

SOUTH AFRICA / JUDGMENT

Erasmus and Others v Senwes Ltd and Others (31964/04) [2005] ZAGPHC 5; 2006 (3) SA 529 (T); (2006) 27 ILJ 259 (T) (1 January 2005) [2005] ZAGPHC 5

COURT

High Courts - Gauteng

BEFORE

B.R. du Plessis

CASE / FILE NUMBER

31964/04

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IN THE HIGH COURT OF SOUTH AFRICA (TRANSVAAL PROVINCIAL DIVISION) Case No:
31964/2004 Dates heard: 17 and 18/2/2005 Date of judgment: In the matter between: ERASMUS, E
and others

APPLICANTS and SENWES LTD

FIRST RESPONDENT OPEN PLAN MEDICAL SCHEME

SECOND RESPONDENT _____ JUDGMENT DU PLESSIS J: Due to the urgency of the matter I have granted an order in the terms set out at the end of this judgment. These are my reasons for the order. The approximately 400 applicants applied for interim relief pending the finalisation of an action that they have instituted against the two respondents. I may at this stage already point out that the second respondent, a registered medical scheme, was joined in the application by reason of the possible interest it might have in the relief sought, but that no relief was sought against it. The applicants are former employees of the first respondent. In the papers the parties distinguish between different categories of applicants. They were in fact not all employed by Senwes. Counsel however informed me that by agreement I am to treat all the applicants as if they had been employees of the first respondent ("Senwes"). They have retired on pension from Senwes's employment but have continued to be members of the second respondent and also of other medical schemes. Whether Senwes is contractually obliged to do so is in issue, but as a matter of fact Senwes has been paying a subsidy towards the applicants' medical scheme premiums. Senwes has over the past few years on a number of occasions unilaterally decided on changes to the structure and amount of these subsidies. On 1 November 2004 it took a decision that in effect proposed to reduce the amount of the subsidies payable to the applicants. After Senwes's decision of 1 November 2004, the applicants instituted action seeking orders aimed at compelling Senwes to pay subsidies based on the premiums payable in respect of the second respondent's "Supreme" option. The relevance of this option, which incidentally is not an option

offered by the second respondent, will become clear in due course. or a similar medical scheme option. In terms of an amended notice of motion the applicants by way of this application sought orders, pending the finalisation of the action, aimed at restraining Senwes from implementing its decision of 1 November 2004. Apart from ancillary relief to which I shall make fuller reference later, the applicants also sought an order aimed at restraining Senwes from in future reducing the subsidies. The dispute arose in the following factual context. When the applicants entered Senwes's employment, membership of a medical scheme called SAKAV was compulsory for Senwes's employees. Senwes subsidised the premiums payable to SAKAV. Employees who retired were, subject to presently irrelevant exceptions, entitled to remain members of the medical scheme. Senwes continued to subsidise pensioners' medical scheme premiums. Some pensioners received 100% of the premiums payable to SAKAV, some received 66,6% and others 50%. (The reason for this distinction is not relevant. It arises from the different categories of employees referred to in footnote 1.) Medical schemes offer different options with different benefits and different premiums. The subsidy that Senwes paid to its retirees was based on SAKAV's "Supreme" option. In 2000 SAKAV merged with another medical scheme to form the second respondent. In the process new options were made available while old ones, including the "Supreme" option, were discontinued. From then on Senwes allowed retirees to choose from a range of options that the second respondent offered. The second respondent's "Providential Plus" option resembled the old "Supreme" option, but offered better benefits. Senwes decided to base the subsidies payable to pensioners on 90% of the premium payable in respect of the "Providential Plus" option. Thus, pensioners who had received 100% subsidy, from then on received 90% of the "Providential Plus" premium, while those who received a lower percentage subsidy, received the relevant percentage of the 90%. Where a pensioner chose another of the second respondent's options, Senwes subsidised the premium payable in respect of that option, but subject to a maximum of the appropriate percentage of 90% of the "Providential Plus" option. Premiums in respect of the "Providential Plus" option were not uniform as different income categories paid different premiums. In the result Senwes paid different subsidies in respect of different income groups. From January 2002 the second respondent abolished the "Providential Plus" option. From then on retirees were no longer required to select an option offered by the second respondent. They could choose between any of five schemes and from any of the options available from any of those schemes. At the same time Senwes decided no longer to base the subsidy on the premium payable in respect of a particular option. They based the subsidy on an amount and no longer differentiated between different income categories. Put differently, 100% from then on was an amount, irrespective of the option that a particular pensioner selected and irrespective also of a pensioner's income. The amount that Senwes thus decided upon represented a 5,2% increase on the subsidy paid in the previous year. The 5,2% in turn represented the estimated rate of inflation for the relevant period and was less than the actual increase in medical scheme premiums. These changes resulted in pensioners in the higher income groups receiving a lower subsidy in monetary terms. The changes also had the effect that lower percentages of medical scheme premiums were paid to pensioners. In the course of 2002 Senwes, again unilaterally, decided to increase the next year's subsidy by 10%. Again this was less than the increase introduced by the second respondent in respect of its premiums. Despite an

increase in premiums for the year 2004, Senwes resolved not to increase subsidies for that year. In 2004 a pensioner with a dependant spouse who received a 100% subsidyI have pointed out that “a 100% subsidy” by then did not necessarily mean 100% of the medical scheme premium that the pensioner paid., was subsidised in an amount of R1843,00 per month.On about 1 November 2004 Senwes announced a new subsidy regime. The company identified a number of the second respondent’s options that pensioners could choose from and on which subsidies were to be based for 2005. The premiums in respect of these options were substantially less than the 100% subsidy that Senwes had paid in 2004. In short, Senwes proposed to reduce subsidies substantially. In addition, Senwes offered three choices to pensioners. In the first place pensioners were given the option of taking a lump sum in lieu of future subsidies. Secondly, pensioners were given the option to receive a subsidy that would not increase in future. Pensioners who elected this option would receive R955 subsidy per month (as opposed to the R1843 that a pensioner and dependant spouse received before). Thirdly, pensioners could choose to have their subsidies increased in future. This option however meant that a pensioner would receive a subsidy of R655 per month which would in future be increased at Senwes’s discretion.Although Senwes contends that “financial stringencies played some part” in the proposed regime, it contends that the decision was mostly motivated by its perception that medical scheme options had been streamlined and offered pensioners a wide range of choices. Senwes also contends that the proposed regime will not detrimentally affect the benefits that pensioners have enjoyed in the past. The applicants contend that the options on which Senwes proposes to base subsidies offer substantially less benefits than those they had previously enjoyed. Senwes’s contention is so clearly untenable that it can be rejected out of hand. It stands to reason that R655 (or R955 that will not be increased) buy substantially less benefits than do R1843.To sum up then, by its decision of 1 November 2005 Senwes proposes to reduce subsidies by some 66,6%. Pensioners who choose not to have subsidies increased in future, will experience a reduction in subsidy of some 50%. I shall return to this, but 64 of the applicants have made an election in terms of the letter of 1 November 2004.It is the decision of 1 November 2004 that prompted this application for interim relief aimed at preserving the status quo as it existed before that date.In order for the applicants to succeed they must in the first place show that they have a prima facie right and should therefore succeed in the main action. I have pointed out that the applicants do not at this stage seek all the relief that they seek in the main action. The interim relief that they seek is more limited. It follows that the applicants must at this stage show that they have a prima facie right to the more limited relief.The applicants contend that they have a contractual right to have their medical scheme premiums subsidised. It is apparent from the applicants’ amended notice of motion that they contend that their contractual right has at least the following content. Firstly, that they are entitled to be subsidised at least in the amounts that they have been receiving until 1 November 2004 (prayer 2.1 of the notice of motion). Secondly, the applicants contend that Senwes has no right in any way to reduce the amount of the subsidy (prayer 2.3 and 3.3). Senwes contends that it has no contractual obligation to pay a subsidy to the applicants. In the alternative Senwes contends that even if it had such a contractual obligation, it is only obliged to pay a reasonable subsidy and that it has the discretion to determine what a reasonable subsidy is.I proceed to consider whether Senwes and each of the applicants have a contract in terms whereof Senwes must pay a subsidy in

respect of the applicants' medical scheme premiums. The contract that the applicants seek to rely on allegedly came about as follows. When entering Senwes' employment each employee was required to sign a "personeelaanstellingsvorm" in terms whereof they accepted Senwes's current conditions of employment "en enige wysigings daarvan wat van tyd tot tyd deur die Raad van Direkteure of die bestuur gemaak mag word". In a summary of the conditions of employment that was annexed to the "personeelaanstellingsvorm" the following appears: "Die hierna vermelde diensvoorwaardes is onderhewig aan wysiging deur die Raad van Direkteure en die Bestuur van die Maatskappy sonder kennisgewing aan, of toestemming van die personeel". The term providing for compulsory membership of the medical scheme is also in the summary. The applicants explain that the conditions of service referred to were initially not to be found in a single document but in a variety of board - and management decisions. One of the applicants, Du Bruyn, was Senwes's personnel training manager. As such he consolidated these decisions into a single document that the applicants refer to as "personnel regulations". It may be accepted, as Senwes contends, that the consolidated document contains policy statements but there is no doubt that it also contains contractual terms (general conditions of employment). Whether a particular portion of the document is the one or the other, is a matter of interpretation. I shall refer to this document as "the general conditions". The contractual provisions in the general conditions constitute the employment contract between Senwes and the applicants. Paragraph 6.1.4.1 of the general conditions provides for retirees' continued membership of SAKAV. The paragraph further provides that, in respect of a defined category of retirees (including the applicants) "sal Senwes die volle premie gebaseer op die 'Supreme' opsie betaal". This clause deals with the position of one of the categories of employees that I have referred to in footnote 1. In accordance with the agreement between the parties referred to in that footnote, I deal only with this clause. Senwes contends that this clause, read with all the general conditions, contains no more than a moral obligation on its part, a moral obligation that it has honoured, first by paying a subsidy based on the "Supreme" option, and after the demise of that option, by paying a differently based subsidy. It is inherently improbable, so Senwes contends, that it would have undertaken an open-ended contractual obligation to subsidise retirees' medical aid premiums for as long as they lived. Senwes' contention raises two distinct questions. The first question is whether, factually, the paragraph was intended to be contractual. If so, the next question is whether in law a binding contract came into being. I start with the first, factual, question. The terminology used in paragraph 6.1.4.1 might be ambiguous, but it is indicative of an obligation rather than a mere statement of intent ("sal Senwes"). At the time that the applicants entered Senwes's employ, it was common practice for employers to offer post-retirement benefits as part of the remuneration package of employees. In the circumstances Senwes's contention that it is improbable that it would have undertaken an "open ended obligation" to pay post-retirement medical scheme benefits cannot be accepted. Interpreted in its contractual setting, clause 6.1.4.1 quoted above forms part of the parties' employment contract. This construction is underpinned by the parties' conduct which shows that they regarded payment of the subsidy as a legal obligation. On retirement Senwes gave to each applicant a letter wherein it unequivocally stated that it was to continue to pay the subsidy. The papers show that Senwes has at all relevant times been paying the subsidies in respect of pensioners' medical scheme premiums. It has done so

even at times when it suffered financial losses and also at times when it went through structural changes in order to increase its profitability. Since it has become generally accepted audit practice to reflect the present value of future obligations in a company's financial statements, Senwes has so reflected its obligation towards pensioners. This conduct shows that Senwes has always regarded the obligation as a legally binding one and not as only a moral one. There is no doubt that the applicants' regard the obligation as contractual. There is nothing in the wording of the general conditions to indicate that the obligation is anything but contractual. I am satisfied that the applicants have shown, at least prima facie, that the parties intended paragraph 6.1.4.1 of the general conditions to contain a contractual obligation. I now turn to the question whether the obligation is legally binding and enforceable. If the relevant paragraph of the general conditions is read with the "personeelaanstellingsvorm" and with the summary of the general employment conditions, the agreements between Senwes and the applicants provide that Senwes will subsidise the applicants' medical scheme premiums, based on SAKAV's Supreme option (paragraph 6.1.4.1 referred to above). The agreement further provides that Senwes's board of directors and its management may amend any of the terms of the employment contract without notice to or the consent of the applicants (the "personeelaanstellingsvorm" and the summary of the conditions of employment referred to above). If performance in terms of an alleged contract is entirely dependant on the will of the promisor (a *condictio si voluero*), the contract is void. That is so because any claim for performance by the promisee could be met with the defence that the promisor has decided not to perform. (See Christie, *The Law of Contract* (4th edition) p. 112 with the authorities at footnote 371). In a number of cases it was said that if one of the parties to a contract has the right to amend the terms thereof, such right amounts to a *condictio si voluero* and the contract is therefore void. In *NBS Boland Bank Ltd v One Berg River Drive CC and others; Deeb and another v Absa Bank Ltd; Friedman v Standard Bank of SA Ltd* 1999 (4) SA 928 (SCA) at paragraphs 19 to 23 Van Heerden DCJ, who wrote the court's unanimous judgment, dealt with the Appellate Division judgments wherein this view was expressed. For reasons that I need not repeat, the Supreme Court of Appeal held that those judgments are not authority for the proposition, namely that if one of the parties to a contract has the right to amend the terms thereof, such right amounts to a *condictio si voluero* and the contract is therefore void. At issue in the *NBS Boland Bank*-case was the right of the mortgagee (promisee) unilaterally to amend the rate of interest payable in terms of the bond. Based on an analysis of our common law and of the law in other countries, the SCA held (para. 24) that "save, perhaps, where a party is given the power to fix his own prestation, or to fix a purchase price or rental, a stipulation conferring upon a contractual party the right to determine a prestation is unobjectionable." The contract now under consideration gives Senwes a general power to amend the terms of the contract. Whether such a general power is objectionable does not arise in this case. The applicants have retired and they have thus performed in terms of the contract. Senwes's power to determine the applicants' prestation is now academic. The remaining issue is whether Senwes's power to amend its own obligation to subsidise medical scheme premiums is objectionable and renders the obligation itself unenforceable. For the reasons that follow I am of the view that Senwes's power to amend its own obligation is also unobjectionable. The essence of the objection to a power on the part of the promisor to amend his prestation is that it renders the contract uncertain and unenforceable.

The objection would fall away if Senwes's power to amend were subject to an objective standard and thus fettered. I proceed now to consider whether Senwes's power is subject to an objective standard. In the NBS Boland Bank-case the SCA held that "it is a rule of our common law that unless a contractual discretionary power was clearly intended to be completely unfettered, an exercise of such a discretion must be made *arbitrio bono viri*". It was not argued that Senwes's power in this case was, as a matter of interpretation, clearly intended to be unfettered. The question then is whether, in law, the power is fettered. There is no reason to limit the rule (that discretionary contractual powers must be exercised *arbitrio bono viri*) to instances where the power vests in the promisee. In fact, if regard is had thereto that all contracts are subject to the principle of good faith see for instance *Tuckers Land and Development Corporation (Pty) Ltd v Hovis* 1980 (1) SA 645(A) at 651, 652. See in general Cockrell, "Second-guessing the exercise of contractual power on rationality grounds" (1997 Acta Juridica) 26 at 41), and that parties should as far as possible be held to their contracts *Christie* op. cit. at 109., there is good reason to apply the rule also to cases where the power is given to the promisor. Moreover, the SCA has applied the rule to the case of a mortgagee who was given very wide powers in terms of a notarial bond to take over and run the business of the mortgagor and thus to determine the manner in which it was to exercise its own contractual rights (*Juglal N.O. v Shoprite Checkers t/a OK Franchise Division* 2004 (5) SA 458(SCA) at para. 26). I hold that Senwes is bound to exercise its right to amend the terms of the contract *arbitrio bono viri*. In the NBS Boland Bank-case it was unnecessary to determine exactly what the term *arbitrio bono viri* means. Claassen, Dictionary of Legal Terms and Phrases (under "*arbitrium boni viri*") translates the term as "the decision of a good man", and explains it as "a reasonable decision". In the *Juglal*-case (para. 26) the SCA also held that an obligation to act *arbitrio boni viri* obliges the person to "act reasonably and to exercise a reasonable discretion". Applied to the present case, Senwes must exercise its power to amend the contract reasonably. In *Genac Properties JHB (Pty) Ltd v NBC Administrators* CC1992 (1) SA 556(AD) the SCA had to decide, amongst other issues, whether an obligation to pay a percentage of "the aggregate of all the landlord's actual and reasonable maintenance and running expenses" rendered the rental payable so vague as to be unenforceable. The court held (at p. 578 D to G) that whether expenses "are reasonable is ... capable of objective ascertainment". As appears from the passage referred to, the concept of reasonableness is so settled in our law that it can readily be used, and is used, as an objective standard that is justiciable by a court. It follows that Senwes's power to amend the contract is subject to the standard of reasonableness and not unfettered. Before I deal with the next issue, I must make a few observations concerning Senwes's right to amend its obligation to pay the subsidy. This case concerns a contract of employment in terms whereof the applicants have fully performed and have already rendered their services to Senwes. Senwes's obligation to pay the subsidy is the only relevant remaining obligation. Contracts of employment remain contracts but when they are interpreted it must be borne in mind that the parties thereto have certain protected constitutional rights. Of relevance in the present context is the right to fair labour practices provided for in section 23(1) of the Constitution of the Republic of South Africa, 1996. In view thereof that the applicants have fully performed under the contract, the applicants' rights to fair labour practices adds impetus to the general rule that a court should endeavour to enforce rather than to invalidate a contract. For

Senwes Mr. Brassey contended that, if the obligation under consideration is contractual, then it must be interpreted to be one to pay a reasonable subsidy towards the applicants' medical scheme premiums. I cannot agree. The contract provides that Senwes must pay a subsidy based on SAKAV's Supreme option. That obligation remains unaltered subject only to Senwes's power to change it if and when it is reasonable in all the circumstances to do so. The next question is whether Senwes acted reasonably when it made its decision of 1 November 2004. It will be recalled that Senwes has over the years already made a number of changes to the contractual obligation to pay the subsidy. The changes prior to 1 November 2004 will be in issue in the pending action between the parties. I need not and do not express any view as to the reasonableness of those changes. I must however take those changes into account when I consider the decision of 1 November. I cannot now ask whether the decision of 1 November 2004 is a reasonable amendment of the obligation to pay a subsidy based on SAKAV's Supreme option. I have to assume that the prior changes were reasonable and then determine whether the proposed change of 1 November is a reasonable amendment of the position as it existed directly before 1 November. The evidence shows that by its decision of 1 November Senwes proposed to change the basis of the subsidy from one expressed in Rand terms to one linked to particular options offered by the second respondent. There is no doubt that those options offer much less in terms of benefits than could be bought with the Rand-based subsidy as it was directly before 1 November 2004. In Rand-terms Senwes proposed to pay substantially less than it did directly before 1 November 2004. Senwes's contention that the smaller amount could buy similar benefits than could the bigger amount need not be taken seriously. By its decision of 1 November, Senwes proposed either not to increase subsidies in future or to pay even less in the case of pensioners who preferred to receive increases in the subsidy. In sum, there is no doubt that by its decision of 1 November, Senwes purported substantially to reduce the subsidy paid to pensioners. The proposed changes were not prompted by any change in the medical scheme market, such as the discontinuation of suitable options. The changes were not necessitated by financial need on the part of Senwes. Considering the evidence as a whole, the proposed changes were probably motivated by a desire on the part of Senwes to increase its profitability. There is nothing wrong with a desire to increase profitability, but on the evidence before this court it is unreasonable for Senwes to seek to do so at the applicants' expense. In the context of a right to amend contractual terms, the reasonable exercise of discretion must take into account the rights and interests of both (or all) the parties to the contract. It must balance those rights and interests, always bearing in mind the nature and content of the original contractual obligation. It follows that by its decision of 1 November 2004 Senwes breached the contract between it and the applicants. In their amended notice of motion the applicants sought orders aimed at interdicting Senwes from in any way reducing the subsidy and at maintaining it at the pre-1 November 2004 levels. Senwes has the power to effect reasonable changes to the subsidy. It cannot be said that it can never be reasonable to reduce the subsidy and that it will never be reasonable to change the subsidies as they were on 1 November 2004. Accordingly I did not grant orders to that effect. The applicants had to show a well-grounded apprehension of irreparable harm if the interim relief sought was not granted and the ultimate relief is eventually granted. Save in respect of the first three applicants, Mr. Brassey on behalf of Senwes conceded that the applicants will suffer such

irreparable harm. Senwes's reason for not making the concession in respect of the first three applicants is that they are relatively wealthy and can afford to contribute to their own medical scheme premiums if the subsidy is reduced. The different requirements for an interim interdict interact and where the applicant for such an interdict has established a strong prima facie right, the court in the exercise of its discretion may place less emphasis on the other requirements (Harms, Civil Procedure in the Supreme Court, S10). In my view the applicants in this case have established a strong prima facie right not to have the decision of 1 November implemented. The mere fact that the first three applicants are relatively wealthy does not in itself mean that they will not suffer irreparable harm if they do not continue to receive their rightful subsidies and the court eventually finds that they were entitled thereto. The pending action could take a long time to be finalised, and there is no reason to accept that the three applicants will be able to pay the shortfall on the medical scheme premiums indefinitely. The third requirement for an interim interdict is that the balance of convenience must favour the applicant. There is no doubt that the balance of convenience in this case favours the continued payment of the subsidy as it was prior to 1 November 2004. The applicants are pensioners and most of them cannot afford to pay any shortfall in the medical scheme premiums. Even those who can, will at least find it inconvenient to do so. Senwes on the other hand has been paying the subsidy and there is no evidence that it will be unable to do so or will suffer inconvenience if it has to continue paying the subsidy as it was prior to 1 November 2004. The applicants have no alternative remedy by which to protect their rights pending the action. I have pointed out that, in reaction to the options embodied in Senwes's letter of 1 November, 64 of the applicants have conveyed elections to Senwes. I have granted an order directing Senwes not to implement these elections pending the finalisation of the action. The evidence before this court does not deal with every single applicant who has made or has purported to make an election. What does appear from papers however is that many of those who have purported to make elections did not understand the import thereof and thus did not do so with knowledge of their rights in that regard. For instance, the papers show that some pensioners have purported to elect to receive the lump sum payment as well as a monthly premium that will increase in future. Those applicants clearly did not understand the letter of 1 November in terms whereof they were to select one of the three available options. I was thus faced with the situation that some of the applicants who have purported to make an election probably did not make a binding election. It is not possible to determine from the papers whose elections, if any, are unassailable. In the result I concluded that the only way to deal with these elections or purported elections was to restrain Senwes from implementing them until the effect of each purported election has been determined in the course of the action. I followed that approach as it is clear that some of the applicants have a prima facie right not to have the elections implement. All the applicants who have purported to make elections will suffer irreparable harm if they are held to the elections now and it ultimately appears that they should not so have been held to their elections. In this instance too, the balance of convenience clearly favours the relevant applicants. In the result the following order was made: 1. The first respondent is hereby restrained and interdicted, pending the finalisation of the action (including any appeal) instituted by the applicants against the respondents out of this court under case number 31965/04 from: 1.1 implementing the proposed reduction of the subsidy paid

by the first respondent to or on behalf of the applicants in respect of the applicants' monthly medical scheme premiums as proposed in the first respondent's letter dated 1 November 2004, annexed to the notice of motion as annexure "AA" or in any other way;1.2 transferring any of the applicants to the second respondent's Primary Classic option where the applicant had been on a different option before 1 November 2004, save where applicants have made such an election in the course of the annual election for 2005 in respect of the available options and have conveyed such election to the second respondent during November 2004;2.Pending the finalisation of the action referred to in paragraph 1above the first respondent is directed to disregard the elections made by applicants listed in annexure "CC" to the notice of motion pursuant to the letter from the first respondent dated 1 November 2004 annexed to the notice of motion as annexure "AA".3.The costs are reserved.B.R. du PlessisJUDGE OF THE HIGH COURT.

IN THE HIGH COURT OF SOUTH AFRICA(
TRANSVAAL
PROVINCIAL DIVISION)

JUDGMENT

DU PLESSIS J:

In the papers the parties distinguish between different categories of applicants. They were in fact not all employed by Senwes. Counsel however informed me that by agreement I am to treat all the applicants as if they had been employees of the first respondent.

The relevance of this option, which incidentally is not an option offered by the second respondent, will become clear in due course.

I have pointed out that "a 100% subsidy" by then did not necessarily mean 100% of the medical scheme premium that the pensioner paid.

prima facie

This clause deals with the position of one of the categories of employees that I have referred to in footnote 1. In accordance with the agreement between the parties referred to in that footnote, I deal only with this clause.

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condictio si voluero

Christie, The Law of Contract

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NBS Boland Bank Ltd v One Berg River Drive CC and others; Deeb and another v Absa Bank Ltd; Friedman v Standard Bank of SA Ltd 1999 (4) SA 928(SCA)

1999 (4) SA 928

NBS Boland Bank

arbitrio bono viri

See for instance

Tuckers Land and Development Corporation (Pty) Ltd v Hovis 1980 (1) SA 645(A)

1980 (1) SA 645

at 651, 652. See in general

Cockrell

, “

Second-guessing the exercise of contractual power on rationality grounds

” (

1997 Acta Juridica

p. 26 at 41).

Christie

op. cit

. at 109.

Juglal N.O. v Shoprite Checkers t/a OK Franchise Division 2004 (5) SA 458(SCA)

2004 (5) SA 458

Claassen, Dictionary of Legal Terms and Phrases

arbitrium boni viris

Juglal

arbitrio boni viri

Genac Properties JHB (Pty) Ltd v NBC Administrators CC

1992 (1) SA 556(AD)

1992 (1) SA 556

Constitution of the

Republic

of

South Africa

, 1996

Harms, Civil Procedure in the Supreme Court

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B.R. du Plessis

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