

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case No:2025/103438

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED YES |

SIGNATURE

29 July 2025
DATE

In the matter between :

JAMCO SUPPLIES CC

Applicant

And

PREFERENCE CAPITAL (PTY) LTD

Respondent

JUDGMENT

WANLESS J

Introduction

[1] This application was heard on the urgent roll on the 16th of July 2025 and it was held that the matter should be heard as one of urgency. Both parties presented full argument before this Court on that day. Thereafter, judgment was reserved.

[2] It follows that *(despite the onerous workload with which this Court is burdened)*, judgment in this matter should be delivered as soon as possible. Arising therefrom, it is both expedient and necessary for this Court to deliver as concise a judgment in this matter, as possible. In the premises, this judgment will not be burdened unnecessarily by setting out and dealing with “*extraneous*” issues but, rather, will deal with the real issues, as succinctly as possible.

[3] The Applicant *(as set out in the Applicant's Notice of Motion and Draft Order)* seeks *(verbatim)* the following relief:

- “ 1. *Condoning the Applicant's non-compliance with the rules relating to form, time and service and dispensing with this application as one of urgency.*
2. *Ordering the Respondent to forthwith open up the business premises of the Applicant situated at Unit 4, 120 Main Road, Anderbolt, Boksburg and to permit Applicant to re-enter the premises and resume trading.*
3. *Ordering the Sheriff of the Court to, forthwith, re-open the premises described in 2 above and to ensure that the Applicant is permitted to re-enter the premises and to continue trading in same.*
4. *Costs of suit. “*

The facts

[4] It is common cause, *alternatively*, cannot be seriously disputed by either of the parties, that the facts of this matter are:

- 4.1 on or about the 5th of October 2020, Jamco Supplies CC (“*the Applicant*”) and Preference Capital CC (“*the Respondent*”) entered into a written loan agreement (“*the agreement*”);

4.2 on or about the 2nd of October 2020 the Applicant executed a general notarial bond (*"the bond"*) in favour of the Respondent. In terms of the bond the Applicant hypothecated its movable assets to the value of R 1.5 million in favour of the Respondent;

4.3 on the 6th of May 2025 the Respondent was granted an order (*unopposed*) by Mudau J in this Court under case number 2025-056452 (*"the perfection order"*);

4.4 the order reads as follows:

"1. The matter is urgent:

2. The applicant, alternatively the applicant's duly authorised agent, are authorised to perfect the security afforded to the applicant under and by virtue of a general notarial bond bearing bond number BN24094/2020 ("GNB"), and in particular to enter in and upon all of the respondent's premises and the premises of any third party where the respondent's assets may be found, and to take possession and hold in pledge all of the movable assets of the respondent, wherever situate up to the value of R1,500.000,00.

3. The applicant is granted leave to approach this Court on these papers as may be amplified for further relief in respect of the GNB.

4. The applicant is authorised to hold the aforesaid movable assets as security for payment by the respondent of its debt to the applicant.

5. Pending full execution of the orders in the preceding paragraphs, the respondent is hereby interdicted and restrained from dealing in anyway whatsoever with any of its movable assets, including removing, selling, concealing, disposing or alienating such assets.

6. *The respondent is directed to furnish the applicant with a schedule of its debtors and the amounts owing to it by said debtors, including the contact details of said debtors, within three (3) days of the granting of the order.*

7. *The applicant, alternatively the Sheriff, is authorised to serve and execute this order by way of an emailed copy.*

8. *The respondent is ordered to pay the costs of this application on the scale as between attorney and client. "*

4.5 when the Sheriff gave effect to the perfection order the Applicant was locked out of the premises from which it carries out business.

Discussion

[5] The crux of this matter is whether or not the Sheriff, when giving effect to the perfection order, acting on behalf of the Respondent, was entitled, in the first instance, to take steps to ensure that the Applicant could no longer enter the premises upon which its movable assets were situated. Consequent thereto, the question arises as to whether or not the Respondent is entitled, relying upon the terms of the perfection order, to refuse the Applicant access to the said premises.

[6] The Applicant submits that the Respondent is not entitled to act as it has. On the other hand, the Respondent submits that the Sheriff, acting on its behalf, was entitled, in terms of the perfection order, to ensure that the Applicant could not enter the premises. Further, the Respondent submits, once again relying on the perfection order granted in its favour, that it is entitled to refuse the Applicant entry to the premises in order to continue trading.

[7] During the course of argument the Respondent relied heavily upon the matter of *Contract Forwarding (Pty) Ltd v Chesterfin (Pty) Ltd and Others*¹ as authority for the proposition that the Respondent was entitled to deny the Applicant access to the

¹ 2003 (2) SA 253 (SCA) at paragraphs 2 and 14

premises in terms of the perfection order by securing those premises. In the opinion of this Court, *Contract Forwarding* does not assist the Respondent in any manner whatsoever. The facts of that matter and the present matter are clearly distinguishable. Importantly, so was the issue that the SCA was asked to decide and that facing this Court.

[8] Critically, the perfection order in *Contract Forwarding* is different to the perfection order in the present matter. In *Contract Forwarding*, paragraph 5 of the order reads as follows:

"The Sheriff of Randburg be ordered to take all necessary steps to ensure the execution of the contents of this order by locking the premises and to hand over the keys of the business of the respondent to the applicant or to deal with the situation as the applicant sees fit."

No such wide-ranging provisions exist in the perfection order granted in the present matter.²

[9] Had the Respondent wished to obtain relief as set out in the perfection order dealt with in *Contract Forwarding*, it was incumbent upon the Respondent to seek same in the perfection application. The Respondent failed to do so. Also, in terms of paragraph 3 of the perfection order the Respondent was given leave to approach the court on supplemented (*amplified*) papers for further relief in terms of the bond. The Respondent failed to do so when the Applicant complained of being denied access to its business premises to trade before instituting this application on an urgent basis. In the premises, the Respondent cannot now argue (*as it sought to do before this Court*) that "*The fact that the assets of the business are held in pledge, securing the premises where such assets are held is an effective means of the respondent possessing and controlling the movable assets*"³ and that it is entitled to secure the premises on the basis that, *inter alia*, the Applicant did not oppose the perfection application.

[10] Securing the premises is not the only manner in which the Respondent could have effectively attached the movable assets of the Applicant. It is common cause that

² Subparagraph 4.4 *ibid*.

³ *Emphasis added*.

the Applicant has expressly undertaken not to deal, in any manner whatsoever, with the movable assets attached at the premises (*in terms of paragraph 5 of the order, as set out above*). Of course, the Respondent was quite entitled, in terms of the bond and the perfection order, to remove the attached goods from the Applicant's business premises. Not only has the Respondent elected not to do so but it was submitted, on behalf of the Respondent, that the Respondent should not have to incur the storage costs in respect of the movable assets. This submission clearly has no legal basis and this Court has no hesitation whatsoever in rejecting the said submission.

[11] Further, the submission made on behalf of the Respondent that, upon a proper interpretation of the perfection order, the Respondent is entitled to secure the premises and deny the Applicant access thereto in order to carry on trading, cannot be accepted by this Court. Applying the correct legal principles in respect of interpretation to the perfection order, no valid grounds exist to interpret the perfection order as enabling the Respondent to secure the business premises of the Applicant, thereby denying the Applicant access thereto and the ability to trade.⁴ The perfection order (*sought by the Respondent and not opposed by the Applicant*) is unambiguous and straightforward. This must be so, having regard to, *inter alia*, the language used; the context in which the perfection order was granted and the purpose thereof.

[12] Regrettably for the Respondent, other "*ancillary*" submissions made on behalf of the Respondent, in an attempt to persuade this Court that the Respondent is entitled to act as it has, also carry no weight. For the reasons set out earlier in this judgment⁵ this Court will not deal therewith. These submissions include, *inter alia*, the total value of the movable assets at the premises; the fact that the Respondent is entitled to the "*fruits*" of the attached movable assets and that the Applicant is allegedly in breach of the lease agreement (*with a third party*) in terms of which the Applicant occupies the premises. The parties (*particularly the Respondent*) can be assured that this Court has taken all of these submissions into consideration before rejecting same.

⁴ *Natal Joint Municipal Pension Funds v Endumeni Municipality* 2012 (4) SA 593 (SCA) at paragraph [18]; *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] 3 All SA 647 (SCA) at paragraphs [25] and [26].

⁵ Paragraph [2] *ibid*.

Conclusion

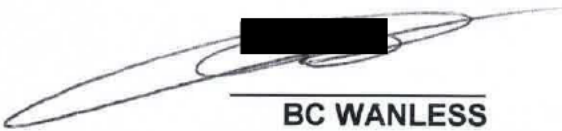
[13] In light of the foregoing, it is clear that the Applicant is entitled to the relief as sought. This Court hereby grants same whilst, at the same time, making certain "linguistic" and practical changes to the relief sought, as set out in the Applicant's Notice of Motion and Draft Order. This Court is entitled to do so, provided the Applicant is not granted any further relief to which it may not be entitled (*which it is not*).

[14] With regard to costs, there are no unusual circumstances in this matter that would cause this Court, in the exercise of its general discretion pertaining to the award of costs, to deviate from the accepted principle that costs should, in the normal case, follow the result. In the premises, the Respondent should pay the costs of this application. The Applicant has not sought costs on a punitive scale.

Order

[15] This Court grants the following order:

1. The Applicant's non-compliance with the rules relating to form, time and service is condoned and this application is heard as one of urgency.
2. The Respondent is to take all reasonable steps to ensure that the Applicant is given access to the business premises situated at Unit 4. 120 Main Road, Anderbolt, Boksburg (*"the premises"*) within three (3) days of the date upon which this order is served upon the Respondent.
3. In the event of the Respondent failing to comply with paragraph 2 hereof the Sheriff of this Court, or his/her Deputy, is authorised to take all reasonable and necessary steps to ensure that the Applicant is given access to the premises.
4. The Respondent is to pay the costs of this application.



BC WANLESS
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
JOHANNESBURG

Date of Hearing: 16 July 2025

Date of Judgment: 28 July 2025

APPEARANCES

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