

“ANNEXURE 11”

IN THE HIGH COURT OF NAMIBIA

Case Title: Kurt Bellwinkel and Another v Leon David Van Niekerk and Another	Case No: HC-MD-CIV-ACT-CON-2017/04625
	Division of Court: High Court
Heard before: Honourable Justice G.H. Oosthuizen	Date of hearing: 21 January 2019
	Delivered on: 29 March 2019, and 04 April 2019
Neutral citation: Kurt Bellwinkel and Another v Leon David Van Niekerk and Another (HC-MD-CIV-ACT-CON-2017/4625 [2019] NAMCMD 82 (04 April 2019).	
Result on merits: Proposed amendments of the plea to the particulars of claim is deferred to be decided at the trial together with the merits.	
The order made on 29 March 2019: Having heard Mr Schurz , on behalf of the plaintiffs, and Ms Vermeulen , on behalf of the defendants, and having read the documents filed of record: IT IS ORDERED THAT: <ol style="list-style-type: none">1. Proposed amendments of the plea to the particulars of claim is deferred to be decided at the trial together with the merits.2. The costs of the opposed application to amend stands over for determination at the trial.3. Reasons shall be supplied and uploaded within 3 days (excluding 29/03/2019).4. Parties shall file their signed joint pre-trial report on or before 02/05/2019.5. Matter is postponed to 06/05/2019 at 14:30 for pre-trial conference hearing.	

Reasons for orders:

1. Plaintiffs/Respondents claim payment of the outstanding capital and interest, allegedly due on a written agreement entered into on 19 February 2012.
2. Applicants/Defendants made payments on the said agreement to the tune of N\$ 9, 000,000.00
3. The application for amendments to applicants'/defendants' plea is strenuously opposed.
4. Without venturing into the merits or demerits of the application and the extent of the intended amendments, it is trite that defendants have materially performed under the agreement before summons was issued.
5. Defendants denied that second defendant was duly represented by the plaintiffs or the first defendant when the agreement was concluded and pleaded that second defendant could not have bought the business from second plaintiff. It is pleaded that first defendant can not be liable for second defendant's debt and second defendant could not incur liability. In their notice to amend and in argument defendants seek to withdraw "procedural" admissions and intend to say that the whole agreement of 19 February 2012 is null and void due to the non- severability of the two transactions embodied in the aforesaid written agreement.
6. In the full Bench Namibian High Court case of IA Bell Equipment Company (Namibia) (Pty) Ltd v Roadstone Quarries CC (I 601-2013 and I 4084-2010) [2014] NAHCMD 306 (17 October 2014), paragraph [55], page 29 (c) it was observed that whether alleged mistakes necessitating amendments is genuine or bona fide and not an afterthought may in certain circumstances become the real issue between the parties. Without quoting or summarizing the whole paragraph, this court finds that the contents thereof may very well find application in the dispute(s) between the parties and that the trial court will be best equipped to deal with the proposed amendments as part of the body of evidence in the main case.

Judge's signature:

Note to the parties:

Counsel:

Plaintiff(s)	Defendant (s)
Advocate Heathcote SC and Advocate Beatrix De Jager Instructed by Francois Erasmus and Partners	Advocate Bruwer Instructed by Ellis Shilengudwa Inc