IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG LOCAL DIVISION, JOHANNESBURG)

COMMERCIAL COURT

CASE NO: 015441/2018

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

6 OCTOBER 2020 **JUDGE L.T. MODIBA**

In the matter between:

CLOSETRADE 200074 CC T/A ILCOR ENGINEERING SERVICES Plaintiff

and

CROSSMOOR TRANSPORT (PTY) LTD Defendant

JUDGMENT

MODIBA J

[1] The plaintiff, *Closetrade 200074 Cc T/A Ilcor Engineering Services (Ilcor)* sues the defendant, *Crossmoor Transport (Pty) Ltd (Crossmoor)* for damages arising from *Crossmoor's* alleged repudiation of two written agreements.

[2] The agreements comprise of orders *Crossmoor* placed with *Ilcor* in for the manufacture of two four-axle trucks and one five-axle truck respectively. For brevity, I refer to these agreements as the four-axle agreement and the five-axle agreement. When the parties concluded these agreements, they were duly represented. *Ilcor* contends that it performed in terms of the agreements, but *Crossmoor* failed to perform. *Crossmoor* initially pleaded that *Ilcor* was not entitled to commence the manufacturing of the trucks because it (*Crossmoor*) had not paid a deposit or furnished a guarantee as required in terms of the agreement. For this reason, it contested that *Ilcor* is not entitled to recover the purchase price. *Crossmoor's* defence not only mutated on the eve of the trial, at the commencement of the trial, its counsel raised an exception point, which he sought argued upfront. When its attempt to have the exception determined separately from the rest of the issues in the trial failed, *Crossmoor* raised several objections to the evidence of *Ilcor's* witnesses, which crystalized into additional grounds of defence during the argument phase of the trial.

[3] The court frowned upon the incremental development of *Crossmoor's* defence as it risked derailing the trial under circumstances where *Crossmoor* failed to make optimum use of the opportunities that the commercial court provides to fully investigate *Ilcor's* claim, prepare its defence and through the judicial case manager dispose of interlocutory issues prior to the trial. This would have resulted in triable issues being defined and narrowed down with reasonable certainty, resulting in a prompt disposition of the matter. *Crossmoor's* conduct was undoubtedly prejudicial to *Ilcor* because it had to respond to the additional defences referred to above without any investigation and preparation of its

response. There is hardly a need to articulate the inconvenience *Crossmoor's* conduct caused the court.

[4] *Crossmoor's* conduct in these proceedings was consistent with its conduct towards *Ilcor* during the implementation of the agreements. Flynn testified at length about countless promises that *Crossmoor* made that it would furnish guarantees for the four-axle trucks and pay a deposit for the five-axle truck but failed to do so, until *Ilcor* considered its non-performance to amount to a repudiation, which it accepted. After *Ilcor* commenced these proceedings, *Crossmoor* filed a plea but subsequently failed to file witnesses' statements after numerous undertakings that it would do so. Ultimately, it came into the trial without a version, resorting to various technical skirmishes in an attempt to debilitate *Ilcor's* case.

[5] This led to the court adopting a very firm approach to uphold the objectives of the commercial court to avoid further delays in determining the disputes between the parties.

[6] In its particulars of claim, *Ilcor* articulates its claims in two parts referenced claim A and B.

[7] In respect of claim A, *Ilcor* claims payment due in respect of the four-axle agreement. By the time it instituted the action, the complexion of *it's* claim had changed. *Ilcor* allegedly sold one of the four-axle trucks in 2018, prior to instituting this action. It persisted with its claims in respect of the remaining four-axle truck. It addressed a formal demand to *Crossmoor* on 8 March 2018,

tendering delivery of, *inter alia*, the four-axle truck and demanding payment for the purchase price. *Crossmoor* did not meet this demand.

[8] During the COVID-19 lockdown period in 2020, *Ilcor* sold the remaining four-axle truck, thereby recovering 94% of the purchase price claimed in claim A. It persists in its claim in respect of the difference between the agreed purchase price for the four axle-truck and the purchase price paid to it by the buyer. It amounts to R45 000.00. No apparent prejudice lies against *Crossmoor* for these changes as they drastically reduce *Ilcor's* claim in respect of the purchase price for the four-axle truck.

[9] *Ilcor* also claims storage costs, which it alleges it is reasonably entitled to charge in order to store the four-axle truck on its premises due to *Crossmoor's* failure to pay and collect them on completion of the manufacturing process. It has computed the storage costs at R22 500.00 per month, to be reckoned from the date *Ilcor* tendered delivery of the truck. From that date to the date of the sale of the four-axle truck, *Ilcor* computes the storage costs.

[10] It is common cause that *Crossmoor* specifically failed to pay for and collect the two four-Axle trucks despite demand, which *Ilcor* had fully manufactured. *Ilcor* considered these failures a repudiation of the four-axle agreement, which it accepted.

[11] In claim B, *Ilcor* similarly claims for the purchase price in respect of the five-axle truck and the reasonable attendant storage costs occasioned by *Crossmoor's* repudiation of the five-axle agreement. It alleges that it started manufacturing

the five-axle truck but stopped when *Crossmoor* failed to furnish a bank guarantee for its payment or to pay a deposit in terms of the five-axle agreement. It considered these omissions to constitute a repudiation of that agreement, which it also accepted. As a result, it stopped the manufacturing of the five-axle truck and instituted these proceedings.

[12] Consequently, *Ilcor's* claim in Claim B comprises the actual costs incurred until the date of cessation of all work on the truck and the loss of profit, calculated at 35% of the cost price of a completely manufactured five axle truck including storage costs. It quantifies storage costs for the five-axle truck at R45, 000 per month reckoned from the date it stopped manufacturing the truck to the date of payment of the monetary order in respect of the purchase price.

[13] *Crossmoor* opposes the action. As already hinted, it initially contended that *Ilcor* was not entitled to perform in terms of the agreement until it (*Crossmoor)* had paid a deposit or furnished a guarantee issued by a South African bank. For that reason, *Crossmoor* contends that the agreements are not enforceable. In the alternative, *Crossmoor* has pleaded that the agreements were subject to a suspensive condition. It amended its plea to this effect on 17 June 2020. This was a mere 3 days prior to the trial. In its amended plea, it contends that since the suspensive condition was not fulfilled, the agreements have lapsed.

[14] In the event that the court finds that the suspensive condition does exist, *Ilcor* contends that it *(Ilcor)* waived it.

[15] From the above, it follows that the following issues stand to be determined between the parties:

15.1. Whether the agreements pleaded in the particulars of claim are enforceable against *Crossmoor*;

15.2. Whether *Crossmoor* is liable to make payment to *Ilcor* in the amount claimed or at all.

15.3. Whether the agreements concluded between *Ilcor* and *Crossmoor* were subject to a suspensive condition and if so, whether such condition was waived by *Ilcor*.

[16] The above triable issues were agreed between the parties at the last judicial pre-trial conference held with the parties on 17 June 2020.

[17] In an unanticipated twist, at the commencement of the trial, *Crossmor's* counsel advised the court that it objects to *Ilcor's* particulars of claim on the basis that they disclose no cause of action in respect of storage costs. He sought the determination of this issue upfront because it is akin to an exception. In this regard, he relied on *Imprefed (Pty) Ltd V National Transport Commission.*[1] The court frowned on the stance belatedly adopted by *Crossmor* for the following reasons:

[1] 1990 (3) SA 324 (T)

17.1. *Crossmoor* failed to raise an exception prior to filing its plea. In its plea, it pleaded a bare denial of liability for storage costs.

17.2. This matter was designated as a commercial court matter in October 2019. From that date, I case managed the matter under the applicable practice directive. I held the first case management meeting with the parties on 15 November 2019. I held two further case management meetings with the parties prior to the trial. At no point until the commencement of the trial did *Crossmoor* raise any interlocutory issues, despite access to me as the designated judicial case manager and my availability to hear any such application on a date arranged with my clerk.

17.3. The fact that *Crossmoor* informed *Ilcor* in writing on 8 June 2020 and outlined these issues in its practice note dated 19 June 2020 does not cure the court's displeasure at *Crossmoor* for belatedly raising these issues at the risk of derailing the trial.

17.4. Hearing the exception as a separated issue will have severe implications for the administration of justice. Given that such a ruling is likely to be appealable, it would require that reasons are furnished. This would impose a postponement of the trial while the court prepares the reasons for the judgment.

[18] The court allowed argument on whether the interlocutory point should be argued as a separate point in terms of rule 33 (4). After hearing counsel for the parties, it dismissed the separation application and deferred reasons.

[19] The court dismissed the application for the reasons set out in paragraph 18 as well as the following reasons:

19.1. Although the issue sought to be separated is a pure legal point and could be separated, the court did not consider it convenient to separate the issue because such an approach would lead to a multiplicity of proceedings. *Ilcor's* witnesses had filed witness statements as required in terms of the applicable practice directive. The witnesses have been lined up to testify at the trial. The issue relating to the exception is a very narrow issue. The witnesses would be required to attend court again to testify if the separation application succeeds.

19.2. As already mentioned, *Ilcor* secured the designation of this matter as a commercial court matter. One of the underlying objectives of this court is the expeditious determination of commercial disputes. The matter has been ripe for hearing since the beginning of 2020 and could not be accommodated earlier due to my unavailability in the early part of the first term, 2020. If the matter became part-heard, it would most likely have taken another six months before it is finalized as the commercial court roll is crowded out until February 2020.

19.3. The commercial prejudice to be suffered by *Ilcor* in the event that it succeeds in this action is grave. *Crossmoor* does not stand to suffer any apparent prejudice if the separation application is not granted. The potential prejudice to *Ilcor* ought to be avoided particularly considering the absence of *Crossmoor's* estimable explanation for the delay in raising this issue. The fact that *Crossmoor* changed its legal team does not warrant the sympathy of this court.

19.4. The exception point is not dispositive of the trial.

19.5. Given the basis on which this exception point stands to be dismissed, separating it from the other issues in the trial is found to be inconvenient to *Ilcor* and the court.

[20] When the trial commenced, counsel for *Crossmoor* informed the court that he will be objecting if *Ilcor*'s witnesses lead any evidence that is contrary to what is pleaded in the particulars of claim. The court adopted a general approach to this objection by provisionally allowing the evidence, with the objections to be dealt with during argument. During the evidence of *Ilcor's* witnesses, counsel for *Crossmoor* raised further objections to which the court adopted a similar approach. I outline these in paragraph 47 below. During the trial, counsel for Crossmoor raised an additional exception point in relation to lack of cause of action for the balance of the purchase price for the four-axle truck.

[21] In light of the foregoing, *Crossmoor's* exception points are the logical place to begin, followed by the objections to the evidence of *Ilcor's* witnesses. I predicate these determinations with the legal principles applicable to pleadings and exceptions.

[22] As I find below, *Crossmoor'*s exception points and objections to the evidence of *Ilcor*'s witnesses stand to fail.

[23] I then proceed to consider *Ilcor*'s claims on the merits. I find that it makes out a case for the relief sought, save for the period for which it seeks to hold Crossmoor liable for storage costs for the five-axle truck. I deal with this point at the end of this judgement.

LEGAL PRINCIPLES APPLICABLE TO PLEADINGS AND EXCEPTIONS

[24] The general principles applicable to pleadings provide guidance for the resolution of *Crossmoor's* objections to the admissibility of the evidence of *Ilcor's* witnesses as they pertain to *Crossmoor's* ground of exception based on lack of cause of action in respect of the storage costs.

[25] In *Robinson,*[2] the appellate division held that:

"The object of pleading is to define the issues; and parties will be kept strictly to their pleas where any departure would <u>cause prejudice or would prevent full enquiry</u>. But ***<u>within those limits the Court has a wide discretion. For pleadings are made for the Court, not the Court for pleadings</u>****. And where a party has had every facility to place all the facts before the trial Court and the* ***<u>investigation into all the circumstances has been as thorough and as patient as in this instance</u>****, there is no justification for interference by an appellate tribunal, merely because* ***<u>the pleading of the opponent has not been as explicit as it might have been</u>****."* [emphasis added]

[26] To disclose a cause of action, the plaintiff's pleading must set out every material fact which is necessary for the plaintiff to prove in order obtain a judgment in its favour. It is not necessary to set out every piece of evidence which is necessary to prove each fact. The plaintiff is rather required to set out averments that are

[2] *Robinson v Randfontein Estates GM Co Ltd Respondent* 1925 AD 173

necessary to be proved. If evidence can be led which would disclose a cause of action or a defence alleged in the pleadings, a pleading is not excipiable. A pleading is only excipiable on the basis that no possible evidence led on the pleading can disclose a cause of action or a defence.

[27] The function of a well-founded exception that particulars of claim, or part thereof, does not disclose a cause of action is to dispose of the case in whole or in part. It is for this reason that an exception cannot be taken to a portion of a pleading unless it is self-contained, amounts to a separate defence, and can therefore be struck out without affecting the remainder of the plea.[3]

[28] The main purpose of an exception that a declaration does not disclose a cause of action is to avoid the leading of unnecessary evidence at the trial.[4]

[29] An exception cannot be taken to a pleading on the ground that it does not support one of several claims arising out of one cause of action, because this does not serve the main purpose of an exception, which is to avoid the leading of unnecessary evidence.[5]

[30] For the purpose of deciding an exception, the court must assume the correctness of the factual averments made in the relevant pleading, unless they are palpably untrue or so improbable that they cannot be accepted.

[3] *Salzmann v Holmes* 1914 AD 152 at 156; *Barrett v Rewi Bulawayo Development Syndicate Ltd* 1922 AD 457 at 459; *Miller v Bellville Municipality* 1971 (4) SA 544 (C) at 546)
[4] *Dharumpal Transport (Pty) Ltd v Dharumpal* 1956 (1) SA 700 (A) at 706.
[5] Santos v Standard General Insurance Co Ltd 1971 (3) SA 434 (O) at 437D–F.

CROSSMOOR'S EXCEPTION POINTS

Lack of cause of action in respect of the storage costs

[31] *Ilcor*'s storage costs claims are pleaded as follows in Claims A and B as set out in paragraphs 10 and 21 of the particulars of claim:

> *"10. The **plaintiff incurs storage costs** due to the defendant's failure to collect the Four-Axle trailer at the rate of R22 500 per month (calculated as: 150m² charged at R150 per m² per month), which cost, the defendant is obliged to pay."*[6]

> *"21The **plaintiff incurs storage costs** due to the defendant's repudiation of the Five-Axle agreement at the rate of R45 000 per month (calculated as: 300m² charged at R150 per m² per month) from 12 April 2018, being the date the plaintiff accepted the defendants repudiation, which cost, the defendant is obliged to pay."*[7]

[32] *Crossmoor* complains that *Ilcor* failed to set out the basis for the storage costs in the particulars of claim. It contends that *Ilcor's* particulars of claim as well as the evidence of its witnesses as set out in their respective witness statement and as confirmed in evidence before court, make it clear that *Ilcor* claims compensation from it for the space it could not use or let as a result of the trucks stored on its premises. In that regard, it contends that *Ilcor* seeks to charge *Crossmoor* storage costs. *Crossmoor* further contends that this is different from

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[6] Emphasis added.
[7] Emphasis added.

*Ilcor'*s pleaded case because *Ilcor* does not actually incur expenditure as a result of storing the trucks on its premises.

[33] The word "incur", carries various meanings. It essentially connotes positive or negative results of something done or not done. One of the meanings ascribed to the word is 'to subject one to something through one's own actions'.[8]

[34] From *Ilcor*'s particulars of claim considered as a whole, it clearly appears that due to *Crossmoor'*s failure to collect the four-axle truck when it was due for collection, *Ilcor* has incurred storage costs. In this instance, *Ilcor* lost the space it would have used for its business as a result of *Crossmoor*'s conduct. Put differently, *Crossmoor*'s repudiation of the contract subjected *Ilcor* to this loss. Flynn's evidence as corroborated by Ramkissoon's attests to this fact. Flynn testified that *Ilcor* lost the use of the space where the truck was located. This space could have been used for other business purposes. In addition to confirming this evidence, Ramkissoon testified that *Ilcor's* premises bear the necessary elements of rental premises for the storage of the truck in that it is expansive, enclosed and secured. He also testified that the amount claimed in respect of storage costs is consistent with the rate of renting similar premises for a similar use in the market.

[35] It is common cause that the *Ilcor's* loss of the use of the space in question on its premises resulted from *Crossmoor's* failure to pay the purchase price and to collect the four-axle truck after Ilcor manufactured it. The same applies in

[8] See Macmillan dictionary online.

respect of the five-axle truck when Ilcor stopped manufacturing the five-axle truck as a result of *Crossmoor's* repudiation.

[36] *Crossmoor* led no evidence in rebuttal.

[37] The *facta probanda* regarding these costs have been pleaded, even as conclusions. When the relevant averments are considered against the evidence of *Ilcor's* witnesses, *Crossmoor* cannot complain of any prejudice in circumstances, where, it pleaded to these averments and has enjoyed the benefits of the witness statements of Flynn and Ramkissoon for over a year prior to the commencement of the trial. It had ample time to consider both the pleadings and the intended evidence of these witnesses. It therefore, cannot complain that the manner in which the relevant averments are pleaded prevented it from conducting a full enquiry.[9]

[38] *Ilcor's* cause of action pleaded in claim A is founded on the *actio venditti* cause of action. This is a claim for the payment of the purchase price for the thing sold. It is not founded in a claim for specific performance as contended by *Crossmoor. Crossmoor's* liability for the purchase price extends to other losses that *Ilcor* incurred due to *Crossmoor's* failure to collect the truck, in this case, the storage costs as pleaded.

[39] The evidence to be led on the exception point is very narrow and would hardly unduly burden the court. As it turned out, the evidence of *Ilcor*'s witnesses on this issue was very brief.

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[9] See *Mckelvey V Cowan NO*, 1980 (4) SA 525 (Z).

[40] For these reasons, *Crossmoor's* exception point in relation to storage costs was dismissed with costs.

Balance of purchase price

[41] *Ilcor* notified *Crossmoor* in several correspondence since 11 June 2020 that it has sold the four-axle trailer. *Crossmoor* never disputed the sale.

[42] Mr Flynn testified at length regarding the sale of the second four-axle truck. His evidence in respect of the sale of this truck stands unchallenged as *Crossmoor* placed no version before the court to rebut it. I find no reason to disregard Mr Flynn's evidence.

[43] I am satisfied with *Ilcor's* evidence regarding how the deficit between the agreed purchase price for the four-axle truck and the amount in respect of which it seeks judgment was arrived at.

[44] In the premises, this exception point also stands to be dismissed with costs.

OBJECTIONS TO THE EVIDENCE OF *ILCOR*'S WITNESSES

[45] *Counsel for Crossmoor* objected to the evidence of *Ilcor*'s witnesses on the basis that it goes beyond the nature and terms of the contracts as pleaded. He contended that *Ilcor*'s particulars of claims are limited to:

45.1. the conclusion of the agreements;

45.2. the alleged express, tacit or implied terms of the agreements.

[46] Further, he contended that in terms of both agreements:

46.1. *Ilcor* required the Department of Transport's (DOT) approval prior to manufacture, as the trucks are abnormal load vehicles;

46.2. If the trucks are not being financed by a South African financial institution, 30% of the purchased price in respect of the four-axle trailer and 50% in respect the five-axle trailer is payable as a deposit prior to the commencement of manufacturing.

46.3. In the event that the sale is financed, guarantees from the institution in question are required.

[47] He also contended that the evidence of *Ilcor's* witnesses on these issues are contrary to the express terms of the agreements.

[48] Again, these issues were belatedly raised on the eve of and during the trial.

[49] Based on *Mckelvey,*[10] when considering whether the particulars of claim disclose a cause of action or not, the court has to consider whether there is any evidence to be led which, when read with the particulars of claim, a cause of action is disclosed.

[50] *Crossmoor* had the benefit of the evidence of *Ilcor's* witnesses several months prior to the trial as *Ilcor* filed witness statements. This allowed *Crossmoor* to

[10] Ibid.

conduct a proper enquiry in respect of *Ilcor's* claims against it and to adequately prepare its defence.

[51] At the trial, *Ilcor* sought and was granted leave to lead its witnesses in chief. I deal with their evidence below.

Department of Transport Approvals

[52] *Ilcor*, acting on behalf of *Crossmoor* did obtain the necessary approvals from the DOT prior to commencing the manufacturing of all three trucks. *Crossmoor's* complaint regarding *Ilcor's* failure to obtain the necessary permission from the DOT is dismissed for lack of merit.

[53] The fact that there were slight variations between the specifications for the trucks and the approvals is of no moment as provision is made for slight deviations during the manufacturing as explained by Flynn. *Crossmoor* led no evidence that the deviations obliterated the DOT approval. *Ilcor's* evidence that it did obtain the necessary approvals is accepted. Further, the approvals filed as part of Flynn's witness statement are found to be valid and admitted in evidence.

Payment of deposit or the furnishing of a guarantee

[54] Although waiver is not specifically pleaded, the parties agreed that it is one of the issues to be determined in these proceedings. Therefore, *Ilcor*'s objection to Flynn's evidence in respect of conduct of the parties in as far as it relates to

the waiver of the suspensive clause is baffling. By agreeing to this issue being determined even though not pleaded, the parties impliedly agreed that the issue stands to be determined on the evidence of the parties. *Crossmoor's* objection to the evidence of *Ilcor's* witnesses' lacks merit as it is consistent with the parties' agreement in respect of the issues to be determined at the trial.

[55] Flynn is the only witness who testified on this issue. His evidence stands uncontested. It is found to be satisfactory. It is therefore admitted by this court.

[56] Both agreements expressly provide for the payment of a deposit prior to the commencement of the manufacturing. In the event that the purchases were financed by a financial institution, *Crossmoor* would furnish guarantees to *Ilcor.* The agreements do not expressly provide a timeframe for the furnishing of guarantees in the event that the purchase price is financed.

[57] Flynn testified that Ashton Naicker informed him that the transaction in terms of the four-axle agreement would be financed and that the guarantees would be forth coming. Contextually construed, the four-axle agreement does not specify the time frame by which *Crossmoor* would furnish the guarantees. *Crossmoor* consistently made undertakings to Flynn after the four-axle agreement was signed and during the manufacturing process that the guarantee would be forthcoming. Naicker was aware that *Ilcor* had commenced the manufacturing process. However, he never contended that *Ilcor* was not contractually entitled to start manufacturing the four-axle truck until *Crossmoor* had furnished the guarantee. It is common course that *Crossmoor* never fulfilled its undertaking. When the truck was fully manufactured, Naicker agreed to Flynn traveling to

Durban to arrange for the registration of the four-axle truck. At that point he undertook that *Crossmoor* would pay for the four-axle truck when Flynn is in Durban. By making such an undertaking, *Crossmoor* acknowledged liability for the four-axle truck. Again *Crossmoor* failed to fulfil the undertaking.

[58] In relation to the order for the five-axle truck, Naicker undertook to pay a deposit. The five-axle agreement expressly provides that *Crossmoor* would pay to *Ilcor* 50% of the purchase price prior to the manufacturing of the truck. Contextually construed, the deposit constitutes a suspensive condition. It disentitles *Ilcor* from commencing with the manufacturing process until *Crossmoor* had paid the deposit. It is common cause that *Ilcor* commenced with the manufacturing before *Ilcor* paid the deposit. *Crossmoor* was aware that *Ilcor* had commenced with the manufacturing but at no point contested *Ilcor's* entitlement to commence with the manufacturing before it paid the deposit. Rather, Naicker made several promises to pay when Flynn persistently followed up on the payment of the deposit. In such instances, Flynn made it clear to Naicker that *Ilcor* had commenced manufacturing the five-axle truck. Again at no point during the manufacturing process did Naicker contest *Ilcor's* entitlement to start manufacturing the five-axle truck prior to the deposit being paid. He made it pertinently clear to Flynn that *Crossmoor* required the truck and was making arrangements to pay.

[59] Having regard to these circumstances, I find that Ilcor waived the suspensive condition. By not contesting Ilcor's entitlement to commence the manufacturing and rather, knowing that Ilcor has started manufacturing the truck, reiterating that Crossmoor requires the truck and making repeated undertakings to pay,

Naicker once more acknowledged *Crossmoor*'s liability to *Ilcor* for the five axle truck. Impliedly, Crossmoor accepted the waiver. Under these circumstances, it is disingenuously belated in these proceedings for *Crossmoor* to attempt to clawback the suspensive condition.

THE MERITS OF ILLCOR'S CAUSES OF ACTION

[60] Having determined all the above issues in *Ilcor's* favour, nothing remains of *Crossmoor's* defence. I find that the four-axle and five-axle agreement came into being. They are enforceable against *Crossmoor*. For the reasons dealt with above, I also find that *Ilcor* was entitled to commence with the manufacturing of the trucks. I am satisfied that *Ilcor* has performed in terms of the agreements. *Crossmoor* failed to perform in terms of the agreements. *Ilcor* was well entitled to consider *Crossmoor*'s failures to amount to a repudiation of the agreements and to accept the repudiation.

[61] In relation to storage costs for the five-axle truck, *Ilcor* claims these costs until the date of payment of the monetary order in respect of the purchase price. *Ilcor* has not made out a case for *Crossmoor's* liability for these costs to endure beyond the date of this judgement.

[62] In the premises, save for the cut-off date for *Crossmoor's* liability for storage costs for the five-axle truck, *Ilcor* is entitled to judgment as prayed for in the notice of motion.

[63] Therefore, judgment is entered against *Crossmoor* as follows:

ORDER

CLAIM A

(a) Payment of the sum of R45,000;

(b) Payment for storage of the Four-Axle trailer at the rate of R22 500 per month from 20 November 2017 until date of the sale of the four-axle truck;

(c) Interest on the sums in (a) and (b) at the rate of 7.75% *per annum*, *tempore morae,* to the date of final payment;

(d) Costs of suit.

CLAIM B

(a) Payment of the sum of R4 447 037.36;

(b) Payment for storage of the Five-Axle trailer at the rate of R45 000 per month from 12 April 2018, until the date of this judgment;

(c) Interest on the sums in (a) and (b) at the rate of 7.75% *per annum*, *tempore morae* to the date of judgement.

(d) Costs of suit.

MADAM JUSTICE L T MODIBA
JUDGE OF THE HIGH COURT,
GAUTENG LOCAL DIVISION,
JOHANNESBURG

APPEARENCES

Counsel for plaintiff:	Advocate N Alli
Attorney for plaintiff:	Norton Rose Fulbright SA Inc.
Counsel for defendant:	Advocate L Hollander
Attorney for defendant:	Swartz Weil Van Der Merwe Greenberg Inc. Attorneys
Date of hearing:	23-25 June, 7 July 2020
Date of judgment:	6 October 2020

Mode of delivery: handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be 11:30am on 6 October 2020.