THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

JUDGMENT

Case no: 522/08

In the matter between:

SAYED HOOSEN MIA Appellant

and

VERIMARK HOLDINGS (PTY) LTD Respondent

Neutral citation: *Mia v Verimark Holdings (Pty) Ltd* (522/08) [2009] ZASCA 99 (18 September 2009)

Coram: STREICHER, MLAMBO and SNYDERS JJA and GRIESEL and WALLIS AJJA

Heard: **24 August 2009**

Delivered: **18 September 2009**

Summary: **Damages – Non-fulfilment of suspensive condition in written agreement – Whether the respondent has proved a claim for damages as contemplated in the agreement.**

ORDER

On appeal from: Johannesburg High Court (Moshidi J sitting as court of first instance).

The following order is made:

1. The appeal is upheld with costs such costs to include those consequent upon the employment of two counsel.
2. The order of the court *a quo* is altered to read as follows;

'(a) On claim 1 judgment is granted in favour of the plaintiff for R13 160 together with interest thereon at the rate of 15,5% per annum from date of demand, being 24 February 2003, to date of payment.

(b) Claim 2 is dismissed.

(c) The defendant is to pay the plaintiff's costs of suit on the appropriate magistrates' court scale from the commencement of the action until the end of the first day of the trial, such costs to exclude the costs of making discovery and the costs attendant upon the preparation and copying of the trial bundle.

(d) The plaintiff is to pay the defendant's costs, including the costs of two counsel, from the second day of the trial until the completion of proceedings, as well as the costs excluded in paragraph (c).'

JUDGMENT

WALLIS AJA (STREICHER, MLAMBO and SNYDERS JJA and GRIESEL AJA concurring).

[1] Suspensive conditions are commonly encountered in contracts for the sale of immovable property. Their legal effect is well settled. The conclusion of a contract subject to a suspensive condition creates 'a very real and definite contractual relationship' between the parties.[1] Pending fulfilment of the suspensive condition the exigible content of the contract is suspended.[2] On fulfilment of the condition the contract becomes of full force and effect and enforceable by the parties in accordance with its terms. No action lies to compel a party to fulfil a suspensive condition. If it is not fulfilled the contract falls away and no claim for damages flows from its failure.[3] In the absence of a stipulation to the contrary in the contract itself, the only exception to that is where the one party has designedly prevented the fulfilment of the condition. In that event, unless the circumstances show an absence of *dolus* on the part of that party, the condition will be deemed to be fulfilled as against that party and a claim for damages for breach of the contract is possible.[4]

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[1] *Corondimas v Badat* 1946 AD 548 at 551, 558-559; *Palm Fifteen (Pty) Limited v Cotton Tail Homes (Pty) Ltd* 1978 (2) SA 872 (A) at 887.
[2] *Odendaalsrust Municipality v New Nigel Estate Gold Mining Co Ltd* 1948 (2) SA 656 (O) at 665-667.
[3] *Design and Planning Service v Kruger* 1974 (1) SA 689 (T) at 695C-F; *Jurgens Eiendomsagente v Share* 1990 (4) SA 664 (A) at 674D-675B.
[4] *Macduff & Co Ltd (in liquidation) v Johannesburg Consolidated Investment Co Ltd* 1924 AD 573 at 590-591.

[2] In the present case the parties entered into a contract on 2 July 2002 in terms of which the appellant, Mr Mia, purchased from the respondent, Verimark Holdings (Pty) Ltd, an immovable property situated in Sandton on which Verimark's office premises were situated. The purchase price was R13,5 million payable against transfer and had to be secured by the provision of a suitable, unconditional and irrevocable guarantee within seven days of the conclusion of the agreement. The contract contained a suspensive condition making it subject to the guarantee being obtained within seven days failing which it would be deemed to be of no force and effect. It is common cause that the guarantee was not furnished by 10 July 2002 and that as a result the agreement fell away. Verimark does not allege that Mia brought about the failure of the suspensive condition by any default on his part so no question of fictional fulfilment arises. Nonetheless Verimark successfully sued Mia for damages in the amounts of R13 160 and R2 248 964.49 in the Johannesburg High Court. Leave to appeal having been refused by the trial court but granted by this Court, Mia now appeals against that judgment.

[3] The foundation for Verimark's claim is found in the terms of the suspensive condition. The material parts of the clause read as follows:

'7.1 The operation of the whole of this Agreement (except for the obligation of the Purchaser to timeously obtain fulfilment of the suspensive condition) is suspended pending the presentation of the guarantee, as contemplated in 3.2, by no later than 7 days after the effective date.

7.2 ...

7.3 In the event that the suspensive condition is not timeously fulfilled ... this Agreement shall from the date referred to in 7.1 ... be deemed to be of no force or effect provided that the Purchaser shall be liable to the Seller for the costs incurred by

the Seller in respect of the drafting, negotiation and signature of this Agreement and any other damages suffered by the Seller as a result of such non-fulfilment.'

In terms of the particulars of claim Verimark's claims were brought under clause 7.3 as claims in terms of the contractual undertaking contained in the proviso to that clause. Therefore the claims were couched as contractual claims, not conventional claims for damages arising from a breach of contract. The first claim is for the costs amounting to R13 160 in respect of the drafting, negotiating and signature of the agreement. That claim is now conceded and we are told has been paid together with interest. Its only relevance for present purposes is therefore in relation to the costs incurred in pursuing the claim. The appeal concerns the merits of the second claim. The nature of that claim and the circumstances giving rise thereto require some explanation.

[4] As mentioned, Verimark's offices were situated in the building standing on the property that was the subject of the sale. In addition to that property it leased warehouse premises in Midrand where it stored the goods that are its stock in trade. At the time its financial position was not entirely satisfactory and it decided to consolidate the office and warehouse in new premises as a measure to save costs and improve its financial circumstances. The lease of the warehouse was nearing an end and so the office property was placed on the market, it being the intention once it had been sold to terminate the warehouse lease and move to new consolidated premises. Verimark claimed that if Mia had provided the guarantee as contemplated within the seven day period stipulated in the agreement it would have been able to pass transfer of the office property by no later than 31 October 2002 and would have been able to relocate to new premises on 1 November 2002. Instead, so it alleged, it was only able to secure new premises in terms of a lease concluded on 20 October

2002 under which new premises were to be constructed for it. This lease provided for the warehouse portion of the new premises to be available by 1 May 2003 and the balance on a later date by arrangement with Verimark. That eventually turned out to be 1 October 2003, the office property having been sold by public auction in June 2003.

[5] Verimark's second claim is for the additional costs that it incurred between 1 November 2002 and 1 May 2003 in the case of the warehouse, and between 1 November 2002 and 1 October 2003 in the case of the office premises, in consequence of its inability to move from its old warehouse and office premises to the proposed new premises. It claims these costs under the following headings:

(a) R1 525 646.66 being the interest on its bond over the office premises during the relevant period;

(b) R199 320.20 being the costs of providing security at its office premises from 1 November 2002 to 30 September 2003;

(c) R253 080.76 being the rates and taxes paid in respect of the office premises from 1 November 2002 to 30 September 2003;

(d) R114 894.18 being the cost of maintenance for the office premises in the form of building repairs, plumbing, cleaning and sanitation, pest control and garden services from 1 November 2002 to 30 September 2003;

(e) R13 485.26 being insurance for the office building from 1 November 2002 to 30 September 2003;

(f) R1 017 409.75 being rental in respect of the warehouse from 1 December 2002 to 30 April 2003;

(g) R167 622.76 being additional rates and taxes in respect of the warehouse for the same period.

(h) R90 406.14 being the cost of advertising the immovable property for

sale.

In calculating its claim for damages Verimark gives credit for an amount of R1 132 901.22 as the rental it calculates it saved as a result of not moving premises earlier. Making this allowance gives the figure of R2 248 964.49 for which the court below held Mia to be liable to compensate Verimark.

[6] In its pleadings Verimark based its claim for damages solely on the provisions of clause 7.3 of the agreement and not on any alleged breach of contract. The relevant paragraphs in the particulars of claim dealing with the terms of the contract read as follows:

'4.7 The provision of the bank guarantee by the Defendant to the Plaintiff would operate as a suspensive condition.

4.8 …

4.9 In the event of the Defendant failing to deliver the bank guarantee to the Plaintiff by 9 July 2002, or within the extended period, the agreement would be deemed to be of no further effect.

4.10 In the event of the agreement becoming of no further force or effect, as a result of the Defendant failing to deliver the bank guarantee, the Defendant would be liable to the Plaintiff for the costs incurred by the Plaintiff in respect of the drafting, negotiation and signature of the agreement, as well as any other damages suffered by the Plaintiff.'

In pleading the second claim Verimark alleged that there had been a failure to fulfil the suspensive condition; that the contract became of no force and effect and that 'in terms of the written agreement' Mia was liable for any damages suffered by Verimark in the event of Mia's failure to deliver a bank guarantee timeously. It then formulated its claim in the fashion already described.

[7] In formulating its claim in this manner Verimark did not challenge

any of the basic principles in relation to suspensive conditions set out in paragraph 1 of this judgment, but accepted that clause 7.1 was a conventional suspensive condition the failure of which would not give rise to any claim for damages. Its claim was accordingly a contractual one based on the undertaking in clause 7.3. No question of breach of contract came into the picture. On that basis the outcome of the case would have depended upon the construction of the words 'any other damages suffered by the Seller as a result of such non-fulfilment' and in particular on the meaning to be assigned to the word 'damages' in clause 7.3. Ascertaining the meaning of this word would involve a conventional exercise in contractual interpretation in accordance with well-established rules.[5] The language used by the parties must be considered in its particular context and in the light of the relevant surrounding circumstances. In general terms, what needs to be determined is what type of financial loss or detriment is encompassed by the expression 'any other damages'. Expressed more narrowly the question is whether any of the heads of claim advanced by Verimark fall within that expression.

[8] In arguing its case in this Court Verimark shifted its ground and contended that the failure by Mia to provide the guarantee timeously constituted a breach of contract. Its case as now presented can be summarised as follows. It submits that under clause 3.2 Mia was obliged to pay the purchase price on transfer and in the interim it was to be secured by a suitable, unconditional and irrevocable bank guarantee which was to be delivered to the seller no later than seven days after the effective date, being the date of signature of the agreement. It says that the words, 'except for the obligation of the Purchaser to timeously obtain fulfilment of the suspensive condition' in parentheses in clause 7.1, mean

[5] *Coopers & Lybrand & others v Bryant* 1995 (3) SA 761 (A) at 767E - 768E.

that this obligation was untouched by the suspension of the 'whole of this Agreement' in clause 7.1. Accordingly when Mia failed to provide the guarantee he was in breach of his obligations under the agreement and liable to pay damages. That liability is recorded in clause 7.3 of the agreement, but is a liability arising from the alleged breach of contract rather than one created by the contract itself. It is not dependent upon notice being given in terms of the breach clause (clause 14) because the operation of that clause is suspended by clause 7.1. The damages recoverable as a result are those that would ordinarily be recoverable for a breach of contract.

[9] Mia disputes this construction of clause 7.1. He contends that the suspension of the whole of the agreement in clause 7.1 extends to the obligation to provide the guarantee and that the words in parentheses apply only to the more limited obligation resting upon him to do all things necessary and within his power to secure the fulfilment of the condition. He accordingly disputes the suggestion that the mere failure to provide the guarantee was a breach of contract, but accepts that as a result of the contract becoming of no force and effect he is liable in terms of clause 7.3 to pay the costs incurred in drafting, negotiating and signing the agreement and any other damages suffered by Verimark as a result of the non-fulfilment of the suspensive condition. His liability is one arising by virtue of the contractual stipulation and it is accordingly necessary to construe the clause in order to determine the meaning to be ascribed to the word 'damages' and hence the scope of his undertaking. He contends that properly understood the 'damages' referred to in clause 7.3 are restricted to those costs and expenses, if any, incurred by Verimark that were wasted as a result of the non-fulfilment of the condition and the agreement lapsing and do not extend to other damages that would

ordinarily flow from a breach of the agreement. If that is incorrect he contends that the requirements for a successful claim for special damages are absent and that the evidence does not support these claims. In addition he challenges the order made by the court below that he pay the costs of the action on the attorney and client scale.

[10] Assuming it is open to Verimark on these pleadings to contend that the failure to provide a guarantee, without more, constitutes a breach of a contractual obligation by Mia, that is clearly relevant to a proper understanding of the nature of the 'damages' referred to in clause 7.3. If the contention is correct the inevitable conclusion would be that clause 7.3 is referring to damages in the broad sense of whatever damages flow from that breach of contract calculated on whatever basis may be permissible. However, even on that basis, Mr Joubert SC, who appeared for Mia, submitted that Verimark had failed to prove its entitlement to the damages claimed by it. As in my view that contention is correct, it is unnecessary to address the issues of construction raised by the parties' conflicting arguments.

[11] Approaching the matter on the basis that Mia was in breach of a contractual obligation to provide the guarantee needed to secure payment of the price, the agreement that in that event the contract would be regarded as of no force or effect must be treated in the same way as if Verimark had cancelled the contract as a result of Mia's breach and become entitled to claim damages as a result. On Verimark's contentions it is entitled to be put in the same position as it would have been in if the contract had been performed, insofar as that can be done by the payment of money and without undue hardship to the wrongdoer. Two types of damages are recoverable on this basis, namely, those that flow naturally

and generally from the kind of breach in question and that the law regards as a probable result of the breach (usually referred to as general damages) and those that, although caused by the breach, would ordinarily be regarded as too remote to be recoverable, but that in the special circumstances attending the conclusion of the contract, the parties actually or presumptively contemplated would result from its breach (usually called special damages).[6] Where damages of the latter kind are claimed the special circumstances, on the basis of which the parties are to be presumed to have formed their contemplation, must be proved by evidence in the usual way.[7] The contemplation of those circumstances must be ascertained at the time the contract is concluded.[8] At present our law adheres to the principle that it is not only necessary that the damage was within the contemplation of the parties, but also that the contract was concluded on that basis (the 'convention' principle), although that may be the subject of reconsideration on some other appropriate occasion.[9]

[12] The damages that flow naturally from the failure of a contract of purchase and sale are ordinarily calculated as the adverse difference between the nett price that would have been paid under the failed transaction and the market value of the property at the time for performance.[10] In many cases the calculation will be based on the nett price actually achieved on resale provided there is no reason to think that market circumstances have materially altered in the interim.[11] Those are the damages that a purchaser would reasonably anticipate as flowing from a default in paying the purchase price and a subsequent cancellation. As

[6] *Holmdene Brickworks (Pty) Ltd v Roberts Construction Co Ltd* 1977 (3) SA 670 (A) at 687C-F.
[7] *Shatz Investments (Pty) Ltd v Kalovyrnas* 1976 (2) SA 545 (A) at 552A-B.
[8] *Shatz Investments* at 551D-H.
[9] *Shatz Investments* at 552A-554F. The controversy remains unresolved. *Thoroughbred Breeders' Association v Price Waterhouse* 2001 (4) SA 551 (SCA) para 47.
[10] *Novick v Benjamin* 1972 (2) SA 842 (A) at 860B-D; *Katzenellenbogen Ltd v Mullin* 1977 (4) SA 855 (A) at 879H-880B.
[11] *Culverwell & another v Brown* 1990 (1) SA 7 (A) at 30I-31F.

damages will probably flow from a particular breach if the party in default would have anticipated their occurrence as a realistic possibility in the circumstances,[12] are any of the heads of damages claimed by Verimark in this category?

[13] The only items that it was suggested in argument fall under this head were the interest on the mortgage over the office property and the additional costs of security guards, rates and taxes, maintenance and insurance in respect of that property. In my view these do not flow naturally from the failure to bring about the fulfilment of the suspensive condition. Had the condition been fulfilled then in due course Verimark would have received the purchase price less estate agent's commission. If the property had been sold for less than the agreed price, after taking account of additional sale costs such as the advertising costs in relation to the auction ultimately conducted, there would have been a loss suffered. If Verimark had changed its mind about moving to new premises and remained in its old offices then it could have claimed the difference between the price offered by Mia and the market value of the property. That was foreseeable and a reasonable possibility in all the circumstances. However that is not the basis of the claim because Verimark in fact sold the building the following year for more than the price offered by Mia, even after taking account of the additional advertising costs.

[14] The expense items referred to above stand on an entirely different footing. If the sale had proceeded they would have ceased in respect of this building but would have been incurred or replaced by equivalent expenses in premises elsewhere, or the rental in respect of new premises

[12] *Thoroughbred Breeders* para 49.

would have taken account of such expenses. Neither Verimark nor Mia could foresee what would happen in this regard. Much would depend on how quickly a new purchaser would be found. That in turn would depend upon the state of the property market. If a new purchaser were found fairly quickly then Verimark would move to new premises. Whether it would need to incur similar expenses in new premises would depend on the terms on which it occupied those premises. The costs incurred would depend on whether these were more luxurious or more Spartan than the existing offices. If it was compelled to stay in the existing premises for a period the expenses would continue to be incurred but Verimark would obtain benefits from them in the form of security, maintenance of the property, insurance cover and the payment of interest on its bond rather than rental. The expenses would maintain the value of its asset and thereby contribute to its obtaining the higher price that was obtained when it was sold the following year. No doubt the costs incurred would have been deductible as expenses in the production of income for income tax purposes and the VAT payable would have been deducted as an input credit. No-one in the position of Mia could have any insight into these matters of internal administration of Verimark's business much less foresee as a realistic possibility that if he failed to provide the guarantee Verimark would suffer loss in relation to them. All in all the situation is far too beset with uncertainty for it to be said that these were costs that were foreseeable as a realistic possibility flowing naturally from the failure to provide a guarantee for payment of the purchase price.

[15] I turn then to consider the claim on the basis that it is recoverable as special damages. In order to assess that claim it is necessary to have regard to the special circumstances on which Verimark relied in advancing this claim as it is those circumstances that must be proved in

order to advance the claim at all. The special circumstances on which Verimark relied as set out in its pleadings were limited to 'the Defendant's knowledge of the Plaintiff's intention to vacate the immovable property and occupy alternative business and warehouse premises'. No allegations were made in regard to knowledge of Verimark's desire to reduce costs nor were any details alleged in regard to the nature or location of the proposed new premises and the basis upon which the move to such premises would result in a cost saving. It is unclear in those circumstances on what basis Verimark then contended that the damages it was claiming were within the contemplation of the parties at the time of entering into the written agreement, but it is unnecessary to go into this as there is a prior insurmountable difficulty with its case.

[16] The claim advanced on the basis of special damages founders because the evidence does not support even the limited pleaded proposition on which it is based. Britz, who was the principal witness for Verimark in this regard, said that Blair, the agent acting for Verimark in looking for a purchaser, knew of its plans in regard to selling the office premises and consolidating new office premises with new warehouse facilities. However Blair was Verimark's agent and his knowledge could not be attributed to Mia. The fact that at the same time he was also employed by Mia to find a tenant for the building that he was buying from Verimark cannot alter this. It certainly forms no basis for the submission advanced to us that Blair must have told Mia about Verimark's plans. That is pure speculation. As regards the knowledge of Mia there is no evidence that he was aware of Verimark's plans. Britz merely testified to some limited and irrelevant conversations when Mia visited the premises. It was suggested that the absence of evidence could

be overcome by drawing an inference against Mia from his failure to testify, but the cases are clear that such an inference can only be drawn when there is at least some evidence that prima facie supports the proposition sought to be proved.[13] Here the evidence provided no basis at all for attributing to Mia knowledge of Verimark's plans so that his failure to give evidence is a neutral factor.

[17] Even if the claim for special damages is limited to the additional costs in respect of the office premises the same problems of lack of knowledge and absence of foreseeability confront Verimark. Not only was Mia not made aware of the existence of the warehouse and the plan to consolidate it with the office, he did not know that Verimark was disposing of the office premises in order to cut its costs by reducing its overheads. As was put to its counsel in argument, Mia did not know if Verimark intended to move to Pofadder or to more palatial premises in Sandton. He could not then have known the underlying facts on which the claim is based and could not have foreseen that Verimark would suffer the damages it now seeks to recover as a result of the failure to provide the guarantee for the purchase price.

[18] What is more, a claim for special damages requires that, in the light of the relevant special circumstances, the damages claimed must have been in the contemplation of the parties when the contract was concluded. However, when Verimark's attorneys formulated its claim in correspondence, in letters dated 14 February 2003 and 4 August 2003, (the latter after the property had been sold) they did so on a wholly different basis to that advanced at the trial. The letters contain no suggestion that the contract had been concluded in the light of knowledge

[13] *Titus v Shield Insurance Co Ltd* 1980 (3) SA 119 (A) at 133D-134B; *Raliphaswa v Mugivhi & others* 2008 (4) SA 154 (SCA) para 15.

of special circumstances or that the damages now claimed (which were not the damages claimed in the letters) were foreseeable when the contract was concluded. As knowledge of the special circumstances on which Verimark relies in support of its claim for special damages is crucial to establish foreseeability, which in turn is necessary for them to be in the contemplation of the parties when they contracted, the letters are a clear indication that the parties did not have the requisite knowledge or foresight.

[19] For those reasons the appeal must succeed and the judgment in favour of Verimark be set aside. In the court below an order for attorney and client costs was made against Mia. In arguing the appeal Mr du Toit SC submitted that if the appeal succeeded that success should not carry with it an order for costs in favour of Mia and similarly no order for costs should be made in Mia's favour in respect of the trial. He based this on allegations of dishonesty that he founded on amendments made to Mia's plea, the late abandonment of the defence of rectification and Mia's failure to give evidence. He added in regard to the appeal that Mia had falsely stated in his application for leave to appeal that he had been refused a loan whereas this was not true.

[20] It is correct that Mia amended his pleadings several times and abandoned certain defences, but the same point can be made against Verimark. The claim it formulated in correspondence prior to commencing proceedings and its initially pleaded claim were significantly different from the claim finally advanced. It is not possible for us to discern whether these changes of stance were, as suggested to us by Mr Joubert SC, a result of counsel's advice as to the law and the proper conduct of the case or for some other reason. They do not appear

to have prolonged the proceedings unnecessarily or resulted in a significant waste of costs. In making its order the trial court should have borne in mind, as I do, the words of Trollip JA in the *Shatz Invesments* case[14] that:

'But generally, in regard to that complaint and others by plaintiff about the manner in which the trial was conducted on defendant's behalf, one should bear in mind that usually a wide latitude should be afforded a defendant in presenting his defence, especially when he is confronted with a substantial claim for damages. In such a case, I think, the defendant is usually entitled

'to put his back against the wall and to fight from any available point of advantage'

(cf KEKEWICH J in *Blank v Footman, Pretty & Co* 39 Ch D 678 at p. 685, quoted with approval in *Nel v Nel* 1943 AD 280 at p. 288).'

[21] As regards Mia's failure to give evidence, if there was, as I have found, no case for him to meet there was no reason for him to do so and no criticism can be addressed against him for not doing so. That leaves only the point about the falsehood in the application for leave to appeal. That cannot affect the costs of the trial and did not affect either the grant of leave to appeal or the outcome of the appeal. Whilst it is deprecated it does not warrant an adverse order for costs.

[22] The appeal therefore succeeds with costs including those of two counsel. However, in regard to the costs in the court below it must be borne in mind that the claim to recover the costs of negotiating, drafting and signing the sale agreement was resisted to the end although no part of the trial was spent on it. Verimark is entitled to some costs in regard to its successful pursuit of that claim. Mr Joubert SC suggested that the appropriate order would be one in which the first claim was upheld with costs on the appropriate Magistrates' Court scale and the second claim

[14] At 560D-F.

should be dismissed with costs including those of two counsel. However that may create unnecessary complexity in taxing the rival bills of costs. It seems to me preferable for Verimark to have its costs on the appropriate magistrates' court tariff up to the first day of the trial and for Mia to have his costs thereafter including the costs of two counsel. An adjustment is made in respect of the costs of discovery and the preparation of the trial bundle as these costs related almost exclusively to the second claim.

[23] In the result the following order is made:

(a) The appeal is upheld with costs such costs to include those consequent upon the employment of two counsel.

(b) The order of the court *a quo* is altered to read as follows:

'(i) On claim 1 there will be judgment for the plaintiff for R13 160 together with interest thereon at the rate of 15,5% per annum from date of demand, being 24 February 2003, to date of payment.

(ii) Claim 2 is dismissed.

(iii) The defendant is to pay the plaintiff's costs of suit on the appropriate magistrates' court scale from the commencement of the action until the end of the first day of the trial such costs to exclude the costs of making discovery and the costs attendant upon the preparation and copying of the trial bundle.

(iv) The plaintiff is to pay the defendant's costs, including the costs of two counsel, from the second day of the trial until the completion of proceedings, as well as the costs excluded in paragraph (c).'

M J D WALLIS
ACTING JUDGE OF APPEAL

APPEARANCES

FOR APPELLANT:	A P JOUBERT SC (with him D H WIJNBEEK) the heads of argument having been prepared by A P JOUBERT SC (with him M M SMIT). Instructed by Melamed & Hurwitz Inc, Johannesburg Rosendorff, Reitz and Barry, Bloemfontein
FOR RESPONDENT:	S DU TOIT SC (with him G NEL). Instructed by Bell, Dewar and Hall Inc, Johannesburg Webbers, Bloemfontein.