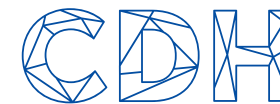


Dispute Resolution

ALERT | 7 October 2025



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SOUTH AFRICA

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DISPUTE RESOLUTION
ALERT

Suspensive conditions: When does prescription begin to run?

Prescription in South African law is governed by the Prescription Act 68 of 1969 (Act), which has been in operation for a considerable number of years. Although the Act establishes a clear framework within which debts are to be dealt with, the issue of prescription continues to spark debate in South African courts.

One such debate recently arose in the case of *Tight Business Enterprise CC v Petrus Johannes Lordan NO & Others* [2025] ZASCA 133, where the Supreme Court of Appeal (SCA) was asked to determine whether prescription began to run on the date of signing an agreement or on the date on which a suspensive condition contained therein was fulfilled.

The case involved a written agreement for the sale of immovable property which was entered into between Tight Business Enterprise CC (TBE) and the Johan Lordan Trust (trust). The agreement was subject to a suspensive condition requiring that by 30 June 2009, the Minister of Agriculture must consent to the immovable property being transferred separately from an adjacent property. TBE alleged that such consent was obtained on 4 June 2009 and further, that the trust did not fulfil its obligations in terms of the sale agreement. As a result, on 6 March 2012, TBE instituted a claim for specific performance against the trust. The trustees raised a special plea of prescription, contending that (i) the agreement was subject to a three-year prescription period in terms of section 11(d) of the Act, (ii) the prescription period began running on the date

the agreement was signed, (iii) the three-year prescription period expired on 4 January 2012 and, consequently, (iv) TBE's claims arising from the agreement had prescribed. TBE maintained that prescription only started running when the suspensive condition was fulfilled on 4 June 2009, and for this reason, it had issued summons well within the prescription period.

The special plea was dismissed with costs by the Pretoria Division of the High Court in November 2019. On appeal, the full bench overturned this finding and ruled that prescription commenced running on the date the agreement was concluded and that for this reason, TBE's claim for specific performance had prescribed. Special leave to appeal against the finding of the full bench was granted by the SCA and the issue which now lay for determination before the SCA was whether prescription began running on the date of signing the agreement or on the date the suspensive condition was fulfilled.

Before the SCA

The SCA found that the full bench incorrectly held that prescription began running on the date of signature of the agreement stating that the principles of prescription, as governed by the Act, are applicable to agreements containing suspensive conditions and that due to this, prescription only began to run once the suspensive condition was fulfilled, as this was when TBE could institute a claim for specific performance. Thus, according to the SCA, the date on which TBE issued summons fell within the prescribed three-year prescription period.



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In coming to its decision, the SCA emphasised the trite principal 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, depends. A suspensive condition suspends the right to performance or the duty to perform until the occurrence or non-occurrence of a specified future event. Pending the fulfilment of the suspensive condition, the parties to an agreement are, in a sense, woven into a contractual relationship and a consequence of such a relationship is that neither party can withdraw from the agreement as they owe each other the duty to perform and are entitled to claim performance from the other party. Importantly, the SCA emphasised that upon fulfilment of the suspensive condition, the parties are entitled to performance, and, as a consequential duty, obliged to perform. Until then, performance may not be claimed.

The SCA interpreted the suspensive condition of the contract with reliance on the principles of the interpretation of documents, stating that the process of interpretation is a unitary and objective exercise that takes into consideration the text, context and purpose of the document or the instruments being interpreted. The SCA emphasised the importance of not conflating the date of signature of an agreement with the date that prescription commences to run. Section 11(d) of the Act, makes provision for a general prescription period of three years and section 12(1) of the Act, determines that prescription commences to run as soon as the debt is due. Therefore, a debt that has not yet ripened into an enforceable claim cannot trigger prescription. Even if the agreement in this case was valid *ex tunc* (from the beginning), because of the suspensive condition, the agreement was not enforceable from the date of signature, said the SCA. Accordingly, the debt did not fall due on that date because TBE could not enforce it.

Conclusion

This case serves as a reminder that when parties choose to conclude an agreement, it is imperative that the agreement contains clear interpretations and precise definitions of its terms. Ambiguities can lead to disputes over rights and obligations, particularly when claims need to be enforced to avoid prescription. While this particular matter focused on the timing of when obligations arose rather than the substantive merits of the case, it reinforces the need for meticulous drafting to avoid uncertainty and potential litigation.

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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