated that the Respondents no longer place reliance on the coming into being of a lease agreement section 37(2 and (3) of the Insolvency Act.

[33] The Respondents dispute that the sum of R5 million ever belonged to the Applicant on the basis that in terms of the agreement the purchaser's obligation was to pay the whole balance of 27 million into the conveyancer's trust account on registration "*without set-off and/or set of any nature"*. Furthermore, so further contend the Respondents, clause 3.2.3 does not reserved the R5 million to the purchaser, it calls the amount *"Balance of the purchase price*" and directs that it be paid "to the Seller". According to the Respondents, the purchaser's only interest in the fund is that occupational rent and interest be reconciled against it, before it is paid out, Accordingly, clause 3.2.3 is a payment mechanism and a security arrangement in favour of the seller's creditor for a defined monetary claim; it is not a reservation of ownership.

[34] The Respondents, relying on *Comwezi Security Services (Pty) Ltd v Cape Empowerment Trust Ltd* [2012] ZASCA 126, contend that it cannot be inferred that the Respondents ratified the sale agreement entered into by the Applicant and Lamolor. The fact that it cancelled what it perceived as a s lease agreement clearly showed its intention not to be bound by the agreement. Furthermore, on the undisputed facts,

the amount of R3 million parties themselves treated the amount of R5 million as the seller's. Nabal opened the account in Lamolor's name, and the interest accrued to Lamolor. Thus, neither entitlement to it nor a say in how it is dealt with.

[35] The Respondents further contend that (as conceded by the Applicant) the Applicant did not own the money because money paid into a bank account becomes the property of the bank; the account-holder acquires a personal right to payment of the credit balance.

[36] I now turn to evaluate the parties competing contentions.

[37] It must be stated from the outset that during argument, Counsel for the Respondents indicated that the Respondents no longer place reliance on the coming into being of a lease agreement section 37(2 and (3) of the Insolvency Act.

[38] In assessing whether the Respondents unequivocally made an election to be bound by the terms of the contract between Lamolor and Halfgewaagd, the conduct of the Respondents must be scrutinised. If the court finds that the liquidators elected to abandon the unexecuted contract, what is left for the Applicant is a concurrent monetary claim against the insolvent estate for damages and a court cannot order specific performance against a liquidator to force them execute a pre-liquidation contract. (*Murray and Others NNO v Ntombela and Others* (729/2022) [2024] ZASCA (14 March 2024) On the other hand, if it is found that the liquidators ratified the contract, then they must be held to the terms of the contract. Much was made about the fact that should the court find that the liquidators ratified the contract, then it would be impossible to perform in accordance with its terms in that they would be unable to institute eviction proceedings against the occupiers who remain in occupation. It must be stated from the outset that nothing prevents the liquidators from applying for eviction proceedings in accordance with whatever regime is applicable on the ground that the occupiers' continued occupation is unlawful and that they are required to give vacant occupation in order to fulfil their obligations. Liquidators are often times require to sell property and give vacant possession for the benefit of creditors.

[39] The assessment process requires first an examination of the terms of the agreement. The following facts are material:

39.1 On 29 March 2023, the farm that is the subject matter of the contract was transferred to the applicant, and it took occupation whilst the purchase price was paid into the trust account of Nabal Attorneys.

39.2 In terms of clause 4.1.3, as a result of Lamolor's failure to give vacant occupation, occupational rental of R100 000.00 per month became due by Lamolor to the Applicant. That security for occupational rent and interest thereon, an amount of R5million would be retained in the trust account of Nabal Attorneys.

39.3 It has been accepted, correctly so, in my view that the contention by the liquidators in the answering affidavit that a lease agreement between the Applicant and Lamolor, in terms of which the latter was obliged to pay rental is erroneous as the basis of the payment is contractual.

39.4 The Applicant invoiced Lamolor and Lamolor tendered payment up until about February 2025. This is a clear indication that Lamolor considered itself bound by the provisions of clause 4.1.3.

[40] In the answering affidavit, there is no unequivocal averment to the effect that the liquidators have taken a resolution to resile from the contract of sale with the Applicant. Put in another way, the deponent does not forthrightly state that it is resiling from the contract of sale. The

intention of the liquidators must also be discerned from the letter of the liquidators dated 21 September 2026. It reads as follows:

"Dear Sir

1. We refer to the above matter, your clients pending application under case number 2025/146990 and previous correspondences;

2. We refer to clause 4.1.3 of the written agreement concluded between your client and Lamolor (Pty) Limited (in liquidation) ("Lamolor") on 29 September 2022 at Durbanville. This clause determines that, in the event of Lamolor not having given vacant occupation of the immovable property, sold to your client, by the date of registration of transfer, occupational rental would be payable in the amount of R100 000.00 (one hundred thousand rand) plus VAT for the period up to 30 April 2023. Thereafter, should any part of the immovable property remain occupied, the obligation to make payment of this occupational rental will continue but will not afford Lamolor any right of occupation of the immovable property.

3. We confirm that it appears to be common cause that vacant occupation was not given or taken on the date of registration of transfer or on 30 April 2023. In fact, certain dwellings on the farm are seemingly still occupied by illegal occupiers that were present when the immovable property as at the date of registration thereof.

4. Consequently, the agreement to pay occupational rental, being a lease agreement, came into existence against registration of transfer of the immovable property to your client's name and remains extant to this day.

5. We further refer to clause 3.2.3 of the Deed of Sale which determines that an amount of R5 000 000.00 (Five million Rand) will be held as security pending the vacation of the immovable property, upon which date the occupational rental and interest would be deducted from the deposit and would be paid to Lamolor.

6. Upon a plain reading of this clause, the amount of R5 000 000,00 (five million rand) is held as security for the payment of rental.

7. In terms of Section 386(2), we as the liquidators are entitled to terminate the lease agreement brough into being by the Deed of Sale, which we herewith do. The obligation to pay rental is forthwith terminated.

8. We notice that your client has not proven a claim against the liquidated estate in terms of arrear rental.

9. We herewith invite your client to, at least 48 hours prior to the second meeting of creditors scheduled for 3 October 2025, prove its claim for arrear rental up to the date of liquidation.

10. The liquidators will have to calculate and include administration rent payable to your client in the Liquidation & Distribution Account from the date of liquidation up to the date of cancellation which will be 22 September 2025.

11. We await your reply at your earliest convenience."

[41] In response to this email, the Applicant's attorneys in a similarly longish letter of 25 September 2025, pointed out that no lease agreement flowed from the payment of occupational rental. They further explained that the Liquidators did not acquire any rights greater than those of Lamolor in terms of the deed of sale, including unfulfilled past obligations, more specifically, seeing that Lamolor did not comply its obligations to give vacant occupation, the liquidators were obliged to continue paying the amount of R100 00.00 plus VAT, monthly into the Applicant's account.

[42] In my view, the liquidators clearly made a choice that the only contract they elected not to be bound by was the lease agreement, albeit mistakenly so, because "*the occupational interest is related not to the*

use of the property sold but to the purchase price, which is again related to the value of the property and not its temporary use." Surely, it is reasonable to conclude that if the liquidators had intended to resile from the contract of sale of the property, they would have had, in in the same letter indicated an unwavering conviction not to be bound thereby.

[43] I am fortified in this view by what was said by the Court in In *Comwezi Security Services (Pty) Ltd v Cape Empowerment Trust Ltd* [2012] ZASCA 126 (SCA) to the following effect:

> "[15] In the past, where there was perceived ambiguity in a contract, the courts held that subsequent conduct of the parties in implementing their agreement was a factor that could be taken into account in preferring one interpretation to another. Now that regard is had to all relevant context irrespective of whether there is a perceived ambiguity, there is no reason not to look at the conduct of the parties in implementing the agreement. Where it is clear that they have both taken the same approach to its implementation, and hence the meaning of the provision in dispute, their conduct provides clear evidence of how reasonable businesspeople situated as they were and knowing what they knew, would construe the disputed provision. It is therefore relevant to an objective meaning of the words they have used and the selection of the appropriate meaning from among those postulated by the parties"

[44] It is my judgment that the only inference to be drawn from the liquidators' conduct is that they had every intention to be bound by the terms of the sale agreement as the conclusion is consistent with all proved facts. This I say because the legal position espoused in the

Applicant's attorneys made it very clear that they were bound to perform Lamolor's responsibilities in terms of the contract, yet the answering affidavit (sworn to on 5 November 2025, almost two months after the Applicant's letter) is silent about the liquidator's stance with regard to the enforcement of the Applicant and Lamolor's contract of sale, they thus sought only to resile from what they thought was the lease agreement, without any refence to the contract of sale. Instead, the liquidators obtained possession of the R5 million clearly intended in terms of clause for the execution of the contract of sale, in the event that vacant occupation was not provided to the Applicant. To my mind, in so doing, they aligned themselves with the obligation attached to the aforesaid amount as the manifest intention of the parties was that the R5 million would not accrue to Lamolor' estate until vacant occupation was given to the Applicant. Put in another way, they obtained the rights that flowed through the unexecuted contract, they must therefore accept the obligations related thereto and cannot limit the Applicant to a concurrent claim. (*Frank v Premier Hanger CC*, *supra*, para [17].

[45] It is so that by the date of the *concursus*, the Applicant had already performed in terms of the contract and transfer of the property had been registered approximately two years earlier. What remained was solely the issue of the vacant occupation of portions of the farm. Insofar as that is concerned, it undisputed that Lamolor paid the invoices presented for occupational rental as agreed. Furthermore, as at the date of the concursus there yet had not been any failure to abide by the terms of the contract on the part of Lamolor. Thus, the Applicant was not yet a creditor of Lamolor.

Conclusion

[46] In conclusion, I have in this judgment found that the facts and circumstances of this matter are consistent with the drawing of an inference that the liquidators elected to be bound by the terms of the sale agreement between the Applicant and Lamolar. The corollary of this finding is that the unterminated executory contract is binding on the liquidators as they have stepped into the shoes of Lamolar. Thus, the application must succeed.

Order

[47] In the notice of motion, the Applicant has sought several orders, some of which I think may not necessarily be granted. For example, in light of the finding that the liquidators have stepped into the shoes of Lamolar, I see no reason why the amount of R5 million in their possession should be returned to Nabal Attorneys. In the result, the following order is issued:

47.1 The application succeeds.

47.2 That the Respondents are ordered to comply with the obligations of Lamolor (Pty) Ltd (in liquidation) in accordance with the provisions of the deed of sale and the addendum thereto dated 29 September 2022 and 27 March 2023 respectively, by giving vacant occupation to the Applicant of the property referred to in the deed of sale by evicting the occupiers of the property and to demolish the dwellings on the property in compliance with the provisions of clause 17.8 of the deed of sale.

47.3 The Respondents are ordered to pay costs on Scale B.

T C NDITA

Judge of the High Court

Appearances:

For the Applicant: Advocate R B Engela

Instructed by: Van Der Spuy Attorneys

For the Respondents: Advocate J Bence

Instructed by: PPM Attorneys