



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case Number: 16453/2023

In the matter between:

THE FORMER CASH CRUSADERS FRANCHISEES

Applicant

and

CASH CRUSADERS FRANCHISING (PTY) LTD

Respondent

JUDGMENT

BORGSTRÖM AJ:

INTRODUCTION

1. This matter presents the latest instalment in a lively contestation between the Applicants and the Respondent (“**CCF**”) – which operates as a franchisor for a chain of outlets specialising in the sale of new and pre-owned goods and appliances. These outlets trade under the name of “*Cash Crusaders*”.

2. The Applicants¹ form a loose affiliation of entities that entered into franchise agreements with CCF, and operated Cash Crusaders outlets in locations throughout the country. In previous proceedings before this Court (to which I shall return), they identified themselves as “*Cash Crusaders Franchisees*”. In the current proceedings they now identify themselves, somewhat tendentiously, as “*Former Cash Crusader Franchisees*”, or “*ex-franchisees*”. This assumes that the franchise agreements between CCF and the Affected Franchisees have validly been brought to an end. This is a matter which is tangentially relevant in the current proceedings, and is the subject matter of on-going arbitration proceedings. I refer to the Applicants as “**the Affected Franchisees**”.
3. The current matter is embedded in a tangle of intertwined proceedings in this Court and in private arbitration. The substantive relief that the Affected Franchisees seek is an order suspending the operation and execution of an Order granted by this Court (per Mr Justice Dolamo) on 3 October 2023 (“**the Interdict Order**”).²

¹ The entities involved in the current matter is not entirely clear. The heading to the Notice of Motion suggests that the Applicants are “*listed in annexure ‘A’ to the Notice of Motion*”. There is, however, no such list. The Applicants’ founding affidavit indicates that they are identified in annexure “FA1” to that affidavit. That list is also unhelpful, taken on its own, as it merely lists various affected retail outlets, and the name of an “*operator*” – without identifying the entities that entered into franchise agreements with CCF in respect of each location. In reply, the Applicants submitted confirmatory affidavits from persons authorised to represent various entities. If these confirmatory affidavits are read together with annexure “FA1” (to the current application), and the more detailed list of parties attached as annexure “ADP1” to the previous interdict proceedings, the following is evident:

- The Applicants’ group in the current matter comprises at least the First; Sixth; Eighth to Tenth; Thirteenth; Twentieth; Twenty-First to Thirty-Ninth; Forty-Fifth; Fifty-Third; and Fifty-Fifth to Sixtieth Respondents as reflected in annexure “ADP1”.
- Annexure “FA1” lists further affected stores, which – according to annexure “ADP1” to the interdict application – are owned by the Second, Fifteenth, Eighteenth; Nineteenth and Twenty-Third Respondents as listed in annexure “ADP1” to the review application. However, none of the confirmatory affidavits clearly applies to these entities.
- In annexure “ADP1”, Casgoli (Pty) Ltd is listed as the Sixty-First and Sixty-Second Respondents, but with different registration numbers. These entities are reflected as owning the affected outlets in Malmesbury, Wellington, and Paarl – which are also listed as being outlets that remain involved in the current matter (in annexure “FA1”). In a confirmatory affidavit of Mr Vernon Ashley Galp, he asserts that he is the owner of these stores, without identifying any juristic entity involved.
- In a confirmatory affidavit, Mr Marius Rikus Groenewald identifies himself as the “director” of Casgoli CC and Linefresh Restaurant CC. These two close-corporations are not reflected in annexure “ADP1” as the owners of any of the affected retail outlets.
- A confirmatory affidavit is attached from Mr Brendan Russel Booth, who avers that he represents affected businesses, without indicating the affected outlets, or the entity/entities that own these outlets.

² Under the same case number as the present matter.

4. The Interdict Order (which the Affected Franchisees now wish to see suspended) arose as a result of a notice sent by the attorneys for the Affected Franchisees, to CCF, on 18 September 2023 – recording complaints and indicating that the Affected Franchisees intended to cancel their franchise agreements with CCF unless remedial action was taken within 10 days.
5. On 22 September 2024 CCF launched the Interdict Application, and set it down for hearing in the ‘fast lane’ on Thursday, 28 September 2024. In this application CCF sought: **(a)** to prevent the Affected Franchisees from cancelling the franchise agreements; and **(b)** to compel the Affected Franchisees “*to abide by and fully comply with their obligations*” under the franchise agreements, pending:
 - 5.1. The final determination of a separate application in this Court, which had been launched in September 2022 (under case number 16436/22) but never been set down. I refer to this as “**the Declarator Application**”. That application was brought by a group of franchisees (which included the Affected Franchisees, as well as others who had since stopped operating or ‘returned to the fold’), and concerned the lawfulness of different iterations of the system that CCF had crafted for use by its franchisees in “*pawn transactions*” – as that term is defined in section 1 of the National Credit Act 34 of 2005 (“**the NCA**”). In the nomenclature adopted by CCF, these are referred to as “*suspensive security buy transactions*” (“**SSB transactions**”);
or
 - 5.2. Alternatively, the final determination by an arbitrator of the issues raised in the main application in the Declarator Application; and
 - 5.3. Thereafter, the final determination by an arbitrator whether the issues raised in the Declarator Application afforded the Affected Respondents the entitlement to cancel their respective franchise agreements with CCF.
6. The merry-go-round sped up when, in the early evening of Tuesday, 26 September 2023, the Affected Respondents (through their attorneys) purported to cancel the franchise agreements – even though the 10-day period for remedial action was still running; and proceedings regarding this very issue were pending before the Court.

7. The Court ultimately dealt with this by allowing CCF to amend the relief sought – and on 3 October 2023 ordered as follows:

“34.1 Pending the final determination by an arbitrator or by court of the applications pending before court of a dispute between the parties as to the respondents' entitlement to cancel their respective franchise agreements (the franchise agreements) concluded with the applicant on the basis set out in the letters of MacGregor Stanford Kruger of 18 and 26 September 2023, the respondents are interdicted from cancelling the franchise agreements and are directed to abide by and comply fully with their obligations under the respective franchise agreements.

34.2 This interdict shall operate for a period of sixty (60) days from day hereof. The applicant is to enroll the applications which are pending before and which have not been enrolled, alternatively, refer the disputes to arbitration, whichever the parties elect to do within the period of sixty (60) days stipulated, supra. The interdict would lapse on the expiry of the sixty (60) days period if there has been no enrolment or referral to arbitration.”

8. But yet, the merry-go-round only spun faster. The Affected Franchisees adopted the position that the Interdict Order, despite being framed as interim relief, was in fact final in effect. On this basis, the Affected Franchisees sought leave to appeal – and more importantly, contended that the Interdict Order was suspended while those applications continued, in terms of section 18(1) of the Superior Courts Act 10 of 2013 (**“the SC Act”**).
9. Moreover, the Affected Respondents continued to sever their ties with CCF. Since 3 October 2023 (i.e. the same date as the Interim Order was handed down) the Affected Respondents started trading under the name and style of “Cash Xchange”.
10. Predictably, the bold conduct of the Affected Franchisees resulted in another application before this Court, which was heard on 10 November 2023 – which I shall refer to as **“the Enforcement Application”**. As that name suggests, CCF sought declaratory relief that the Interdict Order was interlocutory in effect, and thus was not suspended by any application for leave to appeal – in accordance with section 18(2) of the SC Act. Alternatively, CCF contended that if the Interdict Order was interpreted as being final in effect, this Court should direct that its terms were immediately effective – in accordance with section 18(3) of the SC Act.

11. This issue was resolved in a judgment and order of this Court (per Mr Justice Lekhuleni) of 26 January 2024 (“**the Enforcement Judgment**” and “**the Enforcement Order**”).³ The Court found that the judgment in the Interdict Application had made legal findings that were final in effect. These underlying legal findings in the judgment, so the Court reasoned, meant that the Interdict Order was not merely interlocutory. Accordingly, the Interdict Order was automatically suspended pending the finalisation of applications for leave to appeal. The Court also refused CCF’s application to make the Interdict Order immediately effective.
12. Insulated by this development, the Affected Franchisees pursued applications for leave to appeal through this Court, the SCA, and the Constitutional Court. I am not surprised that none of these courts were enticed to hear an appeal by the Affected Franchisees against the Interdict Order. The Affected Franchisees ran out of momentum when the Constitutional Court finally dismissed their application for leave to appeal on 22 July 2023. The Interdict Order could thus no longer be avoided.
13. By this time the arbitration proceedings envisaged in the Interdict Order had been initiated, and serve before a highly regarded retired judge of this Court (“**the arbitration proceedings**”). Those proceedings concern the validity of the actions by the Affected Respondents to cancel their franchise agreements with CCF. The Affected Franchisees indicate that in these proceedings they will also ask the arbitrator to make a finding regarding the lawfulness of CCF’s SSB system.
14. The hearings in the arbitration proceedings commenced on 2 May 2024 and continued intermittently to 7 June 2024, and were scheduled to recommence on 9 September 2024. The Affected Franchisees indicate that the “*arbitration is extensive*”, with 66 000 pages of discovered documents and multiple witnesses. At the break in proceedings on 7 June 2024, the Affected Franchisees had led

³ Reported as *Cash Crusaders Franchising (Pty) Ltd v Cash Crusaders Franchisees* (16453/2023) [2024] ZAWCHC 11; [2024] 2 All SA 49 (WCC); 2024 (4) SA 141 (WCC) at para 3
At paragraph 3.

the evidence of three witnesses, and they intended to call more witnesses. After this CCF would call its witnesses.

15. It is in this setting that the Affected Franchisees now approach this Court, in an endeavour to ensure that they are again alleviated from the duty to comply with the requirements of the Interdict Order. They frame their application as being one made in terms of Uniform Rule 45A of the Uniform Rules of this Court (“**Rule 45A**”), which codifies an element of this Court’s inherent power (as developed under the common law, and now enshrined in section 173 of the Constitution) to protect and regulate its own process, taking into account the interests of justice.⁴
16. However, the peculiarity of the relief sought is immediately apparent in the fact that the period of the desired suspension is:

“pending the outcome of the application under case number 1636/2022 in respect of which the applicants are still awaiting a date of set-down and pending final determination of the arbitration proceedings before Retired Judge Fourie ...”.

17. The reference to case number 1636/2022 relates to the Declarator Application (which is actually before this Court under case number 16436/22).
18. What thus appears is that the order now sought and the Interdict Order are defined with reference to the very same proceedings. In other words, the suspension now sought by the Affected Franchisees is for the very same period that the Interdict Order applies.
19. The Affected Franchisees argue that this is not an insuperable obstacle, and that this Court has a wide power to suspend the execution of an earlier order if this is in the interests of justice. In this regard the Affected Franchisees point to the following:

19.1. The Interdict Order “*should never have been granted*”; and obliging the Affected Franchisees to respect the Interim Order would mean that they would again have to implement the SSB system determined by CCF –

⁴ Section 173 of the Constitution states as follows:

“The Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa each has the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.”

which they argue remains unlawful. Thus, if this Court refused the suspension, it would be giving its imprimatur to CCF's unlawful SSB system and would compel the Affected Franchisees to implement an unlawful system. This, they say, would be unconscionable. It would expose the Affected Franchisees to penalties, and its customers to unlawful fees. At the very least, the Affected Franchisees submit that this Court should not "*put into effect*" the Interdict Order when "*there is a good prospect of that Order being expunged*" once the Declarator Application is finalised.

19.2. The Affected Franchisees believe that they were not given a fair hearing before the Interim Order was granted. This, they say, is evidenced by the facts that the Court improperly allowed CCF to introduce a last-minute amendment to the relief it originally sought; overlooked a supplementary affidavit filed on behalf of the Affected Franchisees in this regard; and "*crafted an order for the franchisor which [the Court] thought would be best suited to address the franchisor's best interests*".

19.3. The Interdict Order was fatally flawed as it sought to prevent the Affected Franchisees from cancelling their franchise agreements with CCF. But the Affected Franchisees had already cancelled their franchise agreements by the time the Interdict Order was handed down. It was now impossible to meet the terms of the Interim Order.

19.4. If this Court refused to suspend the Interim Order, it would be prejudging a key issues in the on-going arbitration proceedings – namely whether the Affected Franchisees validly cancelled their franchise agreements with CCF; and, if not, whether specific performance could be granted to force the Affected Franchisees back into their relationship with CCF.

19.5. The second paragraph of the Interim Order (quoted in paragraph 7 above), properly interpreted, means that the Interim Order only applied for 60 days, or until the disputes were referred to arbitration. The Interdict Order has thus lapsed.

19.6. Implementing the Interim Order would be inequitable and impractical. The Affected Franchisees point out that they have been operating their stores

as Cash Xchange since 3 October 2023, and it would cause hardship if they were now compelled to revert to operating under the name of Cash Crusaders, and alter their systems and operations to accord with CCF's requirements. Furthermore, it would cause hardship if they are compelled to re-enter a franchisee-franchisor relationship with CCF, against a backdrop of mistrust and open antagonism.

19.7. In addition, the Affected Franchisees contend that CCF is preempted from enforcing the Interdict Order because it “*expressly alternatively through its conduct preempted the terms of the Court order*”.

20. CCF contends that the relief sought by the Affected Franchisees does not merely seek to suspend the execution of the Interdict Order for a defined period. Rather, the Affected Franchisees ask this Court to completely neutralise the Interdict Order; or to revisit the terms of the Interdict Order in a stealth appeal process.

BACKGROUND FACTS

21. In order deal with the current matter, and the many arguments raised by the Affected Franchisees, it is necessary to deal in greater detail with the disputes between the parties, and the many proceedings before and after the Interdict Order was granted.

(a) The franchise agreements and CCF's System before 1 November 2021

22. As noted in the judgment of Dolamo J in the Interdict Application – before the fall-out with the Affected Franchisees, CCF was a franchisor with 249 outlets throughout South Africa. Of these stores, 150 outlets were operated by franchisees who had individually concluded franchisee agreements with CCF – which included all of the Affected Franchisees. The remainder were what is known as corporate-owned stores.⁵

23. The business of all of Cash Crusaders outlets involves three modalities:

23.1. **First**, they sell new goods;

⁵ Interdict judgment, para 4.

23.2. **Second**, they buy and sell used goods; and

23.3. **Third**, they enter into SSB transactions. Customers pledge movable property as collateral for a cash loan, which is granted for a specified period (usually 30 days). As alluded to in paragraph 5.1 above, these SSB transactions fall within the definitional ambit of “*pawn transactions*” as defined in section 1 of the NCA. Consequently, when entering into SSB transactions, the franchisees operate as “*credit providers*”; and the agreements between the franchisees and the consumer are “*credit agreements*” (section 8(4)(a) of the NCA). The manner in which these SSB transactions are handled in CCF franchise outlets, lies at the heart of a long-running dispute between CCF and the Affected Franchisees.

24. The relationship between CCF and all of franchisees is regulated in separate, but substantially identical, franchise agreements (“**the franchise agreements**”).

25. The franchise agreements require the franchisees to operate and advertise “*only under the name ‘Cash Crusaders’ without prefix or suffix*” (clause 9.2.3), and impose various requirements to ensure standards and quality.

26. The agreements also regulate amounts that franchisees must pay to CCF, which include:

26.1. Weekly or monthly payments of a “*royalty fee*” equal to 11.1% of the gross profit in that period (clause 5.3 and clauses 5.11.1 and 5.11.2).

26.2. “[M]onthly expenditures and contributions to advertising and promotion” (clause 5.5. and 11.1).

26.3. An annual royalty and advertising contribution in respect of stock write-offs which exceed 2% of the monthly retail sales of the outlet (clause 5.11).

27. In addition, franchisees are required to “*purchase all new products, equipment, supplies, and materials used or sold by the Franchised Business solely from suppliers (including manufacturers, wholesalers or distributors) which demonstrate, to [CCF’s] continuing reasonable satisfaction, the ability to meet [CCF’s] standards and specifications for such items*”, as well as other

requirements. These suppliers must pre-approved by CCF (clause 7.12). It appears in practice this required franchisees to source new products and supplies from Crusaders Corporate (Pty) Ltd.⁶

28. The agreements further provide for a dispute resolution mechanism through arbitration for all disputes arising out of the agreement, or relating to its interpretation (clause 25.4). This does not preclude CCF “*from seeking interdictory or declaratory relief or instituting action proceedings*” if CCF “*in its sole discretion, elected not to proceed by way of arbitration in respect of such dispute*” (clause 25.13).
29. In concluding the agreements, the franchisees acknowledged that that they had, *inter alia*, “*conducted an independent investigation of the rights granted by this agreement*” and that they recognised that “*business venture contemplated herein involves business risks ...*” (clause 27.1.1).
30. Importantly for current purpose, it is striking that the agreements are almost completely silent on the manner in which SSB transactions must be handled. These operational aspects are, instead, regulated in the “*Franchisor’s Operating Manual*” (“**the Manual**”) and “*such other manuals as [CCF] may develop and issue from time to time*” (clause 1.13).
31. These operational aspects form part of CCF’s “*System*” (“**the System**”), which is defined to mean “*the distinctive business and franchise system developed by [CCF] and conducted under the name of ‘Cash Crusaders’ relating to the establishment and operation of retail businesses selling pre-ownes and new goods to customers predominantly for use in a domestic environment*” (clause 1.18).
32. With regard to the Manual and the System, the agreements provide, *inter alia*, that:

⁶ Judgment in the Interdict Application, para 4.

- 32.1. CCF had developed and owned “*the right to franchise the System*”, which it had produced “*as the result of the expenditure of time, skill, effort, and money*” (clause 2.1).
- 32.2. The distinguishing characteristics of the System included the operation of businesses and training “all of which may be changed, improved, and further developed by [CCF] from time to time” (clause 2.2).
- 32.3. Franchisees understood and acknowledged “*the importance of [CCF’s] high standards of quality, appearance and service, and the necessity of operating the Franchised Business in conformity with [CCF’s] standards and specifications*” (clause 2.5); and “*that every detail of the System ... [is] essential*” to CCF for its operations and to protect its goodwill and reputation (clause 7.1).
- 32.4. CCF would “*loan*” a single copy of the Manual for the duration of the agreement (clause 6.2) to the Franchisee. This Manual was confidential, remained the property of CCF, and could not be copied or distributed (clause 10.1).
- 32.5. Franchisees were obligated to “ensure the highest degree of quality and service”, and to operate “*in strict conformity with such methods, standards, and specifications that [CCF] may from time to time prescribe in the Manual or otherwise in writing*” (clause 7.7).
- 32.6. Franchisees acknowledge and agreed that CCF “*may, from time to time in its sole discretion, revise the Manual to incorporate System changes*”. Franchisees were obligated to keep the Manual current; and to “*implement any System changes*” upon notice and in the period specified by CCF (clauses 7.1 and 10.2).
33. Before 1 November 2021, the Manual and the System effectively provided that franchisees would levy repeated “*initiation fees*” against customers to extend the period in an SSB transaction. In simple terms, when a franchisee entered into an SSB transaction with a customer, the franchisee would charge an initiation fee. The franchisee would then extend a loan to the customer, usually for a 30-day

term, and hold moveable property provided by the customer as security for repayment. But, in many cases, the customer would be unable to repay the loan at the expiration of the term. The franchisee would then effectively extend the term. But, because this extension was treated as a fresh SSB transaction, the franchisee would again charge an initiation fee. I refer to this as “**the original SSB System**”.

34. A concern arose that this aspect of the System was unlawful, in that:

34.1. Section 101(1)(b) of the NCA permits an initiation (in a prescribed amount) if “*the application results in the establishment of a credit agreement with that consumer*”.

34.2. But, section 101(2) of the NCA continues that “*a credit provider who is a party to a credit agreement with a consumer ... and enters into a new credit agreement with the same consumer that replaces the earlier agreement in whole or in part*”, could only charge a fresh initiation fee “to the extent permitted by regulation, having regard to the nature of the transaction and the character of the relationship between the credit provider and consumer.”

34.3. This was problematic in light of Regulation 43 of the NCA Regulations, which provides that “*supplementary conditions shall apply on the application of the maximum initiation fee*”, including (in Regulation 43(2)) that “*no initiation fee may be charged on credit agreements as envisaged in section 101(2).*”

35. CCF states that most major players in the industry also charged multiple initiation fees when extending the period of pawn transactions. This had never been flagged as an issue by any of the relevant authorities. But, once this concern was raised, CCF obtained several legal opinions, which came to divergent conclusions. It also sought input from its franchisees. Ultimately CCF states that it took “*a strategic business decision*” to revise the SSB System. This revised System was contained in amendments to the Manual introduced on 1 November 2021. I refer to this as “**the revised SSB System**”.

36. The Affected Franchisees have completely altered their views regarding the lawfulness of the original and the revised SSB Systems over time. As noted above, in the proceedings before me they contend that the Systems are unlawful. They also contend that this unlawfulness is addressed in the system that they now apply in their Cash Xchange outlets (although the outlines of this system are never dealt with).
37. But, at the time that the revised SSB came into effect, they adopted a very different view – borne of their frustration that the revised SSB System would have the effect of them foregoing considerable profits that they previously earned by levying initiation fees under the original SSB System. The Affected Franchisees thus contended that the original SSB System was lawful, and that they had been sold a business model that included the ability to charge multiple initiation fees when extending the term of an SSB transactions. The introduction of the revised SSB System was thus viewed as an unjustified incursion by CCF into their ability to operate their business profitably.

(b) The revised SSB System of 1 November 2021

38. As noted above, the Affected Franchisees have now pivoted, and implore this Court to come to their assistance – in that they contend that CCF's revised SSB System remains unlawful. However, in their founding papers, the Affected Franchisees fail to deal with the terms of the revised SSB System or explain why it is unlawful.
39. CCF has explained that terms of the revised SSB System limits franchisees to charging a single initiation fee, and does not permit franchisees to levy repeated initiation fees when extending SSB transactions. In this regard, the revised System envisages an original loan period of between 30 and 32 days (depending on when in a month the loan was granted), with up to three 30-day extensions. Thereafter, a final extension is extended to the end of the next calendar month. This allowed customers the greatest opportunity to repay the loan and recover their property (used to secure the loan). In this scheme a single initiation fee would be charged, but additional income would be possible through increased interest rates in the extension periods.

40. After this period, customers would have several options, namely:
- 40.1. They could forfeit the property presented as security, ending their obligation.
 - 40.2. They can forfeit the property presented as security, and then re-purchase it from the franchisee under a standard lay-by facility (with payments over three months).
 - 40.3. They could conclude a new loan, with a new initiation fee, provided this was “*materially different*” from the original loan.
41. The material difference, envisaged in the last option, would be achieved by:
- 41.1. The customer bundling a second asset together the property put up to secure the original loan. To ensure a material difference, this second asset would have to have a value of at least 50% of the original asset.
 - 41.2. Paying a minimum of 50% of the capital value and settling fees for the original loan.
 - 41.3. Revaluing the asset put up in the original loan, and advancing a minimum of an additional 50% of the original capital value and settling fees of the original loan.
42. To mitigate any potential loss of income for franchises, CCF provided its franchisees an *ex gratia* concession on the royalty and marketing contributions arising from profits on SSB transactions.
43. CCF notes that this did not undermine profits, as other players in the industry still charged multiple initiation fees – and the commercial advantage of a single initiation fee charged by CCF’s franchisees had translated into an increase in the number of SSB transactions.

(c) The Declarator Application

44. At the time that the revised SSB System came into effect, a cohort of disgruntled franchisees – including the Affected Franchisees, and others – raised a dispute

against CCF, seeking a return to the original SSB System. This was referred to mediation on 20 April 2022, but failed to reach an acceptable resolution.

45. The disgruntled franchisees elected not to refer this issue to arbitration (in terms of the dispute resolution mechanisms in the franchise agreements). This was so because, in their view, the lawfulness of the SSB System could only be resolved by this Court.
46. But, before approaching this Court, the Affected Franchisees sought clarification from the National Credit Regulator (“**NCR**”).⁷ The NCR refused to entertain this matter.
47. Accordingly, on 29 September 2022 the Affected Franchisees launched the Declarator Application (referred to in paragraph 5.1 above). In this application, the Affected Franchisees sought declaratory relief that:
 - 47.1. The original SSB System, and the levying of multiple initiation fees, was lawful;
 - 47.2. Alternatively, that the original SSB System complied with section 101(2) of the NCA; and
 - 47.3. The revised SSB System was lawful.
48. The papers in the Declaration Application are not before me. However, what is evident is that CCF opposed the application, and indicated that the issues should be dealt with in arbitration proceedings (as provided for in the franchise agreements). Allied to this, CCF brought a counter-application for a stay of the proceedings pending the finalisation of such arbitration proceedings.
49. The Affected Franchisees opposed the counter-application, sticking to their guns that issues of lawfulness could not be dealt with in private arbitration proceedings.

⁷ Established in terms of section 26 of the NCA.

50. Another aspect that is evident from the papers before me is that the Respondents to the Declarator Application included the National Credit Tribunal (“**the NCT**”);⁸ the NCR;⁹ and the Minister of Trade, Industry and Competition (“**the Minister**” – as the executive authority responsible for the NCA).
51. On 8 November 2022 (and after the exchange of pleadings between the Affected Franchisees and CCF), the office of the State Attorney noted that the Minister was considering entering the matter. In so doing, it was pointed out that the argument raised by the Affected Franchisees suffered an elementary flaw. The case was premised on section 101(2) of the NCA – which recognises the notional possibility that a new initiation fee could be charged to the same customer when extending an existing pawn transaction. But what had been ignored was that this was only possible to the extent permitted by Regulations; and Regulation 43(2) explicitly provides that no such additional initiation fees can be charged in pawn transactions. The State Attorney thus suggested that *“there is no interpretive issue that needs to be resolved as the applicable regulation is express in its wording.”* In the event, the State Attorney called on the Affected Franchisees to withdraw the Declarator Application, failing which a punitive costs order would be sought.
52. On 1 December 2022 the NCR also provided a non-binding legal opinion, setting out the provisions of the NCA and Regulation 43(2). No conclusions are offered, but it seems that the provisions were viewed as self-explanatory.
53. The Affected Franchisees, however, did not withdraw the application; and note that it still needs to be set down before this Court. They pin responsibility for the delay on CCF, which they blame for failing to agree to an order confirming the correctness of the approach in the State Attorney’s letter.
54. I do not intend making any findings in this regard. As noted, I do not have the papers before me. Furthermore:

54.1. It is not clear to me why the application presents a live dispute. The relief primarily relates to the lawfulness of the original SSB System, which no

⁸ Established under section 27 of the NCA.

⁹ Established under section 12 of the NCA.

longer finds application. Instead, it would appear that the Affected Franchisees wish to use the Declarator Application to receive the benefit of an order that they can utilise to their advantage in the arbitration proceedings.

54.2. It is also not clear to me the basis the Affected Franchisees could expect any order, other than one dismissing it. The relief sought by the Affected Franchisees is, after all, that original and revised SSB Systems were lawful. But as matters have turned out, the Affected Franchisees no longer support that proposition.

(d) The Interlocutory Application to Stay the Interdict Application

55. Curiously, on 3 May 2023 the Affected Franchisees then launched an urgent, interlocutory application, in which they now sought relief that:

55.1. The main and counter applications in the Declarator proceedings be stayed pending a final determination in arbitration proceedings (which would consider various issues, including the lawfulness of the original and the revised SSB Systems); and

55.2. The Court should direct that an arbitrator be appointed and required to determine various issues, including the lawfulness points.

56. I say this interlocutory application is curious as it appears that the Affected Franchisees were now clutching at an outcome that they had actively opposed in the Declarator Application. Equally curious is that CCF opposed this application, even though the relief sought correlates to that which CCF sought in its counter-application in the Declarator proceedings.

57. In any event, this interlocutory application was postponed for hearing on 16 November 2023. But by that stage matters had been overtaken by subsequent events.

(e) The Salestalk 330 arbitration proceedings

58. On 21 July 2023, one of the Affected Franchisees – being Salestalk 330 (Pty) Ltd – commenced arbitration proceedings against CCF for damages incurred from the loss of profits it suffered as a result of the removal of the original SSB System, and its replacement with the revised SSB System.
59. CCF understood that the other Affected Franchisees would follow suit, and also seek damages on the same basis.
60. It appears that CCF adopted the position that it would be premature to present its statement of defence in these proceedings – based on the fact that the underlying issue regarding the lawfulness of the SSB Systems was still serving before this Court (in the Declarator Application).

(f) The letter of 18 September 2023

61. Matters came to a head once again on 18 September 2023. At this time the attorneys for the Affected Franchisees addressed a letter to CCF’s attorneys alleging breaches of the franchise agreements, and threatening that if these were not remedied within 10 calendar days, the Affected Franchisees would cancel their franchise agreements.
62. The letter of 18 September 2023 is quoted *in extenso* in this Court’s judgment in the Interdict Application. It seems to me that a proper understanding of the letter is essential to an understanding of the Interdict Order.
63. The Affected Franchisees commence by pointing to a “*litany of complaints*” against CCF, that had now been presented in a letter to the National Consumer Commission on 1 September 2023 (“**the NCC**”).¹⁰ But, it does not appear that these are the source of the alleged breaches of the franchise agreements upon which the franchisees were relying at this stage.
64. Instead, the complaints raised by the Affected Franchisees link back to the issue of the lawfulness of the original and the revised SSB Systems. The complaints seem to have two themes:

¹⁰ Established under section 85 of the Consumer Protection Act 19 of 2014.

- 64.1. The first is that CCF had sold a business model to the Affected Franchisees based on the ability to levy initiation fees as envisaged in the original SSB System. The fact that the Affected Franchisees could no longer carry on business in this manner caused them “*significant losses on the yield that they were led to believe by [CCF] that they would be able to earn*”.
- 64.2. The second is that the Affected Franchisees had operated their businesses based on this unlawful SSB system. This benefitted CCF, in that it resulted in increased royalty payments from all franchisees. But the franchisees were now exposed penalties, and they could not “*operate their franchises under the threat of this shadow*”.
65. The Affected Franchisees contended that in all of the circumstances:
- 65.1. CCF had not protected the “*legitimate business interests*” of the Affected Franchisees, “*as contemplated in the franchise agreements*”;
- 65.2. CCF’s (unspecified) conduct towards the Affected Franchisees violated (unspecified) provisions of the Consumer Protection Act 19 of 2014 (“**the CPA**”) – including “*unconscionable conduct*”, as defined in section 40 of the CPA. This appears to relate to the manner in franchisees were supplied with new appliances and household goods.
- 65.3. CCF’s conduct was designed to manufacture a basis for it to cancel the franchise agreements, so as reduce the number of parties stacked up against CCF in arbitration proceedings and proceedings before this Court, In this regard it was alleged that CCF was “*not bona fide*”.
- 65.4. CCF had frustrated the progress of the Declarator Application and arbitration proceedings.
66. Moving to the remedial action demanded, the Affected Franchisees required CCF to:
- 66.1. “*Comply with [the Affected Franchisees] demands as set out above*”. (I note that it is not clear to me, and was not clear to CCF’s attorneys, what these

demands were, and how these related to obligations in the franchise agreements).

- 66.2. Remove any uncertainty about the lawfulness of the revised SSB, and to provide the Affected Franchisees with a written undertaking that the revised SSB System was lawful.
- 66.3. Provide a written undertaking indemnifying the Affected Franchisees against any “*penalties, claims or damages*” arising from their past and future actions in implementing the SSB Systems.
- 66.4. Placing the Affected Franchisees “*in the same earning capacity (i.e. allowing them to practically earn the same yield on SSB contracts)*” which the Affected Franchisees enjoyed under the original SSB System, had the revised SSB System not been implemented.
- 66.5. Cease and desist “*from any and all threats, intimidation and tactics*” designed to engineer the cancellation of franchise agreements.
- 66.6. Commit, in writing, to the existing arbitration proceedings, and other contemplated proceedings, and seeing these through “*as a matter of urgency in the most practical and feasible fashion*”.
- 66.7. Provide a written undertaking that the CCF would not use a legal fund, established under clause 26 of the franchise agreements, in disputes against the Affected Franchisees, and to refund amounts already spent.
67. In a response, of 19 September 2023, the CCF’s attorneys dealt with the background facts (as they understood them) and called on the Affected Franchisees to withdraw the threats that they would cancel the franchise agreements, failing which CCF would approach this Court for urgent relief to compel them to comply with the franchise agreements, “*pending the determination by means of arbitration of their entitlement to cancel*”.
68. With respect to the demanded remedial action, CCF’s attorneys sought clarity as to what these were, their location in the franchise agreements, and their legal basis.

69. In a second letter (sent on a 'without prejudice' basis), CCF's attorneys proposed a practical solution in terms of which the lawfulness of the SSB Systems would be placed before an arbitrator, who would also determine the costs aspects of the proceedings before this Court.
70. The attorneys for the Affected Franchisees reverted on 21 September 2023 (in letters incorrectly dated 18 September 2023). They perceived CCF's response to "*evinced its unequivocal intention not to remedy the breaches in question*"; and in almost ecclesiastical terms offered "*a last opportunity to repent the repudiation*", which would otherwise be accepted and the franchise agreements would be cancelled.

(g) The Interdict Application

71. In light of the above, on 22 September 2023 the FFC launched the Interdict Application. I have dealt with the relief sought in paragraph 5 above. To recap, CCF sought to: **(a)** interdict the Affected Franchisees from cancelling the franchise agreements on the bases set out in the letter of 18 September 2023 (dealt with in paragraphs 61 to 66 above); and **(b)** compel the Affected Franchisees to comply with the franchise agreements, pending:

71.1. The final determination of the Declarator Application, or arbitration proceedings concerning the same issues as those in the main application in the Declarator Application; and

71.2. The final determination, thereafter, by an arbitrator as to whether the issue of the lawfulness of the SSB Systems entitled the Affected Franchisees to cancel their franchise agreements with CCF.

72. In presenting their case, CCF contended that the complaints in the letter of 18 September 2023 "*raise no breach, much less a material breach entitling the [Affected Franchisees] to cancel the franchise agreements.*" Furthermore, the underlying disputes regarding the lawfulness of the SSB System were pending before this Court in the Declarator Application.

73. On 26 September 2023, the Affected Franchisees filed a notice of opposition in the Interdict Application.
74. But then, after the close of business on 26 September 2023, matters took a startling turn. The attorneys for the Affected Franchisees now adopted the position that CCF had indicated their refusal to undertake the remedial action demanded in the letter of 18 September 2023; and that this entitled the Affected Franchisees to cancel the franchise agreements immediately – which they purported to do. This was done notwithstanding the fact that the letter of 18 September 2023 allowed CCF 10 days to undertake remedial action (in accordance with the dispute resolution mechanism in the franchise agreements). This period had not as yet elapsed.
75. CCF set out this new development in a supplementary founding affidavit that it placed before the Court. CCF indicated that it viewed this attempted cancellation of the franchises agreements as a repudiation, which was not accepted.
76. In addition, CCF's supplementary papers attached a draft order setting out amended relief designed to accommodate the new development – viz. by seeking relief to direct the Affected Franchisees to abide by the franchise agreements, pending arbitration proceedings dealing with the right to cancel the franchise agreements on the grounds set out in the letters of the Affected Franchisee's attorneys of 18 and 26 September 2024.
77. On 27 September 2023, the Affected Franchisees filed a bloated answering affidavit (spanning over 380 pages) – which began by asserting that the Interdict Application was now moot.
78. The Interdict Application came before this Court (per Dolamo J) on Thursday, 28 September 2023; and the judgment and Order were handed down on Tuesday, 3 October 2023.
79. In its judgment, the Court set out the background facts, as well as the arguments raised by the parties. I note a few aspects:

79.1. The Court noted that the clear provisions of section 21(2) of the SC Act provided it with jurisdiction to hear the matter in respect of the Affected Franchisees that operated in other parts of the country.¹¹

79.2. The judgment indicates that the Court fully understood that the Affected Franchisees had purported to cancel the franchise agreements on the evening of 26 September 2023;¹² and that they accordingly now contended that the original relief sought by CCF was moot.¹³ Concomitantly, the Court also fully appreciated that the relief sought by CCF would have to be amended – and that it would no longer suffice to merely interdict the cancellation of the franchise agreements. To be effective, the relief would now also have to direct the Affected Franchisees to abide by their franchise agreements with CCF.¹⁴

79.3. In dealing with the *prima facie* right established by CCF, the Court considered the attempt to cancel the franchise agreements, and found that the “*alleged breaches contained in the letter of 18 September 2023 are in vague terms and have as their foundation the contention that the [original SSB System] was unlawful. As [CCF] pointed out the letter does not identify a single clause of the franchise agreement that was allegedly breached.*”¹⁵

79.4. The Court quite correctly identified that the franchise agreements do not contain a *lex commissoria*, and that as such the Affected Franchisees could only cancel based on a breach that was, objectively assessed, sufficiently serious. The Court found was “*not persuaded that [CCF] is in any way in breach of the franchise agreements nor [does] the alleged breach stated in the letter of 18 September 2023 justify a mass rescission of the franchise agreements ...*”¹⁶

¹¹ Judgment, at para 25.

¹² Judgment, at para 17.

¹³ Judgment, at para 21.

¹⁴ *Ibid.*

¹⁵ Judgment, at para 28.

¹⁶ Judgment, at para 33.

79.5. The Court quite clearly appreciated that the relief sought by CCF “*in effect seeks specific performance of the [franchise] agreements*”.¹⁷ The Court also had regard to the argument by the Affected Franchisees that franchise agreements required reciprocal trust, and that in these circumstances the relief sought by CCF was inappropriate.¹⁸ In this regard the Court found that, as a matter of law, franchise agreements do not create a fiduciary relationship, and the Affected Franchisees could not “*import the element of trust into the franchise agreements*”.¹⁹

80. In the circumstances, the Court granted the Order, as set out in paragraph 7 above.

(h) The Enforcement Application

81. However, as seen above, the Affected Franchisees did not comply with the Interdict Order at all. On the contrary, the Affected Franchisees confirm that since 3 October 2023 they have all been operating under the name and style of Cash Xchange, “*effectively in competition with [CCF], under their own business systems, own branding, and own suppliers, which are in many respects different to that of [CCF, and] most importantly as to the previous unlawful SSB systems of [CCF]*”.

82. The immediate justification for this non-compliance with the Interdict Order was that on 4 October 2023 the Affected Franchisees launched an application for leave to appeal against the Interdict Order. This was heard by this Court (again, per Dolamo J) on 6 October 2023 and refused on 25 October 2023.

83. Thereafter, on 26 October 2023, the Affected Franchisees sought leave to appeal from SCA, in accordance with section 17(2)(b) of the SC Act. At the same time, the Affected Franchisees adopted the stance that the Interdict Order, although presented as an interim interdict, was actually final in effect.

¹⁷ Judgment, at para 15.

¹⁸ Judgment, at para 20.

¹⁹ Judgment, at para 29-31.

84. In response, on 30 October 2023 CCR launched the Enforcement Application, referred to in paragraph 10 above. This application had two prongs, depending on whether the Court found that the Interdict Order was interim or final in effect:

84.1. **First**, CCR sought a declaration that the Interdict Order operated as an interim order, without final effect. In accordance with section 18(2) of the SC Act, this meant that the Affected Franchisees application for leave to appeal to the SCA did not suspend the immediate effectiveness of the Interdict Order.

84.2. **Second**, and in the alternative, CCR dealt with the situation if the Court found that the Interdict Order was in fact final in effect. In terms of section 18(1) of the SC Act, this would mean that the Interdict Order was automatically suspended while an application for leave to appeal remained before the SCA. CCR asked that in this event, the Court should override the suspension of the Interdict Order, and direct that was immediately operative – as allowed under section 18(3) of the SC Act.

85. The Affected Franchisees also brought a counter-application to protect their position if the Court found that the Interim Order was interim in effect. In this event, they sought that the Court should suspend the operation of the Interdict Order until all applications for leave to appeal had been finalised.

86. The Enforcement Application came before this Court (per Lekhuleni J) on 10 November 2023. In its judgment and order of 26 January 2024, the Court accepted the arguments presented by the Affected Franchisees, and found that the terms of the Interim Interdict were final in effect. This is so in that:

86.1. The Interdict Order would remain in place until the finalisation of arbitration proceedings, which could be a considerable time. Tethering the Affected Franchisees to franchise agreements with CCF was “*invasive and far-reaching, especially considering the breakdown of trust and confidence in the relationship between the parties.*”²⁰

²⁰ Enforcement Judgment, at para 50.

86.2. The judgment in the Interdict proceedings made the “*factual determination*” that the letters from the attorneys for the Affected Franchisees (of 18 and 26 September 2023) did not validly cancel the franchise agreements. The Court suggested that this finding could not be reconsidered by another court; and anticipated the central issue in the arbitration proceedings between the parties.²¹

86.3. The Interdict Order is premised on an underlying finding, in which the Court rejected a jurisdictional defence raised by the Affected Franchisees. This “*had the effect of finally and irreversibly disposing of a self-contained defence*”.²²

(i) The exhaustion of leave to appeal processes

87. Interestingly, on 22 January 2024, the SCA (per Mocumie ADP and Kathree-Setiloane JA) refused the Affected Franchisee’s application for leave to appeal. This was a few days before the Order in the Enforcement Application was handed down (on 26 January 2024). I assume that the SCA’s Order was not placed before Lekhuleni J before he handed down the Enforcement Order.

88. If he had been made aware of the SCA’s Order, Lekhuleni J would have been compelled to find that the Enforcement Application was moot – in that it related to the enforceability of the Interdict Order while the SCA considered an application for leave to appeal. Once the SCA’s Order was handed down, the relief in the Enforcement Application had no practical effect. Based on the SCA’s findings in *Stransham-Ford*²³ and a Full Court in *Vinpro*,²⁴ the Enforcement Application should have been dismissed on the basis that the Court no longer had the jurisdictional power to decide the matter.

89. In any event, armed with the judgment and the Enforcement Order, the Affected Franchisees applied to the President of the SCA to reconsider their application

²¹ Enforcement Application, at para 52.

²² Enforcement Judgment, at para 53-54.

²³ *Minister of Justice and Correctional Services and Others v Estate Late James Stransham-Ford and Others* 2017 (3) SA 152 (SCA) at para 25.

²⁴ *Vinpro NPC v President of the Republic of South Africa and Others* (1741/2021) [2021] ZAWCHC 261 (3 December 2021) at para 38 and 42

for leave to appeal – in terms of section 17(2)(f) of the SC Act. This application was refused on 4 April 2024.

90. Still undeterred, on 30 April 2024 the Affected Franchisees launched an application for leave to appeal to the Constitutional Court. In this application the Affected Franchisees valiantly attempted to argue that the case raised “*constitutional matters*”, thus falling with the Constitutional Court’s jurisdiction in section 167(3)(b)(i) of the Constitution. But these are, with respect, contrived. Thus, the only basis on which the Constitutional Court would have possibly entertained the matter would have been if it was found to raise an “*arguable point of law of general public importance which ought to be considered*” by that Court (in terms of section 167(3)(b)(ii) of the Constitution).
91. In an Order of 22 July 2024, the Constitutional Court refused leave, indicating that the matter did “*not engage its jurisdiction*”. I understand this to mean that the Court found that the case did not meet the requirements set out in section 167(3)(b)(ii) of the Constitution.

GENERAL PRINCIPLES

92. CCF contends that the starting point for the consideration of this matter must be that court orders matter, and must be respected. As the Constitutional Court has asserted, “*all orders of court, whether correctly or incorrectly granted, have to be obeyed unless they are properly set aside.*”²⁵ This is a matter of profound importance, as “[a]llowing parties to ignore court orders would shake the foundations of the law, and compromise the status and constitutional mandate of the courts. The duty to obey court orders is the stanchion around which a state founded on the supremacy of the Constitution and the rule of law is built”.²⁶
93. Allied to this is the doctrine of *stare decisis*. In *Gcaba*²⁷ the Constitutional Court explained this to mean that “*in the interest of certainty, equality before the law*

²⁵ *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and others* (2021 (5) SA 327 (CC) at para 59.

²⁶ *Department of Transport and Others v Tasima (Pty) Limited* 2017 (2) SA 622 (CC) at para 183.

²⁷ *Gcaba v Minister for Safety and Security and Others* [2010 \(1\) SA 238](#) (CC) at para 58

and the satisfaction of legitimate expectations, a court is bound by the previous decisions of a higher court and by its own previous decisions in similar matters.” In *Turnbull-Jackson*²⁸ the Court added that respect for precedent is “a core component of the rule of law”. On this basis, those findings of the Court in the Interdict Judgment which form part of the *ratio decidendi* (i.e. which form part of its rationale and the basis for granting the Interdict Order),²⁹ must be respected unless obviously wrong.

94. But merely invoking principles regarding the value of court orders and precedent cannot be an answer to the case raised by the Affected Franchisees in these proceedings. After all, the Affected Franchisees cannot be accused of simply turning their faces against the Interdict Order; or adopting an attitude of bloody-minded intransigence.
95. As dealt with above, in the period until 22 July 2024 their refusal to comply with the terms of the Interdict Order was based on their contention that its terms were final in effect. This meant that, in terms of section 18(1) of the SC Act, the Interdict Order was suspended while they pursued applications for leave to appeal.
96. The strategy adopted by the Affected Franchisees may have been somewhat high-risk and bold (in that if they were wrong, and the Interdict Order had been found to be purely interlocutory in nature, they would have had no excuse for their failure to immediately comply with the Interdict Order). But, as found by this Court in the Enforcement Application, the Affected Franchisees were correct in asserting that the Interdict Order was final in effect. The Order in the Enforcement Application must also be respected.
97. As a result, the Affected Franchisees cannot be condemned for their refusal to comply with the Interdict Order while their applications for leave to appeal continued. They were acting within their rights.
98. Furthermore, once the Affected Franchisees had exhausted all avenues for leave to appeal, they acted proactively by launching the current application. This points

²⁸ *Turnbull-Jackson v Hibiscus Court Municipality and Others* 2014 (6) SA 592 (CC) at para 59.

²⁹ *Camps Bay Ratepayers' and Residents' Association and Another v Harrison and Another* [2011 \(4\) SA 42](#) (CC) at para 30.

against any suggestion that the Affected Franchisees are acting in a unilateral manner and with a flagrant contempt for orders of this Court.

99. The analysis required must focus on the powers of this Court to suspend the Interdict Order, rather than the incantation of mantras about the general importance of respecting orders and judgments.

100. As intimated in paragraph 15 above, this Court's power to suspend the execution and operation of its orders arises from its inherent powers, now entrenched in section 173 of the Constitution. In *SABC*³⁰ the Constitutional Court described the inherent power of the superior courts as follows:

*"The power in section 173 vests in the judiciary the authority to uphold, to protect and to fulfil the judicial function of administering justice in a regular, orderly and effective manner. Said otherwise, it is the authority to prevent any possible abuse of process and to allow a **Court** to act effectively within its jurisdiction."*

101. Rule 45A codifies one aspect of this inherent power.

102. Flowing from its inherent power and Rule 45A, the power of superior courts to suspend the execution of their orders usually finds application in two broad categories of cases.

102.1. The **first** category arises where the "*underlying causa*" of the order remains in dispute, or no longer exists, or "*when an attempt is made to use the levying of execution for ulterior purposes*"; and if "*real and substantial justice compels such action*."³¹ This category of cases is exemplified by matters in which a party bound by an order brings proceedings to rescind that order.³² In these cases, the application for rescission does not have the automatic effect of suspending the order. However, a court will take cognisance of the fact that if the rescission application is successful, the obligation to comply with the dictates of the order would be removed. Similarly, courts have employed this power

³⁰ *South African Broadcasting Corp Ltd v National Director of Public Prosecutions* 2007 (1) SA 523 (CC) at para 90

³¹ *Van Rensburg and Another NNO v Naidoo and Others NNO; Naidoo and Others NNO v Van Rensburg NO and Others* [2011 \(4\) SA 149](#) (SCA) at para 51

³² *Peach v Kudjoe and another* (2016/30120) [2018] ZAGPPHC 291 (10 January 2018) at para 11-15.

after refusing an application for rescission, but the party that sought rescission seeks to appeal that decision.³³ Ultimately, if a court suspends the execution of an order in these circumstances, and the efforts to rescind that order are unsuccessful, then the order is once again effective. In a similar vein, in *Mokone v Tassos Properties*³⁴ and *Rissik Street*³⁵ the Constitutional Court invoked the inherent power of superior courts as a basis for orders staying proceedings for the ejectment of business until other related proceedings could be finalised.

- 102.2. The **second** category occurs when there is no remaining challenge that can be pursued to set an order aside – but the temporary suspension of that order will cause comparatively little prejudice to the party in whose favour the order was granted; while at the same time immediate execution of the order would cause another party to suffer “*real and substantial injustice*”.³⁶ This has found application in cases in which courts have been called upon to stay an order permitting a sale of immoveable property in execution;³⁷ to stay an order for ejectment from commercial premises;³⁸ and to stay payment of money.³⁹ This power is rooted in the powers of courts to regulate their own processes.⁴⁰ As noted by this Court in *Stoffberg*, the discretion of a court to suspend the execution of its orders in such cases must be exercised judicially, based on the facts and a determination of substantial injustice.⁴¹ It cannot be based on a “*mere plea ad misericordiam*”.⁴² Furthermore, the temporal limits of the suspension must be limited appropriately an order.⁴³

³³ [Janse van Rensburg v Obiang and Another 2023 \(3\) SA 591 \(WCC\) at \(26 September 2022\)](#)

³⁴ [Mokone v Tassos Properties CC and Another 2017 \(5\) SA 456 \(CC\) \(24 July 2017\)](#)

³⁵ *Rissik Street One Stop CC t/a Rissik Street Engen and Another v Engen Petroleum Ltd 2024 (4) SA 447 (CC)*

³⁶ *Stoffberg N.O and Another v Capital Harvest (Pty) Ltd (2130/2021) [2021] ZAWCHC 37 (2 March 2021)*

³⁷ As in *Stoffberg*, *ibid*.

³⁸ *AJP Prop CC v Sello 2018 (1) SA 535 (GJ)*

³⁹ *MEC, Department of Public Works and others v Ikamva Architects 2022 (6) SA 275 (ECB)*

⁴⁰ *Van Renburg v Naidoo*, *supra* at para 51; *AJP Prop*, *supra*, at para 22; *Stoffberg*, *supra*, para 26.

⁴¹ *Stoffberg*, *supra*, at para 26.

⁴² *Stoffberg*, *supra*, at para 28.

⁴³ *Stoffberg*, *supra*, 29; *AJP Prop*, *supra*, at para 47.

103. In my view further guidance as to the limits of this Court's powers in suspending the effect of its orders can also be gleaned from its specific powers of suspension in other circumstances.

103.1. Most notably, when granting relief in a "*constitutional matter*", this Court's powers are regulated under section 172(1) of the Constitution. This provides that this Court "must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency" (section 172(1)(a)). But, following on from such a substantive declaration, this Court has a broad discretion to craft consequential relief that is "*just and equitable*" – which may include an order "*suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect*" (section 172(1)(b)(ii) of the Constitution). But, even in such cases, in which larger societal interest are in play, a successful litigant should be protected and granted effective relief;⁴⁴ and orders should be interpreted to ensure that this occurs.⁴⁵ In addition, if remedial action is not taken within a period of suspension, the impugned law or conduct becomes invalid and cannot be revived.⁴⁶

103.2. When reviewing and setting aside administrative action, the Court's powers are contained in section 8(1) of the Promotion of Administrative Justice Act 3 of 2000, which provides that a court may "*grant any order that is just and equitable*". This often requires a court to suspend its substantive finding when an action or decision is unlawful, based on the public good. But, in *Allpay 2*,⁴⁷ the Constitutional Court again highlighted that an effective remedy was important, and the "*corrective principle*"

⁴⁴ *Minister of Home Affairs v National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) and others* 2005 (3) SA 280 (CC) at para 74.

⁴⁵ *SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation (SOC) Ltd* 2019 (1) SA 370 at para 52.

⁴⁶ Although the Constitutional Court may exercise its powers under section 172(1) to grant fresh ancillary relief to avoid any injustice that may result from a sudden *lacunae*. *Ex parte Minister of Home Affairs and another* 2024 (2) SA 58 (CC) at para 40.

⁴⁷ *Allpay Consolidated Investment Holdings (Pty) Ltd and others v Chief Executive Officer, South African Social Security Agency and others* 2014 (4) SA 179 (CC) at para 30.

means that an order must seek to “*correct the wrongs that led to the declaration of invalidity*”, while also ensuring the public good.⁴⁸

- 103.3. Similarly, a court ordering the eviction of an unlawful occupier must consider a range of factors to determine when the occupiers must vacate – in terms of sections 4(8) and (9) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.
104. Flowing from the above, several guiding principles can be determined which are important in the current matter.
105. In the **first** place, a distinction must be made between the substantive legal and factual findings made by a Court in resolving a dispute; and the discretionary power it exercises to regulate the operation and execution of its resulting orders.
- 105.1. This gains particular importance in the current matter. The substantive and legal findings were made in the Interdict Judgment, and were translated by that Court into the provisions of the Interdict Order.
- 105.2. This Court’s remaining powers – under Rule 45A and/or inherent power – are limited to regulating any issues arising from the implementation of the Interdict Order. This power may be significant, but is not an invitation to revisit, reconsider, amend, or quietly undermine antecedent findings of law and fact.⁴⁹
- 105.3. In this sense then, the Interdict Judgment must be respected, as must the provisions of the Interdict Order – which flow from the findings of fact and law in the Judgment.

⁴⁸ *Allpay 2*, at para 31-32.

⁴⁹ *Member of the Executive Council for Finance, Economic Development, Environmental Affairs and Tourism (Eastern Cape) and others v Legal Practice Council and others* 2023 (2) SA 266 (ECMk), at para 82:

“Execution is a means of enforcing a judgment, or order of court, and is incidental to the judicial process. The court has the inherent power to regulate its procedures in the interests of proper administration of justice, and s 173 of the Constitution reaffirms this power. Regulating the process of execution is purely procedural, not substantive. The inherent jurisdiction of the high court does not, however, include the right to tamper with the principle of finality of judgments other than in the specific circumstances, which do not arise in this case.”

105.4. This Court has no general power to revisit orders which are final in effect. The remedy available to the Affected Franchisees to correct any aspect of the Interdict Order arising from erroneous findings of fact and law in the Interdict Judgment was to pursue an appeal. It attempted to do so, with vim and vigour, but failed to convince any Court that an appeal was justified. The precise reasons why leave to appeal was refused by this Court, the SCA, and the Constitutional Court, are not relevant. The consequence remains that the findings of law and fact in the Interdict Judgment remain undisturbed; and the power to regulate the implementation of the Interdict Order cannot be transmogrified into a stealth appeal process.

106. In the **second** place, measures introduced to regulate the implementation of the Interdict Order must still ensure that CCF obtains the benefit of effective relief.

106.1. In the Interdict Judgment and Order, the Court established that CCF had established the right to receive relief preventing the Affected Franchisees from giving effect to their actions purporting to cancel the franchise agreements.

106.2. A measure to regulate the implementation of the Interdict Order could notionally delay the date on which this relief could be realised. But in so doing this Court cannot strip CCF of effective relief, or nullify the Interdict Order.

106.3. As seen, even when dealing with public power, courts must ensure that effective relief follows. In some cases, a successful litigant may be expected to be satisfied with declaratory relief as a vindication of their rights – but that only arises when there are compelling countervailing considerations of the public good. These considerations do not apply in this case.

106.4. But yet, the order sought by the Affected Franchisees completely guts the Interdict Order. It simply has not practical value if the suspension relief is granted.

107. In the **third** place, in granting the Interdict Order, the Court already made a determination regarding how the Interim Order should be implemented, and how long it would last. In my view, this Court would only reconsider this issue based on 'new' facts, which compellingly show that the Affected Franchisees will face real and substantial injustice.
108. In the **fourth** place, the Affected Franchisees cannot expect this Court to come to its assistance to save it from the consequences of its own strategic decisions.
- 108.1. The Affected Franchisees elected to adopt the approach that the Interdict Order was final in effect; and convinced the Court in the Enforcement Application that this was correct.
- 108.2. By doing so the Affected Franchisees received the benefit that the Interdict Order was suspended while they pursued every possible application for leave to appeal. The fact that these applications for leave to appeal took some time only benefitted the Affected Franchisees further.
- 108.3. But as with all strategies, it was not risk-free. Also, just because a litigant is acting within their rights does not mean that a Court should ignore the consequences of their actions.
- 108.4. The Affected Franchisees knew that they were insulated, and that they could afford the time it would take to launch multiple applications for leave to appeal. The same was not true for CCF, which lost the royalties it should have earned from the Affected Franchisees if the franchise agreements were in place. The request for reconsideration by the President of the SCA, and the application for leave to the Constitutional Court – show the hallmarks of a siege litigation. With respect, I do not believe that the Affected Franchisees could have seriously believed that the Interdict Order raised a matter of such importance that it would entice the Constitutional Court to hear it.

- 108.5. The Affected Franchisees must also accept that their strategy came with a great risk. Once the process of seeking leave to appeal from every court had been exhausted, their protection would end abruptly.⁵⁰
- 108.6. By contrast, if the Affected Franchisees had accepted that the Interdict Order was purely interlocutory, it would have much enjoyed greater scope to approach this Court to revisit the Interdict Order. But, because of its own strategic choices, this is not open to them.
- 108.7. As pointed out by Kriegler J,⁵¹ litigation presents a “*minefield of hard choices*”, each of which has “*decisive consequences and therefore poses difficult decisions*”. The Affected Franchisees made their choices, and for a long time this benefitted them.
109. In light of these principles, the relief sought by the Affected Franchisees is clearly unsustainable. They fail to point to rights that are threatened; and their assertions about the interest of justice are not compelling.

THE AFFECTED FRANCHISEE’S CRITICISMS OF THE INTERDICT JUDGMENT

110. Much of the application before is based on a broad-side attack on the Interdict Judgment, and the relief granted to CCF in the Interdict Order. The Affected Franchisees thus describe the Interdict Order as “*contradictory*”; they assert that the Order “*should never have been granted*”; they contend that the Interdict Order incompetently sought to interdict action that had already taken place; and they conclude that Interdict Order must be “*re-evaluated within the present context*”.
111. These arguments are, in my view, misplaced. As indicated above, this Court cannot take up the Affected Franchisee’s complaints that the Interdict Judgment and Order are wrong.

⁵⁰ *Bezuidenhout v Standard Bank of South Africa Limited* (76288/2012) [2018] ZAGPPHC 834 (28 February 2018) at para 48.

⁵¹ *S v Dlamini, S v Dladla and Others; S v Joubert; S v Schietekat* 1999 (4) SA 623 (CC) at para 94.

112. In any event, even if I was inclined to delve into the Interdict Judgment, the various criticisms raised by the Affected Franchisees seem to miss the mark. For instance:

112.1. I can see no good reason to call into doubt the Court's findings on jurisdiction. Based on section 21(2) of the SC Act, as an expression of the *causae continentia* rule,⁵² the Court plainly had jurisdiction over franchisees from around the country. Furthermore, the fact that the franchise agreements envisaged arbitration as a mechanism to resolve disputes between the parties, did not oust this Court's power to hear proceedings arising from a dispute between the parties.

112.2. The Court's decision to allow CCF an opportunity to amend its relief was eminently reasonable, even if this did not strictly follow the strictures of Rule 28. By cancelling the franchise agreements shortly before the hearing (in which that right to cancel would be considered), the Affected Franchisees did not cover themselves in glory. Not only did this undermine this Court's processes, but the Affected Franchisees' justification for cutting short the 10-day period (allowed for remedial action to be taken in the letter of 18 September 2023) appears to me to be contrived and self-serving. In any event, the Court exercised a 'true discretion' when allowing an amendment of the relief in the Interdict Application, which another Court must respect.⁵³

112.3. I note that in the judgment in the Enforcement Application, the Court raises a concern that the Interdict Order effectively seeks to prevent past actions – namely the cancellation of the franchise agreements, which had already occurred.⁵⁴ The Affected Franchisees criticise the Interdict Order for the same reason. But in my view this is incorrect.

⁵² *Permanent Secretary, Department of Welfare, Eastern Cape, and Another v Ngxuzza and others* 2001 (4) SA 1184 (SCA)

⁵³ *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* 2015 (5) SA 245 (CC) at para 28

⁵⁴ Enforcement Judgment, at para 43.

- 112.4. I accept, of course, that interdictory relief must prevent future actions, and cannot be targeted at that which has already occurred.⁵⁵ However, it must also be recalled that CCF disputed both the validity and efficacy of the attempts by the Affected Franchisees to cancel their franchise agreements (as contained in the letters from their attorneys of 18 and 26 September 2023).
- 112.5. In this regard, CCF acknowledged that the actions of the Affected Franchisees amounted to a repudiation, but elected to hold the Affected Franchisees to the franchise agreements. In other words, the franchise agreements remained valid. In its Interdict Judgment, the Court accepted that a *prima facie* case had been made out by CCF in this regard. In other words, on a *prima facie* basis it appeared that the attempted cancellation of 26 September 2023 was ineffective.
- 112.6. Thus, in granting the Interdict Order, the Court was not imposing an agreement on the parties that no longer existed. The critical finding is instead that the franchise agreements are, at least *prima facie*, still in place. Against this backdrop the relief in the Interim Order prevents the possibility that the Affected Franchisees from taking fresh action to cancel the agreements based on their attorney's letters of 18 and 26 September 2023; and prevents the Affected Franchisees from future actions giving effect to their questionable attempts to cancel the franchise agreements.
- 112.7. I cannot criticise the Court's finding that the letter of 18 September 2023 (which formed the foundation of the Affected Franchisees' attempt to cancel the franchise agreements) is vague. I would have gone further. I have attempted above to set out the content of the letter fairly. But after reconsidering it several times, it remains a turgid and ponderous

⁵⁵ *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC) at para 50.

document. In particular, it provides no clear indication of a breach by CCF or the franchise agreements.

- 112.8. The central theme of the complaint by the Affected Franchisees appears to relate to CCF's introduction of the revised SSB System in November 2021. But it remains entirely unclear to me why this action would constitute a breach of the franchise agreements. CCF was always entitled to revise the Manual and its System, including the manner in which franchisees would charge initiation fees in SSB transactions. In addition, the Affected Franchisees acknowledged that they had undertaken their own due diligence examination of CCF's System, and that the operation of a franchise involved commercial risk.
113. It is also telling that the Affected Respondents were all poised to commence trading on 3 October 2023, under a different name and operating a different system. To my mind this indicates that they were resolutely bent on severing their ties with CCF; and, significantly, to halt payments of royalties to CCF. CCF indicated that this would affect the viability of their remaining business, and would impact their ability to defend arbitration proceedings. This was no doubt the intention.
114. Furthermore, the fact that the Interdict Order amounts to specific performance is not obviously problematic.⁵⁶ In *Foize*⁵⁷ the SCA held that when a party sought specific performance in an application for interim relief, it "*was not required to prove it would suffer harm if the interdict was not granted. All it had to show was that the respondents were either breaching or threatening to breach the ... agreement, or were intentionally assisting or encouraging another to breach such agreement.*"
115. Furthermore, allowing the Affected Franchisees to walk away from the franchise agreements would amount to an on-going wrong to CCF. The calculation of

⁵⁶ See Bradfield Christie's *The Law of Contract in South Africa* (8ed) at p665-666.

⁵⁷ *Foize Africa (Pty) Ltd v Foize Beheer BV and Others* 2013 (3) SA 91 (SCA) at para 32.

damages in such circumstances would be complex at a later stage. In *Edrei*⁵⁸ the Court held that in such cases interdictory relief was appropriate.

116. Finally, there can be no suggestion that this Court must suspend the Affected Franchisees so as to avoid pre-judging issues that will serve before the pending arbitration proceedings. I make no findings of this kind. The Court's central findings in the Interdict Application are explicitly made on a *prima facie* basis, and would not bind the arbitrator.⁵⁹ They remain there, even if a suspension order was granted.

THE 60-DAY PERIOD IN THE INTERDICT ORDER

117. The Affected Franchisees attempt to gain some traction from the 60-day period referred to in the second paragraph of the Interdict Order (quoted in paragraph 7 above).

118. In the **first** place, they argue that the Interdict Order must be understood to mean that the interdictory relief (in the first paragraph of the Order) expired 60-days after it was granted (on 28 September 2023).

119. This, with respect, an odd argument for the Affected Franchisees to make. If the submission was correct, the current application would be entirely moot, and I would be compelled to dismiss the application. It would plainly be illogical for this Court to suspend an Order that has expired.

120. Furthermore, if the Affected Franchisees had any confidence in this contention, they would surely not have pursued the multiple applications for leave to appeal.

121. In any event, the argument is plainly wrong. Thanks to the efforts of the Affected Franchisees in the Enforcement Application, we have confirmation that the Interdict Application was final in effect – and was thus suspended with each of the consecutive applications for leave to appeal. This suspension would freeze the running of the 60-day period in the Order.⁶⁰

⁵⁸ *Edrei Investments 9 Ltd (in Liquidation) v Dis-Chem Pharmacies (Pty) Ltd* 2012 (2) SA 553 (ECP)

⁵⁹ *Prinsloo NO and others v Goldex 15 (Pty) Ltd* 2014 (5) SA 297 (SCA) at para 18-19.

⁶⁰ [Minister of Finance v Sakeliga NPC \(previously known as Afribusiness NPC\) and Others 2022 \(4\) SA 401 \(CC\)](#) at para 13.

122. In the **second** place, the Affected Franchisees suggest that the 60-day period in the Interdict Order commenced after the Constitutional Court refused leave to appeal (on 22 July 2024) – and that the interdictory relief fell away when this period elapsed.
123. Again, I am somewhat perplexed why the Affected Franchisees would raise such an argument. What would have been the purpose of loading this Court with a record spanning 9 lever arch files (spanning various applications), in respect of an Order which was all but expired by the time of the hearing?
124. It would seem to me to be quite obvious: If the Interim Order is understood properly (based on its text, context, and purpose), the relevance of the 60-day period is clear. It was to ensure that appropriate proceedings were set down in this time. Once those proceedings were launched, the second paragraph of the Order was fulfilled, and it fell away. The interdict relief in the first paragraph of the Interdict Order remained. If it was otherwise, it would mean the Court meant to force the Affected Franchisees back into the CCF fold for just 60-days, and then to allow them to leave again. This would be a peculiar outcome.

THE LAWFULNESS OF CCF'S SSB SYSTEM

125. As dealt with above, Affected Franchisees initially contended that the original and revised SSB System were lawful. In fact, they felt so strongly about this that they were moved to bring the Declarator Application.
126. But, when the State Attorney pointed out the obvious flaw in their argument (based on their apparent ignorance of Regulation 43(2)), the Affected Franchisees became enthusiastic, and somewhat dogmatic, converts – now convinced that the original and revised SSB System were both unlawful.
127. In the current application, the Affected Franchisees again raise this issue as an ostensible basis justifying the suspension of the Interdict Order.
128. As I understand it, the Affected Franchisees originally contended that I should venture into this dispute, and if I found that the original and/or the revised SSB Systems were unlawful, then I should suspend the Interim Order. Anything else

would mean that the Affected Franchisees would be dragooned (by CCF and this Court) to operate under CCF's unlawful systems.

129. Alternatively, the Affected Franchisees suggest that I should recognise that the original and/or revised SSB Systems may be found to be unlawful in the near future – and for this reason alone I should ensure that the Interdict Order never takes effect.
130. To confound matters further, on 5 August 2024 CCF again altered its SSB System. (I refer to this as “**the current SSB System**”). At first one would think that the alteration would give the Affected Franchisees succour, as it removes any obligation on franchisees to charge customers a second initiation fee in any circumstances.
131. To explain: The revised SSB System is dealt with in paragraphs 35 to 41 above. In that System there was a final stage in which customers extend an existing SSB transaction, provided they bundled the property held as security together with a second item of greater value. This would be considered a fresh transaction, and the franchise would be required to charge a new initiation fee.
132. The Affected Franchisees, however, still find the current SSB System unacceptable.
133. In fact, they contend the introduction of the current SSB System adds injustice on injustice. This is so as the Interdict Order, when granted, attempted to force them into a specific contractual relationship with CCF under a particular business model. Now they were forced into a different contractual relationship with CCF, with a different business model. This new business model was not one that the Court had in mind when granting the Interdict Order; and was also not one that the affected Franchisees has signed up for.
134. Furthermore, the Affected Franchisees held firm that I should still also consider the lawfulness of the original and the revised SSB Systems; or at least recognise the possibility that these Systems could soon be found to be unlawful.

135. I see no reason why the question of the lawfulness of the original and the revised SSB Systems would be of any value in considering whether to grant suspension relief under Rule 45A.
136. The Rule 45A relief must be concerned with the Affected Franchisee's rights, or real and substantial injustice. These determinations must be made on the facts as they present themselves now. Any findings about the lawfulness of historical SSB Systems cannot be relevant.
137. In addition:
- 137.1. It would inappropriate for me to venture into a consideration of issues, that have been raised between the same parties, for much the same reason, in other proceedings.
 - 137.2. It appears to me, at least at first blush, that questions regarding the lawfulness of the original and revised SSB Systems are moot.
 - 137.3. The Affected Franchisees have not placed me in a situation in which I can make any legal findings about the original and revised SSB Systems with any confidence. The papers in the Declaratory Application were not placed before me; and the Affected Franchisees did not even describe an outline of the revised SSB System in their founding papers.
 - 137.4. It is not clear to me at all why the Affected Franchisees contend that the revised SSB System is unlawful.
138. The arguments raised by the Affected Franchisees regarding the current SSB System, are similarly misplaced.
- 138.1. The franchise agreements between CCF and the Affected Franchisees have not changed, not could CCF unilaterally change these contracts.
 - 138.2. All that has changed in one aspect of the SSB System, as contained in the FFC Manual. As dealt with above, the franchise agreements do not deal with SSB transactions, or dictate how they are implemented. These aspects are all contained in the Manual – which is created, updated, and

improved by FFC alone. Franchisees agreed to be bound by the Manual. They have no rights or expectations to operate under any particular iteration of the Manual.

- 138.3. In any event, even if the Affected Franchisees were being coerced into a new business model, they would have to provide evidence that it would cause them profound to operate under these conditions.

PEREMPTION

139. In a supplementary affidavit the Affected Franchisees contend that CCF had expressly, or through conduct, perempted the terms of the Interdict Order, and thus could not enforce the Order.
140. CCF notes that in making this argument, the Affected Franchisees failed to point to any statements or conduct that were consistent with an intention to abandon the Interdict Order. Furthermore, CCF's consistent opposition to all of the applications for leave to appeal, and to the current application, clearly indicated that it has no intention of abandoning the Interdict Order.
141. The conduct that the Affected Franchisees rely on is that CCF has in some case set up new Cash Crusader stores in close proximity to Cash Xchange stores.
142. CCF responds by pointing out that it is not unusual to have outlets in close proximity to one another, and that none of the franchise agreements cater for geographical exclusivity for any franchisor.
143. The test for peremption is an exacting one. In *Qoboshiyane*⁶¹ the test was restated as follows:

"If the conduct of an unsuccessful litigant is such as to point indubitably and necessarily to the conclusion that he does not intend to attack the judgment, then he is held to have acquiesced in it. But the conduct relied upon must be unequivocal and must be inconsistent with any intention to appeal. And the onus of establishing that position is upon the party alleging it. In doubtful cases acquiescence, like waiver, must be held non-proven."

⁶¹*Qoboshiyane NO and Others v Avusa Publishing Eastern Cape (Pty) Ltd and Others* [2012] ZASCA 166; 2013 (3) SA 315 (SCA)

144. In *Mhlontlo Local Municipality and Others v Ngcangula*⁶² the SCA explained that

—

*“the principle of peremption safeguards the integrity of the judicial process by preventing litigants from oscillating between contradictory positions, ensuring judicial consistency and fairness. It ensures finality and stability in legal proceedings, which is essential for maintaining public trust in the justice system. The underlying principle of the doctrine of **peremption** is that a litigant cannot take two inconsistent positions. Accordingly, an unsuccessful litigant cannot appeal a judgment it has acquiesced to. In order to succeed on **peremption** a respondent must demonstrate with reference to the facts before court that an appellant’s unequivocal conduct after having obtained leave to appeal, is inconsistent with an intention to appeal”.*

IMPOSSIBILITY OF PERFORMANCE

145. The Affected Franchisees raise a catalogue of practical issues that they suggest make it impossible for them to give effect to the Interdict Order; or which are so burdensome that it is not in the interests of justice that they yoked with these difficulties.

146. CCF contends that the arguments can carry no weight, and points to *dicta* in which courts have refused stay applications sought by litigants who are the “*authors of their own misfortune*” as result of their failure to follow the Uniform Rules, follow directives, or by acting carelessly, in a dilatory manner, and in bad faith.⁶³

147. In my view the Affected Franchisees cannot be accused of acting improperly or recklessly. As noted above, they adopted a bold strategy by asserting that the Interdict Order was final in effect, and was thus suspended while they pursued multiple applications for leave to appeal. But, this approach was accepted in the judgment in the Enforcement Application; and must also be respected.

⁶² *Mhlontlo Local Municipality and Others v Ngcangula and Another* (1154/2022) [2024] ZASCA 5; [2024] 3 BLLR 239 (SCA); (2024) 45 ILJ 775 (SCA) (17 January 2024) at para 13.

⁶³ [*Van der Westhuizen N.O and Another v Land and Agricultural Development Bank of SA and Others* \(3173/2020\) \[2022\] ZALMPPHC 11 \(14 February 2022\)](#) at para 15-16; and *Momentum Life v Thirion* [2002] 2 All SA 62 (C) at para 35.

148. I do not intend to deal with all of the practical issues raised by the Affected Franchisees. In my view, they can be dealt with thematically.
149. A large number of the issues raised were also placed before Court when the Interdict Application was heard. That Court was unmoved by the Affected Franchisees lamentations. As noted above, it is not for this Court to revisit matters which were considered in the Interdict Application.
150. The new issues that the Affected Franchisees raise all came about because of their strategic choice to start trading as Cash Xchange outlets on 3 October 2023 (i.e. the very same day that the Interdict Judgment and Order were handed down); and to chase down applications for leave to appeal in every court possible.
151. The fact that the Affected Applicants could so seamlessly switch over from Cash Crusaders outlets, to Cash Xchange outlets, dulls the sound of their cries that it will be so impossibly burdensome to switch back.
152. Furthermore, CCF has come forward and offered assistance to the Affected Franchisees to ease their concerns, and even offered to free the Affected Franchisees from some obligations.
153. The Affected Franchisees retort that this assistance is unacceptable, and amounts to CCF self-selecting those parts of the Interdict Order that it wishes to assert, and foregoing other parts. This argument is hard to understand. The Interdict Order only refers to the franchise agreements. How the parties implement those agreements between themselves is not a matter that the Interdict Order addresses. Furthermore, if the Affected Franchisees do not want assistance, or do not want to be freed from any contractual commitments, they can tell this to CCF. It is not my understanding that anyone is forcing assistance on them.

154. None of hardships that the Affected Franchisees raise indicate impossibility of performance. There may be expense, but this does not mean that the Interdict Order would be impossible to fulfill.⁶⁴
155. In their replying papers the Affected Respondents presented affidavits contending that their individual circumstances should be taken into account. CCF contends that this amounts to an impermissible introduction of new material in reply. I agree, and had CCF sought to strike out this material I would have been inclined to do so. I certainly do not intend sifting through this material weighing the hardships of each Affected Franchisee individually. As noted in footnote 1 above, the identity of the individual franchisees who are before this Court is not even clear. Conversely, the larger group cannot seek relief *en bloc* based on hardships borne by only a small number of franchisees.
156. The Affected Franchisees contend that it will be chaotic for them to respect the Interdict Order. This is so as they would be compelled to rebrand their stores immediately as Cash Crusaders outlets, with all the accoutrements that go along with a franchise relationship with CCF. But then, when the arbitration proceedings end, they will have to switch back, and rebrand their stores as Cash Xchange outlets.
157. I appreciate that it is not this will come to pass; and that if it does, it would be very disruptive and costly. But I have simply not been placed in a position to make a finding that it is likely or probable. I cannot make any order in the interest of justice, based on a casual combination of speculation and clairvoyance.
158. Furthermore, the appropriateness of specific performance as a remedy (in the arbitration proceedings) may be influenced by whether the Affected Franchisees are trading Cash Convertors outlets, or not. It would be manifestly unfair to CCF if its arguments in favour of specific performance were undermined – all because the Affected Franchisees had managed to avoid giving effect to the Interdict Order.

⁶⁴ *Unibank Savings and Loans Limited (formerly Community Bank) v ABSA Bank Limited* 2000 (4) SA 191 (W) at para 9.3.1.

159. Finally, the concerns of Affected Franchisees must be weighed against the on-going harm suffered by CCF. Had the Interdict Order been respected, they would have received royalties from the Affected Franchisees. I see no reason to continue cossetting the Affected Franchisees and protecting them from any inconvenience, while CCF is deprived of the benefits it should have received under the Interdict Order.

COSTS

160. Costs should follow the cause. Although CCF raises issues of abuse of process, I do not believe that a punitive costs award is justified. I do, however, believe that the matter justified the use of three counsel.

161. A practical matter, dealt with in footnote 1 above, is that there is no list of the Applicants before this Court. This will have to be resolved between the parties in order to determine liability for costs.

ORDER

162. I accordingly make the following order:

162.1. The application is dismissed.

162.2. The Applicants, jointly and severally, shall pay the costs incurred by the Respondent, including the costs of three counsel, on scale C.



ACTING JUDGE OF THE HIGH COURT

APPEARANCES

For Applicant:

Adv R Stelzer SC

Instructed by:

MacGregor Stanford Kruger Inc

For Respondent:

Adv A Oosthuizen SC

Adv D Goldberg SC

Adv Perumalsamy

Instructed by:

Ashersons Attorneys

Date of hearing: 13 August 2024

Date of judgment: 16 October 2024 (electronically)