

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**



**Case numbers: 2023-115519**

**Date of hearing: 27 February 2025**

**Date delivered: 24 March 2025**

|                                                      |                                                                                     |
|------------------------------------------------------|-------------------------------------------------------------------------------------|
| DELETE WHICHEVER IS NOT APPLICABLE                   |                                                                                     |
| (1) REPORTABLE: <del>YES</del> /NO                   |                                                                                     |
| (2) OF INTEREST TO OTHERS JUDGES: <del>YES</del> /NO |                                                                                     |
| (3) <del>REVISED</del>                               |                                                                                     |
| 24/3/25                                              |  |
| DATE                                                 | SIGNATURE                                                                           |

In the application of:

**RÖHLIG-GRINDROD (PTY) LTD**

**Applicant**

and

**SELEMO VALLEY FARMS (PTY) LTD**

**Respondent**

**DEKKER CHRYSANTEN SOUTH AFRICA  
(PTY) LTD**

**Intervening Party**

In the action between:

**Case number: 2024-020392**

**RÖHLIG-GRINDROD (PTY) LTD**

**Plaintiff**

and

**SELEMO VALLEY FARMS (PTY) LTD**

**First Defendant**

**SURAJ LALLCHAND**

**Second Defendant**

**This order is made an order of court by the Judge whose name is reflected herein, duly stamped by the Registrar of Court, and is submitted to the parties or their legal representative by email. This order is further uploaded to the electronic file of CaseLines by the Judge or his Registrar. The date of this order is deemed to be 24 March 2025.**

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**JUDGMENT**

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**SWANEPOEL J:**

[1] The applicant seeks the winding-up of the respondent under case no. 2023/115519. It also seeks summary judgment against the respondent and its surety, jointly and severally, under case no. 2024-020329. The applicant says that it is owed R 1 513 981.54 for customs and clearing services rendered to the respondent. The intervening party sought leave to intervene in the winding up proceedings, and it also sought the winding-up of the respondent. The intervening party alleged

that it was owed R 1 846 926.94 by the respondent for flower cuttings that it supplied to the respondent over a period of time. After judgment was reserved the intervening party and the respondent settled the matter. They have presented me with a settlement agreement in terms of which the respondent is to pay a reduced amount in instalments, together with the Intervening party's costs on Scale C, and they have asked that the settlement agreement be made an order of court. I will deal with this request hereunder.

[2] On 7 February 2025 the Deputy Judge President directed that the summary judgment application, the intervention application, and the winding up applications be heard simultaneously by the same judge. In this judgment I shall, firstly, deal with the intervention application. I shall then deal with the respondent's application to supplement its papers, then with the application for summary judgment by the applicant (as the defences in the summary judgment application dovetail with the defences raised by the respondent in the winding up application of the applicant). Finally, I will deal with the winding up application itself.

### **APPLICATION TO INTERVENE**

[3] The applicant's case is premised on the respondent's alleged inability to pay its debts within the meaning of section 344 (f) read with section 345 (1) (c) of the Companies Act, 1973 ("the Act"). It is common cause that the applicant rendered customs clearing and freight services on behalf of the respondent for the export of crops and flower stems. The

applicant alleges that the respondent effected partial payment of one of ten invoices that the applicant rendered to the respondent. On 24 August 2023 the applicant delivered a demand to the respondent in terms of section 345 of the Act. Notwithstanding the expiry of three weeks after demand, the balance of the debt remains unpaid, and, says the applicant, the respondent is therefore deemed to not be able to pay its debt.

[4] The intervening party's case was based on similar facts. It also sought the respondent's winding up in terms of section 344 (f) read with section 345 of the Act. It alleged that it had sold flower cuttings to the respondent. The respondent allegedly fell into arrears with payment for the goods, and on 29 October 2023 the intervening party delivered a notice in terms of section 345 of the Act to the respondent. Notwithstanding delivery of the notice, as at the date on which this matter was heard, payment had not yet been made to the intervening party.

[5] The intervening party sought an order in terms of rule 12 of the Uniform Rules, which reads:

"Any person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a plaintiff or a defendant. The court may upon such application make such order, including an order as to costs, and give such directions as to further procedure in the action as to it may deem meet."

[6] The principles underpinning an application for intervention were spelt out in *Peermont Global (KZN) (Pty) Ltd v Afrisun KZN (Pty) Ltd t/a Sibaya Casino and Entertainment Kingdoms and others and a related matter*<sup>1</sup>:

[6.1] The intervening party must have a direct and substantial interest in the right that is the subject matter of the application;

[6.2] The allegations made by the intervening party must constitute a prima facie case or defence;

[6.3] The application must be made seriously and not frivolously.

[7] In my view, the intervening party showed that it had a direct and substantial interest in the winding up of the respondent, and that its case, if found to be proven, would have entitled it to succeed. For that reason I granted the intervening party leave to intervene. It is not necessary to say more on the intervention application in light of the settlement agreement between the intervening party and the respondent.

### **THE APPLICATION TO SUPPLEMENT**

[8] On the day before this application was to be heard the respondent delivered an application that it styled “affidavit to replying affidavit”, evidently a rebutting affidavit to the intervening party’s replying affidavit. In the affidavit the respondent lamented the alleged onus allegedly placed

on it by the intervening party to prove its solvency. The respondent's affidavit aimed to prove that the respondent has current assets of R 70 079 226, as against liabilities of "a mere" R 68 520 000. The respondent attached annual financial statements for the year ended 31 May 2024 to support its claim that it is solvent.

[9] Although the relevance of the affidavit to the winding up application was, in my view, questionable, I took into consideration that this is a status matter of extreme importance to the parties, and that it is in the interests of justice that the facts be fully ventilated. I consequently allowed the affidavit into evidence.

#### **THE APPLICATION FOR SUMMARY JUDGMENT**

[10] The applicant (the plaintiff in the summary judgment application) alleges that on 9 May 2022 the respondent (the first defendant), represented by the second defendant in the action, to whom I will refer as Mr. Lallchand, applied for a credit facility by completing a Business Credit Application Form. It alleges that upon the applicant accepting the application, an agreement was concluded that comprised of the Business Credit Application Form, a deed of suretyship by which Mr. Lallchand bound himself as surety and co-principal debtor with the respondent, the applicant's Trading Terms and Conditions, and a letter from the applicant granting an increased credit facility.

[11] The applicant alleges that it rendered customs clearing and forwarding services to the respondent, in accordance with the agreement,

in the period between December 2022 and January 2023. It delivered ten invoices to the respondent in respect of the services. The respondent has paid R 53 456.48 to the applicant, and, says the applicant, R 1 513 981.54 remains unpaid.

[12] The respondent delivered a plea in which the following averments were made:

[12.1] The respondent denied that the application for a credit facility constituted an agreement, and it said that no acceptance of the application by the applicant was evident from the document itself.

[12.2] Mr. Lallchand denied having applied for a credit facility, but, if it were to be determined that an agreement had come into being, then Mr. Lallchand pleaded that he had merely represented the respondent, and had not bound himself as surety.

[12.4] Mr. Lallchand denied ever having been given a copy of the different documents that comprise the agreement, and he consequently denied understanding the terms thereof.

[13] As far as the suretyship itself is concerned, it was pleaded that the document does not comply with the formalities provided for in section 6 of the General Law Amendment Act, 50 of 1956. The document was deficient, it was alleged, as it did not identify either the creditor, the principal debtor nor the surety, and it did not specify the nature and

amount of the principal debt. The respondent and Mr. Lallchand also pleaded that the suretyship was bad in law as it identified Mr. Lallchand as both surety and co-principal debtor, which is allegedly bad in law.

[14] In respect of the merits of the claim itself, it was pleaded that the applicant had ignored an instruction not to utilize the services of Air France to export goods to Europe, and that the respondent had suffered damages of R 740 000 when the goods were confiscated in France. The respondent instituted a counter-claim for payment of the R 740 000 in damages, plus a further consequential loss of R 5 028 035 “due to the reduction in 2022 export supply”, and R 255 424 for payment towards shipping of the goods, allegedly to the wrong country.

[15] In its affidavit opposing summary judgment the respondent raised the defence of *lis alibi pendens*, alleging that the liquidation proceedings was an attempt at debt enforcement under a different guise. Therefore, the argument went, the application for summary judgment could not proceed at the same time.

[16] *Lis alibi pendens* is a dilatory defence that applies when there are different proceedings, between the same parties, for essentially the same relief arising from the same cause of action. In *Caesarstone SDot-Yam Ltd v The World of Marble and Granite*<sup>2</sup> the court said:

“[12] Voet said that there are three requirements for a successful reliance on a plea of *lis pendens*. They are that the litigation is between the same parties; that the cause of action is the same; and, that the same relief is sought in both. In *Hassan & another v Berrange NO*, 2012 (6) SA

329 (SCA) Zulman JA expressed these requirements in the following terms:

'Fundamental to the plea of *lis alibi pendens* is the requirement that the same plaintiff has instituted action against the same defendant for the same thing arising out of the same cause.'

[17] In the summary judgment application the applicant seeks payment of monies. In the winding up application it seeks that the respondent be liquidated. Although the agreement is fundamental to both proceedings, in the summary judgment the cause of action is payment for services rendered. The winding up application is based on the contention that the respondent is unable to pay its debts. The relief sought is not the same in the two applications.

[18] In any event, a defence of *lis alibi pendens* is merely a dilatory defence, and a court has a discretion whether to uphold the defence or not. In the circumstances of this case, and for the reasons I set out hereunder regarding the respondent's financial situation, I would not have exercised my discretion in the respondent's favour.

[19] The second point taken by the respondent is that there are numerous disputes of fact that cannot be resolved on paper, more especially, that the respondent and Mr. Lallchand never agreed to enter into any agreement with the applicant. Particularly, they deny that the respondent ever agreed to repay any credit facility advanced by the applicant. It is therefore necessary to consider the credit application that Mr. Lallchand admits having signed.

[20] Mr. Lallchand signed the credit application on 9 May 2022. At the top of the first page of the credit application form it is recorded that:

“All business is undertaken in terms of the Company’s Standard Trading Terms and Conditions. A copy of the Company’s Standard Trading Terms and Conditions is available on request or at [www.rohlig.co.za](http://www.rohlig.co.za).”

[21] The credit application form contains the following paragraph in bold print:

“4. All credit facilities shall be subject to the terms and conditions of this credit application form which shall operate in addition to the terms on the reverse of the relevant sea transport document, as well the Companies Standard Trading Terms and Conditions, and tariffs, as amended from time to time, copies of which are available on request.”

[22] The following paragraph is in bold type, and is capitalized:

“12. IN ADDITION, THE SIGNATORY HERETO BINDS HIMSELF/HERSELF AS SURETY AND CO-PRINCIPAL DEBTOR, ENTITLING THE COMPANY TO RECOVER PAYMENT FROM HIM/HER IN HIS/HER PERSONAL CAPACITY IN THE EVENT THAT THE APPLICANT FAILS TO TIMEOUSLY PAY ANY AMOUNT DUE.”

[23] Immediately above Mr. Lallchand’s signature is the following paragraph in bold print:

"17. The applicant hereby accepts and agrees that all business is undertaken in terms of the Company's Standard Trading Terms and Conditions, which terms and conditions the applicant acknowledges having read and understood. A copy of the Company's Standard Trading Terms and Conditions is available on request or alternatively at [www.rohlig.co.za](http://www.rohlig.co.za)."

[24] In the same paragraph in which Mr. Lallchand signed the application, the following is recorded in bold type:

"I sign this agreement in my personal capacity as surety and co-principal debtor with the applicant."

[25] Under Mr. Lallchand's signature, it states (and I quote exactly:

"For and on behalf of the applicant AND in my capacity as **surety and co-principal debtor**.

[26] Below Mr. Lallchand's signature the application is signed by the applicant and it is recorded that the application was accepted by the applicant on 7 June 2022.

[27] On 24 August 2022 the applicant wrote to the respondent confirming an increase in the credit facility to R 8 million, and it recorded that *"all STC's as per the credit application/contract signed on 9<sup>th</sup> May 2022 apply to this limit."*

[28] There is no dispute that Mr. Lallchand signed the credit application form. There is also no doubt that the applicant accepted the application,

and that it performed in terms of the agreement that came into existence upon such acceptance. The respondent was specifically advised, in the letter of 24 August 2022, that the Standard Terms and Conditions were applicable to the agreement. Given the above, I am of the view that the respondent's version, that it never intended to accept the Standard Terms and Conditions, is so far-fetched and untenable that it can be rejected.

[29] However, even if I am wrong on this, it is not necessary for a party to an agreement to have actually read the terms and conditions before being bound thereby. All that is required of a contracting party that seeks to rely on separate terms and conditions, is that objectively it made a reasonable attempt to bring the terms and conditions to the other party's attention. As was said in *Durban's Water Wonderland Pty Limited versus Botha*<sup>3</sup> the test is,

"An objective test based on the reasonableness of the steps taken by the proferens to bring the terms to the attention of the customer or patron."

[30] I am at a loss to understand what additional steps the applicant might have taken to bring the Standard Terms and Conditions to the respondent's attention. Even if Mr. Lallchand did not have sight of the Standard Terms and Conditions in advance of signing the credit application, there were repeated references in the application form to the fact that the Standard Terms and Conditions Applied to the transaction.

[31] I find, therefore, that the Standard Terms and Conditions bind the parties to the agreement. As far as the suretyship is concerned, the agreement, read in its totality, clearly identifies the creditor, the debtor and the surety. With regard to the submission that the reference to Mr. Lallchand as surety and co-principal debtor renders the suretyship bad in law, the Supreme Court of Appeal has already spoken. In *Liberty Group Ltd v Illman*<sup>4</sup> the Court held<sup>5</sup>:

“[20] It only remains to reiterate the position in our law. A surety and co-principal debtor does not undertake a separate independent liability as a principal debtor; the addition of the words ‘co-principal debtor’ does not transform his contract into any other than one of suretyship. The surety does not become a co-debtor with the principal debtor, nor does he become a co-debtor with any of the co-sureties and co-principal debtors, unless they have agreed to that effect. The jurisprudence of this court in *Kilroe-Daley* and *Neon* accordingly correctly reflects our law on this topic.”

[32] Having found that the Standard Terms and Conditions apply to the relationship between the parties, it is necessary to analyze exactly what those terms mean in the context of the case.

[33] The terms and conditions apply to all and any business conducted by the applicant. They contain a Shifren clause that prohibits any variation of the agreement other than in writing, and upon signature by an authorized person on behalf of the applicant. The applicant reserved the right to enter into any contract with third parties in fulfillment of its

contractual obligations, as it reasonably deemed necessary, for the carriage of goods by any route.

[34] In the event that a third party's services were utilized to provide the necessary services, the applicant was not obliged to obtain the respondent's approval for the employment of the third party.<sup>6</sup> The applicant has no liability whatsoever arising from the carriage of goods.<sup>7</sup> All goods were deemed to have been received in good order unless the applicant was notified otherwise within 3 days of the receipt of the goods of any damage thereto.<sup>8</sup> Instructions given to the applicant as to the transportation of goods had to be in writing.<sup>9</sup>

[35] The applicant was entitled to decide the route taken for the carriage of the goods.<sup>10</sup> All transportation of goods was at the sole risk of the respondent, and the respondent indemnified the applicant against any claims for loss or damage resulting from breach of contract or negligence of the applicant or its employees.<sup>11</sup> The applicant was not liable for indirect or consequential loss.<sup>12</sup>

[36] The result of the aforesaid clauses is that the applicant had the discretion to decide on the route of carriage, and the airline by which the goods were to be transported. It was indemnified against any claims arising from the carriage of the goods. The respondent's alleged claim for damages is therefore excluded by the contract, as is its claim for consequential damages.

[37] The respondent has thus not raised a triable issue in the summary judgment, and judgment must be granted against both the respondent and the surety.

### **THE WINDING-UP APPLICATION OF THE APPLICANT**

[38] The respondent does not dispute that the applicant rendered the services referred to in the invoices. The respondent does not, therefore, dispute that the applicant is a creditor in an amount in excess of R 100, and that it has *locus standi* to bring the application. It relies for its defence on the contention that the applicant dispatched goods on Air France for carriage to Paris, when it should have known that the goods may be seized due to France's more onerous importation regulations. The respondent says that due to the applicant's breach of contract, it has a claim in reconvention for damages.

[39] I have already held above that the respondent's defences are precluded by the terms of the contract, and that the applicant has attracted no liability for damages. The sole remaining question is whether the applicant has proven that the respondent is liable to be wound up by virtue of section 344 (f), read with section 345 of the Act.

[40] Section 344 (f) provides that a company may be wound-up if it unable to pay its debt as envisaged in section 345. Section 345 (1) (a) provides that a company is deemed to be unable to pay its debts if-

“(a) a creditor, by cession or otherwise, to whom the company is indebted in a sum of not less than one hundred rand then due-

(i) has served on the company, by leaving the same at its registered office, a demand requiring the company to pay the sum so due; or

(ii) .....

and the company or body corporate has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or...”

[41] The respondent admits that the applicant delivered a notice in terms of section 345 to its registered office, and it does not dispute that the debt remains unpaid. Consequently, by virtue of the provisions of section 345 the respondent is deemed to be unable to pay its debts.

[42] In *Absa Bank Ltd v Rhebokskloof (Pty) Ltd*<sup>13</sup> it was explained as follows:

“The concept of commercial insolvency as a ground for winding up a company is eminently practical and commercially sensible. The primary question which a Court is called upon to answer in deciding whether or not a company carrying on business should be wound up as commercially insolvent is whether or not it has liquid assets or readily realisable assets available to meet its liabilities as they fall due to be met in the ordinary course of business and thereafter to be in a position to carry on normal trading - in other words, can the company meet current

demands on it and remain buoyant? It matters not that the company's assets, fairly valued, far exceed its liabilities: once the Court finds that it cannot do this, it follows that it is entitled to, and should, hold that the company is unable to pay its debts within the meaning of s 345(1)(c) as read with s 344(f) of the Companies Act 61 of 1973 and is accordingly liable to be wound up. As Caney J said in *Rosenbach & Co (Pty) Ltd v Singh's Bazaar (Pty) Ltd* 1962 (4) SA 593 (D) at 59 7E-F:

"If the company is in fact solvent, in the sense of its assets exceeding its liabilities, this may or may not, depending upon the circumstances, lead to a refusal of a winding-up order; the circumstances particularly to be taken into consideration against the making of an order are such as show that there are liquid assets or readily realisable assets available out of which, or the proceeds of which, the company is in fact able to pay its debts."

[42] I have already expressed my skepticism whether the facts set out in the supplementary affidavit are relevant to the current enquiry. I have noted that the respondent says that its assets far exceed its liabilities. However, even if the respondent has assets in excess of its liabilities, that does not mean that it is able to settle its debts as they fall due, and it may be commercially insolvent despite owning substantial assets.

[43] In deciding whether the respondent is in fact commercially insolvent, it is important to consider the evidence provided by the intervening party. In my view, notwithstanding that the intervening party and the respondent have settled the matter between them, I am entitled

to consider the evidence in the intervening application, to determine whether the respondent was able to settle its debts as they fell due.

[44] The intervening party says that it did business with the respondent from approximately August 2022 onwards. By December 2022 the respondent had already failed to meet its commitments, and the parties agreed on a payment plan. At that stage the respondent admitted to being more than 60 days overdue for an amount of R 1.2 million.

[45] During July 2023 the respondent undertook to make weekly payments towards the arrears in the sum of R 200 000. On 25 July 2023 Mr. Lallchand wrote:

“Our cash flow only allow for this payment to be done on Saturday morning, once we’ve received from our customers.” (sic)

[46] The above communication from Mr. Lallchand is an unequivocal acknowledgement that the respondent was unable to settle its debts as they fell due. The intervening party threatened, on numerous occasions, to stop supplying the respondent unless the arrears were settled. During August 2023 the respondent reneged on a promise to pay R 200 000 per week towards the arrears, citing maintenance problems on its farm, and it only paid R 100 000. This payment was unacceptable to the intervening party, and it threatened to withhold deliveries unless the respondent immediately paid R 300 000, presumably the next instalment and the arrears of R 100 000.

[47] On 7 September 2023 Mr. Lallchand wrote to the intervening party seeking an indulgence, and recording that:

"Please could you give us a few weeks to get back to this position- we do have better inflows in the next 1-2 months as supply to the UK starts.

We do not want to miss the Xmas peak supply, this will set us back even further- please help- we will both be worse off if this happens."

[48] On the date that the above letter was written the respondent owed the intervening party R 1 374 005.32, and the intervening party was demanding payment of the entire amount, and a return to payment in full within 30 days.

[49] The correspondence between the respondent and the intervening party reflects a clear picture of a company in financial distress. At the same time as the respondent was indebted to the applicant, it was admitting its inability to settle its debts to the intervening party.

[50] For the first time, in the answering affidavit, the respondent raised a familiar defence to the intervening party's case: that it had suffered damages due to the intervening party's alleged breach of the agreement by providing defective flower cuttings. The respondent made this allegation in answer despite having failed to mention its alleged losses previously, and after trying to reach a compromise with the intervening party on its debt long after the alleged damages were allegedly suffered.

In my view the respondent was simply dissimulating in order to escape the consequences of the winding up application.

[51] I am of the view, therefore, that despite its alleged extensive assets, the respondent was clearly unable to settle its debts as they fall due. I am fortified in this view by the fact that the respondent is still not able to settle its debt to the intervening party, but is reliant on a settlement agreement to pay a portion of the debt in instalments.

[52] The applicant's application must succeed. The question that remains is what I must do about the request by the intervening party and the respondent that I should make the settlement agreement an agreement of court.

[53] It must be clear from the above that I intend to grant the application. In doing so, a *concursum creditorum* is established. The respondent will therefore not be able to give effect to the agreement. I cannot, therefore, make the settlement agreement an order of court.

**[54] I make the following order:**

**UNDER CASE NUMBER: 2024-020329:**

**[54.1] The defendants shall pay the applicant R 1 513 981.54 jointly and severally, the one paying the other to be absolved;**

**[54.2] The defendants shall pay the costs of the action jointly and severally, the one paying the other to be absolved, on Scale C.**

**UNDER CASE NUMBER 2023-115519:**

**[54.3] The respondent is provisionally wound-up in the hands of the Master of the High Court, Johannesburg.**

**[54.2] All persons who have an interest herein are called upon to show reasons, on 30 April 2025, at 10h00 or so soon thereafter as the matter may be heard, why this order should not be made final;**

**[54.3] A copy of this order shall forthwith be served:**

**[54.3.1] On the respondent at its registered office;**

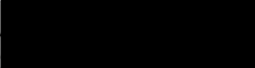
**[54.3.2] On the respondent's employees at the respondent's place of business;**

**[54.3.3] On the South African Revenue Services;**

**[54.3.4] By publication once in the Government Gazette and in the Beeld newspaper;**

**[54.3.5] By registered mail on the respondent's known creditors.**

**[54.4] Costs of the application, including the costs of the Intervening party, shall be costs in the winding-up, on Scale C.**

  
**SWANEPOEL J  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION PRETORIA**

|                                           |                                  |
|-------------------------------------------|----------------------------------|
| <b>Counsel for the applicant:</b>         | <b>Adv. M. Meyerowitz</b>        |
| <b>Instructed by:</b>                     | <b>Prinsloo Inc.</b>             |
| <b>Counsel for the Intervening party:</b> | <b>Adv. J Stroebe</b>            |
| <b>Instructed by:</b>                     | <b>Roodt &amp; Co. Attorneys</b> |
| <b>Counsel for the respondent:</b>        | <b>Adv. X Van Niekerk</b>        |
| <b>Instructed by:</b>                     | <b>LDV Attorneys Inc.</b>        |
| <b>Date heard:</b>                        | <b>27 February 2025</b>          |
| <b>Date of judgment:</b>                  | <b>24 March 2025</b>             |

<sup>1</sup> Peermont Global (KZN) (Pty) Ltd v Afrisun KZN (Pty) Ltd t/a Sibaya Casino and Entertainment Kingdoms and others and a related matter [2020] 4 ALL SA 226 (KZP)

<sup>2</sup> Caesarstone SDot-Yam Ltd v The World of Marble and Granite 2013 (6) SA 499 (SCA); [2013] 4 ALL SA 509 (SCA)

<sup>3</sup> Durban's Water Wonderland (Pty) Ltd 1991 (1) SA 982 (A)

<sup>4</sup> Liberty Group Ltd v Illman 2020 (5) SA 397 (SCA)

<sup>5</sup> At para [20]

<sup>6</sup> Clause 6

<sup>7</sup> Clause 7.3

<sup>8</sup> Clause 8.6

<sup>9</sup> Clause 9.3 and 9.4

<sup>10</sup> Clause 10.1.2

<sup>11</sup> Clause 30.1 and 30.4; Clause 31

<sup>12</sup> Clause 30.3

<sup>13</sup> Absa Bank Ltd v Rhebokskloof (Pty) Ltd 1993 (4) SA 436 (CPD) at 440 F