

REPUBLIC OF SOUTH AFRICA


 IN THE HIGH COURT OF SOUTH AFRICA
 GAUTENG DIVISION, JOHANNESBURG

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED
 SIGNATURE	
11/06/2025 DATE	

CASE NUMBER: 2022-029290

In the matter between:

MICHAEL EDWARD COYLE

First Applicant

MARIE ANN COYLE

Second Applicant

and

CLASSIC COMFORT CONSTRUCTION (PTY) LTD

First Respondent

PETER JOHN TROSKIE

Second Respondent

GAVIN BYRNE

Third Respondent

UMHLABATHI ENGINEERING CC

Fourth Respondent

BYRNE HOPE JONES PROPERTIES CC

Fifth Respondent

GARETH AHIER

Sixth Respondent

*In re:***MICHAEL EDWARD COYLE**

First Plaintiff

MARIE ANN COYLE

Second Plaintiff

and

CLASSIC COMFORT CONSTRUCTION (PTY) LTD

First Defendant

PETER JOHN TROSKIE

Second Defendant

GAVIN BYRNE

Third Defendant

UMHLABATHI ENGINEERING CC

Fourth Defendant

BYRNE HOPE JONES PROPERTIES CC

Fifth Defendant

Heard: 23 January 2025

Delivered: 11 June 2025

J U D G M E N T

YACOOB, J:

[1] The applicants, Mr and Ms Coyle,¹ to whom I shall refer collectively as "the Coyles" seek an order that arbitration proceedings between themselves and the first respondent ("Classic Comfort"), before the sixth respondent ("the arbitrator"), are stayed pending the determination of action proceedings that they have instituted against the first to fifth respondents. Only the first and second respondents have opposed the application. Where I refer to "the respondents" collectively this means only the first and second respondents.

[2] The basis on which the Coyles seek a stay is that they claim they have a counterclaim which is now the subject of the action proceedings, and that the counterclaim will set off the claim in the arbitration, but cannot be determined in the arbitration.

[3] On 28 June 2018 the Coyles signed an offer to purchase from the fifth respondent, represented by the third respondent ("Byrne") and an estate agent, Denise Eysell, who is not a defendant, a property which was part of a development called "Eco-on Dean". The property was still to be developed, and construction of the Coyles' home, in which they now live, was to begin within two months of transfer.

¹ It is not clear from the papers whether they are married to each other or merely live together and have the same last name. The annexures to the agreement state that each is married in community of property but do not state to whom. On the assumption that a spouse married in community of property would have signed the offer to purchase immovable property, it may be inferred that they are married to each other, but this is not pleaded.

[4] On the same day, and in accordance with the contract of sale, the Coyles entered into a building contract with Classic Comfort for construction of a dwelling house on the property. Classic Comfort was represented by the second respondent ("Troskie") in this transaction. In July 2018, the Coyles paid an amount of R3 650 000 into a trust account, portions of which were to be drawn down by Classic Comfort on certain milestones in the building process. According to the respondents' affidavit, all of this was apparently drawn down by December 2019, leaving an amount of R148 889.20 outstanding from the building price. It is common cause that the R148 889 is approximately 5% of the total price.

[5] On 10 November 2020 Byrne signed the certificate of completion in his capacity as the member of the fourth respondent. A certificate of occupation was issued by the local authority on 15 December 2020 (although the Coyles dispute the validity of the certificate of occupation) and the property was handed over to the Coyles on 14 January 2021, and they apparently took occupation shortly thereafter.

[6] In February 2021 the Coyles obtained a report from an entity known as Gauteng Property Inspections detailing a "snag list" for the property. They requested that Classic Comfort deal with these issues. Classic Comfort, on the other hand, contended that the Coyles owed it the outstanding R148 889. This remaining unpaid, Classic Comfort instituted arbitration proceedings in accordance with the building contract for the payment of this final amount in February 2021. The Coyles cancelled the building agreement in August 2021 because the "snag list" had not been dealt with.

[7] The Coyle's response was to claim that they have a substantial counterclaim which will set-off the claim, and then raised a number of defences to the claim, including defects in the construction and "snags". They also claim that parts of the

contract are against public policy. In the affidavits it is clear that the counterclaim was initially brought before the arbitrator, but that has not been placed before this court. Only the amended statement of defence which refers to the counterclaim being pursued in action proceedings is annexed to the papers. This seeks the stay of the arbitration proceedings pending the action.

[8] On 29 April 2022 the arbitrator issued a ruling, based on Classic Comfort raising a point in limine that the counterclaim fell outside the arbitrator's jurisdiction, on the basis that the Coyles had not followed the process set out in the building contract to deal with defects, and had not properly declared a dispute regarding the defects, so that there was no proper dispute before the arbitrator. It was further contended that the counterclaim was a claim for damages arising from cancellation and that this all arose after Classic Comfort's claim was referred to arbitration, so that it could not be part of the dispute before him.

[9] The arbitrator found that because the cancellation happened after he was appointed and the damages claim was linked to the cancellation, he (personally in those particular arbitration proceedings) did not have jurisdiction to determine it.

[10] It must be noted that there is no evidence before me that any of the second to fifth respondents were implicated in the counterclaim, since that counterclaim is not before me. It must also be noted that arbitrator did not determine that the counterclaim could not be determined in arbitration, but simply that it could not form part of what was before him because the cause of action was the cancellation, which occurred after the arbitration was referred to him.

[11] So, there is no merit in the contention that the counterclaim cannot be determined in arbitration. It is so that there are additional parties in the action

proceedings, but it is not clear to me that that should affect the arbitration proceedings. It is not that each of the defendants has a different claim against them. It is contended in the particulars of claim that all of them are liable for the amount claimed jointly and severally, but the core complaint is that the home built by Classic Comfort is not what the Coyles expected. The claim in the action proceedings is for damages apparently suffered in bringing the home up to the necessary standard.

[12] The Coyles contend that it will be convenient for them to have the arbitration proceedings stayed. However, the issues in the arbitration and the action are not identical. The Coyles will have far less to prove in the arbitration than they do in the action.

[13] The second reason relied upon by the Coyles for the stay is that Classic Comfort is a "man of straw" and has had to furnish security in the arbitration proceedings. It is not clear how this supports the argument that the arbitration proceedings should be stayed. The fact that Classic Comfort had to furnish security for arbitration proceedings of R250 000 does not support a claim to stay those proceedings so that a claim of over R3 million can first be proceeded with. If Classic Comfort is of so little substance, it is unlikely that the Coyles will recover the full amount of their damages from Classic Comfort anyway and would recover it, if proved, from the remaining defendants. It then does not become a true set off.

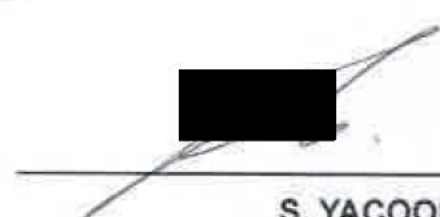
[14] In addition, it seems to me that where the amount outstanding is so small and the issues, although related, are not identical, it does not serve anyone to stay an arbitration pending a trial date some six years in the future. The whole point of arbitration proceedings is so that a dispute is determined quickly and relatively

inexpensively and in those circumstances, there should be a weighty reason for staying them.

[15] I am not satisfied that any such reason has been provided. A court has a discretion to stay arbitration proceedings, and I am not satisfied that my discretion should be so exercised.

[16] In the result, I order:

1. The application is dismissed with costs.



S. YACOOB
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 11 June 2025.

APPEARANCES

For the applicants:	SJ Martin
Instructed by:	Anthony Berlowitz Attorneys
For the respondent:	MJ Cooke
Instructed by:	Tiefenthaler Attorneys Inc