

INTERPRETATION OF CONTRACTS

Timeline

KPMG Chartered Accountants (SA) v Securefin Ltd 2009 (4) SA 39 (SCA)

Parol evidence rule still part of our law. If a document was intended to provide a complete memorial of a jural act, extrinsic evidence may not contradict, add to or modify its meaning.

To the extent that evidence may be admissible to contextualise the document, one must use it as conservatively as possible.

The City of Tshwane Metropolitan Municipality v Blair Atholl Homeowners Association 2019 (3) SA 398 (SCA)

Point of departure: the language of the document in question. Evidence on the intention of the parties of their prior negotiations is inadmissible.

Significance of the words the parties chose to record their agreement is emphasised, though not above context.

1934

THE HISTORICAL APPROACH TO INTERPRETATION:

Scottish Union & National Insurance Co Ltd v Native Recruiting Corp Ltd 1934 AD 458

In construing every kind of written contract the Court must give effect to the ordinary and grammatical effect of the words used therein unless it is clear from the context that the parties intended a different meaning.

Where there is ambiguity/inconsistency the Court may modify the words just so much as to avoid the absurdity or inconsistency.

2009

2012

Natal Joint Municipality Pension und v Endumeni Municipality 2012 (4) SA 593 (SCA)

Interpretation is an objective process. Consideration must be given to: The language used in light of the ordinary rules of grammar and syntax. The context in which the provision appears. The apparent purpose to which it is directed and the material known to those responsible for its production. A sensible meaning is to be preferred to one that leads to insensible/unbusiness-like results or undermines the purpose of the document.

2019

2021

University of Johannesburg v Auckland Park Theological Seminary and Another 2021 (8) BCLR 807 (CC)

The parol evidence rule does not prevent extrinsic evidence from being adduced. Integration of the parol evidence rule is only applicable where the evidence in question seeks to vary, contradict or add to (as opposed to assist the court to interpret) the terms of the agreement. The obligation on courts to take a contextual approach to contractual interpretation is peremptory. The factual matrix, purpose, circumstances leading up to its conclusion and the knowledge at the time of those who produced the contract should be considered from the onset.

2021

Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd 2022 (1) SA 100 (SCA)

The starting point in interpretation must be the analysis of the provisions of the agreement, in the context in which it is used, having regard to the purpose of the provision. Since the interpretative exercise affords the meaning yielded by text no priority and requires no ambiguity as to the meaning of the text to admit extrinsic evidence, the parol evidence rule is likely to become a residual rule that does little more than identify the written agreement, the meaning of which must be determined.

There are limits to the evidence that may be admitted as relevant to context and purpose.

Contact



Bianca Da Costa
Partner
+27 11 586 6046
bdacosta@fasken.com