

SOUTH AFRICA / JUDGMENT

Slim B and D Construction (Pty) Ltd v Caterpillar Financial Services (Pty) Ltd (105847/2024) [2025] ZAGPPHC 780 (4 August 2025)

[2025] ZAGPPHC 780

COURT

North Gauteng High Court, Pretoria

BEFORE

MP Kumalo

CASE / FILE NUMBER

105847/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE

NO.: 105847/2024

(1)

REPORTABLE: (2)

OF INTEREST TO OTHER
JUDGES: (3)

REVISED: (4)

Signature:

Date: 04/08/25

In

the matter between: SLIM
 B AND D CONSTRUCTION (PTY) LTD
 Applicant
 and
 CATERPILLAR
 FINANCIAL SERVICES (PTY) LTD
 Respondent

JUDGMENT

Kumalo J

INTRODUCTION

[1]. In this matter, the Applicant seeks an order that it be declared the owner of the following equipment: a Caterpillar Motorgrader serial number W[...], a Caterpillar Large Excavator 336 serial number J[...] and a Caterpillar Medium Wheel Loader 966 serial number F[...].

[2]. Applicant further seeks that the Respondent be ordered to release the equipment as mentioned earlier into its custody, and the Respondent to issue a paid-up letter and transfer titles to it.

[3]. The Respondent opposed the application.

[4]. The facts of this matter are common cause between the parties. The salient facts of the matter are that the Applicant and the Respondent concluded a written master instalment sale agreement on 21 September 2021 and written schedules to the said agreement.

[5]. Subsequently, the Applicant fell into arrears in respect of this agreement, which resulted in the Respondent terminating the contract on 4 May 2023. Pursuant to the termination of the contract, the Respondent instituted an application in this division for the repossession of the equipment, and an order was granted in its favour for the repossession of the said equipment on 31 August 2023.

[6]. Subsequently, the parties entered settlement negotiations, which the Applicant offered to settle the outstanding arrears on condition that the Respondent reinstate the terminated contract.

[7]. On 27 February 2024, the attorneys of the Applicant were advised that the arrears amounted to R1 451 153.99. The figure was queried, and an explanation was forwarded on 29 February 2024.

[8]. On 5 March 2024, the Respondent's attorneys responded and advised that the Respondent did not dispute the outstanding arrears and offered to pay a sum of R200 000.00 over and above the current instalments until the arrears have been discharged in full.

[9]. The Respondent was not amenable to the proposal and, on 18 July 2024, proceeded to attach and remove the Units.

[10]. On 30 July 2024, the Respondent addressed a letter to the Applicant and offered to transfer the Units to the Applicant upon the payment of the total amount of R3 384 642.60, which offer was valid until 6 August 2024.

[11]. The offer was accompanied by a letter detailing how the amount of R3 384 542.60 was calculated. The Applicant accepted the offer but requested an extension until 9 August 2024. An extension was granted until 8 August 2025 because 9 August 2024 was a public holiday.

[12]. The Applicant paid the money, and on 12 August 2024, the Applicant was informed that there were further transport costs payable for the attachment and removal of the Units. Those costs were paid on 14 August 2024.

[13]. Only on 23 August 2024, the Applicant's attorney's office was informed that there was an error in the calculation of the outstanding amount as expressed in the letter of 30 July 2024.

[14]. The Respondent contends that the agreement on the settlement figure is rendered unenforceable due to its unilateral mistake and the Applicant's conduct in attempting to snatch a bargain when it ought to have known that the figure was incorrect.

[15]. The Respondent submitted that the only issue that arises for determination, in the circumstances, was whether the Applicant was aware, or should reasonably have been aware, of the fact that the Respondent had incorrectly stated the outstanding amounts in respect of the Units in the letter of 30 July 2024.

[16]. The general rule is that the court in such situations must apply an objective test and enquire whether the mistaken party has so conducted himself as to give the other party reason to believe that he was contracting with him on specific terms, and in this case, would be the payment of the amount stated in the letter of 30 July 2024, which amount was to be paid by no later than 6 August 2024.

[17]. The answer to the above question is dependent on the determination of whether the Applicant was aware or should have reasonably known the Respondent had incorrectly stated the outstanding amounts in respect of the Units in the letter of 30 July 2024. Ordinarily, if that is so, the party relying on the unilateral mistake is bound to the contract, whatever his subjective state of mind.

[18]. There are, however, instances in which this general rule would not apply, as in the circumstances where the other party knew, or ought to have known of, or caused the mistake.

[19]. In *Sonap Petroleum SA (Pty) Ltd (formerly known as Sonarep (SA) (Pty) Ltd v Pappadogianis* [1] set out the test as follows: -

"... did the party whose actual intention did not conform to the common intention expressed, lead the other party, as a reasonable man, to believe his declared intention represented his actual intention..."

[20]. The Law, as a rule, concerns itself with the external manifestations, and not the workings, of the minds of parties to a contract.[2] However, in the case of an alleged dissensus, the law does have regard to other considerations: it is said that, to determine whether a contract has come into being, resort must be had to the reliance theory.[3]

[21]. In *George v Fairmead (Pty) Ltd*[4], the then Appellate Division, confronted with a similar situation, stated the following: -

“When can an error be said to be iustus for the purpose of entitling a man to repudiate his apparent assent to a contractual term? As I read the decisions, our Courts, in applying the test, have taken into account the fact that there is another party involved and have considered his position. They have, in fact, said: Has the first party – the one who is trying to resile – been to blame in the sense that by his conduct, he has led the other party, as a reasonable man, to believe that he was binding himself? ... If his mistake is due to a misrepresentation, whether innocent or fraudulent, by the other party, then, of course, it is the second party who is to blame, and the first party is not bound.”

[22]. In this case, the question that needs to be answered is whether the Applicant realised or should have realised that there was a mistake in the offer and had the duty to speak and to enquire whether the expressed offer was the intended offer.

[23]. It was argued on behalf of the Respondent that the Applicant knew, or at least reasonably should have known, that the aggregate outstanding amount in respect of the Units could not have been R3 130 357.22 on 30 July 2024 and the proffered reason being that according to the payment schedules, had the Applicant diligently paid all the instalments up to February 2024, the aggregate of its indebtedness would have been R3 488 347.00, which figure it is alleged is conservative.

[24]. Further, the Respondent stated that when it provided the settlement figures of 30 July 2024, it did not consider some invoices. What invoices are those? This is not stated anywhere in the papers.

[25]. The Respondent terminated the contract between the parties in May 2023 and could not have been invoicing thereafter. It was therefore crucial that the Respondent be specific with the invoices that it says were not considered in the settlement figure it gave to the Applicant.

[26]. On 30 July 2024, the Respondent made an offer with a figure that it was prepared to accept for it to transfer the ownership of the Units to the Applicant, subject to the condition that the said offer was open for acceptance no later than 6 August

2024. The Applicant accepted the offer with a counter proposal that the deadline of 6 August be extended to 9 August 2024.

[27]. The Respondent granted the extension to 8 August 2024 because 9 August was a public holiday. The Applicant met its deadline and paid the amount demanded.

[28]. On 8 August 2024, the Applicant attempted to negotiate a reduction and offered an amount of R3 100 000.00. The Respondent rejected the Applicant's offer and insisted on being paid the full amount.

[29]. The said amount was paid on 8 August 2024. When the Applicant subsequently enquired about the delivery of the Units, it was advised about the outstanding transport and attachment costs, which were paid on 14 August 2024.

[30]. On further enquiries, and only on 21 August 2024, the Respondent advised that it had made a mistake in the calculation of the outstanding amount. It was argued on behalf of the Respondent that there was no consensus on the outstanding amount, and the payment of the incorrect amount did not result in a binding agreement.

[31]. When exactly did the Respondent become aware of its colossal mistake? On 30 July 2024, it gave the Applicant a document that detailed what is owed to it with a breakdown of how the figure was arrived at. The document concerned indicated the amount owed for each Unit, the interest thereon, early settlement fees, legal fees and tracer fees.

[32]. I must agree with the submissions of the Applicant that it could not, on the facts before this court, be said that the Respondent had genuinely made a mistake on the figures provided. It had attempted to get a discount on the figure but was refused and informed to pay the said amount. Surely it should, at that stage, have realised that it made a mistake and correct it. Instead, the Applicant was told to pay the figure given in the Respondent's letter of 30 July 2024.

[33]. It must also be borne in mind that the initial contract was cancelled and was no longer in existence as at the time the second agreement was entered into. The Respondent was not seeking specific performance in terms of the cancelled agreement. It could have brought an action for damages, which it still can.

[34]. In the circumstances, the following order is made:

1. The Applicant is declared the owner of the following Units:
 - 1.1 a Caterpillar Motorgrader 140 with serial number: W[...];
 - 1.2 a Caterpillar Large Excavator 336 with serial number: J[...]; and
 - 1.3 a Caterpillar Medium Wheel Loader 966 with serial number: F[...].
2. The Respondent is ordered to release the Units as mentioned above into the custody of the Applicant and issue the Applicant with paid-up letters and transfer the titles of the Units to the Applicant.
3. The Respondent is to pay the costs of this application on the scale "C" of the High Court.

MP Kumalo

Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicant: Adv L Pretorius

Instructed by: Ndebele Du Plessis Attorneys

For the respondents: Adv PG Louw

Instructed by: Werksmans Attorneys

Date of the hearing: 28 July 2025

Date of judgment: 4 August 2025

[1]

[1992] ZASCA 56; 1992

(3) SA 234 (A) at 239I

[2] South African Railways and Harbours v National Bank of South Africa Ltd 1924 AD 704, 715-6.

[3] Saambou-Nationale Bouvering v Friedman 1979 (3) SA 978 (A) 995-6

[4] 1958

(2) SA 465 (A) 471 B-D

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