REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 2025-066710

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

[redacted]

Date: 23 July 2026 E van der Schyff

In the matter between:

JOHANNES CHRISTIAAN BEZUIDENHOUT	**FIRST APPLICANT**
HAASFONTEIN BELEGGINGS (PTY) LTD	**SECOND APPLICANT**
and	
MOMENTUM, a division of MMI GROUP LIMITED	**FIRST RESPONDENT**
AFGRI AGRI SERVICES 9PTY) LTD	**SECOND RESPONDENT**
UNIGRO FINANCIAL SERVICES (PTY) LTD	**THIRD RESPONDENT**
LAND AND AGRICULTURAL DEVELOPMENT BANK OF SOUTH AFRICA	**FOURTH RESPONDENT**

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JUDGMENT

VAN DER SCHYFF, J

Introduction

[1] The facts underlying this matter, stated at the level of generality on which the parties agree, are these: The second applicant, Haasfontein Beleggings (Pty) Ltd (Haasfontein Beleggings) entered into a series of credit agreements with the third respondent, Unigro Financial Services (Pty) Ltd (Unigro). Unigro required, among other forms of security, that the loans be secured by a life policy taken out on the life of the first applicant, Mr Johannes Christiaan Bezuidenhout (Mr Bezuidenhout) and by a cession of crops and crop proceeds. Subsequent to the conclusion of these credit agreements, Unigro ceded its rights under them, including the accompanying security, to the fourth respondent, Land and Agricultural Development Bank of South Africa (Land Bank).

[2] Haasfontein Beleggings defaulted on its obligations to Land Bank. Despite negotiations, neither Haasfontein Beleggings, Mr Bezuidenhout, nor the other corporate entities within the group controlled by Mr Bezuidenhout, who had bound themselves as sureties for Haasfontein Beleggings' indebtedness, were able to settle the debt. Land Bank instituted liquidation and recovery proceedings in the High Court of South Africa, Mpumalanga Division (Middelburg) (the Mpumalanga proceedings) against Haasfontein Beleggings and its sureties.

[3] The Mpumalanga proceedings were opposed and defended by the respective respondents and defendants. The further conduct of those proceedings, including the filing of replying papers, was overtaken by negotiations and correspondence passing between the parties' attorneys. Land Bank was advised that the applicants had disposed of certain farms and movable assets to the Department of Land Reform and Rural Development, and that the proceeds of that transaction would enable payment to be made to Land Bank. On the strength of this, Land Bank was asked to refrain from proceeding further with the litigation and to furnish cancellation figures and its guarantee requirements. Some days later, Land Bank furnished its Guarantee Requirements.

[4] The following aspects are pertinently set out in the Land Bank Guarantee Requirements:

(a) Heading: Land Bank Guarantee Requirements: Haasfontein Beleggings (Edms) Bpk;

(b) The Guarantee Amount – R 6 996 979.16;

(c) 'The possibility of the Guarantee Amount being amended in future – "The Guarantee Amount will be amended should there be a change in the Bank's interest rate and/or if any payment is received for the account."

(d) The duration of validity – "The Guarantee Amount is valid until 2023/12/31. Should the transaction(s) not be registered by the said date, the amount required will alter and it is your responsibility in such a case, to obtain new figures from this office."

(e) Refund of surplus funds – "However, if the transaction(s) is registered before the said date the surplus (if Applicable) will be refunded to you".

(f) Inability to settle the account in full – You are also informed that, should the Guarantee not make provision for enough funds to settle the abovementioned accounts on the date of registration, the Bank reserves the right to withdraw its documents from the Deeds Office.

(g) The compilation of the Guarantee Amount – "The Guarantee Amount reflects all amounts, including administration or other fees where applicable, and is calculated to be accurate as at 2023/12/31, subject to the Bank's reservation of rights".

(h) The Bank's reservation of rights – "If payments are effected before or after 2023/12/31 the Guarantee Amount will change. In either event the Bank reserves its right to amend the balance if required."

[5] The applicants contend that payment of the Guarantee Amount, made on 7 December 2023, as having settled the whole of the indebtedness owed to Land Bank, including Land Bank's costs in the Mpumalanga proceedings. Land Bank disputes this. It contends that the Guarantee Requirements were issued for the narrower purpose of securing the release of its mortgage bonds over immovable property being transferred to the Department, and that its costs of recovery, together with the balance of the underlying debt, remain outstanding. This dispute as to the proper meaning and effect of the Guarantee Requirements lies at the heart of the present application.

[6] A second and related dispute concerns the life policy. It is common cause that no formalities ordinarily apply to a cession of rights, but that a creditor's freedom to cede may be contractually restricted. The Momentum policy under which Mr Bezuidenhout is the insured life records that no transfer of rights under the policy will be permitted unless Momentum has been given written notice of the cession prior to the occurrence of the risk event. The applicants contend that the further cession of the policy from Unigro to Land Bank is, for want of such notice, of no force and effect, with the result that the policy cession remains vested in Unigro and, the underlying debt to Unigro having been superseded, has lapsed and reverted to Mr Bezuidenhout. Land Bank disputes both the premise (that notice was not given) and the legal consequence contended for (that the clause operates as a bar to cession at all, or merely a mechanism regulating to whom Momentum may safely pay the proceeds).

These proceedings

[7] The first applicant, Mr. Bezuidenhout, is an adult farmer and the sole director of the second applicant, Haasfontein Beleggings, a farming enterprise based in Mpumalanga. The applicants seek declaratory relief to the effect that the cessions of the life policy and of the crops and crop proceeds have lapsed by operation of law and reverted to them, alternatively orders for re-cession, together with consequential and ancillary relief, including an order directing Momentum to correct its records.

[8] Land Bank opposes the application on the merits. Land Bank further contends that the application ought to be stayed pending finalisation of the Mpumalanga proceedings, in which the question of its entitlement to costs — said to be substantially determinative of the present dispute — falls to be decided. In addition, the applicants have brought an application to strike out various passages of Land Bank's answering affidavit, together with related annexures, on the grounds of irrelevance, which Land Bank resists.

Issues for determination

[9] It is accordingly necessary to determine:

(a) whether the application ought to be stayed pending the outcome of the Mpumalanga proceedings;

(b) the application to strike out;

(c) whether the Guarantee Requirements, properly interpreted, effected a compromise of the whole of the applicants' indebtedness to Land Bank, including its costs of recovery, or only secured the release of the mortgage bonds, leaving the balance of the debt intact;

(d) whether the cession of the life policy from Unigro to Land Bank was valid and effective, notwithstanding the absence of written notice to Momentum, and, related thereto, the proper characterisation of the notice clause in the Momentum policy;

(e) whether, in consequence of the foregoing, the cessions of the life policy and of the crops and crop proceeds have lapsed and reverted to the applicants, alternatively whether the applicants are entitled to re-cession; and

(f) costs.

[10] I deal with these issues in turn.

Point in limine: Lis pendens

[11] Land Bank contends that the relief sought by the applicants pertains, in substance, to the costs of the liquidation and recovery litigation pending in the High Court of South Africa, Mpumalanga Division (Middelburg). It argues that the determination of that question in those proceedings will be largely, if not entirely, determinative of the issues in this application. On this basis, the Land Bank submits that this application ought to be stayed pending the finalisation of the Mpumalanga proceedings.

[12] A plea of *lis pendens*, whether raised as a bar to or as a ground for the stay of proceedings, requires the party invoking it to establish that there is litigation pending between the same parties, based on the same cause of action, and in respect of the

same subject-matter.[1] Even where these requirements are met, the grant of a stay remains a matter for the court's discretion, to be exercised having regard to considerations of equity and convenience.[2]

[13] While the parties to this application and to the Mpumalanga proceedings are substantially the same, I am not persuaded that the cause of action and relief sought are the same, or so closely related as to warrant a stay. The Mpumalanga proceedings concern the liquidation of the second applicant and the recovery of amounts allegedly owing to the Land Bank, including a determination of its entitlement to costs incurred in that litigation. By contrast, this application requires this Court to determine the anterior and distinct questions whether the life policy was validly ceded by Unigro to the Land Bank, and whether the Guarantee Requirements issued in October 2023, on their proper construction, operated to compromise or extinguish the debt secured by the cessions, including any liability for costs not yet quantified or awarded. Interpreting whether a contractual document has completely extinguished a liability is a fundamentally different cause of action from calculating or recovering a debt under that liability.

[14] That does not mean the two proceedings are unrelated, only that their relationship goes to weight rather than this Court's competence to interpret the Guarantee Requirement. The factual and legal findings made by the Mpumalanga court regarding the applicants' liability for costs may well bear on the *quantum* of any debt still secured by the cessions, should any such debt survive. However, that matter goes to the weight or relevance of those findings, not to this Court's competence to determine, as a matter of interpretation, what the Guarantee Requirements purported to settle. This Court is not called upon to usurp the function of the Mpumalanga court by determining costs liability in those proceedings.

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[1] *Association of Mineworkers and Construction Union v Ngululu Bulk Carriers (Pty) Limited (In Liquidation) and Others* [2020] ZACC 8 at para 26.

[2] *Richtersveld Community v Alexkor Ltd and Another* 2000 (1) SA 337 (LCC) at para 20.

[15] Even if the strict requirements of *lis pendens* were to be relaxed, in line with the approach that looks broadly at whether the same central issue is being litigated,[3] the plea must still fail on the grounds of equity and convenience. It is highly convenient for this Court to resolve the interpretive dispute regarding the Guarantee Requirements now. Determining whether the debt has been contractually compromised provides necessary clarity that will narrow, rather than complicate, the issues remaining before the Mpumalanga court.

[16] In these circumstances, I am not satisfied that the requirements for a stay on the grounds of *lis pendens* have been established, nor that the discretion to grant such relief ought, in any event, to be exercised in the fourth respondent's favour. The application for a stay accordingly falls to be dismissed.

The striking out application

[17] Before turning to the substantive issues, it is necessary to deal with the applicants' application to strike out portions of Land Bank's answering affidavit. The application is brought in terms of Rule 6(15) of the Uniform Rules of Court, which empowers a court to strike out matter that is scandalous, vexatious or irrelevant, provided it is satisfied that the applicant for such relief will be prejudiced if the impugned matter remains. Both requirements must therefore be established.[4] Matter is irrelevant if it does not bear upon any issue that falls to be determined in the proceedings. Whether material ultimately proves persuasive is a different enquiry from whether it is relevant.[5]

[18] The applicants seek to strike out three categories of allegations. The first comprises paragraphs 9.8.1 to 9.8.30 of the answering affidavit, which recount the history of the second applicant's indebtedness to Land Bank and the litigation instituted in the Mpumalanga Division. The applicants contend that this material is irrelevant

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[3] See *Nestlé (South Africa) (Pty) Ltd v Mars Inc* 2001 (4) SA 542 (SCA) and *Caesarstone Sdot-Yam Ltd v The World of Marble and Granite 2000 CC and Others* 2013 (6) SA 499 (SCA).

[4] *Beinash v Wixley* 1997 (3) SA 721 (SCA) at 733A-D.

[5] *Helen Suzman Foundation v President of the Republic of South Africa and Others* 2015 (2) SA 1 (CC) at paras 27–28.

because the existence and quantum of the indebtedness secured under the relevant credit agreements, at the time the Guarantee Requirement was issued, are common cause. The second category comprises paragraphs 9.8.39 to 9.8.41, dealing with the transfer of the credit agreements and the associated security from Unigro to Land Bank. The third comprises paragraphs 9.9.3 to 9.9.6, dealing with Land Bank's response to the applicants' challenge to its locus standi in the pending Mpumalanga proceedings.

[19] The application to strike out paragraphs 9.8.1 to 9.8.30 cannot succeed. It is correct that the amount owing under the credit agreements at the time the Guarantee Requirement was furnished is not disputed. That does not, however, render the historical background irrelevant. Land Bank relies upon that background as part of the factual context within which it contends the Guarantee Requirement should be interpreted, including the status of the Mpumalanga proceedings and the existence of a separate claim for costs. Whether that contextual material ultimately advances Land Bank's interpretation is a matter going to the weight of the evidence rather than its admissibility. Although portions of the narrative may prove to be of limited assistance, they cannot properly be characterised as irrelevant within the meaning of Rule 6(15). Nor have the applicants demonstrated any prejudice beyond having to answer allegations which they contend should not have been included. That falls short of the prejudice contemplated by the Rule.

[20] The application directed at paragraphs 9.8.39 to 9.8.41 likewise falls to be dismissed. One of the principal issues in the present proceedings concerns Land Bank's entitlement to assert rights under the Momentum life policy. The applicants contend that no effective transfer of those rights from Unigro to Land Bank occurred. Land Bank's answering affidavit responds directly to that allegation by setting out the transactions upon which it relies to establish the transfer of the relevant rights. Whether Land Bank ultimately succeeds on that issue is a question for determination on the merits. The impugned allegations are, however, plainly directed at a live dispute between the parties and cannot be characterised as irrelevant.

[21] Paragraphs 9.9.3 to 9.9.6 stand on a different footing. Those allegations explain why Land Bank dealt, in some detail, with the history of the transfer of rights from

Unigro to itself, including the challenge to its locus standi raised in the Mpumalanga proceedings. The material contributes little to the determination of the issues before this Court and is of limited significance. It is nevertheless not so disconnected from the present dispute as to warrant its removal under Rule 6(15). More importantly, the applicants have not demonstrated any prejudice of the kind contemplated by the Rule if those allegations remain. The Court is able, in determining the merits, to attach such weight to those allegations as they deserve. The application to strike out these paragraphs must therefore also fail.

[22] It follows that none of the impugned passages satisfy both jurisdictional requirements for relief under Rule 6(15). Some of the allegations may ultimately carry little weight in the determination of the substantive issues, but that does not render them irrelevant for purposes of the Rule. The application to strike out must accordingly be dismissed.

The validity of the on-cession of the life policy

[23] The Momentum policy contains the following clause:

> "Geen oordrag van enige regte op 'n langtermynversekeringspolis (enige tipe sessie) sal toegelaat word indien Momentum nie skriftelik in kennis gestel is van die sessie voor die plaasvind van die risiko gebeurtenis nie." [No transfer of any rights on a long-term insurance policy (any type of cession) will be allowed unless Momentum has been notified in writing of the cession before the occurrence of the risk event.]

[24] It is common cause that Momentum was notified of the original cession by the second applicant to Unigro, but that no separate notice was given of the subsequent on-cession from Unigro to the fourth respondent. The applicants contend that compliance with this notification requirement was a prerequisite for the validity of the subsequent cession. They argue that, absent such notice, the fourth respondent never acquired the rights previously vested in Unigro. I disagree.

[25] Under the common law, a personal right is generally freely cedable. A cession is perfected by agreement between the cedent and the cessionary and ordinarily

requires neither the debtor's consent nor notification to the debtor. Equally well established is the principle that the parties to a contract may restrict those ordinary incidents of cession and that such restrictions, if clearly expressed, must be respected.[6] The question is not whether notification is ordinarily required, but whether the Momentum policy contractually made notification a prerequisite for the validity of the subsequent cession.

[26] The applicants' argument proceeds from the premise that the notification requirement renders a subsequent cession void in the absence of written notice to Momentum. That conclusion does not, in my view, follow from the language employed. The clause undoubtedly regulates transfers of rights under the policy by requiring written notification to Momentum before such a transfer "will be allowed". It does not, however, specify the legal consequence of non-compliance with that requirement. In particular, it does not provide that a transfer concluded without prior written notification is void or of no force and effect as between cedent and cessionary. Those are distinct juridical questions. Had the parties intended written notification to constitute a constitutive requirement for the validity of every subsequent cession, one would ordinarily expect clear language to that effect. The policy contains no language which, expressly or by necessary implication, renders a transfer concluded without prior notification void as between cedent and cessionary.

[27] The clause is capable of bearing an interpretation that the phrase *"enige tipe sessie"* ("any type of cession") distinguishes between the juridical forms which a cession may assume, such as an out-and-out cession and a cession *in securitatem debiti*, rather than extending the notification requirement to every subsequent transfer in a chain of title. That interpretation accords with the distinction recognised in *Brian Garth Batteson NO and Others v Deborah Joubert NO and Another*,[7] and avoids attributing to the clause a restriction upon the further alienation of vested rights in the absence of clear language. Whether this is the correct construction need not ultimately be decided because, even on the broader interpretation advanced by the applicants, the challenge cannot succeed for reasons to follow.

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[6] *National Sorghum Breweries Ltd v Corpcapital Bank Ltd* 2006 (6) SA 208 (SCA) at para 1.
[7] 2025 (6) SA 386 (SCA) at paras 36–39.

[28] Even if that construction is incorrect, and the phrase "any type of cession" is given its widest possible meaning so as to include a subsequent on-cession by the original cessionary, the applicants' argument nevertheless encounters a more fundamental difficulty. The clause does not provide that a subsequent cession is void or of no force and effect in the absence of written notice to Momentum. Nor does it state that written notification constitutes a prerequisite for the transfer of rights as between cedent and cessionary.

[29] The applicants correctly relied upon *National Sorghum Breweries Ltd v Corpcapital Bank Ltd*[8] for the proposition that, as a general rule, a creditor is free to cede its rights in whatever form it chooses, without requiring the debtor's consent or notice, but that this freedom may be restricted by contract, in which case the creditor must comply with the terms of the restriction when ceding its rights. That principle is not controversial. Land Bank invokes the same authority for the same proposition. The difficulty for the applicants lies elsewhere. *National Sorghum* does not determine the legal consequence of non-compliance with a contractual notification provision of the present kind. It does not hold that every contractual notification requirement constitutes a condition for the validity of the cession itself.

[30] The approach adopted in *Lynn & Main Incorporated v Brits Community Sandworks CC*[9] is instructive. There the Supreme Court of Appeal rejected the contention that a contractual requirement of written notice rendered the cession itself invalid. MPATI P held that 'the validity of the cession does not depend on when or whether or not written notice of the cession was given . . . 'and observed that, had the parties intended prior written notice to constitute a prerequisite for validity, 'they failed to make their intention clear when they could easily have done so'.[10] The Court concluded that the giving of notice regulated the stage at which the cessionary became substituted for the cedent under the suretyship, rather than the validity of the cession itself. In my view, the same distinction applies here. The Momentum policy requires written notification but does not expressly attach invalidity to non-compliance. In those

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[8] Above n 6.

[9] 2009 (1) SA 308 (SCA).

[10] Id at para 14.

circumstances, I am unable to conclude that the subsequent cession from Unigro to the fourth respondent was void.

[31] There is a further consideration. The notification contemplated by the clause is required only before the occurrence of the insured event, namely the death of the life insured. That event has not occurred. The clause therefore still permits notification to be furnished before the insurer's obligation to perform arises. It cannot presently be said that the contractual machinery has been exhausted or that the opportunity to comply has passed. This time limitation serves a clear commercial purpose: it protects the insurer from the risk of double payment at the moment the policy matures, while allowing the parties maximum flexibility to deal with the underlying personal rights prior to the risk event.

[32] Furthermore, Momentum has filed a notice to abide. The notification requirement is a provision designed solely for the protection of the debtor insurer, ensuring it is not exposed to competing claims upon the occurrence of the risk event. Consequently, that considerably weakens the applicants' reliance on a clause which the insurer itself has elected not to invoke.

[33] For all these reasons, I conclude that the subsequent cession from Unigro to the Land Bank was effective notwithstanding the absence of separate written notification to Momentum. The applicants' challenge to the Land Bank's title to rely upon the life policy must therefore fail.

Did payment of the guarantee sum extinguish Land Bank's claim for legal costs?

The issues

[34] The applicants contend that the payment of the guarantee sum of R 6 996 979.16 on 7 December 2023 extinguished the second applicant's indebtedness to Land Bank in its entirety and that the security cessions consequently lapsed. Their case is advanced on two related basis. First, they submit that, properly interpreted in its context, the Guarantee Requirement issued by Land Bank represented the full amount required to discharge the indebtedness secured by the

mortgage bonds, including the Bank's entitlement to legal costs. Secondly, and in the alternative, they contend that even if the guarantee sum did not include litigation costs, no enforceable debt presently exists in respect of such costs because no costs order has been granted in the pending proceedings. On either basis, they argue, the cessions can no longer serve as security and have lapsed.

[35] Land Bank disputes both propositions. It contends that the Guarantee Requirement was issued solely for the purpose of facilitating the cancellation of the mortgage bonds and the transfer of the immovable properties. Properly construed, it quantified the amount required to discharge the outstanding loan account for conveyancing purposes and was never intended to settle the parties' rights and obligations arising from the pending liquidation proceedings. Land Bank further contends that its contractual entitlement to recover enforcement costs under the credit agreements remains extant notwithstanding that the quantum of those costs has yet to be determined, with the result that the cessions continue to operate as security.

[36] The dispute accordingly raises two distinct questions. The first is whether, upon a proper interpretation of the Guarantee Requirement and the surrounding circumstances, payment of the guarantee sum extinguished Land Bank's claim for litigation costs. The second, which arises only if that question is answered in the negative, is whether the outstanding contractual liability for those costs is sufficient to sustain the continued operation of the security cessions.

The parties' contentions

[37] The applicants submit that the language of the Guarantee Requirement is inconsistent with Land Bank's present contention that litigation costs remained outstanding after payment of the guarantee sum. They emphasise that the document records that the guarantee amount reflects "all amounts, including administration or other fees where applicable". Read together with the account schedules attached to the Guarantee Requirement and the Ad Hoc Account Transaction Lists annexed to the founding affidavit, they contend that the guarantee amount included legal costs previously debited to the second applicant's loan account. Had Land Bank intended to exclude any category of indebtedness, particularly legal costs, it could readily have

said so. Instead, it accepted payment of the full amount reflected in its own documentation and thereafter permitted registration of the transfers and cancellation of the mortgage bonds to proceed.

[38] The applicants further submit that Land Bank cannot rely upon an unadjudicated claim for litigation costs to maintain the cessions. No costs order has been granted in the Mpumalanga proceedings, no costs have been taxed or agreed, and no judgment has been entered in Land Bank's favour in respect of such costs. They accordingly contend that no presently enforceable debt exists capable of sustaining a cession *in securitatem debiti*.

[39] Land Bank answers that the applicants' construction divorces the Guarantee Requirement from the purpose for which it was issued. The document was prepared in response to a request for bond cancellation figures to enable the transfer of immovable property and must be interpreted within that commercial context. It was never intended to regulate, still less compromise, the parties' respective rights in the pending liquidation proceedings. According to Land Bank, the reference to "administration or other fees" concerns charges arising from the banking relationship and not the unresolved costs of separate litigation.

[40] Land Bank further submits that its entitlement to recover enforcement costs arises directly from the credit agreements, which render Haasfontein Beleggings liable for legal costs actually incurred by the Bank in protecting or enforcing its rights. That contractual obligation exists independently of any future costs order. Although the precise quantum remains to be determined, Land Bank contends that the underlying obligation has neither been discharged nor waived and that the security cessions accordingly remain operative until all obligations under the credit agreements have been fulfilled.

Application of the Plascon-Evans principle

[41] Final declaratory relief is sought on motion. The applicable approach is therefore that stated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd.*[11] The Court must determine the application on the facts stated by the respondent together with those facts admitted by the applicants, unless the respondent's version is so far-fetched or untenable that it can safely be rejected on the papers.

[42] That principle, however, does not require every disagreement between litigants to be treated as a genuine dispute of fact. Where the material facts are either common cause or established by documents whose authenticity is not disputed, the dispute is frequently one of legal consequence rather than factual controversy. In such circumstances the Court is required to determine the legal effect of the documents and the admitted facts, rather than to resolve disputes of credibility or probability.

[43] The first issue falls substantially into that category. The contents of the Guarantee Requirement, the attached schedules, the relevant account statements, the payment of the guarantee amount on 7 December 2023, and the subsequent cancellation of the mortgage bonds are all common cause or objectively established by the documentary record. Land Bank places reliance on correspondence exchanged between the parties' attorneys, which refers to WhatsApp exchanges and telephone calls said to have taken place between them. The applicants do not dispute the existence or wording of that correspondence, but deny that the underlying exchanges and calls referred to within it in fact occurred. That narrow factual dispute need not be resolved for present purposes.

[44] As appears below, the interpretation of the Guarantee Requirement turns on the document's own language, read in the context objectively established by the documentary record, and not on the content of the disputed calls or messages. What divides the parties, for purposes of this issue, is accordingly the legal significance of documents whose existence and content are not in dispute, rather than a factual controversy requiring resolution under *Plascon-Evans*.

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[11] 1984 (3) SA 623 (A) at 634E-H.

[45] The second issue likewise raises no genuine dispute of fact. It is common cause that no costs order has yet been made in the Mpumalanga proceedings and that the quantum of any recoverable litigation costs has not been determined. The question is whether, notwithstanding those facts, the contractual costs provisions contained in the credit agreements constitute a subsisting principal obligation capable of sustaining the security cessions. That enquiry is one of contractual construction and legal principle rather than factual determination.

[46] Both issues are therefore capable of determination on the papers. No referral to oral evidence is either necessary or appropriate.

The interpretative framework

[47] The first issue turns upon the proper interpretation of the Guarantee Requirement issued by Land Bank on 16 October 2023. The exercise is governed by the now well-established principles articulated in *Natal Joint Municipal Pension Fund v Endumeni Municipality,*[12] and subsequently reaffirmed in *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk*[13] and *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others.*[14] Interpretation is a unitary exercise in which the language employed, the purpose of the document and the circumstances in which it came into existence are considered together. Neither text nor context enjoys primacy. Each informs the other in the search for the objective meaning which the document would convey to a reasonable person possessed of the relevant background knowledge.

[48] The enquiry is therefore not whether either party subjectively understood the Guarantee Requirement to have a particular meaning, but whether the document, read as a whole and in its commercial setting, objectively bears the meaning contended for by the applicants. The starting point, nevertheless, remains the language chosen by Land Bank itself. Context cannot be invoked to substitute words which the parties did

[12] 2012 (4) SA 593 (SCA) at para 18.

[13] 2014 (2) SA 494 (SCA) at para 12.

[14] 2022 (1) SA 100 (SCA) at paras 25–26.

not use, nor may textual language be read in isolation from the purpose the document was intended to serve.

The character and purpose of the Guarantee requirement

[49] The applicants expressly contend that the Guarantee Requirement formed part of a broader process by which the parties settled the indebtedness arising from the credit agreements and the pending liquidation proceedings. According to them, the correspondence culminating in the issue of the Guarantee Requirement was written "in pursuance of the settlement of the matter". That characterisation, however, is not reflected in the Guarantee Requirement itself. On its face, it is a document recording the amount required by Land Bank, together with the conditions upon which it would accept a guarantee and release its mortgage security. Whether the document nevertheless acquired the wider contractual significance for which the applicants contend depends upon the surrounding evidence and not upon its language alone.

[50] The Guarantee Requirement bears that character throughout. It emanates from Land Bank's Customer Data and Information Management Unit. Its annexure is headed "Requirements Applicable when Issuing a Guarantee for Repayment of a Loan". The conditions recorded therein regulate matters ordinarily encountered in conveyancing practice, including the nature of acceptable guarantees, the relationship between the guarantee and the Bank's security, the withdrawal of documents from the Deeds Office should the guarantee prove insufficient, and the period for which the guarantee would remain valid. There is no reference to the pending liquidation proceedings, to the case pending in the Mpumalanga Division, or to the settlement of litigation between the parties.

[51] That conclusion is not altered by the broader commercial background. It is common cause that the sale of the immovable properties was intended to generate the funds required to discharge Haasfontein Beleggings' indebtedness to Land Bank and thereby avoid the consequences of the pending liquidation proceedings. That explains why the cancellation figures were requested. It does not follow that every document generated in the conveyancing process thereby assumed the character of a settlement agreement regulating all rights arising from the litigation. The commercial

objective explains the transaction; it does not determine the legal effect of each document produced in its implementation.

[52] Although the applicants expressly plead that the correspondence culminating in the Guarantee Requirement was written "in pursuance of the settlement of the matter", the founding affidavit contains almost no evidence explaining how that settlement was concluded. There is no allegation identifying the representatives who negotiated it, the discussions that preceded the issue of the Guarantee Requirement, the terms upon which Land Bank allegedly agreed to accept the guarantee amount in full and final settlement, or the basis upon which the guarantee figure came to include litigation costs not yet reflected on the loan account. The applicants' case therefore depends predominantly upon the objective meaning they attribute to the Guarantee Requirement itself rather than upon evidence establishing the alleged compromise.

[53] That does not defeat the applicants' case. A written instrument may, depending upon its terms, speak for itself. Nevertheless, where a party contends that a document generated for one commercial purpose also had the effect of compromising or extinguishing substantial rights arising in separate litigation, the absence of evidence explaining how that result came about is a relevant consideration in evaluating whether the document objectively bears the meaning contended for. This omission assumes particular significance because the applicants seek to attribute to a standard conveyancing document the legal consequence of extinguishing substantial contractual rights arising in separate litigation.

Did the Guarantee requirement quantify the whole indebtedness?

[54] The applicants' principal submission is that the Guarantee Requirement itself demonstrates that the guarantee amount represented the entirety of the indebtedness owed to Land Bank. Particular reliance is placed upon the statement that the guarantee amount reflects "all amounts, including administration or other fees where applicable". Read together with the account schedules attached to the document, the applicants contend that the amount necessarily included all legal costs recoverable by Land Bank. Since Land Bank prepared the document and accepted payment of the

amount specified therein, they argue that it cannot now assert the existence of a residual liability.

[55] The submission cannot be rejected merely because the document arose in a conveyancing setting. The language employed by Land Bank is broad. The expression "all amounts" is, viewed in isolation, capable of conveying that nothing remained outstanding after payment of the guarantee amount. Moreover, the applicants correctly point out that certain legal costs had already been debited to Haasfontein Beleggings' loan account prior to the issuance of the Guarantee Requirement. The account schedules produced by Land Bank itself therefore provide some support for the applicants' argument that legal costs formed part of the indebtedness reflected in the guarantee figure. The contention accordingly requires careful consideration.

[56] Properly analysed, however, the applicants' argument elides two distinct categories of liability. The first comprises amounts which, in terms of the credit agreements, had already been debited by Land Bank to the loan account before the Guarantee Requirement was issued. Once debited, those amounts formed part of the outstanding balance owing under the loan account and naturally fell to be reflected in the amount required to procure cancellation of the mortgage bonds. The second comprises the costs of the pending litigation which, although allegedly recoverable under the credit agreements, had not yet been finally determined or incorporated into the loan account. The presence of the first category in the account statements does not establish that the second category was likewise included in the guarantee amount.

[57] This distinction is of central importance. The applicants' arithmetic demonstrates no more than that the guarantee figure included all amounts then standing to the debit of the loan account. That is consistent with the ordinary function of a guarantee figure prepared for purposes of bond cancellation. Whether the document nevertheless acquired the wider contractual significance for which the applicants contend is considered below.

[58] The surrounding circumstances reinforce that interpretation. The Guarantee Requirement is directed exclusively at the cancellation of mortgage security. It contains no reference to the pending litigation, no indication that the parties intended

to finally regulate their respective rights arising from those proceedings, and no language ordinarily associated with compromise, settlement, or waiver. Had Land Bank intended the document to constitute a comprehensive settlement of all existing and future claims arising from the litigation, including contractual claims for legal costs, one would reasonably expect that intention to have been expressed in clear terms. The absence of such language is significant.

[59] The applicants nevertheless submit that the Guarantee Requirement must be read in the context in which it came into existence. They plead that the correspondence culminating in its issue was written "in pursuance of the settlement of the matter", being, according to the applicants, the indebtedness arising from the credit agreements and claimed in the pending liquidation proceedings. On that footing, they contend that the guarantee amount represented either the entirety of the indebtedness then owing or, at the very least, a compromised amount accepted by Land Bank in settlement thereof.

[60] The applicants further rely upon the terms of the Guarantee Requirement itself. They point out that Land Bank expressly reserved the right to amend the guarantee amount should interest accrue or payments be received before registration, and reserved the further right to withdraw its documents from the Deeds Office should the guaranteed amount prove insufficient to settle the specified accounts, and no amendment to the guarantee amount was sought before expiry. They argue that Land Bank exercised neither right. Instead, it accepted payment of the guarantee amount, permitted registration to proceed and released its mortgage security. According to the applicants, that conduct objectively demonstrates that the amount reflected in the Guarantee Requirement constituted everything which Land Bank required in settlement of the indebtedness.

[61] The submission is carefully constructed and cannot simply be dismissed. It correctly recognises that the Guarantee Requirement afforded Land Bank mechanisms by which to protect itself if the guaranteed amount became inadequate before registration. The difficulty, however, lies in the legal consequence which the applicants seek to draw from those facts.

[62] The fact that Land Bank accepted the guarantee and released its mortgage security demonstrates that the Guarantee Requirement was sufficient to achieve the purpose for which it was issued, namely to procure the release of Land Bank's mortgage security. It does not necessarily follow that Land Bank thereby objectively manifested an intention to compromise or abandon every contractual right arising from the parties' broader relationship. That conclusion requires consideration not merely of Land Bank's subsequent conduct but of the language of the document and the evidence concerning the alleged settlement.

[63] It is here that the applicants' case encounters difficulty. Although they expressly plead that the Guarantee Requirement was issued in pursuance of a settlement, the founding affidavit contains almost no evidence explaining how that settlement was concluded. No deponent identifies the representatives who negotiated it, the discussions that preceded the issue of the Guarantee Requirement, the terms upon which Land Bank allegedly agreed to accept the guarantee amount in full and final settlement of every obligation arising from the credit agreements, or the basis upon which litigation costs not yet incorporated into the loan account formed part of the alleged compromise. The applicants therefore invite the Court to infer the existence and scope of that compromise almost exclusively from the wording of the Guarantee Requirement itself.

[64] That inference is not borne out by the document. The Guarantee Requirement nowhere records that it is issued pursuant to a settlement or compromise, nor does it contain language ordinarily associated with the abandonment, waiver or discharge of claims arising outside the indebtedness then reflected on the loan account. On its face, it remains a document directed at quantifying the amount required for the release of Land Bank's mortgage security.

[65] Nor do the reservation clauses alter that conclusion. Objectively construed, their evident purpose is to regulate the adequacy of the guarantee before registration by permitting Land Bank to adjust the amount or withhold cancellation should the guaranteed sum become insufficient. They regulate the conveyancing process. They do not objectively indicate that Land Bank agreed to relinquish separate contractual claims which, on its version, fell outside the amount then reflected on the loan account.

[66] Considered as a whole, the Guarantee Requirement bears the hallmarks of a document intended to quantify the indebtedness then reflected on the secured loan account for purposes of releasing the mortgage security. It does not objectively manifest an intention to compromise or extinguish every contractual obligation arising under the credit agreements. The true enquiry is therefore not whether the applicants complied with the Guarantee Requirement, they plainly did, but whether that document, properly construed in its factual setting, effected the broader compromise for which the applicants contend. In my view, it did not. The applicants have therefore failed to establish that the Guarantee Requirement embodied the compromise for which they contend.

[67] It follows that payment of the guarantee amount discharged the indebtedness reflected in the loan account for the purposes of bond cancellation and obliged Land Bank to release the mortgage security over the relevant properties. It did not, however, extinguish any separate contractual entitlement which Land Bank may have had under the credit agreements to recover enforcement costs not yet incorporated into that account. The applicants' primary contention must therefore fail.

Does the outstanding costs obligation sustain the security cessions?

[68] The conclusion that payment of the guarantee amount did not extinguish every contractual claim arising under the credit agreements does not dispose of the application. The applicants advance a separate and logically distinct contention. They submit that, even if Land Bank retained a contractual claim for litigation costs, the cessions nevertheless lapsed because no debt presently exists capable of supporting them. As recorded herein above, it is common cause that no costs order has been made and no costs taxed or agreed in the Mpumalanga proceedings. As a result, they argue that there is no principal obligation to which the security can attach.

[69] The submission requires a distinction to be drawn between the source of the obligation and the mechanism by which its quantum is ultimately determined. The applicants' argument correctly recognises that no court has yet ordered one party to pay the other's costs in the liquidation proceedings. It does not necessarily follow, however, that no contractual obligation presently exists between the parties.

[70] The source of Land Bank's claim is not the anticipated exercise of the Mpumalanga Division's discretion to award party-and-party costs. Land Bank's case is founded upon clause 27 of the credit agreements. That clause provides that, where it becomes necessary for Land Bank to institute proceedings to protect or enforce its rights under the agreements, the client will be liable for the legal costs actually incurred by the Bank on the stipulated scale. The obligation relied upon is therefore contractual in origin. It is the agreement itself, and not a future court order, that creates the liability.

[71] Whether Land Bank will ultimately succeed in recovering those costs is a different question. The existence of a contractual obligation does not inevitably determine either its enforceability or its quantum. Those matters may depend upon subsequent events, including the outcome of the pending litigation and the proper application of the contractual costs provisions. Those issues do not fall for determination in these proceedings. The present enquiry is confined to whether the alleged obligation is capable, in principle, of sustaining the continued operation of the security cessions.

[72] In my view, it is. The institution of the liquidation proceedings constituted the event contemplated by clause 27 as giving rise to the client's contractual liability for enforcement costs. The precise extent of that liability may remain uncertain until the litigation has run its course. That uncertainty, however, relates to the amount ultimately recoverable and not to the juridical source of the obligation itself.

[73] It is a fundamental principle of our law of security that a security right is accessory to the principal obligation which it secures. Where the principal obligation is extinguished, the security ordinarily falls away with it. Conversely, where the principal obligation continues to exist, the security ordinarily endures until that obligation has been discharged. The enquiry is therefore directed at the continued existence of the secured obligation rather than the stage which enforcement of that obligation has reached.

[74] This principle finds expression in the authorities dealing with cessions *in securitatem debiti*. A security cession may validly secure obligations that are existing, future or contingent, provided that the principal obligation to which the security

attaches is one recognised by law. Once such an obligation comes into existence, the security remains operative until the secured indebtedness has been discharged. It is not a prerequisite that the amount owing must already have been finally liquidated or reduced to judgment.[15]

[75] The applicants' submission tends to equate the absence of a presently enforceable costs order with the absence of any principal obligation. That equation cannot be accepted. A distinction must be maintained between the existence of an obligation and the procedural mechanisms by which its extent is ultimately established and enforced. Many contractual obligations exist before they become liquidated or immediately enforceable. The fact that the precise amount owing remains to be determined does not mean that the underlying obligation has ceased to exist.

[76] This conclusion is reinforced by the terms of the security agreements themselves. The crop cession provides that it shall remain operative until the client has complied with all its obligations under the relevant credit agreement. If clause 27 forms part of those contractual obligations, as it plainly does, the parties themselves agreed that the security would endure until that obligation had likewise been discharged. There is nothing in the language of the cession to suggest that it would terminate merely because the amount recoverable under one component of the contractual relationship had yet to be finally quantified.

[77] This conclusion should not be understood as determining that Land Bank is in fact entitled to recover all of the litigation costs which it claims, or any particular portion thereof. That issue remains for determination in the appropriate proceedings. Nor does this judgment determine whether every item presently claimed falls within clause 27 of the credit agreements. Those questions are not before this Court. The present finding is confined to the narrower proposition that the contractual costs provisions, properly construed, are capable of constituting a subsisting principal obligation for purposes of the accessory security.

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[15] *Batteson* above n 7 at paras 44 and 45.

[78] It follows that the applicants have not established that the principal obligation secured by the cessions has been extinguished. The contractual costs obligation relied upon by Land Bank has not been shown to have been discharged, waived or otherwise terminated. The security cessions accordingly continue to operate pending the determination and discharge of whatever contractual liability for enforcement costs may ultimately be established.

Conclusion

[79] The applicants have therefore failed on both legs of their case. The Guarantee Requirement did not, upon its proper interpretation, extinguish Land Bank's alleged contractual entitlement to recover enforcement costs under the credit agreements. Nor have the applicants established that the contractual obligation relied upon by Land Bank has ceased to exist so as to bring the accessory security to an end.

[80] It follows then that the declaratory relief sought cannot be granted. The continued operation of the security cessions does not determine the outcome of the pending proceedings in the Mpumalanga Division, nor does it pre-judge Land Bank's entitlement to recover the litigation costs claimed. It determines only that, on the present papers, the applicants have not established that the security has lapsed.

Costs

[81] The Land Bank sought a punitive costs order. Since clause 27 of the credit agreements provides for costs on attorney and own client scale, a contractual basis for the order sought exists and it is granted.

ORDER

In the result the following order is granted:

1. **The application to strike out portions of the Fourth Respondent's answering affidavit is dismissed.**
2. **The main application is dismissed.**

3. **The applicants are, jointly and severally, the one paying the other to be absolved, to pay the Fourth Respondent's costs on attorney and own client scale.**

[redacted]

E VAN DER SCHYFF
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

For the applicants:	Adv. CE Thompson
Instructed by:	Röntgen & Röntgen Incorporated
For the fourth respondent:	Adv. HR Fourie SC
Instructed by:	Strydom & Bredenkamp Incorporated
Date of the hearing:	11 May 2026
Date of judgment:	23 July 2026