

SOUTH AFRICA / JUDGMENT

Highpoint Hotels (Pty) Ltd v Parthenon Construction CC and Another (32447/18) [2021] ZAGPJHC 649 (9 November 2021) [2021] ZAGPJHC 649

COURT

South Gauteng High Court, Johannesburg

BEFORE

Keightley

CASE / FILE NUMBER

32447/18

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REPUBLIC OF SOUTH

AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL

DIVISION, JOHANNESBURG

CASE

NO: 32447/18

NOT

REPORTABLE

NOT OF

INTEREST TO OTHER JUDGES

REVISED

In

the matter between: HIGHPOINT HOTELS (PTY)
 LTD Plaintiff
 And
 PARTHENON CONSTRUCTION
 CC First
 Defendant
 GRAHAM MICHAEL
 PIETERSE Second
 Defendant

JUDGMENT

KEIGHTLEY, J:

1. The plaintiff in this matter, Highpoint Hotels (Pty) Ltd, (Highpoint) sues the second defendant, Graham Michael Pieterse (Mr Pieterse) for payment of two amounts allegedly outstanding under a lease agreement entered into between Highpoint and the first defendant, Parthenon Construction CC (Parthenon). Claim A is for an amount of R1 231 494, 92, being for outstanding rental for the premises, and Claim B is for an amount of R1 820 416, 37, being the outstanding amount due in respect of utilities.
2. Mr Pieterse is the sole member of Parthenon. Highpoint is an entity through which a business known as the Courtleigh Hotel was conducted

at certain premises in Yeoville. Dr Barney Hurwitz was the effective owner of Highpoint and the immovable property until his death in 2018, when ownership passed to his son, Mr Jeffrey Hurwitz. After Dr Hurwitz's death, Highpoint instituted the present proceedings in order to recover the outstanding monies from both Parthenon and Mr Pieterse. Summary judgment was granted against Parthenon, but Mr Pieterse was given leave to defend the action. It is common cause that the execution process following from judgment having been entered against Parthenon yielded no return. In the circumstances, Highpoint seeks to recover the full amount of the outstanding debt from Mr Pieterse.

3. I should record at the outset that Mr Pieterse was self-represented at the trial. Highpoint was represented by counsel, Mr Novitz.
4. Most of the facts on which the claim is based are common cause. The lease agreement was no longer in dispute at the time of trial. Under that agreement, Parthenon was liable for rental, ancillary charges and utilities. Mr Pieterse also accepted under cross-examination that he did not dispute the amounts due. The amounts were based on a utilities bill issued by the municipality to Parthenon on 12 July 2018, showing a balance in the amount claimed under Claim B, and a statement of account issued by Highpoint to Parthenon on 31 March 2018 in the amount claimed under Claim A.

5. Mr Pieterse denies his indebtedness as claimed under both Claims A and B. In addition, he raised a special plea of prescription in respect of claim B. I can dispense with the prescription issue summarily. Mr Pieterse pleaded, in general terms, that the claim was instituted more than three years after the municipal charges in question fell due. However, he led no evidence to support his plea, and he accepted, ultimately that the amounts reflected in the municipal statement dated 31 March 2018 were due. His ultimate case at trial was that he was not personally liable for them.
6. Mr Pieterse submitted that because Dr Hurwitz was always aware of the outstanding amounts due for utilities, both by Parthenon and its predecessors, his plea of prescription should be upheld. However, this is not a valid basis upon which the plea of prescription could be upheld. It was incumbent on Mr Pieterse to lead evidence to establish which portion of the amount under Claim B fell due for payment to the municipality three years or more from the date of the institution of the action. There was no evidence led by him to this effect, and thus no evidence to support his special plea. The special plea of prescription is plainly unmeritorious, and it must fail.
7. The only real bone of contention between the parties is whether Mr Pieterse is personally liable for the amounts owed by Parthenon under the lease agreement. The basis for Highpoint holding him personally liable is a letter, dated 12 June 2013 (the June 2013 letter). In view of its importance to both plaintiff's claim and Mr Pieterse's defence, it is necessary to set the content of the letter out in full (the underlining has been added by me):

Mr Graham Michael Pieterse

[...]

HOUGHTON ESTATE

2041

TEL: [...]

[...]

Dr Barney Hurwitz

c/o Highpoint Hotels (Pty) Ltd (The Courtleigh Hotel)

I, Graham Michael Pieterse, (ID: [...]), acknowledge and give my commitment that I will continue to pay rental of R75,000-00 per month plus utilities and plus VAT, on a monthly basis.

Should however, after a period of 4 months as from 01 July 2013, the premises presently occupied by the Courtleigh Hotel, at 10 Hendon Street, Corner Jo Slova (sic) street, acquire re-zoning or erecting of a building onsite, that I agree to vacate the premises when notified.

Thus agreed and signed on this day, 12th June 2013.

GRAHAM M PIETERSE

8. The plaintiff contends that the June 2013 letter clearly and unequivocally records that Mr Pieterse undertook that he would be personally liable to Highpoint for the amounts falling due by Parthenon under the lease agreement. Mr Pieterse denies this. He says, and his case has always been, that he was doing no more in the letter than giving the undertaking on behalf of Parthenon, despite the use of his personal name and details in the letter.
9. The crux of the dispute between the parties is the proper interpretation of the June 2013 letter. Before dealing with the evidence led by both parties, it is as well to refer to the relevant principles that apply to the interpretive exercise.
10. Mr Novitz for Highpoint referred me to *Coopers & Lybrand v Bryant*;^[1] *Engelbrecht v Senwes Ltd*;^[2] and *KPMG Chartered Accountants (SA) v Securefin*.^[3] All of these authorities precede more recent authorities that have clarified the modern principles applicable to the interpretation of documents. I refer, of course, to *Endumeni*.^[4] Reference must also be made to the Constitutional Court judgment in *University of Johannesburg v Auckland Park Theological Seminary and Another*.^[5] A recent judgment of the Supreme Court of Appeal, *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others*,^[6] usefully summarises the current state of the law in this regard, with reference to the *Endumeni* and *University of Johannesburg* judgments, and offers further guidance on how the principles are to be applied.
11. In summarising the approach laid down in *Endumeni*, Unterhalter AJA in *Capitec* explains it as follows:

“It is the language used, understood in the context in which it is used, and having regard to the purpose of the provision that constitutes

the unitary exercise of interpretation. I would only add that the triad of text, context and purpose should not be used in a mechanical

fashion. It is the relationship between the words used, the concepts expressed by those words and the place of the contested provision

within the scheme of the agreement (or instrument) as a whole that constitutes the enterprise by recourse to which a coherent and

salient interpretation is determined. As Endumeni emphasised, citing well-known cases, “[t]he inevitable point of departure is the language of the provision itself.”^[7]

12. As to the admissibility of evidence as an aid to interpretation, the SCA in *Capitec* points out that the Constitutional Court in *University of Johannesburg* affirmed that an expansive approach should be taken to the admissibility of evidence in its context and purpose, so as to determine what the parties to the contract intended. This is regardless of whether or not the

words used are ambiguous.[8] In other words, courts should lean towards admitting evidence relevant to context and purpose. Thereafter, a court may weigh that evidence for purposes of ascertaining the meaning of the document in question, taking into account the text, context and purpose.[9]

13. On the question of the primacy of clear language in the interpretive exercise, Unterhalter AJA says:

“The Constitutional Court has rejected the idea of the plain meaning of the text or its primacy, since words without context mean nothing, and context is everything. It has given a wide remit to the admission of extrinsic evidence as to context and purpose so as to interpret the meaning of a

contract.”[10]

14. Capitec does warn, however, that although the “plain meaning” of a document does not enjoy primacy in the interpretive process, that process does begin with the text and its structure. In other words, the text and structure remain an important element in the unified process of interpretation. Further, while it is frequently stated in judgments dealing with interpretation that “context is everything”, this should not be regarded:

“...as a licence to contend for meanings unmoored in the text and its structure. Rather, context and purpose may be used to elucidate the text.”[11]

15. It is with these principles in mind that the June 2013 letter must be interpreted. Specifically, was the letter intended by the parties to impute personally liability to Mr Pieterse for Parthenon’s obligations under the lease agreement? The language and structure of the letter are the obvious starting point, but equally important is evidence that may shed light on the context and the purpose the parties had in mind when the letter was signed by Mr Pieterse.
16. It is an important feature of this case that the only witness who could give direct evidence about the facts and circumstances in which Mr Pieterse signed the letter is Mr Pieterse himself. Dr Hurwitz, unfortunately, is deceased. It is common cause that the letter was dictated by Dr Hurwitz and typed up by his personal assistant. In fact, Ms Devenish, the personal assistant at the time, gave evidence for Highpoint and confirmed that this was the case. She signed the letter as a witness. It is also common cause that Dr Hurwitz dictated the letter for Mr Pieterse’s signature following a meeting held between the two of them. Ms Devenish testified that she was not in the meeting. Nor, was Mr Hurwitz Jnr. His evidence was that he had no involvement in Highpoint or the Courtleigh hotel at this time. His involvement only arose after his father’s death. Ms Devenish and Mr Hurwitz Jnr were the only two witnesses for Highpoint.
17. Mr Pieterse testified about the circumstances in which he signed the June 2013 letter. There was no objection by Highpoint as to the admissibility of his evidence, and correctly so. The evidence is obviously of great relevance to ascertaining the context and purpose of the letter.

18. According to Mr Pieterse, the June 2013 letter was the product of a meeting he was invited to attend by Dr Hurwitz. The latter explained to Mr Pieterse that he was working on an idea to develop a shopping centre on the land upon which the Courtleigh Hotel was situated. He told Mr Pieterse that he would need have the land rezoned for this purpose, and he anticipated that the project could get off the ground in the next approximately four months.
19. He and Dr Hurwitz had a good working relationship as Mr Pieterse had taken over the Courtleigh under the lease in 2007. Dr Hurwitz

requested Mr Pieterse to assist him in securing three erven in front of the hotel premises for the necessary parking that would be required for the shopping centre project. It is common cause (Mr Hurwitz Jnr confirmed this) that Mr Pieterse agreed and that between the two of them, they purchased the properties in question.

20. As for what the letter was meant to achieve, Mr Pieterse explained that Dr Hurwitz understood that Mr Pieterse's lease of the hotel premises would be affected by the shopping complex project. Obviously, Mr Pieterse could not continue running the accommodation

business of the hotel once the project was off the ground. This according to Mr Pieterse, based on what Dr Hurwitz told him at the meeting, could take place as early as in the next four months or so. Dr Hurwitz drafted the letter to give him comfort on two fronts. The first was to get an undertaking that in view of the fact that the lease might well be cut short (due to the shopping centre project), there would be no defaulting on the rentals that would fall due in the interim. Second, that the lessee would not put up a fuss about vacating the premises when the time came and the project got off the ground. Dr Hurwitz wanted comfort from Mr Pieterse that this would not present an obstacle to the proposed development.

21. Mr Pieterse explained that both of these aspects were covered in the June 2013 agreement. In other words, according to him, this was the sole purpose of the letter. It was never meant to constitute a document in terms of which he undertook personal liability for the debts of Parthenon under the lease agreement. Mr Pieterse described the letter as being a "gentleman's agreement". By this I understood him to mean that it was an assurance given to someone with whom he had a good relationship, that he would not do anything to undermine that relationship by putting obstacles in the way of the shopping centre project.
22. Mr Pieterse conceded under cross-examination that there is no reference to Parthenon at all in the June 2013 letter, and that all references in terms of the undertakings given are to him in person. However, he said that the nature of the relationship he had with Dr Hurwitz was that in their communications and direct dealings they didn't distinguish between the person and the entity. As I understand this part of Mr Pieterse's evidence, he was not referring to formal documents and communications, such as invoices and the original written lease agreement. It is common cause that Parthenon was the identified party in all of them.

23. Mr Pieterse said that he was the mouthpiece and the brain behind Parthenon, and was the only member of the CC. He ran the accommodation business through Parthenon. Accordingly, when he gave the undertaking to Dr Hurwitz after their meeting in June 2012, he was effectively doing so on behalf of Parthenon. Mr Pieterse testified that he would never have given a personal undertaking for Parthenon's debt under the lease agreement, as he simply would not have had the money personally to make good on that undertaking. Moreover, he pointed out that there was no change to the billing and payment regime following the June 2013 letter. Parthenon continued to
- be billed and to make payment, as it had always done. In other words, Mr Pieterse didn't make any personal payments, despite the letter.
24. In cross examination, Mr Nowitz put to Mr Pieterse that the purpose of the June 2013 letter was to get a personal undertaking from him that he would be liable for Parthenon's debt, as Parthenon was in debt at that stage under the lease agreement. Mr Pieterse did not dispute that Parthenon was in debt, but he denied that the debt was the underlying reason for, and purpose of, the letter.
25. It seems to be common cause that Parthenon's indebtedness was a perpetual state of affairs throughout the lease period. Mr Pieterse testified that this had been the case too with the two predecessors, who had leased the hotel premises. Neither of them was able to keep up with the rental and utilities payments.
26. However, he explained that Dr Hurwitz accepted this state of affairs. This was because Dr Hurwitz understood that having a tenant occupying the premises and running a business meant that there was a reduced threat of the property falling into disrepair and being vandalised. Mr Pieterse carried out the necessary repairs and maintenance of the premises and in this respect also acted as a "caretaker". Without denying that Parthenon was a tenant, Mr Pieterse explained that it was because of the valuable caretaking function played by Parthenon's continued occupation of the building that Dr Hurwitz never took action against Parthenon for outstanding rentals or sought its eviction from the premises. Indeed, Dr Hurwitz gave Mr Pieterse two other premises that he owned to lease in subsequent years.
27. As I understand the gist of Mr Pieterse's evidence in this regard it is that although Parthenon was a tenant, Dr Hurwitz was not primarily driven by a purely commercial motive in the lessor/lessee relationship. Mr Pieterse's case is that for this reason, Highpoint's interpretation of the June 2013 letter, which is premised solely on the commercial motive of recovering rentals, should be rejected.
28. It is common cause that the only action taken against Parthenon and Mr Pieterse was after Dr Hurwitz's death. Ms Devenish confirmed that Parthenon was often in debt and that Dr Hurwitz would get frustrated when promises of payment were not kept. It was also not disputed that the previous tenants had had similar payment (or rather non-payment) histories.

29. There was some contestation from Mr Hurwitz Jnr about how well Mr Pieterse had actually maintained the property during the currency of the lease period. He testified that when he took over the premises after his father's death, there was flooding in the kitchen and unsightly corrugated iron coverings had been placed over plumbing stacks. Mr Pieterse readily accepted that there were problems with leaks in the kitchen. He explained that this was a situation that arose from the use of the kitchen having been abandoned.
30. Mr Pieterse impressed me as a credible witness. He did not have the benefit of being led by counsel, and so understandably, he used terms like "caretaker" and "gentleman's agreement" quite freely. However, it was plain that he implied no legal meaning to his use of these terms. He readily accepted that when he described himself as a "caretaker" he did not mean to imply that he was not a tenant. His version of events was consistent throughout. He has maintained, from the commencement of the action that the June 2013 letter did constitute a personal undertaking on his part for Parthenon's liability.
31. Mr Novitz criticised Mr Pieterse for the confusion drawn in his evidence between the legal entity Parthenon and Mr Pieterse personally. Mr Novitz argued that Mr Pieterse could not say that he did not understand that there was not a legal distinction between himself personally and the CC through which he conducted his business when it was plain from the affidavit opposing summary judgment that Mr Pieterse was well aware of this legal distinction. I did not understand Mr Pieterse's evidence to be that he was not aware of this legal distinction. His case is simply that the June 2013 letter was never meant for the purpose of vesting in him personal liability for Parthenon's debt. Mr Pieterse's evidence was that in the manner in which he interacted with Dr Hurwitz, including in the meeting leading to the June 2013 letter, they commonly spoke in personal, rather than in terms of the entities through which each of them operated. I did not find his evidence to lack credibility for this reason.
32. The evidence of both Mr Hurwitz Jnr and Ms Devenish was uncontroversial and there is no reason to question their credibility either. However, this is not a case in which the evidence of witnesses produces mutually exclusive versions. This is because, as I mentioned earlier, neither Mr Hurwitz Jnr nor Ms Devenish can shed any light on what the parties meant to agree to when Mr Pieterse signed the June 2013 letter. In other words, even though their evidence is also credible, this does not assist one way or another.

33. Having found Mr Pieterse's evidence to be credible, there is no reason to reject it. The question remains: what weight does it carry in the interpretive exercise in this case? Just because Mr Pieterse says what he understood the purpose of the June 2013 letter to be does not mean that I must accept this as the proper interpretation. This would go against the basic principle that interpretation is for the court to undertake and not a witness. However, his evidence as to context and purpose is nonetheless relevant to this undertaking.
34. The starting point of the interpretation of the June 2013 letter is, as the authorities discussed earlier tell me, the text and structure. I must bear in mind, however, that the text and structure do not enjoy primacy, but must also be considered together with the context and purpose.
35. It is so, as Mr Novitz points out, and Mr Pieterse accepts, that the letter is cast in personal terms. There is no reference to Parthenon in it at all. The first sentence, from "I, Graham Michael Pieterse" to "give my commitment that I will..." , appears, purely textually, to be a reference to Mr Pieterse in his person, and appears to denote a personal undertaking. However, one cannot consider these words on their own. One must consider them, first, in the context of what follows in the sentence and, second, in the full context of the letter as a whole.
36. The remainder of the first sentence gives a hint that all may not be as it seems. Mr Pieterse's undertaking is that he will "continue to pay rental ...". I underlined this phrase when I referred to the full text of the letter earlier. I underline "continue" again because it is in my view significant. It is common cause that Mr Pieterse never personally paid rental on behalf of Parthenon previously, nor did he previously give a personal undertaking to do so. The inclusion of the word "continue" must have some meaning understood by Dr Hurwitz (who drafted the letter) and Mr Pieterse, who signed it. Why would Mr Pieterse undertake personally to "continue" to pay monthly rental in circumstances when he had never done so, or never undertaken to do

so before? Indeed, it is also common cause that he did not subsequently pay the rental instead of Parthenon either. In fact, the

parties continued to go about the business of invoicing for amounts due, and payment thereof as before: Highpoint invoiced Parthenon, and Parthenon paid Highpoint (albeit not always on time or in full).

37. Mr Pieterse's evidence, which I have accepted, is that the context of the agreement was Dr Hurwitz's disclosure to him that he had embarked on a project to build a shopping centre on the premises occupied by the hotel. He said that Dr Hurwitz wanted comfort that the rentals would continue to be paid, even though the tenancy could be cut short. In other words, as Mr Pieterse put it, Dr Hurwitz wanted an assurance that the tenant would not fleece what it could from the profits in the few months possibly remaining of the tenancy at the expense of paying rentals that were due. This contextual evidence is important. It explains the use of the term "continue" in the first sentence of the June 2013 letter. The rental would continue to

be paid, despite the fact that the tenancy was threatened with early termination. This is the most reasonable explanation for the undertaking being cast in the terms it was cast.

38. However, this alone would not necessarily warrant rejection of Highpoint's interpretation. As I said, one must also consider the first undertaking given in the context of the whole document, and in particular, the second paragraph. This is the undertaking to vacate. This paragraph has some important textual features. First, it refers specifically to a "period of 4 months" and to "rezoning" or "erection of a building onsite". These events clearly have some significance to the parties. That significance is explained by Mr Pieterse's evidence: Dr Hurwitz wished to develop the property within the next four months. One of the factors giving rise to the June 2013 letter was precisely this plan by Dr Hurwitz. The undertakings in the letter were not self-standing, but related.
39. The second important textual feature of the undertaking in the second paragraph is the reference yet again to Mr Pieterse personally, as in "...I agree to vacate the premises when notified". It is common cause that Mr Pieterse never occupied the premises in his personal capacity. Parthenon did. Bearing in mind the distinction between Parthenon's legal personality and that of Mr Pieterse, he could not personally undertake to vacate. His "personal" undertaking here only makes sense if he was giving that undertaking on behalf of Parthenon. It would be nonsensical otherwise.
40. This latter textual feature is consistent with Mr Pieterse's evidence that he and Dr Hurwitz commonly overlooked the entities

through which they operated their respective businesses in their communications. In fact, if one looks at how both parties are

described in the addresses cited at the commencement of the document, it is not only Mr Pieterse who is referred to personally. Dr Hurwitz is too. His address is given as "Dr Barney Hurwitz, c/o Highpoint Hotels (Pty) Ltd (The Courtleigh Hotel)." It is significant that he is identified as the primary party, not Highpoint. This lends credence to Mr Pieterse's version that they commonly reverted to informal referencing as opposed to referencing the actual business entities through which they operated.

41. If one reads the text and structure of the June 2013 letter, it is clear that the two undertakings are connected. Taking into account the context, the connection between the two was the shopping centre project Dr Hurwitz had in mind.
42. Mr Novitz made the point when he was cross-examining Mr Pieterse and in his closing argument that there would have been no need for Highpoint to seek an undertaking from Parthenon when there was already an obligation under the lease on the part of Parthenon to pay rental. The suggestion was that the undertaking in the first paragraph only makes sense if it is read as an additional, personal undertaking by Mr Pieterse that he would pay. This submission fails properly to take into account the full structure and context of the June 2013 letter. It assumes that there isn't a connection between the two undertakings. It also

assumes that the personal “I” used in the first paragraph means something different to the “I” in the second. As I have already noted, Mr Pieterse could not personally vacate the premises. He has to have been “speaking” in the document on behalf of Parthenon, in giving that undertaking. Logically, the same interpretation must be given to the use of the personal pronoun in the first paragraph.

43. In fact, during his cross- examination, Mr Novitz put it to Mr Pieterse that he and Parthenon were the same, and that “you were the real tenant”. This was in relation to the second paragraph of the letter. While Mr Novitz certainly did not meant to undermine his client’s case in doing so, his line of cross-examination shows the difficulty of his interpretation of the June 2013 letter. It cannot be that Mr Pieterse was the “real tenant” and “the same as Parthenon” when it comes to the undertaking to vacate, but that he cannot be so regarded when he gives an undertaking to continue to pay the rent in the first paragraph.
44. The textual features I have identified only really make sense if one interprets the June 2013 letter in its full context. That context

includes the uncontested evidence of Mr Pieterse about the meeting that gave rise to the letter. Once this is done, the purpose of the letter becomes apparent.

45. There is no evidence that out of the blue Highpoint decided to crack down on Parthenon’s outstanding debt by seeking to hold Mr Pieterse personally liable. Had this been the case, one would have expected a stand-alone undertaking in clear terms. On the contrary, the evidence clearly establishes that it was the shopping centre development project that precipitated Dr Hurwitz drafting the letter, following his meeting with Mr Pieterse. The letter includes not one but two undertakings. From a business-sense point of view, in the context within which the letter was drafted, the two undertakings capture the two-pronged purpose that came from the meeting: Dr Hurwitz wanted to make sure that his tenant didn’t start reneging on rental obligations because the tenancy was to be unexpectedly terminated; and he wanted an assurance that the tenant would depart on notice in the event of such early termination.
46. It seems to me, therefore, that properly interpreted, Mr Pieterse’s interpretation of the agreement is correct. It was never meant to establish a personal undertaking on Mr Pieterse’s part to assume liability for Parthenon’s debt. The June 2013 letter served a very particular purpose. It was designed to deal with two aspects of the relationship between landlord and tenant arising out of the shopping centre project. In giving the two undertakings, Mr Pieterse was doing so on behalf of Parthenon, even if this was not specifically stated. What is quite clear, is that the undertaking in the first paragraph cannot, in this context, be interpreted as imposing liability on Mr Pieterse henceforth for Parthenon’s financial obligations under the lease agreement.
47. For all of the above reasons, I find that Highpoint has failed to make out a case that under the June 2013 letter Mr Pieterse can be held liable for Parthenon’s debt.

48. If follows that the claim against him must be dismissed.

49. I make the following order:

“Plaintiff’s claim against the second defendant is dismissed with costs.”

R KEIGHTLEY

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION

Electronically submitted therefore unsigned

This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be November 2021.

Date Heard (Microsoft Teams): 25 October 2021

Date of Judgment: 9

November 2021

On behalf of the Plaintiff: Adv M Norwitz

Instructed by: Norwitz

Attorneys

On behalf of the Defendant: Mr Pieterse (Appearing in person)

[1]1995

(3) SA 761 (A)

[2] 2007

(3) SA 29

[3] 2009 (4) SA 399 (SCA)

[4] Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)

[5] [2021] ZACC 13

[6] [2021] ZASCA 99 (9 July 2021)

[7] Capitec, supra, at 25

[8] Capitec, supra, at 39

[9] Capitec, supra, at 40

[10] Capitec, supra, at 46

[11] Capitec, supra, at 51

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