



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 356/24

In the matter between:

TIGHT BUSINESS ENTERPRISES CC

APPELLANT

and

PETRUS JOHANNES LORDAN N O

FIRST RESPONDENT

THEODORUS LOUIS LORDAN N O

SECOND RESPONDENT

CHARLES JAKOBUS PIETERSE N O

THIRD RESPONDENT

Neutral citation: *Tight Business Enterprise CC v Petrus Johannes Lordan NO & Others* (356/24) [2025] ZASCA 133 (17 September 2025)

Coram: MOCUMIE and KATHREE-SETILOANE JJA and TOLMAY, VALLY and MODIBA AJJA

Heard: 16 May 2025

Delivered: 17 September 2025

Summary: Civil Procedure – special plea – Prescription Act 68 of 1969 – whether prescription begins to run on the date of signing an agreement or on the date the suspensive condition is fulfilled – suspensive condition suspended the enforceability of the agreement – prescription only started running when the suspensive condition was fulfilled.

ORDER

On appeal from: The Gauteng Division of the High Court, Pretoria (Yende AJ, with Motha and Baqwa JJ concurring, sitting as court of appeal).

- 1 The appeal is upheld with costs, including the costs consequent upon the employment of two counsel.
- 2 The order of the high court is set aside and substituted with the following order: ‘The special plea of prescription is dismissed with costs. Such costs to include the costs of two counsel, where so employed.’
- 3 The matter is remitted to the high court to determine the merits.

JUDGMENT

Modiba AJA (Mocumie and Kathree-Setiloane JJA and Tolmay and Vally AJJA concurring):

[1] The question that arises in this appeal is whether prescription begins to run on the date of signing an agreement or on the date on which a suspensive condition is fulfilled. It arose in an appeal against the judgment of the North Gauteng High Court, Pretoria (the full court), which is before us with the special leave of this Court. Before the full court, the respondents, in their capacity as the jointly appointed trustees of the Johan Lordan Trust (the trustees), had successfully appealed against the judgment and order of the same division of the high court, per Lukhaimane AJ, (the high court), which had dismissed their special plea of prescription with costs. The trustees oppose this appeal.

[2] The factual background to this appeal is briefly as follows. On 5 January 2009, the Johan Lordan Trust (the trust), as seller, represented by Mr Johannes Hermanus Cronje Lordan in his capacity as the duly authorised trustee, and Tight Business Enterprises (TBE) as the buyer, concluded a written agreement for the sale of immovable property (the agreement). Clause 18 of the agreement made provision for a suspensive condition, requiring that by 30 June 2009, the Minister of Agriculture (the Minister) consent to the property being transferred separately from an adjacent property. TBE alleged that such consent was obtained on 4 June 2009. In the alternative, it pleaded that the consent had been granted when the agreement was signed. TBE further alleged that the trust did not fulfil its obligations in terms of the agreement. As a result, on 6 March 2012, it instituted a claim for specific performance against the trust.

[3] The trustees raised a special plea of prescription, asserting that the agreement was subject to a three-year prescription period in terms of s 11(*d*) of the Prescription Act 68 of 1969 (Prescription Act); the prescription period began running on the date the agreement was signed; the three-year period expired on 4 January 2012. Consequently, when TBE served summons on the trustees, its claims arising from the agreement had prescribed. TBE maintained that prescription only started running when the suspensive condition was fulfilled on 4 June 2009. Therefore, it issued summons well within the prescription period.

[4] The high court determined the trustees' special plea on the pleadings without the parties leading evidence on the merits. It rejected the trustees' special plea and found that prescription only commenced to run when the suspensive condition was fulfilled.

[5] On appeal, the full court overturned this finding and ruled that prescription commenced running on the date the agreement was concluded. Therefore, TBE's claim for specific performance had prescribed. Before the full court, the trustees had

contended that the high court erred in not finding that, in law, the parties' rights flow from, relate to, and are deemed to have been in force from the date the agreement was signed, *ex tunc* (from the date of signature). As a result, the trustees contended, the performance that TBE claimed, was deemed to have fallen due on the date the agreement was signed; all rights flowing from the agreement, being unconditional, were enforceable from that date; and TBE's claim, had prescribed. TBE contended before the full court that the trustees' special plea was untenable because the suspensive condition was only fulfilled on 4 June 2009, and therefore prescription began to run from that date.

[6] In this Court, TBE, relying on *B B S Empangeni v Phoenix Industrial Park (Pty) Ltd*¹, contended that the full court confused the date when the debt arose (signature date) with the date when it became due (date that the suspensive condition was fulfilled), as highlighted in *List v Jungers*² and *Trinity Asset Management (Pty) Ltd v Grindstone Investments (Trinity Asset Management)*³. As a result of this error, it found that the agreement prescribed three years after it was signed.

[7] The trustees contended that in terms of s 12(1) of the Prescription Act, prescription begins to run upon signature of the agreement and not upon fulfilment of the suspensive condition, and accordingly, TBE's claim had prescribed. The trustees maintained that the full court was correct in overturning the finding of the high court. The trustees further argued that on TBE's own version, as pleaded in the alternative, namely that the suspensive condition was superfluous to the agreement as the ministerial consent had been granted when the agreement was signed, it meant that the debt arising from the agreement was due on the date of the signature, and the running of prescription had been triggered.

¹ *B B S Empangeni v Phoenix Industrial Park* [2012] ZASCA 33; 2012 JDR 0501 (SCA) paras 26-27.

² *List v Jungers* 1979 (3) SA 106 (A) at 121B-H.

³ *Trinity Asset Management (Pty) Ltd v Grindstone Investments 132 (Pty) Ltd* [2017] ZACC 32; 2018 (1) SA 94 (CC); 2017 (12) BCLR 1562 (CC) para 100.

[8] The general principles of the law of contract relevant to the determination of this matter can be summarised as follows. It is a trite principle that a contractual term imposing a condition in an agreement regulates an uncertain future event upon which either the commencement of the duty to perform or the validity of the agreement is dependent. A suspensive condition suspends the right to performance or duty to perform pending the occurrence or non-occurrence of a future event specified in an agreement. Pending the fulfilment of the condition, the parties to the agreement are woven into a contractual relationship. One of the consequences of this relationship is that neither party can withdraw from the agreement, and that they owe each other the duty to perform and are entitled to claim performance from the other party.⁴

[9] Upon fulfilment of the suspensive condition, the parties are entitled to performance and, as a corollary duty, obliged to perform. Until then, performance may not be claimed. If the suspensive condition is not fulfilled, the agreement may be terminated, and neither party has to perform. The offending party may be liable to the innocent party for breaching the agreement, which may include the return of anything already performed and/or contractual damages. The parties provide for permutations of their choice in the agreement.⁵

[10] In *Corondimas v Badat (Corondimas)*⁶, this Court deviated from these general principles of contract and formulated what became known as the *Corondimas* principle. It held that:

‘[W]hen a contract of sale is subject to a true suspensive condition, *there exists no contract of sale unless and until the condition is fulfilled* . . . Until that moment, in the case of a sale subject to a true suspensive condition . . . it is entirely uncertain whether or not a contract of sale will come into existence at some future time.’⁷ (Emphasis added).

⁴ H Schulze et al *General Principles of Commercial Law* (2015) 8th ed at 103. See also G B Bradfield (R H Christie original text) *Christie’s The Law of Contract in South Africa* (2011) 8th ed at 176-177 and authorities cited.

⁵ Ibid.

⁶ *Corondimas v Badat* 1946 AD 548.

⁷ Ibid at 551.

The above principle remains good law as *Corondimas* has not been overruled. Nor has there been any suggestion by the trustees that it should be overruled in this matter. To the contrary, it has been applied in a number of cases in this Court and the Constitutional Court.⁸

[11] When determining the effect of an agreement subject to a suspensive condition, a court is primarily engaging in an interpretative exercise, and the general approach to interpreting text which requires the consideration of the text, its purpose and context, has to be employed.⁹ In *University of Johannesburg v Auckland Park Theological Seminary and Another*¹⁰, held that:

‘. . . [w]hen a court determines the nature of the parties’ rights and obligations in a contract, it is involved in an exercise of contractual interpretation. It follows then, that the determination of whether rights in a contract are *delectus personae* is always a matter of contractual interpretation. That means that the inquiry must adhere to the strictures of the now settled approach to the interpretation of contracts.’

[13] Clause 18 of the agreement provides:

‘That permission for the transfer of the above-mentioned property separately from Portion ... of Farm ... shall be granted by the Minister of [A]griculture not later than 30 June 2000.

That the PURCHASER will ensure that the necessary permission is obtained and will bear the cost in this regard.’

[14] No controversy arises regarding the ordinary meaning of the text in clause 18. The purpose of clause 18 is to ensure that the necessary ministerial consent is obtained

⁸*Rein NO v Fleischer NO and Others* 1984 (4) SA 863 (A) at 866; *Thorpe and Another v BOE Bank Ltd. and Another* 2006 (3) SA 427 (SCA) para 12; *Rockbreakers and Parts (Pty) Ltd v Rolag Property Trading (Pty) Ltd* [2009] ZASCA 102; 2010 (2) SA 400 (SCA); [2010] 1 All SA 291 (SCA) para 14; *Paradyskloof Golf Estate (Pty) Ltd v Municipality of Stellenbosch* [2010] ZASCA 92; 2011 (2) SA 525; [2010] 4 All SA 591 (SCA) para 17; *Diggers Development v City of Matlosana Pty (Ltd)* [2011] ZASCA 247; 2011 JDR 1671 (SCA); [2012] (1) All SA (1) 428 (SCA) paras 23-29 and *Swart v Starbuck and Others* 2017 (5) SA 370 (CC); 2017 (5) SA 370 (CC); 2017 (10) BCLR 1325 (CC) para 31.

⁹ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18-19.

¹⁰ *University of Johannesburg v Auckland Park Theological Seminary and Another* [2021] ZACC 13; 2021 (6) SA 1 (CC); 2021 (8) BCLR 807 (CC) para 63.

by 30 June 2000 for the transfer of the property as a divided portion. It placed the obligation to obtain the consent on TBE.

[15] Whether the agreement is valid from the date of signature or is invalidated by the non-fulfilment of the suspensive condition as contended by the trustees, is a question to be determined at the trial, as it goes to the merits of TBE's claim for specific performance. The temptation to conflate this question with the particular question that arises in this appeal should be resisted. Therefore, the *Corondimas* principle, the controversies around it, and the plethora of cases relied on by the parties where its contours detained courts, are of limited value in determining the succinct question that arises in this appeal.¹¹

[16] The question that arises in this appeal highlights the importance of not conflating the date of signature of an agreement, on the one hand, with the date prescription commences to run, on the other hand. This distinction is particularly important in a case such as this, where there is a legal basis for the conclusion that the date of signature has no bearing on prescription. In *Trinity Asset Management*, the Constitutional Court held otherwise with reference to an agreement where the debt was due on demand.¹² But, for reasons that follow, that conclusion is unsustainable on the present facts.

[17] Section 11(d) of the Prescription Act makes provision for a general prescription period of three years. In terms of s 12(1) of the Prescription Act, prescription commences to run as soon as the debt is due. Until then, although an agreement may have been signed, creating a binding contractual duty to perform and a corollary right to performance, prescription may not commence running if the debt is not yet due.

¹¹ The various critiques of *Corondimas* are discussed, but the principle is confirmed in *Geue and Another v Van Der Lith and Another* 2004 (3) SA 333 (SCA); [2003] 4 All SA 553 (SCA) paras 7-13.

¹² Fn 3 paras 161-163.

[18] In *Van Deventer v Ivory Sun Trading 77 (Pty) Ltd (Van Deventer)*¹³, this Court referred to its judgment in *Umgeni Water v Mshengu*¹⁴ where the principles for determining when a debt is due were clarified as follows:

‘... In its ordinary meaning, a debt is due when it is immediately claimable by the creditor and, as its correlative, it is immediately payable by the debtor. Stated another way, the debt must be one in respect of which the debtor is under an obligation to pay immediately. ... A debt can only be said to be claimable immediately if a creditor has the right to institute an action for its recovery’.¹⁵
(Citations excluded)

[19] In *Tuckers Land and Development Corporation v Strydom (Tuckers Land)*¹⁶, this Court held that the legal nature of an agreement subject to a suspensive condition is that no obligations can be enforced until the condition is met. Upon fulfilment of the suspensive condition, the agreement is perfected. The trustees’ reliance on the line of cases that espouse the principle that the agreement is valid from the date of signature is therefore misplaced. Even if the agreement is valid from the date of signature, because of the suspensive condition, the agreement is not enforceable from the date of signature. It is only enforceable from the date the suspensive condition is fulfilled. TBE obtained the ministerial consent on 4 June 2009, thereby perfecting the agreement. Before 4 June 2009, TBE could not enforce its rights in terms of the agreement. The fact that the agreement was valid from the date of signature is therefore of no moment. The debt did not fall due then because TBE could not enforce it.

[20] The trustees’ argument that the agreement became effective from 5 January 2009 due to the *ex tunc* principle is also inconsistent with the principle in *ABSA Bank Ltd v Sweet & others*,¹⁷ where the court concluded that the *ex tunc* effect

¹³ *Van Deventer v Ivory Sun Trading 77 (Pty) Ltd* 2015 [2014] ZASCA 227; [2014] ZASCA 169; (3) SA 532 (SCA); [2015] 1 All SA 55 (SCA).

¹⁴ *Umgeni Water v Mshengu* [2009] ZASCA 148; (2010) 31 ILJ 88 (SCA) [2010] 2 All SA 505 (SCA) paras 5 – 6.

¹⁵ *Van Deventer* fn 13 para 21.

¹⁶ *Tuckers Land and Development Corporation v Strydom* 1984 (1) SA 1 (A) as applied in *Thorpe and Another NO v BOE Bank LTD and Another* 2006 (3) SA 427 (SCA) para - 12.

¹⁷ *ABSA Bank Ltd v Sweet & others* 1993 (1) SA 318 (C) at 323.

is a contractual fiction to regulate mutual rights between the parties. Therefore, the principle does not override the prescription rules under the Prescription Act and cannot render a debt due when its enforceability is suspended by a suspensive condition.

[21] The principles of prescription, as governed by the Prescription Act, apply to agreements containing suspensive conditions. Prescription only began to run once the suspensive condition was fulfilled, as this was when TBE could institute a claim for specific performance. The date on which TBE issued the summons falls within the prescribed three-year prescription period. The fact that, on TBE's alternative case as pleaded, this date coincides with the signature date is irrelevant, as it succeeds on its main case as pleaded.

[22] It follows that the appeal succeeds, and the following order is issued.

- 1 The appeal is upheld with costs, including the costs consequent upon the employment of two counsel.
- 2 The order of the high court is set aside and substituted with the following order: 'The special plea of prescription is dismissed with costs. Such costs to include the costs of two counsel, where so employed.'
- 3 The matter is remitted to the high court to determine the merits.

L T MODIBA
ACTING JUDGE OF APPEAL

Appearances:

Counsel for the appellant: B P Geach SC with E Janse Van Rensburg
Instructed by: S J Van Den Berg Attorneys, Pretoria
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Counsel for the respondents: J Hershensohn SC with J Stroebe
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