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Case No 393/1985

IN THE SUPREME COURT OF SOUTH AFRICA

APPELLATE DIVISION

In the matter between:

NOREX INDUSTRIAL PROPERTIES (PTY) LIMITED Appellant

and

MONARCH SOUTH AFRICA INSURANCE COMPANY LIMITED Respondent

CORAM: RABIE CJ, JANSEN, JOUBERT, BOTHA JJA et BOSHOFF AJA

HEARD: 10 NOVEMBER 1986

DELIVERED: 28 NOVEMBER 1986

JUDGMENT

/BOTHA JA ...

BOTHA JA:-

The appellant was the plaintiff and the respon= dent the defendant in an action brought in the Transvaal Provincial Division by the former against the latter for payment of R604 878, interest thereon and costs. The trial Judge (CURLEWIS J) dismissed the appellant's claim, with costs. The present appeal is directed at that order, the trial Judge having granted leave to the appel= lant to appeal against it to this Court.

The facts are common cause and can be summarised briefly.

The appellant's case against the respondent was founded upon a document which bears the heading "LETTER OF GUARANTEE", and which was executed by the respondent in favour of the appellant on 8 February 1983. It is addressed to the directors of the appellant and the body of it reads as follows:

/"We ...

"We the undersigned

MONARCH SOUTH AFRICA INSURANCE COMPANY LIMITED

57 Commissioner Street, Johannesburg, do hereby guarantee that throughout the first three years of the Deed of Lease about to be entered into between yourselves as lessor and SPIRAL INDUSTRIES (PTY) LIMITED as lessee in respect of ERF 99, WALTLOO, PRETORIA with buildings thereon, SPIRAL INDUSTRIES (PTY) LIMITED will promptly and faith= fully fulfil all the obligations and undertakings by it in terms of the said Deed of Lease."

The deed of lease which was contemplated in the letter of guarantee was concluded on 9 February 1983. In terms of it the appellant let Erf 99, Waltloo, Pretoria, with the buildings and improvements thereon, to Spiral Industries (Pty) Ltd, for a period of 9 years and 11 months, from 1 February 1983 to 31 Desember 1992, at a monthly rental which was R22 000 per month for the first year of the lease and which was to escalate from time to time thereafter (it is not necessary to enter upon the details).

The name of the lessee was later changed to Tomlyn Industries (Pty) Ltd (hereinafter abbreviated to "Tomlyn").

/On ...

On 10 February 1984 Tomlyn was placed in provisional liquidation by an order of the Transvaal Provincial Divi= sion, which order was made final on 22 March 1984, on the ground that Tomlyn was unable to pay its debts. At all material times since February 1984 Tomlyn has been and still is insolvent and unable to pay its debts.

In its particulars of claim the appellant made the following allegation, which was admitted by the res= pondent in its plea:

> "On 17 February 1984 the provisional liqui= dators of TOMLYN duly cancelled the lease in terms of Section 37 (1) of the Insolvency Act, 1936, read with Section 386 of the Companies Act, 1973, from which time they have failed to perform the terms of the lease."

The appellant alleged further in its particulars of claim that by virtue of the cancellation and the non-performance of the lease it had suffered loss in an amount of R604 878, being the amount of the rental that was payable in terms of the lease from 18 February 1984

/to ...

to 31 January 1986, less a certain amount received by the appellant from the liquidators of Tomlyn in respect of the use of the property for storage purposes. The calculation of the appellant's loss was based on the further allegation, contained in the appellant's further particulars, that it had been unable to re-let the pre= mises. The appellant's allegations regarding its loss were placed in issue in the respondent's plea, but shortly before the trial it was agreed between the par= ties that the appellant had in fact suffered loss in the amount alleged by it and that the appellant would be entitled to judgment in that amount if the defence to its claim on which the respondent relied were not to be upheld.

The defence to the appellant's claim on which the respondent relied was set forth in the following terms in the respondent's plea:

"4.1 The cancellation of the lease by the

/provisional ...

provisional liquidators of TOMLYN resulted in the creation of liabilities not flowing from the lease itself.

4.2 In terms of the letter of guarantee, the Defendant is liable to the Plaintiff for the fulfilment only of the obligations and undertakings of TOMLYN in terms of the Deed of Lease.

4.3 In the premises, no liability attaches to the Defendant as a result of the cancellation of the lease in terms of Section 37 (1) of the Insolvency Act, 1936, read with Section 386 of the Companies Act, 1973."

The defence thus raised was based squarely on the decision in the case of Strydom v Goldblatt 1976 (2) S A 852 (W). The trial Judge in his judgment came to the conclusion that it would be out of the question for him to say that the judgment in that case was clearly wrong. In the result he found that the judgment was binding upon him, and upon that footing he upheld the respondent's defence and dismissed the appellant's claim.

In this Court it was common cause between counsel that the fate of the appeal hinged on the question whether

or not Strydom v Goldblatt supra was correctly decided. Counsel for the appellant urged us to find that it was not and to overrule it, while counsel for the respondent argued to the contrary. It will be convenient, therefore, to discuss the judgment in that case in some detail: to do so will at the same time determine whether or not the respondent's defence in the present case is sound in law.

In Strydom v Goldblatt the Court (FRANKLIN J) was concerned with an application by a defendant in an action for an order setting aside a judgment by default granted against him on a summons in which the plaintiff had claimed payment of an amount as owing by the defendant to the plaintiff arising out of a deed of suretyship signed by the defendant in favour of the plaintiff. In the deed of suretyship the defendant had bound himself "as surety for and co-principal debtor with" a certain company ("the lessee") to and in favour of the

/plaintiff ...

plaintiff ("the lessor"),

> "for the due fulfilment by the lessee of all its obligations in terms of the annexed lease and the due payment of all amounts claimable thereunder ....."

In order to succeed in his application the defendant was required to show that he had a bona fide defence to the action, and the only issue that FRANKLIN J was called upon to decide was whether the defendant had done so. The defence that was put forward was the following: the lessee company for which the defendant had stood surety had been placed in liquidation; a lease is not termi= nated ipso jure by insolvency, but the liquidator had terminated the lease by virtue of the provisions of section 37 (1) of the Insolvency Act, 1936, read with section 386 (4) of the Companies Act, 1973; the amount in issue was not claimable under the lease but on account of a statutory intervention by the liquidator; and by reason of the liquidation of the company and the conse= quent intervention of the liquidator, a different

statutory liability for compensation for loss (and not for damages) had arisen, which did not flow from the agreement itself but arose from extrinsic causes, viz from the statutory act of intervention of the liquidator. FRANKLIN J found that this was a valid defence in law. The ratio decidendi appears from the following passage in his judgment (at 855 i f - 856 B):

> "..... I have come to the conclusion that the act of the liquidator in terminating the lease in this case resulted in the creation of lia= bilities not flowing from the lease itself but from extrinsic causes, namely the statutory act of intervention which conferred on the plaintiff a right differing in its juristic nature from the rights which it had previously enjoyed and which flowed directly from the non-performance by the lessee of his obligations under the lease. And, since the deed of surety= ship does not bind the defendant for liabilities arising from such extrinsic causes, in my view the point taken ..... is sound in law, and the default judgment was wrongly granted.
>
> I conclude, therefore, that the defendant has disclosed a bona fide defence in law and that he is entitled to a rescission of the de= fault judgment on this ground."

/In ...

In analysing the reasoning of the learned Judge it will be convenient to consider, as a starting point, his reference to "the rights" which the plaintiff "had previously enjoyed", i e prior to the termination of the lease by the liquidator, "and which flowed directly from the non-performance by the lessee of his obligations under the lease". To facilitate the discussion I shall first assume a situation in which there was no super= vening insolvency of the lessee. The defendant had bound himself as surety "for the due fulfilment by the lessee of all its obligations in terms of the ..... lease and the due payment of all amounts claimable thereunder." In my view the effect of an obligation undertaken by a surety in such terms is perfectly plain. In relation to a failure by the lessee to make due payment of the rental, the lessor is entitled, not only to claim pay= ment of the rental by the surety, but also to hold the surety liable to indemnify him for any loss suffered by

/him ...

him in consequence of the non-payment by the lessee. So, if the lease were to be duly cancelled by the lessor on the ground of the lessee's failure to pay the rental, the lessor could hold the surety liable for damages flowing from the lessee's breach of contract. I do not consider that proposition to be open to any doubt. I mention it with the object of obviating any misunderstanding that might arise from the fact that FRANKLIN J in the course of his judgment (at 854 B-F) quoted at some length cer= tain passages from the judgment of CLAYDEN J in Moreriane v Trans-Oranje Finansierings- en Ontwikkelingskorporasie Beperk 1965 (1) S A 767 (T). In those passages a situation was dealt with in which it was held that the creditor's claim against the surety was limited to the payment of arrear instalments in terms of the principal contract, and did not extend to liability for damages for its breach. (It may be observed in passing that the nature of the amount claimed by the plaintiff in

Strydom v Goldblatt is not mentioned expressly in the judgment of FRANKLIN J; it can be assumed with safety, however, in view of the tenor of the judgment as a whole, that the claim was one for compensation of the plaintiff's loss consequent upon the termination of the lease.) But the judgment in Moreriane's case supra was based on the particular terms of the suretyship in that case, which were quite different from those of the deed of suretyship in Strydom v Goldblatt. In my view the passages quoted by FRANKLIN J had no bearing on the terms of the deed of suretyship with which he was dealing (see the comment of CLAYDEN J in Moreriane's case on the case of Beaufort West Municipality v Krummeck's Trustees 5 S C 5 - which will be considered later in this judgment - as quoted in Strydom v Goldblatt at 854 D; and cf the observations of MILLER J in Demetriou v O'Flaherty and Another 1973 (4) S A 691 (D & C) at 694 C-G and of LEON J in Sydney Road Holdings (Pty) Ltd v Simon 1981 (3) S A 104 (D & C) at

/107 A/B-C) ...

107 A/B-C). It follows, therefore, that FRANKLIN J's use of the phrase "the rights ..... which flowed directly from the non-performance by the lessee of his obligations under the lease" ought not to be construed as excluding a claim by the plaintiff for damages for breach of the contract.

I proceed to consider the effect of the lessee's insolvency on the position discussed above. I shall do so first with regard to the insolvency per se, leaving aside for a while the termination of the lease by the liquidator. It was accepted by FRANKLIN J that the in= solvency of the lessee did not ipso jure terminate the lease (see at 853 D and 855 H - in the latter passage there is a typographical error: "lessor" should read "lessee"; the same error occurs at 855 D). In the course of the argument in this appeal counsel for the respondent belatedly suggested that at common law a lease was automatically terminated by the lessee's insolvency.

/The ...

The suggestion is without merit. It was based on a passage in Van der Linden (Koopmanshandboek) 1.15.12, which is cited, together with Van der Keessel Th Sel 676, in Cooper's The S A Law of Landlord and Tenant at 295 in support of a statement by the author that at common law the insolvency of the lessee terminated the lease. (A similar statement, with a reference to the same authorities, had appeared in Wille's Landlord and Tenant in S A, 5th ed, at 256.) It is clear, however, that neither Van der Linden nor Van der Keessel was expounding the common law of Holland in the passages cited; they were dealing with the effect of purely local ordinances or keuren. Van der Linden says that in the case of insolvency (sc of either the landlord or the tenant) the lease does not endure for longer "dan tot den gewoonen eerstkomended verhuistijd." In sup= port of this statement he cites Van der Keessel loc cit, who says (I quote from the translation of Lorenz at 243):

/"If ...

"If the lessee, or even the lessor, has made cession to the Court (foro cedente), the lease expires after a short delay, at the customary time for removal (eo tempore, quo solent cives migrare); which varies in different places", and he then refers to ordinances and keuren of Amsterdam, Leiden, Haarlem and Rotterdam. The position is made even clearer in Van der Keessel's more elaborate treatment of the topic in his Praelectiones ad Gr 3.19.11, which is to be found in Gonin's transla= tion, Vol V at 35 (the notes are at 575). He there states expressly that provision is made in either the old or the more recent statutes (vel antiquis legibus vel recentioribus) for the termination of a lease upon the insolvency of the lessor or the lessee, and he proceeds to give numerous examples of the varying periods of time laid down in various local statutes for regulating the termination of the lease. It is not necessary to go into the details. My researches into the well-known

/old ...

old Roman Dutch writers have failed to reveal any sug= gestion of the existence of a general principle in the law of Holland that a lease is terminated by the insol= vency of the lessor or the lessee. In any event, there can be no doubt that in our case law, far from any such principle having been recognised, a directly contrary principle has been applied. The insolvency of the les= sor is not in issue here, so that I shall content myself by saying that it can be regarded as a trite proposition that in our law a lease is not automatically terminated by the lessor's insolvency. The effect on a lease of the lessee's insolvency, under the common law, arose pertinently for consideration in Liquidators F H Clarke & Co Ltd v Nesbitt 1906 T S 726, before a full Bench consisting of INNES CJ and SOLOMON and WESSELS JJ. The facts are summarised in the report of the case as follows:

> "F.H. Clarke & Co., Ltd., held a lease from the respondent of certain premises for five years from May, 1904, at a monthly rental of £12,10s.

/In ...

> In March, 1906, the company was placed in liquidation. The company remained in occu= pation of the premises until after the month of July. The lessor sued in the court below for rent for May, June and July. By letter dated the 25th June the liquidators intimated that they disclaimed the lease, which they contended had been terminated by liquidation. They tendered rent for May and June, but re= pudiated any liability under the lease for rent for July; they offered to pay for use and oc= cupation during the latter month."

The lessor's claim having succeeded in the magistrate's court, the liquidators appealed. It was contended on their behalf that the Liquidation of Companies Law (1 of 1894) had incorporated the provisions of section 104 of the Insolvency Law (21 of 1880), in terms of which a lease terminated upon the insolvency of the lessee. The appeal was dismissed. INNES CJ, delivering the judg= ment of the Court, said (at 727; my emphasis):

> "The only point for decision is whether the liquidators were liable for the July rent ..... Their defence is that the lease was duly ter= minated before July, and that therefore they are not liable to pay rent for that month. That raises the question <u>whether they had the</u>

/<u>right</u> ...

> right to treat the lease as terminated. Under the common law clearly they had no such right; nor is it expressly conferred upon them by the statute regulating the liquidation of companies."

INNES CJ proceeded to enquire whether Law 1 of 1894 had incorporated the provisions of the Insolvency Law of 1880 in regard to the termination of leases to which insolvents were entitled, and found that it had not. His judgment proceeded (at 728; my emphasis):

> "What then is the position? The lease still runs. If the liquidators do not occupy the premises, but repudiate the lease, then the lessor will have his action for damages or otherwise. But if they do occupy they must pay rent."

As far as I am aware (leaving aside the statements in Cooper and Wille to which I referred above) the correct= ness of this decision has never been questioned (cf Neon and Cold Cathode Illuminations (Pty) Ltd v Lowe N O 1957 (1) S A 80 (N) at 83 G and Montelindo Compania Naviera S A v Bank of Lisbon and S A Ltd 1969 (2) S A 127 (W) at 140 B-H; and cf also De Wet & Yeats,

Kontraktereg en Handelsreg, 4th ed, at 337).

I have dwelt at some length on the effect under the common law of a lessee's insolvency upon the lease, because it provides the important background against which an assessment is to be made of the effect of sec= tion 37 (1) of the Insolvency Act of 1936. Were it not for the provisions of that section, the legal posi= tion following upon the insolvency of the lessee would have been governed by the ordinary principles which apply when a party to an executory contract of a kind not specifically dealt with in the Insolvency Act goes insolvent (cf Bryant & Flanagan (Pty) Ltd v Muller and Another N NO 1978 (2) S A 807 (A) at 812 G - 813 B; Smith and Another v Parton N O 1980 (3) S A 724 (D & C) at 728 D-F and 728 H - 729 D; and Somchem (Pty) Ltd v Federated Insurance Co Ltd and Another 1983 (4) S A 609 (C) at 615 B - 616 A). Very briefly, in the con= text of the facts in Strydom v Goldblatt, it comes to

/this ...

this: the act of the liquidator of the lessee company, in deciding not to continue with the lease, would have constituted a repudiation of the contract, which would have afforded the lessor (the plaintiff) the right, concurrently with other creditors, to claim from the liquidator the payment of damages for the non-performance by the company of its contractual obligations.

Now section 37 (1) of the Insolvency Act (24 of 1936) provides as follows (it may be noted that there are typographical errors in the quotation of the section in Strydom v Goldblatt at 853 E):

> "A lease entered into by any person as lessee shall not be determined by the sequestration of his estate, but the trustee of his insolvent estate may determine the lease by notice in writing to the lessor: Provided that the lessor may claim from the estate, compensation for any loss which he may have sustained by reason of the non-performance of the terms of such lease."

(This section, read with section 37 (2), was, in broad substance, a re-enactment of its forerunners, section

43 of Transvaal Law 13 of 1895, and section 36 (1) and (2) of Act 32 of 1916.)

FRANKLIN J, it will be recalled, considered the liquidator's termination of the lease in terms of this section to be a "statutory act of intervention which conferred on the plaintiff a right differing in its juristic nature from the rights it had previously enjoyed", and which "resulted in the creation of liabilities not flowing from the lease itself." I respectfully dis= agree with these views of the learned Judge. In my opinion they are at variance, on the one hand, with the wording of the proviso to the section, and, on the other, with the common law position as discussed above. With regard to the wording of the proviso, it recognises a right of the lessor to "claim from the estate compensa= tion for any loss he may have sustained by reason of the non-performance of such lease." With reference to the words I have emphasised, two observations fall to be

/made ...

made. First, the concept involved in the expression "claim ..... compensation for ..... loss", in the con= text, is identical with the concept involved in a claim for damages (cf Russell N O and Loveday N O v Collins Submarine Pipelines Africa (Pty) Ltd 1975 (1) S A 110 (A) at 145 D); counsel for the respondent was unable to suggest any difference in content between the two concepts in the context of the subject-matter dealt with in the section. Secondly, the phrase "by reason of the non-performance" of the lease shows that the liability of the estate flows from the lease itself. That being the tenor of the proviso, it follows, when the effect of the section is tested against the background of the com= mon law position, as discussed above, that the position in which the lessor and the liquidator find themselves under the section is, substantially speaking, no dif= ferent from that which it would have been but for the section. Accordingly, there is no warrant for regard= ing the section, or the liquidator's "intervention"

/pursuant ...

pursuant to it, as resulting in the creation of a pre= viously non-existent right on the part of the lessor (the plaintiff), or of liabilities on the part of the liquidator not flowing from the lease itself. The true impact of the proviso to the section is no more than to preserve for the lessor the right he would have had, but for the main provision of the section, to hold the liquidator liable for the compensation of his loss, or his damages, flowing from the liquidator's decision not to continue with the lease and the consequent non-performance of the lessee's contractual obligations.

From the view I have just expressed as to the effect of the proviso, two further observations follow. The first is that it provides an immediate and complete answer to what counsel for the respondent described as the heart of his argument. That was that the lessor could not claim damages from the liquidator flowing from the termination of the lease, because the liquidator

/acted ...

acted lawfully in terminating it, being expressly autho=rised by the section to do so. The argument negates the very object of the proviso: while the opening words of the section preserve the common law position that the lease is not terminated, the words following thereupon confer upon the liquidator the right to ter=minate the lease; under the common law his termination of the lease would have constituted a repudiation there=of, giving rise to a concurrent claim for damages for breach of contract; and it was precisely for the purpose of preserving that claim for the lessor that it was neces=sary to add the proviso to the section. Accordingly the lawfulness of the liquidator's act is of no consequence.

The second observation is that FRANKLIN J's view as to the liquidator's intervention in terminating the lease constituting "extrinsic causes" for which the surety (the defendant) could not be held liable in terms of the deed of suretyship, is, with respect, unsound.

/The ...

The genesis of the learned Judge's use of the expression "extrinsic causes" is to be found in his earlier reference (at 853 F-H) to the judgment of CANEY J in Patel v Patel and Another 1968 (4) S A 51 (D & C) at 56 D. (There are typographical errors in the quotation at 853 H.) But an examination of CANEY J's discussion of the topic and of the examples given by him (at 56 F - 57 A) shows that the concept of "extrinsic causes" could not have been intended to apply to a situation such as in Strydom v Goldblatt. That is borne out by an examination of the authorities to which CANEY J referred: Van der Linden, Pothier and Wessels. The sense of what they say is reflected in the statement by Wessels (para 3907) that consequences which arise from "a cause foreign to the transaction" (sc between the creditor and the principal debtor) will be regarded as "extrinsic". When a surety binds himself to a lessor "for the due fulfilment by the lessee of all its obligations in terms of the .... lease",

/and ...

and the lessee goes insolvent, in consequence of which the liquidator terminates the lease and the lessor suf= fers a loss in respect of the rental, that can assuredly not be regarded as a cause foreign to the lease. On the contrary, it seems to me to be apparent that that was exactly the kind of eventuality against which the lessor would have wished to protect himself by procuring the suretyship, and in respect of which the surety bound himself to indemnify the lessor.

FRANKLIN J was referred to the case of Beaufort West Municipality v Krummeck's Trustees and Others (1887) 5 S C 5, which he discussed in his judgment at 854 G - 855 H. In that case two persons had bound themselves as sureties to a lessor for, inter alia, "the due ful= filment of the conditions and stipulations" in a lease, by the lessee. The latter's estate was sequestrated. Section 104 of Cape Ordinance 6 of 1843 (incorrectly referred to in the judgment of FRANKLIN J as Ordinance

68 of 1843) provided, in so far as is relevant here, as follows:

> "If any insolvent shall be entitled to any lease ..... such lease ..... shall, upon the surrender or adjudication of sequestration of the estate of such insolvent, cease and determine: Provided, that nothing herein contained shall prevent the lessor ..... from suing the trustee or trustees ..... for any damage which he shall prove to the satisfac= tion of such court to have been by him sustained, in consequence of the non-performance of the conditions of such lease ..... during the full period of the stipulated endurance thereof ....."

The lessor sued the trustees for damages, after they had refused to continue the lease. On their behalf it was argued that they were not liable for damages, because the lease had been extinguished. This argument was re= jected, DE VILLIERS CJ holding as follows:

> "Now one of the stipulations which the sureties undertook to fulfil was that the lease should last for twenty-one years. It has been put an end to by operation of law and not by any= thing the lessor has done, and the very same section of the statute which puts an end to the lease specially provides that the estate of the

/lessee ...

> lessee should still be liable for damages sus= tained in consequence of the non-performance of the conditions of the lease during the full stipulated period."

FRANKLIN J sought to distinguish that case on the ground that under section 104 of the Cape Ordinance the lease terminated ipso jure upon the insolvency of the lessee, whereas under section 37 (1) of the present Insolvency Act the insolvency of the lessee does not of itself ter= minate the lease, but the trustee may terminate it. In my respectful opinion that is a distinction without a difference. The principles discussed earlier in this judgment are as applicable to the one case as to the other. Counsel for the respondent in this appeal was constrained to submit that that case had been wrongly decided. I do not agree with the submission, which is rejected.

For the above reasons I conclude that the deci= sion in Strydom v Goldblatt was wrong and that it should be overruled.

/That ...

That conclusion is decisive of the result of this appeal. It remains only to say a word or two about the terms of the respondent's letter of guarantee, as quoted earlier. There can be no doubt that the respondent undertook the liability of a surety vis-à-vis the appellant in respect of the lessee's obligations under the lease. There are some differences in the wording of the letter of guarantee and the terms of the deed of suretyship in Strydom v Goldblatt, but they are clearly immaterial. In the course of the argument we were referred to a number of cases decided after Strydom v Goldblatt, in which that case was distinguished by reason of differences in the wording of the particular deeds of suretyship under consideration. In view of the conclusion arrived at above, there would be no point in discussing the later cases. In the present case the respondent guaranteed to the appellant that the lessee would fulfil its obligations in terms of the lease; the lessee in fact did not fulfil its obligations

/in ...

in terms of the lease; that was precisely the even=tuality against which the guarantee was intended to protect the appellant; the respondent can derive no benefit from the provisions of section 37 (1) of the Insolvency Act; and in the result the respondent is liable to make good the appellant's loss.

The order which is to be substituted for the order made by the Court a quo, as set forth below, is in accordance with what was proposed by counsel for the appellant. Counsel for the respondent, on the hypo=thesis that the appeal were to succeed, offered no ob=jection thereto.

The order of the Court is as follows:

1. The appeal is allowed, with costs, in=cluding the costs of two counsel.

2. The order of the Court a quo is set aside, and there is substituted therefor an order in the following terms:

"Judgment is granted in favour of the plaintiff against the defendant for -

(a) Payment of R604 878;

(b) Interest on the aforesaid amount at the rate of 15% per annum from date of judgment to date of pay= ment;

(c) Costs of suit, including the costs of two counsel and the costs of the attendance of two counsel at the pre-trial conference."

3. The expression "date of judgment" in para 2 (b) above means the date of the delivery of the judgment of this Court.

A.S. BOTHA JA

RABIE CJ
JANSEN JA
JOUBERT JA
BOSHOFF AJA

CONCUR