IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

CASE NO: 2023/093920

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

1 October 2024
DATE

[redacted]
SIGNATURE

In the matter between:

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY Plaintiff

and

MIR-AIR PROP. (PTY) LIMITED Defendant

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email and by upload to CaseLines. The date and time for hand down is deemed to be 10h00 on 1 October 2024

JUDGMENT

S VAN NIEUWENHUIZEN AJ

Introduction

[1] In this matter the Plaintiff, the City of Johannesburg Metropolitan Municipality will, for the sake of convenience, be referred to as the COJ and Mir-Air Prop (Pty) Limited, the defendant, will be referred to as Mir-Air.

[2] On 15 September 2023, the COJ issued a combined summons against Mir-Air and alleged, in its particulars of claim, as follows.

2.1 Mir-Air was the registered owner alternatively the lawful possessor alternatively manager of immovable property situated at stand number 116, Tormill [sic] Ext. 3 within the municipal area of the COJ ('the property').

2.2 The property is alleged to be rateable in terms of the provisions of the Local Municipality: Municipal Property Rates Act '(the Act') and the plaintiff's credit control policy and by-laws ('the policy').

2.3 It further asserts that the property is rateable in terms of the provisions of the plaintiff's credit control policy and by-laws ('the policy') and the Local Government Systems Act 32 of 2000 ('the Act').

2.4 It is then alleged that the COJ duly levied and charged electricity charges on the property, pursuant to and in accordance with the provisions of the Act and the policy: which

are due and payable by Mir-Air to the COJ on the date stipulated by the COJ under account number 220012347, a copy of which is annexed as “COJ1”.

2.5 It is then alleged that in terms of the Act and the policy Mir-Air is liable to pay to the COJ rates and taxes as determined by the plaintiff in respect of the property on the date stipulated by the COJ.

2.6 It is further alleged that, by virtue of section 229(1) of the Constitution of the Republic of South Africa, Mir-Air is liable to pay to the COJ interest on any arrear monies due to the COJ at the rate of 10.75% per annum.

2.7 It is also alleged that the COJ’s attorneys of record, in an effort to avoid litigation, sent a notice drawing Mir-Air’s attention regarding the default and demanded payment. A copy of this notice is annexed marked “COJ2”.

2.8 Despite lawful demand, Mir-Air allegedly refused and/or neglected and/or failed to make payment which is due and payable.

2.9 Hence, the COJ prays for judgment against Mir-Air:

2.9.1 in the sum of R1 677 793.24;

2.9.2 interest on the aforesaid sum at the rate of 10.75% per annum from date of demand to date of payment in full;

2.9.3 costs of suit.

[3] I should point out that nowhere in the particulars of claim is there a positive allegation that in the relevant period or at all times electricity was supplied by the COJ to Mir-Air. The aforesaid, I would have thought, is a vital allegation to be made by the COJ.

[4] The particulars of claim contain an annexure, marked “COJ1”, which is dated 4 September 2023, and relates to Stand No 116-000, Stormill Ext. 3. The account number on this invoice is 220012347.

[5] This invoice opens with a previous balance of R2 455 008.08 and, after adding interest on arrears and current charges, excluding VAT, and VAT, this amounts to R2 677 793.24 as at 11 September 2023. If one has regard to the aging breakdown, it suggests the following, that R2 027 616.18 is in excess of 90 days, on 60 days zero amount is payable and, on 30 days, an amount of R427 389.90 is due and payable and, on the current account, the amount of R222 786.16 is payable, all of which adds up to the total amount outstanding of R2 677 793.24.

[6] On the back of this invoice, there appears a reading period of 2023/08/04 to 2023/09/04, equalling 32 days. It reflects that the meter, number 63125797, start reading is 91,134.246 and the end reading is stated as 144,789.041; the differential is 53,654,794 and, hence, the consumption is reflected as 53,754.794 units in KwH and it is made clear that same are estimated readings. This amounts to a daily average consumption of 1 676.712 KwH. The total of the charges raised amounts, for the current period, to R217 361.05. Over and above that, there is a surcharge on business services, excluding property rates, of R3 716.80 plus 50% on the aforesaid, which adds a further R4 273.17, totalling R221 634.22, which is equal to the so-called current charge in the aging breakdown on the first page of the same invoice.

[7] The final demand referred to in the particulars of claim is dated 31 July 2023 and demands payment of R2 140 248.60 in respect of municipal services, plus interest, at the property. This final demand purports to be a notice in terms of s129 of the National Credit Act 34 of 2005 and contains the usual reference to the customer's right to approach a debt counsellor or seek an alternative dispute-resolution or a consumer ombudsman for jurisdiction in the matter. It also warns that, if there is no reply to this notice within 10 business days of delivery, the municipality will institute legal proceedings for recovery of the full outstanding balance in terms of the agreement without further notice to Mir-Air.

[8] It was sent by registered post on 11 August 2023 to Mir-Air.

[9] Another invoice is also annexed. It has no particular reference number on it but it is dated 10 July 2023, purporting to be the statement for July 2023 for the property. The total amount reflected on this invoice is R2 140 248.60 and when the aging is analysed, it shows R1 923 389.20 on 90 days, plus zero amount of 60 days and, on 30 days, R108 461.60 and current R108 397.80, all of which adds up to R2 140 248.60.

[10] The back of this document refers to a reading period of 2023/06/06 to 2023/07/06, i e 31 days, in respect of meter number 630020754. The end reading is given as 569,086.730, with a differential of 28228.336. The start reading was 540859.391. Hence, the consumption is given as 28,228.338 units of KWH. These readings are, again, reflected as estimated readings. The readings, once totalled up, amount to R103 426.55 and the surcharge on business services, excluding property rates, is given as R1 674.85, with a VAT figure of R264.72, overall adding up to R2 029.57 which, once added up, is R103 426.55, amounts to R105 556.12. This equates to the same figure as is reflected on the first page of this document under the age analysis of current.

[11] Mir-Air pleaded to the particulars of claim and in paragraph 1 of its plea, ad 1 to 2 of the particulars of claim, indicated that the property is situated at Stormill and not Tormill.

[12] It thereafter pleads, ad paragraph 3, that paragraph 3 of the particulars of claim is nonsensical and is denied.

[13] In respect of paragraph 4.1 to 4.3 of the particulars of claim, the following is pleaded:

> "*3. the defendant is the owner of the property;*
>
> *4. the claim does not appear to relate to rates but electricity charges,*
>
> *5. the contents of paragraphs 4.2 to 4.3 is contradictory and is denied.*"

[14] Then it pleads, at paragraph 4.4, as follows:

> "*6. It is admitted that the defendant's account number is 22012347*.
>
> *7. The appendices from annexure 'COJ1' is admitted.*
>
> *8. The balance of the content of this paragraph is denied.*
>
> *9. It is unclear which 'act' is referred to, having regard to paragraphs 4.2–4.3.*
>
> *10. As is evident from the last invoice of annexure 'B3' the plaintiff has raised alleged additional charges under account number 302209270 which account number the defendant disputes and which is indicative of the chaotic state of the plaintiff's account system.*

11. *The defendant denies being indebted to the plaintiff in any amount under any purported account number raised and/or referred to by the plaintiff and is in credit of municipal charges/fees.*

12. *In amplification of the aforegoing, the defendant pleads that the meters:*

The meters

12.1 *During the period April 2013 to about October 2022, the only electricity meter installed at the property was meter 633020254 ('the old meter').*

12.2 *During the period November 2022 to about June 2023, there was no electricity meter installed at the property as the plaintiff removed the old meter shortly after 26 October 2022.*

Property Vacant

12.3 *During the period commencing about June 2023 to date, the only electricity meter installed at the property is meter 63125797 ('the new meter').*

12.4 *During the period March 2020 to date the property was vacant with no business being conducted thereat.*

Termination of supply

12.5 *On or about August 2022, the plaintiff terminated the electricity supply to the property by removing cabling and/or fuses at the electricity connection point to the property ('the termination'). There has been no*

electricity supply or consumption at the property, since the termination.

12.6 *Upon the termination, the meter ceased reflecting any meter reading, apparent from 'A1'–'A3' hereto.*

Credit on account

12.7 *The defendant was in credit on the account, in the amount of R436 719.17 as at 1 May 2018, when a reading on the old meter stood at 157,806.00 KwH evident from the statement appended as 'A4'.*

The true readings on the old and new meters

12.8 *The last old meter reading the defendant is aware of is a meter reading of 268,974.00kWh as at 28 July 2022 as 'A5' hereto (taken at the end of the month prior to the termination).*

12.9 *Other photos taken of the old meter readings are appended as 'A6' to 'A6.7' hereto.*

12.10 *The new meter commenced with a reading of 000,000.00 apparent from 'A7' hereto and its meter reading as at 14 November 2023 still stands at 000,000.00 apparent from 'A8' hereto.*

True consumption

12.11 *In the premises for the period 1 May 2018 to 28 July 2022 (1549 days) the total electricity consumption on the property was 111,168.00 KwH (157,806.00 KwH – 268,974.00kWh), equating to an average daily consumption of 71.76 KwH*

12.12 There was no electricity supply and consumption at the property after the termination in August 2022.

Report of meter readings: old meter

12.13 The July 2023 statement forming part of 'POC1' reflects an estimated end meter reading on the old meter as at 6 July 2023, of 569,086.73kWh.

12.13.1 The old meter was removed in October/ November 2022.

12.13.2 The old meter ceased registering consumption as a result of the termination in August 2022 already.

12.13.3 The estimated reading on the old meter (per the July 2023 statement forming part of 'POC1' exceeds the actual meter reading thereon as at 28 July 2022 by 300,112.73kWh.

Abortive meter readings: new meter

12.14 In another statement of the plaintiff for July 2023, issued by the plaintiff, appended as 'A9', the estimated end reading of the old meter was 478,647.00 KwH.

12.14.1 The new meter does not register any electricity consumption as there was no electricity supplied to the property since the termination.

12.14.2 Despite the aforegoing, the plaintiff transfers the end meter reading on the old meter, to the new meter (478,647.00kWh) in September 2023, purporting to be an actual meter reading apparent from the plaintiff's statement appended as 'A10' hereto.

12.14.3 The new meter reflects a zero reading as at 14 November 2023.

12.15 The other September 2023 statement, forming part of 'POC1' reflects an estimated end meter reading on the new meter of 144,789.041, in circumstances where the reading on the new meter from installation to date hereof, stands at zero per 'A8' hereto.

False actual meter readings

12.16 The statements rendered by the plaintiff falsely claim that some readings were actual meter readings.

12.16.1 As appears from 'A5' the actual meter reading on the old meter, on 28 July 2022 was 268,974.00kWh.

12.16.2 Despite the above, the plaintiff reflected a purported 'actual' meter reading on the old meter of 299,020.00kWh as at 31 July 2020 (two years prior) evident from 'A11' hereto.

12.16.3 Similar contrived alleged 'actual readings' on the old meter appear from 'A11.1' to 'A11.8'.

12.16.4 'A10' being one of the plaintiff's September 2023 statements, reflects an alleged actual meter reading on the new meter of 478,647kWh when the meter stood at zero on 14 November 2023 per 'A8' hereto. (see the other side of the annexure for this reading)

Abortive accounting

12.17 Additionally, the plaintiff's accounting is abysmal, and patently abortive, as evinced, for instance, by annexure 'A12', being the plaintiff's statement for September 2021 where a purported start meter reading on the old meter was 399,643 KwH and the end reading is 268,622 KwH which is an impossibility, as it reflects a reversal of consumption on the old meter itself.

12.17.1 The consumption must be minus 70,988 KwH.

12.17.2 The statement inexplicably levies electricity charges based on the aforesaid start and end readings (for consumption of 929,012.00 KWH) totalling consumption charges of about R1.5 million (leaving the reversals in 'A12' aside).

12.17.3 Similar abysmal accounting appears from 'A12.1' and 'A12.2' hereto.

12.18 In the plaintiff's statement for January 2022, appended as 'A13', the commencement meter reading for the old meter is reflected as 3,558.34 KwH as an estimate where the purported reading reflected in the statement of the month prior (December 2021) was 421,141.53 KwH per 'A13.1'.

12.18.1 By decreasing the commencement reading by about 425,000 KwH in the January 2022 statement, and then billing on an estimate in that meter reading of 461,509.70 KwH the plaintiff artificially and unlawfully levied electricity charges, on a purported consumption of 457,941.36 Kwh over the period 7 April 2021 to 4 January 2022, equating to the aggregate electricity charges of over R1.4 million per 'A13'.

Conclusion on abortive statements

13. The plaintiff levied electricity charges on wholly inflated purported meter readings, and carried over the inflated charges from month to month to the next, with interest charged thereon.

14. During the period 1 May 2018 to 28 July 2022, the defendant consumed a total of 111,168.00 KwH

14.1 The plaintiff thus as a bare minimum inflated electricity consumption on the old meter alone by

300,112.73 KwH, per the July 2023 invoice forming part of 'POC1'.

15. *Since the termination (August 2022) no electricity was supplied or consumed at the property. No electricity was supplied and consumed after the installation of the new meter during or about June 2023 to date hereof.*

    15.1 *In the September 2023 statement, forming part of 'POC1' the plaintiff inflated the electricity consumption on the new meter alone, by 144,789.04 KwH and in the subsequent September 2023 statement ('A10'). This overcharge increased to 478 647.00 KwH whilst the new meter reading stood at zero on 14 November 2023 per 'A8'.*

16. *In the premises the plaintiff overcharged for at least 441,901.77 KwH, leaving aside the other duplicated, and inflated charges carried over from one statement to the next.*

17. *Having regard to the credit on the account of R436 719.17 as at 1 May 2018, the fact that only 111,168.00 KwH was consumed since then and the fact that the defendant made payment for electricity charges on the account the defendant remains in credit on the account.*

Unlawful enforcement

18. *The defendant disputed that the totality of the inflated, excessive, and contrived electricity charges levied by the plaintiff on 17 August 2020, per annexure 'B1' and thereafter per annexures 'B2' and 'B3'.*

19. *The plaintiff failed to respond to and resolve the queries raised by the defendant in accordance with s11 of the plaintiff's Credit Control and Debt Collection By-laws 2004.*

20. *The institution of the action is unlawful, constitutes an abuse and contravenes section 102(2) of the Local Government Municipal Systems Act.*

AD PARAGRAPH 4.5

21. *The content of this paragraph is denied for the reasons canvassed above.*

22. *The claim is not for rates and taxes.*

AD PARAGRAPH 5

23. *The content of this paragraph is denied and the plaintiff is put to the proof thereof.*

AD PARAGRAPH 6

24. *It is admitted that a demand was sent.*

25. *The amounts claimed are inflated, not due, nor payable.*

26. *It is denied that the demand was sent in an attempt to avoid litigation.*

27. *The defendant is in credit on the account.*

AD PARAGRAPH 7

28. *The defendant denies that the demand is lawful and admits its refusal to pay amounts which are not due and payable.*

29. Save as set out above, the content of this paragraph is denied.

Therefore the defendant prays for an order that the action be dismissed with punitive costs against the plaintiff, as the action constitutes an abuse of process warranting punitive costs."

[15] This plea is dated 20 November 2023.

[16] One would have thought that this plea itself would have been enough for the COJ and its attorneys to halt the legal proceeding and attempt to investigate what exactly is going on and to resolve the matter in another way.

[17] The COJ undaunted by the allegations in the plea marched on valiantly seeking summary judgment On 11 December 2023, the COJ applied for summary judgment in a unique fashion. I say so because the application for summary judgment which is supposed to verify the cause of action on oath, is formulated in the most curious fashion. I will for purposes of clarity, refer to the full affidavit for verification and quote same herein:

" I, the undersigned

TUWANI NGWANA

Do hereby make oath and state that: •

1.I am a major male under the employ of the City of Johannesburg Metropolitan Municipality, in the capacity of Legal Advisor with my offices situated in the principal place of business and head office, being 61 JORISSEN STREET,

BRAAMFONTEIN.

2. Unless otherwise stated or the converse appears from the context, the facts herein contained are within my own personal knowledge and belief, and are both true and correct.

3. I have access to all the Applicant's files and records pertaining to the Respondent and have acquainted myself with contents thereof insofar as may be necessary for the purposes of this application.

4. The facts herein contained are, save where otherwise stated or where the converse appears from the context, within my own personal knowledge and are both true and correct. I confirm that I have perused all the relevant documentation in this matter prior to deposing this Affidavit.

5. I can swear positively to the facts contained in the Applicant's Summons, verify the cause of action and that as at date of signing this affidavit Respondent is liable to the Applicant in the amount of R4 447 841.07 (Four Million Four Hundred and Forty-Seven Thousand Eight Hundred and Forty-One Rand) in respect of the respondent's electricity charges as at 11 December 2023, account number: 220050494 ("the account").

6. Copy of tax invoice is attached hereto marked annexures "COJ 3", respectively. The document upon which the Applicant relies are liquid documents and amount are easily ascertainable.

7. I have perused the Respondent's plea and submit that the Respondent failed to put a *bona fide* defence to the Applicant's claim. I shall deal with each of the ground (sic) of plea and then deal with the merits thereafter.

CREDIT CONTROL AND DEBT COLLECTION POLICY

8. **Clause 16 of the Policy provides:**

16.1. *Any customer that disputes the correctness of an account or any entry thereon must:*

16.1.1. *Lodge* a *query relating to such dispute by specifying the nature of the dispute and the service to which it relates (sic) the City's Ombudsman .*

OMBUDSMAN BY-LAWS

9. Section 7 of the Act (Matters not for investigation) provides:

(1)(g) where the complainant has not exhausted all internal remedies available unless the Ombudsman considers that the refusal to act would result in an injustice to the complainant.

10 . Section 8 of the Act (Submission of complaints) provides:

10. 1 All complaints submitted to the Office of the Ombudsman must be writing.

10.2 Telephonic submissions made to the Office will be captured in writing to enable the office to properly record the submission. The complaint will be dealt with in accordance with section 8(3) below.

10.3 A complainant must complete the form set out in Annexure A to this bvlaw and such form must be accompanied by an affidavit where the Ombudsman requests an affidavit.

10.4 Each complaint must specify-

a) The nature of the complaint;

b) The grounds on which the complainant believes that there has *been an act, or omission or an attempt* as *contemplated in section 6;*

c) Such facts or other relevant information as *are known to the complainant;*

d) The redress sought, if any.

UNIFORM RULES OF THE COURT

11. Rule 22 (2) (sic) of the Uniform Rules of Court provides that the Respondent, in the plea, shall state which facts are not admitted and to what extent; and shall clearly and concisely state all material facts upon which he relies (*underline own* emphasis).

APPLICANT'S CASE

12. It is common cause further that the Respondent is the registered owner alternatively the lawful possessor of stand no: 116, Stormill ("the property") which falls within the jurisdiction of the Applicant.

13. It is common cause further that the Applicant levied Electricity charges on the property under account number 220012347, which at the time of issuing summons,

the account was in arrears in the amount of R2 140 248.60 **(Two Million One Hundred and Forty Thousand Two Hundred and Forty-Eight Rand Sixty Cent)**.

14. The Applicant has an obligation to levy charges and render invoice to the Respondent. In compliance with its obligations, it captured readings of meter at the Respondent's property and proceeded to issue invoice.

15. I pause to state that in terms of clause 9.3 of the Applicant's Credit Control Policy and Bylaws is entitled for *any reason whatsoever readings cannot be obtained, interim readings (estimates) shall be utilised. Interim readings will be based on the average monthly consumption of services registered over the 12 preceding months.* As soon as *an actual reading* is *obtained, the account will be adjusted accordingly.*

16. Clause 16 of the Applicant's Credit Control and Debt Collection Policy provides that a query reference number and if not satisfied, a formal dispute *telephonically with the City through its Call Centre; or*

16.1.2 By lodging such query at a *Customer Service Centre and obtaining* a *reference number for such querv. (underlined own emphasis).*

16.2. *If, after* a *period of 30 days from the time the query* was *logged in terms of clause 16.1 above, the query has not been resolved to the satisfaction of the customer, the customer may declare* a *dispute by lodging* a *written query specifying the nature of the dispute and the service to which it relates with the City.*

16.3.*A query logged in terms of clause 16.1 or a dispute declared in terms off clause 16.2 above. must be accompanied by payment of at least the total amount outstanding on the account. where* a *portion of the account is under query/dispute, payment shall be based on average monthly previous charges before the query/dispute arises until such query/dispute is resolved. (underlined for own emphasis)*

16.4. *The City will investigate the query logged in terms of clause 16.1 or dispute declared in terms of clause 16. 2 and advise the customer of the result of the City 's*

investigation , and if the query is *found to have been correct, the City will adjust the account accordingly.*

16.5. *If, after* a *period of 90 days from when the query* was *logged in terms of clause 16.1 or dispute declared in terms of clause 16.2, the query or dispute* has *not been resolved to the satisfaction of the customer, the customer may;*

16.5.1. Either appeal the decision made or failure to make a *decision to the City Manager in terms of Section 62 of the Municipal* Systems *Act, or*

16.5.2 Refer the query/dispute to conciliation/mediation at the office of

(sic) must be lodged and ultimately (sic) matter should be referred to the Johannesburg Ombudsman.

17. The Respondent makes many conflicting submission (sic) to the extend (sic) that it is unclear to the Applicant what the Respondent relies on as a defence, i.e installations, removals, vacant, removal of cabling and/or fuses, false readings, abortive meter reading, false actual meter readings abortive account, conclusion of abortive statements, unlawful etc.

18. The above conflicting submissions are pleaded in efforts to create a false dispute of fact to avoid summary judgment. The Applicant submits that there is no dispute of fact that should be adjudicated by a trial Court .

19. Nowhere in the Respondent's plea does it mention that a formal query was issued and reference number was issued by the Applicant. Therefore, any allegation of escalation and/or pending dispute is unsubstantiated.

20. In amplification, the Respondent attached multiple photographs taken from 2022 to November 2023, some of which are unclear. The Applicant can only assume that the photographs are intended to prove discrepancies in the reading, capturing, computation and billing of the Respondent's account.

21. The Respondent's opinion on how and what the readings should be does not constitute a valid query and/or dispute . In amplification, by the Respondent's own admission there were actual readings captured on the account, which in the Respondent's opinion are "false actuals".

22. For the Respondent to successfully counter the actual charges captured by the Applicant, it ought to have appointed a technician/expert to prepare a report which details the alleged correct readings.

23. Further to the above, if the Respondent believed the meter/s were faulty; the Respondent ought to have applied for a meter testing .

24. The Applicant submits that the amount is due and payable by the Respondent.

I TURN TO DEAL WITH THE RESPONDENT'S PLEA

Ad paragraph 2

25. It is unclear how submission regarding jurisdiction on the basis that the services were rendered and levied with jurisdiction of this Court is nonsensical and denied.

Ad paragraph 3 to 18

26. Save to admit that the account is levied electricity charges; the Applicant submitted at sub-paragraph 4.2 & 4.3 that the account is rateable " ... *and the plaintiff's Credit Control Policy and Bylaws ("the Policy")".*

27 . For sake of completeness, the Respondent may be interpreting the term "rateable" incorrectly. The Applicant applies certain prescribed electricity rates/tariffs; thus, submission that the property is rateable.

28. In amplification, sub-paragraph 4.4 specifically pleads that *'The plaintiff duly levied and charged, electricity ("charges") ... "*

29. In respect of account number 302209270, the submission made in paragraph 10 is clear that the Respondent either does not understand , read, or have regard to the account/s. The said account clearly states that it is charged for Water & Sanitation supply.

30. The Respondent is once again in paragraph 11 making unsubstantiated submissions that account is in credit of the municipal charges/fees, whilst annexure "**COJ 1**" clearly stipulates that the **R2 140 248.60 (Two Million One Hundred and Forty Thousand Two Hundred Forty-Eight Rand Sixty cent)**.(**sic**)

31. There is no contradiction in any of the sub-paragraphs, nor is there alleged chaos state of the Applicant's account system.

32. All submission regarding the Respondent's own analysis of readings (including average daily consumption, faultiness, etc) are denied and the Applicant is neither a technician and/or expert in electricity meter charges or the Applicant's systems. Any allegation and/or submission made is made on the Respondent's opinion.

Ad paragraph 19 & 20

33. The Respondent referred to a Policy of 2004 in claim that relates to charges levied from 2018 to 2023. The submissions made in paragraph 19 should be disregarded.

34. In amplification, the Respondent failed to prove existence of a formal and valid query or dispute; therefore, the provisions of section 102 of the Municipal Systems Act are not applicable in this matter.

Ad paragraph 27 to 29

35. The Applicant submits that annexure **"COJ 1"** clearly stipulates that the **R2 140 248.60 (Two Million One Hundred and Forty Thousand Two Hundred Forty-Eight Rand Sixty cent)** at the time of issuing summons. (sic)

CONCLUSION

22. There is no basis upon which the Respondent can claim it has a *bona fide* defence as required in terms of the Rules of this Honourable Court. The conflicting, contradictory and unsubstantiated submissions made by the Respondent should be disregarded, as it is pleaded in attempt to misdirect the Court to believe that there is a dispute of fact to be clarified and/or adjudicated at trial.

23. Rule 22 (sic) of the Uniform Rules of this Honourable Court are very clear that defence must be clear and concise, which the Respondent failed to properly, in a clear and understandable manner failed to plead.

24. I submit that a proper case has been made out that the Applicant's claim is valid due and payable, based on a liquid document and the Respondent failed to make out a *bona tide* defence to be adjudicated by a trial Court.

WHEREFORE I HUMBLY pray that the Summary Judgment be granted against the Respondent, as prayed for in the application to which this affidavit is attached."

[18] The quantum has now jumped from the original figure stated in the particulars of claim of R1 677,793.24 to in respect of Mir-Air's liability for electricity as at 11 December 2023, on account number 220050494 to R4 447 841.07.[1]

[19] The provision in Rule 32 (2) (b) permitting an affidavit verifying the amount due in terms of the cause of action reads as follows:

"*(b) The plaintiff shall, in the affidavit referred to in subrule (2)(a), verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial.*"

It does not permit for the type of material placed by the deponent to the verifying affidavit before the court. It also does not permit for an increase in the quantum to the amount stated.

[20] Mir-Air filed an opposing affidavit placing in issue the bulk of the content put forward and demonstrating that, apart from the procedural difficulties and as is evident from its plea, there is simply no such liquidated amount due and owing as stated by the aforesaid Ngwana. The COJ was permitted a period of three days from service of the verifying affidavit to formally withdraw the application for summary

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1 See para 5 of the verifying affidavit.

judgment and to tender costs, failing which all costs occasioned by this application, inclusive of the costs occasioned by heads of argument, preparation, appearance and the like would be sought on the scale as between attorney and client against it. It was also informed that heads, on behalf of Mir-Air, would be drafted after the third day to secure finalisation of the matter.

[21] The COJ proceeded as can be seen from the “verifying affidavit” and, despite the three days’ grace, it did not withdraw the application for summary judgment.

[22] This resulted in Mir-Air having to engage with the particulars of claim under oath as well as the content the verifying affidavit, although Mir-Air was clearly aware of the fact that the procedural errors were, in fact, impermissible.

[23] David Alistair Lang (“Lang”) qua director deposed to Mir-Air’s answering affidavit of some 28 pages under various headings.

[24] He firstly described it as an abuse of process given the issues raised in the plea and it is under this rubric the COJ was offered 3 days to withdraw the summary judgment proceedings failing which a punitive costs order would be sought.

[25] Further under this he states that the COJ was aware of his complaints as is evident from the plea.

[26] He also raises the fact that the particulars of claim was excipiable to the extent that reliance was placed on the Municipal Rates Act and the Municipal Systems Act, and specifically paragraphs 4.2 – 4.5

[27] It is only paragraph 4.4 that refers to the levying of electricity charges that under account 220011347, the account and with reference to “COJ 1” being the September 2023 and July 2023 statements.

[28] No period is pleaded during which electricity was supplied nor is it pleaded that electricity was supplied at all. In addition the COJ also does not plead that it measured electricity consumption at the property or how same was measured through which electricity meters.

[29] The obvious point is made that absent an allegation of supply of electricity no obligation arises to pay for same and that the amount claimed in the particulars of claim differs from the September and July 2023 statements. It is submitted that on account of such excipiability alone the application for summary judgment should be refused.

[30] The further complaint is the use of hearsay and the incompentency of the deponent. This complaint is directed at the failure of the deponent to recognise the various inherent conflicts in the amounts referred to and the verification of the cause of action. The amount ultimately confirmed comes from a December 2023 invoice which was not even pleaded. This is an alleged second ground on which the application should be dismissed on attorney and client costs.

[31] The third ground for dismissal of the application for summary judgment with attorney and client costs is the fact that the amount claimed is impermissibly inflated.

[32] Lang also points out that his attorney was unable to find a Credit Control And Debt Collection Policy “approved” in August 2022. He also states that there is a reference to the Ombudsman By-Laws (which was published in 2014 but that there is also an amended version dated 2023 but that he is unaware if it was ever publicised.

[33] Reference is also made to the COJ only quoting section 16 of the Policy in part to section 16.5.2. Section 16.11 of the Policy reads as follows:

> “*Disputes lodged with the City prior to the implementation of this policy in terms (of) any previous policy, shall continued to be dealt with in terms of that policy.* ”

[34] As appears from Annexure “B1” to the plea Lang lodged a dispute with the COJ regarding the electricity account via a telephone conversation on 11 August 2020 and thereafter sent several follow up emails to resolve the disputes commencing on 17 August 2020.

[35] The lodging of disputes continued in 2020 as confirmed by Annexure “B2” to the plea.

[36] The disputes not only related to electricity charges but also water charges as is apparent from annexure "B3", which were lodged in 2021

up to about March 2022 , before the "approval" of the August 2022 policy. It is contended that Municipal accounts are consolidated, hence any dispute on one affects the amounts allegedly owing under the other account.

[37] Some of the dispute reference numbers received from the COJ, also appear from annexure "B3" to the plea . None of the disputes were resolved and no reasons for the plaintiff's accounting, in justification of the unlawful charges were ever received.

[38] In paragraph 33 of the verifying affidavit, the COJ contends that the 2004 policy should be disregarded, as the claim relates to charges levied from 2018 – 2023.

[39] Paragraph 19 of the plea does not refer to a policy but to the plaintiffs Credit Control and Debt Collection By-Laws of 2004 *("the **2004** bylaws")* a copy of which is uploaded to Caselines by the defendant 's attorneys.

[40] This allegation in paragraph 33 of the verifying affidavit, apart from supplementing the excipiable POC (which is impermissible), confirms that a substantial portion of the alleged claim has already become prescribed. This was not raised as such in the plea but is now raised and is a cognisable defence although the exact quantum cannot be determined.

[41] Section 29 of the 2004 bylaws provide:

*"If there is **any** conflict between a provision in these Bylaws and a provision of any other bylaw of the Council, the provisions of these Bylaws prevail."*

[42] Thus it was argued that reliance on section 11 of the 2004 bylaws, as pleaded in the plea is correct.

[43] The aforesaid is proffered as the fourth ground confirming abuse of process . The reliance on the August 2022 policy, not yet in existence, to contend that the disputes lodged, failed to meet the requisites required per the August 2022 policy, is incorrect and warrants a dismissal of the sumrnary judgment application with costs, on the attorney and client scale, more so as the deponent is a legal advisor and to which I can add he had access to independent legal advice.

[44] It is further asserted that “COJ 3” is not a liquid document.

[45] The plaintiff terminated electricity supplv to the property in August 2022 There could thus be no consumption charges from September 2022, or thereafter.

[46] The property had an electricity meter with number 630020254 ***("the old meter")*** which was replaced with a new meter bearing meter number 63 ·125 79 7 ***("the** new meter")*.

[47] The old meter ceased registering consumption, as the electricity supply was terminated.

[48] The new meter never measured any consumption, as there was no electricity supply to the property since August 2022.

[49] The new meter was installed during June 2023, which had a commencement reading of zero, and it still stood at a zero reading in November 2023, as proven by annexure “A8” to the plea , being a photo that was taken of the new meter on 14 November 2023 (about two months after the issuing of the summons. (Paragraph 12 .3, 12.10 and 12.14.1 to the plea).

[50] The July 2023, September 2023 and December 2023 readings relied on by the plaintiff, all reflect *"Estimated Readings".* ("COJ1" and "COJ3").

[51] .Annexure "A9" to the plea , is a statement for July 2023 issued by the plaintiff, confirming a commencement meter reading on the new meter of zero. This account confirms that the plaintiff raised charges, based on *"Estimated Readings"* for the period 1 March 2023 to 6 July 2023 (when the new meter was only installed in June 2023).

[52] Estimated readings are assumptions, and the reliance on alleged historical consumption, over the past 12 months, as raised with reference to section 16.3 of the August 2022 policy, and at paragraph 15 of the verifying affidavit is a figment.

[53] The estimated consumption must be zero, since at !least September 2021 (but for the abysmal accounting since May 2018, as is evident from what follows.

[54] It is contended that estimates can never render the quantum liquid or certain.

[55] Additionally, on a reading of paragraph 33 of the verifying affidavit, the claim relates to charges levied from 2018 to 2023, and all purported electricity charges arising three years prior to date of service of the summons being 9 October 2023 have prescribed.

[56] On this ground alone so it is asserted the claim is illiquid and cannot sustain summary judgment.

[57] This is the fifth ground confirming abuse of process, warranting a dismissal of this application, with costs on the attorney and client scale.

OMBUDSMAN BY LAWS/ ABSENCE OF DISPUTE/ ABSENCE OF BONA FIDE DEFENSE

[58] .Lang explains that he does not understand the reference to these by-laws (nor do I).

[59] Section 102(2) of the MSA, prohibits enforcements steps, where there is a dispute on the account. The section does not require exhaustion of internal remedies before a dispute qualifies as a dispute, for the purposes of S 102(2).

[60] It is contended that all charges raised after August 2022, when electricity supply was terminated to the property, is disputed. This in a nutshell lies at the heart of the defence.

[61] In addition the credit of over R430 000 -00 must be deducted from charges, lawfully leviable after 1 May 2018. At the stage that the account was in credit, the old meter was installed.

[62] The charges levied after 1 May 2018, which exceed the *de facto* meter reading on the old meter, as of 28 July 2022 (just prior to the electricity to the property being terminated by the plaintiff) must be reversed . The meter reading on the old meter as of 28 July was 268 974 KwH as is evidenced by the photo annexed as “A5” to the plea (paragraph 12.1 and 12.8 of the plea).

[63] Mr Lang cannot understand how the COJ can state there is no dispute, and no *bona fide* defence as claimed in the verifying affidavit.

[64] This it is submitted is the sixth ground confirming abuse, warranting a dismissal of the application for summary judgment with costs on the attorney and client scale.

THE MATERIAL FACTUAL DISPUTES AND BONA FIDE DEFENCES

[65] The defendant's *bona tide* defences have been fully traversed in the plea , the content of which is incorporated in Lang’s opposing affidavit

on behalf of Mir-Air. The COJ was clearly aware of the defences before launching the summary judgment application.

[66] He states that the suggestion in paragraph 7 read with 11 and the second set of paragraphs 22 and 23 of the verifying affidavit, that a *bona tide* defence was not disclosed and that there was non-compliance with rule 22(2) is “disconcerting”.

[67] The full detail of the disputes, the abortive accounting , inflated charges and the like were fully traversed in the plea, supported by the COJ’s own statements, and objective evidence in the form of photos taken.

[68] He denies that it is common cause that the arrears on the account, was R2.1 million as alleged in paragraph 13. This averment he says is false.

[69] He states that he have dealt with the excipiability of the POC above. Despite being faced with an abrupt nonsensical and nonspecific version the plea deals chapter and verse with the errors on the account. To this I might add that to the extent that the COJ suggests that all the accounts annexed causes the plea to be non-compliant and not clear and concise, any such difficulty is nothing but the result of the chaos displayed in their accounts. It is clear [2]that the COJ’s accounting is in chaos.

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[2] Cf the judgment in Ackerman v City **of** Johannesburg **and two others** 2024 JDR 1449 (GJ)

[70] The COJ seeks to explain away the errors in the POC, by claiming that there is no contradiction between paragraph s 4.2 to 4.5, which is incorrect (Paragraph 31 to the verifying affidavit).

[71] Mr Lang regards the bare denial of Mir-Air's version as *"the Applicant"* [sic] is "*neither* a *technician and/or expert in electricity meter charges or the Applicant's systems."* as telling. So do I.

[72] Despite the plaintiff having all the records and documents at its disposal to address the defences raised in the plea, the best the COJ could muster is a reference to the August 2022 policy, the ombudsman by-laws, and an (impermissible) attempt at amplifying its case in the verifying affidavit and bare denials. Mr Lang states that the COJ ought to have known better that to proceed with summary judgment proceedings. The aforesaid is the 6th ground on which Mir-Air seeks dismissal of the application for summary judgment and an attorney and client costs order.

The termination of electricity supply in August 2022

[73] Since the termination of the electricity supply in August 2022 there has been no supply or consumption.

[74] The property was vacated and has stood empty since March 2020. (Paragraph 12.4 of the plea).

[75] The termination of electricity supply is confirmed by photos that were taken and annexed to the plea as "A1" to "A3". The old meter did not even show readings, as there was no electricity supply. (Paragraph 12.6 to the plea).

[76] In fact, on an assessment of "COJ3", when read with "COJ1", the COJ contends that well over R1,8 million worth of electricity was consumed (without any supply) between 4 September and 4 December 2023.

[77] From the aforesaid Lang draws the conclusion that the COJ's accounting is abysmal, the claim illiquid and non-existent

The account should be in credit.

[78] It is also contended that the account should be in credit. Lang makes it clear that is not just a statement or conclusion as suggested in paragraph 30 of the verifying affidavit.

[79] The electricity account was in credit of R436 719.17 as at 1 May 2018 as evidenced by the COJ's own account annexed marked "A4" to the plea (paragraph 12.7 of the plea).

[80] The old meter reading as at 28 July 2022 (just prior to the electricity to the property being terminated by the COJ was 268 974.00 KwH, as evidenced by the photo annexed marked "A5" to the plea. (Paragraph 12. and 12.8 to the plea).

[81] It is submitted, that having regard to the aforegoing, Mir-Air remains in credit on the account, as the actual limited consumption , prior to the termination of electricity supply did not erase the credit, alternatively, same renders the claim illiquid.

Purported Actual Meter Readings

[82] Despite the factual old meter reading on 28 July 2022, evidenced by "A5" **,** the COJ rendered a statement for November 2022, annexed to the plea as “A11.7” purporting to reflect a commencement meter reading on the old meter on ·1 August 2022 of 378 760 .00 KwH, which is an impossibility having regard to the actual meter reading, evidenced by "A5" **.**

[83] A11.7 reflects same as an “Actual” reading.

[84] The COJ in addition reflected a purported "Actual Reading” of 299 020 .00 KwH (end meter reading) on the old meter, in its statement of August 2020 ("A11" to the plea).

[85] It is thus contended that 2 years before the old rneter reaching consumption of 268 974.00 KwH, the COJ already over billed Mir-Air f**or** 30 046 KwH.

[86] Lang states that one need not be an expert to see this and once again draws attention to “A5” the photograph taken on 28 July 2022 reflecting

a reading of 268 974.00 KwH and the statement of August 2020 annexed as “A11” to the plea reflecting a purported “Actual reading” of 299 020.00 KwH.

[87] The differential between the above two readings are 30 046.00 KwH.

[88] Lang alleges that the aforesaid are objective facts which confirm inflated charges being levied with the false entry as “Actual Readings”.

[89] These inflated estimated readings (purporting to be “Actual readings” are then carried over from one month to the next and by further inflated readings as appears from “A11.1 – “A11.8” to the plea.

[90] Then the COJ closes of the old meter reading with an estimated end meter reading on 6 July 2023 of 569 086.73o KwH.

[91] The reality is, however, different by then there was only a new meter reading zero. As Lang puts it: “At the risk of stating the obvious it is impossible to consume over 300 000.00 KwH from August 2022 to 6 July 2023 (bearing in mind the electricity supply has been terminated).

Superimposing of old meter reading, to the new meter on the account.

[92] According to the COJ’s statement for July 2023 ("A9"), the new meter was installed with a reading of zero and a reading from 1 March 2023,

ending with an estimate reading of 30 378.0 82 KwH . This statement reflects both the old and new meters, with different readings.

[93] Inexplicably according to the COJ's statement for September 2023 ("A10") the new meter was installed with a reading of zero and metered consumption from 23 June 2023. The end meter reading on the new meter is 478 647 KwH, as of 4 September 2023, supposedly an "Actual Reading ".

[94] Curiously, the start meter reading for the old meter, as of 1 March 2023, in "A9" to the plea, was exactly 478 647.00 . ("A9" read with paragraph 12.14 of the plea.)

[95] The COJ simply imported the inflated start meter reading of the old meter as of 1 March 2023 (478 647KwH as an "Actual Reading", as of 4 September 2023, per "A10".

[96] Based on this unlawful import of readings, the COJ raised R1 832 224-48 in "A10" (leaving aside levies and reversals), for electricity consumption over 74 days, where there was no electricity supply to the property.

New meter readings

[97] It is by now trite that the new meter reads zero. Notwithstanding this the COJ rendered “A10” in September 2023 with a purported “Actual reading” of 478 647 KwH.

Minus consumption, equating to positive charges/ incomprehensible calculations.

[98] Mr Lang finds it disconcerting that the COJ is unable to do basic arithmetic when computing charges. The commencement readings are higher than the end meter readings.

[99] Despite a negative consumption reflected in invoices (which is of itself impossible) the statements compute positive consumption, bearing no relation to any principles of arithmetic . This issue was traversed in the plea. (Paragraphs 12.17 to 12.18.1 read with "A12" **to** "A13.1" to the plea).

[100] He refers to "A12" where the start reading is 339 643 00. 0 and the end reading is 268 655.00, which somehow (according to the COJ (and the deponent)) equates to positive consumption of 929 012.00 KwH. The - electricity charges raised in "A12" are **over** R1 389 215-00 (leaving aside reversals and ancillary charges).under circumstances where

107.1.1. 339 643.000 minus 268 655.00 = - (minus) 70 998 KwH.

[101] The aforesaid are the 7th of 12 grounds in support of costs on the attorney and client scale.

SECTION 102(2) OF THE MSA

[102] As explained in the plea, disputes have been lodged and a full record of same is annexed to the plea, and properly pleaded therein. The disputes are confirmed and supported by "B1" to "B3" to the plea (Paragraphs 18-20).

[103] In the circumstances the COJ is not entitled to pursue enforcement as it does in the action, unless and until it complies with its obligations in terms of the MSA.

RESPONSES TO ARGUMENTATIVE MATTER

[104] Lang denies the entire content of the verifying affidavit insofar as same is inconsistent with his affidavit and the plea on behalf of Mir-Air.

[105] He then deals with the individual paragraphs of the verifying affidavit , insofar as same warrants a response.

[106] I do not repeat same here save to record his observation that any legal advisor should be able to see that the application is an abuse.

THE COJ'S ARGUMENT

[107] In the hearing of the matter, the COJ persisted with the application and sought to persuade me that the answering affidavit to the application for summary judgment does not disclose a defence. The first point raised in paragraph 3 of its heads was that Mir-Air filed a defective affidavit resisting summary judgment inasmuch as there was no resolution attached from Mir-Air empowering the deponent to depose

to the affidavit on behalf of Mir-Air, being a company. This is of no consequence, given that it has been held that the appropriate method to attack authority is to utilise Rule 7 of the Uniform Rules of Court.[3] I therefore refuse to strike the affidavit out.

[108] The rest of the argument dealt with the applicable credit policies and the dispute resolution mechanism of the COJ. I was also referred to the ombudsman bylaws but do not intend to refer thereto. What was not addressed was the fact that there is no allegation in the particulars of claim that, during the relevant period, the COJ actually provided the electricity.

[109] The explanation for the sudden jump in the quantity in the verifying affidavit is that, given that the COJ continues to levy monthly charges on the account, it cannot be expected to amend the summons at every stage and thus it submits that the judgment should be granted based on the notion that the amount which is referred to as due and payable as at the application for summary judgment is now due. I cannot agree with this. If the COJ wanted to amend its particulars of claim it should have done so and not introduce it via the verifying affidavit.

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3 See the discussion in Erasmus: Superior Court Practice under Uniform Rule 7 – in the present matter this could have been done at the stage the defendant entered its appearance to defend. The author is of the view that the "The challenge may also be brought in interlocutory proceedings such as an application for summary judgment, or in an application for rescission of a summary judgment. "

[110] A lot was made of the fact that the COJ's credit control policy and by-laws allow it to rely on interim readings or estimates and this was supposed to magically make the conflicts in the COJ's case disappear.

[111] It was further asserted that conflicting submissions are pleaded in efforts to create a false dispute of fact to avoid summary judgment. I cannot accede to this allegation. If anything, this could be said of the COJ's approach to this matter.

[112] I do not accept that the reliance on the clause 11 of 2004 or clause 16 of the 2022 policy and by-laws reference number is relevant. To the extent that the COJ relies hereon, it seeks to bypass the fundamental conflicts and omissions in its own case which cannot be overcome in this fashion.

[113] The email trail referred to, in which Mir-Air tried to raise a pending dispute, reflects that Mir-Air advised the COJ that the query will not be logged and that Lang will have to call and supply information, alternatively, visit the nearest branch. Apparently, the fact that he lives in Hermanus does not count.

[114] With regard to the multiple photographs reflecting the conflicting readings during the period reflected in Mir-Air's answering affidavit, the COJ simply assumes that the photographs are intended to prove discrepancies in the reading capturing computation and billings of Mir-Air's amount. It submits that the alleged defences could have been

resolved had it properly logged queries and/or formal disputes. Not only does this not engage with the defects in the COJ summons, but the attempt made by Mir-Air to declare a dispute was rebuffed, as is evident from the email correspondence.

[115] The COJ's heads of argument further reflect that, in terms of Rule 22(6), the defence must be clear and concise and that Mir-Air failed to make out such a case by making conflicting and confusing submissions, which was clearly intended to create a "self-laid dispute of fact which should be adjudicated at trial". I cannot agree that this is the case. If anything, the various annexures and photographs demonstrate the problems with the accounting system of the COJ and, rather than embarking on further argument, it should have accepted the offer made by Mir-Air to withdraw the application for summary judgment. By not doing so, it opened itself up to the risk of a punitive costs order.

[116] It is then rather startlingly submitted that Mir-Air's opinion on how and what the readings should be does not constitute a valid query and/or dispute. In amplification, it is submitted that on Mir-Air's own admissions there were actual readings captured on the account which, in Mir-Air's opinion, are "false actuals".

[117] It was submitted that Mir-Air, to successfully counter the actual charges captured by the COJ, should have appointed a technical expert to prepare a report which details the alleged correct readings.[4]

[118] In my view, obvious arithmetic demonstrates the fallacy of these submissions and the various photographs with their respective dates of the various readings from the relevant meters demonstrates that this argument is devoid of any content. Reliance was also placed on the decision in Body Corporate Croftdene Mall v Ethekwini Municipality[5] paragraph 22 where the Court stated as follows:

> "*[22] It is, in my view, of importance that s 102(2) of the Systems Act requires that the dispute must relate to a 'specific amount' claimed by the municipality. Quite obviously, its objective must be to prevent a ratepayer from delaying payment of an account by raising a dispute in general terms. The ratepayer is required to furnish facts that would adequately enable the municipality to ascertain or identify the disputed item or items and the basis for the ratepayer's objection thereto. If an item is properly identified and a dispute properly raised, debt collection and credit control measures could not be implemented in regard to that item because of the provisions of the subsection. But the measures could be implemented in regard to the balance in arrears; and they could be implemented in respect of the entire amount if an item is not properly identified and a dispute in relation thereto is not properly raised.*"

[119] Inasmuch as it requires the ratepayer to furnish facts that would adequately enable the municipality to ascertain or identify the disputed item or items and the basis for its objection, no more need to be said. Mir-Air provided the COJ with ample evidence of the items in dispute

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5 2012 (4) SA 169 (SCA)

and they are all properly identified and properly raised and I cannot fault Mir-Air's calculations.

[120] Despite the argument put forward by the COJ, I am satisfied that Mir-Air disclosed a *bona fide* defence in addition to the further and numerous arguments made by the COJ. I should point to the submissions made by Mir-Air, i.e. to the effect that the COJ's attempt at enforcement of the summons is unlawful and contravenes section 102(2) of the Municipal Systems Act 32 of 2000 ("the MSA"), which reads as follows:

"102 Accounts
(1) A municipality may-
(a) consolidate any separate accounts of persons liable for payments to the municipality;
(b) credit a payment by such a person against any account of that person; and
(c) implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person.

***(2) Subsection (1) does not apply where there is a dispute between the municipality and a person referred to in that subsection concerning any specific amount claimed by the municipality from that person**.*

(3) A municipality must provide an owner of a property in its jurisdiction with copies of accounts sent to the occupier of the property for municipal services supplied to such a property if the owner requests such accounts in writing from the municipality concerned.
*[Sub-s. (3) added by s. 17 of Act 19 of 2008 (wef 13 October 2008).]***"**

[121] I cannot fault the notion that Mir-Air was in credit for R436 719.17 when the old meter had an actual reading of 157,806.00 KwH.

[122] I also agree with Mir-Air that the COJ's quantum and claim cannot be liquidated given that it has not been fixed by agreement or by a

judgment of the court and no amount of credit control policy or bylaws can change these principles. This is even more so where the figures are estimates.

[123] I agree with the conclusion that was reached in Oos-Randse Bantoesake Administrasieraad v Santam Versekeringsmaatskappy Bpk en Andere (2),[6] where it was said that:

> "…*if the ascertainment of the amount is a mere matter of calculation. In the last-mentioned case, however, the data upon which the calculation is to be based would themselves have to be amounts about which there was no room for uncertainty, estimation or debate*."

[124] It follows that the amounts claimed are not based on the fact that they are liquidated as opposed to same being disputed in substance. The massive defect in the COJ's claim still remains. The failure to allege that, during the relevant period, electricity was supplied and, in fact, it in no way, not even in the purported verifying affidavit, engages the difficulties raised in the plea following upon the termination and the fact that there was no electricity supply since the termination. The affidavit supports the allegations in the plea that, since August 2022, and absent supply, the old meter was removed by the COJ in October 2022 and, despite no supply since August 2022 and in the absence of any meter between November 2022 and June 2023, the COJ, regardless, rendered statements levying charges on estimates and purported

6 1978 (1) SA 164 (W), at 168

actual meter readings on the old meter. The full import of this nonsense is clearly lost on the COJ.

[125] Notwithstanding the termination, the consumption of the old meter is still reflected as late as July 2023.

[126] The last reading captured by Mir-Air, and proven by a photograph, annexure “A5”, at paragraph 89 of the replying affidavit, was 268974.00 as of 28 July 2022, and the last statement for the old meter (July 2023) reflects a reading of 569086.73. This is not only mindboggling but a strong indication that the COJ has not the faintest comprehension of what the ground level facts are. No wonder Mir-Air points out that this is double the end-meter reading of the old meter, over 300 000.00kWh more.

[127] I cannot simply disregard Mir-Air’s allegation that the new meter was installed in June 2022, which commenced at zero and which measured no consumption absent supply. Nevertheless, as of 14 November 2023, two months after the service of the summons, the new meter still reflected a zero reading.

[128] That notwithstanding, the COJ still rendered statements on the new meter, reflecting estimates as high as 566,746.838 KwH (“COJ3”) appended to the verifying affidavit and actual readings as high as 478,647.00 KwH The overcharge for electricity never supplied is

alleged to be 300,112.73 KwH on the old meter and 568,746.838 KwH on the new meter.

[129] No wonder Mir-Air contends that the COJ's claim for 866,859.588 KwH is a conjured up figure. What should have happened is that the credit of R436 719.17 should have been deducted from any alleged (but denied) charges minus 111 168.00kWh consumption between May 2018 and the beginning of August 2022, which should have been computed on published step tariffs per month for the period 2018–2022 whilst having regard to prescription on part of the claim.

[130] Not only was this not done, but there is a complete failure to bear in mind that charges like electricity could prescribe. No wonder Mir-Air describes the COJ's accounting as chaotic and abysmal and that all interest and penalties must be deducted as well as ancillary charges flowing from supply (where there was none).

[131] Given that no actual electricity supply is alleged and, in fact, Mir-Air states that, after termination, there was no electricity supply, as is confirmed by annexures "A1" to "A3", is so obvious. Surely, it must be clear to the COJ that no estimates can be raised when there is no *de facto* supply.

[132] I could go much further than I have done so far and deal with the balance of Mir-Air's opposing affidavit, but same is not necessary. It is clear that the COJ has not the faintest idea of what is going on on the

ground and that its accounting system seems to take cognisance of fictitious facts. It is thus no wonder that Mir-Air alleges a contravention of sections 95 and 96 of the MSA, despite which the COJ confirms same as actual readings. The relevant sections read as follows:

"*95 Customer care and management*
In relation to the levying of rates and other taxes by a municipality and the charging of fees for municipal services, a municipality must, within its financial and administrative capacity-
(a) establish a sound customer management system that aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality, and where applicable, a service provider,
(b) establish mechanisms for users of services and ratepayers to give feedback to the municipality or other service provider regarding the quality of the services and the performance of the service provider;
(c) take reasonable steps to ensure that users of services are informed of the costs involved in service provision, the reasons for the payment of service fees, and the manner in which monies raised from the service are utilised;
(d) where the consumption of services has to be measured, take reasonable steps to ensure that the consumption by individual users of services is measured through accurate and verifiable metering systems;
(e) ensure that persons liable for payments, receive regular and accurate accounts that indicate the basis for calculating the amounts due;
(f) provide accessible mechanisms for those persons to query or verify accounts and metered consumption, and appeal procedures which allow such persons to receive prompt redress for inaccurate accounts;
(g) provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the municipality;
(h) provide mechanisms to monitor the response time and efficiency in complying with paragraph (g); and
(i) provide accessible pay points and other mechanisms for settling accounts or for making pre-payments for services.

96 Debt collection responsibility of municipalities
A municipality-
(a) must collect all money that is due and payable to it, subject to this Act and any other applicable legislation; and
*(b) for this purpose, must adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariff policies and complies with the provisions of this Act.***"**

[133] I do not intend to elaborate any further on the opposing affidavit, suffice to say that by the application of basic arithmetic and logic it is clear that the quantum claimed by the COJ must be incorrect.

[134] The implementation of the COJ's own accounting system seems to be chaotic, erratic and, at best, random, in terms of the outcomes achieved.

[135] Mir-Air raises prescription in its affidavit and points out that the charges are levied from 2018 to 2023. I have noticed that Mir-Air did not plead prescription in its pleadings, but, at the same time, the COJ never pleaded the period in which the alleged liability arose in the particulars of claim. Mir-Air raises prescription squarely in its opposing affidavit and also refers to the fact that the summons was excipiable. Presumably, it is still entitled to amend its plea to raise prescription squarely.

[136] Finally, Mir-Air also alleges that the judgment in Croftdene, which the COJ relies on, is misconstrued, especially in the context of pursuing enforcement unlawfully.

[137] It was submitted that Croftdene does not assist the COJ and finds no application.

[138] To put it rather bluntly, in Croftdene the SCA never stated that absent pleading a specific quantum a dispute does not exist.

[139] In all the circumstances, it is clear that the defences are not put up to raise a false dispute and that they all go to the root of the COJ's conduct, not only when charging on the basis of estimates when there is *de facto* no electricity supply, but also in the sense that the allegations as read in the plea, together with the opposing affidavit of Mir-Air, puts it beyond argument that summary judgment cannot be obtained in these circumstances.

[140] Mir-Air claims that the summons is excipiable. it is true that no cause of action is made out in the particulars of claim for the supply of electricity under circumstances where same is not even alleged. One is supposed to infer it from the invoices and that is not the way you plead your particulars of claim.

[141] It is also highly doubtful that the deponent, in the verifying affidavit, has the slightest knowledge of what is really going on in the accounting systems, let alone what is going on in terms of electricity supply in reality.

[142] I was urged to grant leave to defend and a punitive costs order against the COJ. I believe a punitive costs order is justified.

[143] I accordingly make the following orders:

143.1 the Plaintiff's application for summary judgment is dismissed;

143.2 the Plaintiff is ordered to pay the costs of the summary judgment proceedings on the attorney and client scale;

143.3 The Defendant is granted leave to proceed with the conduct of its defence in the above matter.

[redacted]

S VAN NIEUWENHUIZEN AJ
ACTING JUDGE OF THE HIGH COURT

Date of hearing: !6 May 2024

Date of judgment: 30 September 2024

Representation for plaintiff

Counsel:	None
Attorney Appearing:	Lucky Moenyane c/o Madhlopa Thenga Inc 17 Power Street, Germiston P O Box 522935, Saxonwold, 2132 Tel: 087 135 5672 Cell: 078 888 6661 Email: lucky@madhlopathenga.co.za

Representation for respondent

Counsel:	Adv C van der Merwe Cell: 082 788 3911 Email: dominus.cvdm@gmail.com
Instructed by:	Darryl Ackerman Attorneys Tel: 011 268 2593 Email: leonette@ackermanlaw.co.za