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

Case Number: 2024-031003

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

6 OCTOBER 2025

In the matter between:

DIMENSION DATA (PTY) LTD

Applicant

and

**CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

Respondent

Coram: B R Kahn AJ

Heard: 9 and 12 June 2025

Supplementary submissions: 19 and 25 June 2025

Delivered: 6 October 2025

JUDGMENT

B R KAHN AJ

- 1 If Helen of Troy was the face that launched a thousand ships, then the law of prescription is what has launched almost as many lawsuits. This is one such lawsuit.

Use of specific words in context

2 I refer in this judgment to:

- 2.1 the 'respondent' and on occasions in referring to the respondent, to the 'City'. I intend when referring to the respondent, to refer to it in the context of this application and this judgment, but where I refer to the City, I intend to refer to the respondent but outside the context of the role it plays in this application but rather the role it plays within the life of the City of Johannesburg Metropolitan Municipality;
- 2.2 the disputed amount (R29 958 512,89 excluding VAT and interest but with interest and depending on when calculated, now exceeding some R50 000 000,00) which the respondent is claiming from the applicant and which it resists because, so the applicant says, it has prescribed as the disputed claim (but which is variously described in the application papers as the 'disputed claim', the 'disputed amount' and the 'disputed debt'); and
- 2.3 the applicant's challenge to the disputed claim as the 'complaint' in order to maintain consistency with the wording in s 11(5)(a) of the Credit Control and Debt Collection By-laws (the 'By-laws'), even though the applicant's complaint could perhaps be better categorised as a challenge or denial of liability.

Introduction

3

- 3.1 This is an opposed application in which the applicant (a private South African company – the consumer) asserts as against the City of Johannesburg (an organ of State and a supplier of electricity in this instance and the respondent in this matter) that the disputed claim has prescribed, whereas the respondent says that this is not so and that, to use the respondent's counsel's terminology, it is very much alive, due, owing and claimable.
- 3.2 There is ancillary relief claimed by the applicant in which it seeks an order directing the respondent to reconcile and correct the applicant's

municipal account number: 2[...] (the 'municipal account') by reversing the charges forming the subject matter of the disputed claim as well as interest, legal fees, disconnection / reconnection fees and miscellaneous fees that relate thereto that have been debited to the municipal account.

Urgent interdict

4

4.1

4.1.1 In the early part of 2024, the parties were involved in an urgent application in which the applicant sought and was granted on 6 March 2024, an interim interdict against the respondent, which, inter alia, prohibited the respondent from terminating the supply of services to the applicant's property, namely erf 2 [...], Rosebank Township, Johannesburg, being [...] K[...] Avenue, Rosebank, Johannesburg (the 'Johannesburg property') which the respondent had threatened via a pre-termination notice pending the finalisation of this application.

4.1.2 The merits of that application need not be considered by me, but the order granted (which I will call the 'urgent order') plays a role in this application and so it is as well I refer to it at this early stage in the judgment.

4.2 Whilst it is not necessary for me to quote the whole of the urgent order, in summary it provided for the following:

4.2.1 pending the final determination of an application to be instituted by the applicant (which is this opposed application which came before me) the respondent was interdicted from terminating the power supply to the Johannesburg property;

4.2.2 the applicant was entitled, if it so wished, to institute an application against the respondent in which the applicant will seek an order in the following terms, inter alia:

4.2.2.1 declaring the disputed claim has prescribed through the effluxion of time;

4.2.2.2 that the respondent reconciles the municipal account; and

4.2.2.3 costs of suit including the reserved costs of the urgent application.

Background context – chronology of events

5 As is the case in almost all, if not all, disputes that are to be adjudicated upon, to understand and evaluate the issues, the background facts and chronology of events are necessary. The chronology referred to by me excludes certain non-material events which, in my view, do not add to or detract from an understanding of the background facts or context.

6

6.1 Prior to 1 June 2018 (see paragraph 7.1.1 hereunder), the applicant and the respondent concluded a consumer agreement whereby the respondent supplied and measured the consumed electricity to the applicant under, in this particular instance, consumer account number: 2[...] – ie, the municipal account – relating to the Johannesburg property.

6.2 Because the respondent is an organ of State, the agreement concluded between the parties is contractual and administrative in nature.

7

7.1 On 21 January 2019, the respondent advised the applicant (via a letter of that date) that:

7.1.1 it had, on 1 June 2018, conducted an audit and site investigation at the Johannesburg property and discovered that the electricity meter was programmed incorrectly and as a result thereof, corrected the programming; and

7.1.2 as a result of the corrected programming and having analysed the billing data on the electricity meter on 7 November 2018, it, the respondent, determined the amount of electricity back charges owed by the applicant to it for the period 1 June 2015 up until the end of May 2018 to be an amount of R29 958 512,89 (excluding VAT).

7.2

7.2.1 This amount is the capital component of the disputed claim.

7.2.2 The applicant has taken the position (and told me) that I can assume, for the purposes of the relief claimed by it, that the disputed claim was, at some stage, owed by it, even though there is reference by the applicant to the disputed claim being in respect of *alleged* (My emphasis) back charges. (This conflict does not need to be addressed – let alone resolved – by me, given the applicant's position as to what I can assume for the purposes of this judgment).

8

8.1 On 28 January 2019, seven days after receipt of the respondent's notification on 21 January 2019 of its claim (ie, the claim which, because of the applicant's response thereto, became what is now called the 'disputed claim'), the applicant's attorneys replied to the respondent's letter of 21 January 2019 and denied liability for the disputed claim (thereby obviously taking issue therewith) and on 27

March 2019 addressed a letter to the respondent setting out the grounds on which the applicant challenged the disputed claim.

8.2

8.2.1 However, prior to 27 March 2019 (and it would seem initially unbeknown to the applicant), the respondent generated an invoice dated 15 March 2019 addressed to 'Internet Solutions Dimension Data (Pty) Ltd', that incorporated the disputed claim as part of its accounting narrative (line items) and claimed that the due date for payment of such invoice was 1 April 2019 (the '15/03/2019 invoice')..

8.2.2 Even though it does not emerge from the papers themselves, my own research via the website of the Commission for Intellectual Property and Companies (known as CIPC), reveals that there is no such legal entity as 'Internet Solutions Dimension Data', but it would appear that Internet Solutions is a division of the applicant. It is however clear that the 15/09/2019 invoice was intended for the applicant. Whilst nothing turns thereon, it is as well that, to that the extent that the addressee on the 15/03/2019 invoice does not exist (at least prima facie), I should note that there is no dispute between the parties that same was and remains intended for the applicant. This is common cause.

8.3

8.3.1 The applicant however only received a copy of the 15/03/2019 invoice, incorporating the disputed claim on 15 April 2019 and on 23 April 2019 – some eight days later – the applicant telephonically lodged a query / complaint with the respondent pursuant to the provisions of s 11(1) of the By-laws (the 'complaint').

8.3.2 S 11(1) of the By-laws reads as follows:

‘A customer may lodge a query or complaint in respect of the accuracy of any amount due and payable in terms of an account rendered to him or her in terms of these By-laws’.

8.3.3 As will emerge from later in this judgment, for s 11(1) to be triggered (so to speak), it is not sufficient for a customer (such as for example the applicant) to simply deny liability by way of a bald assertion; the denial of liability must satisfy the requirements identified in the *Croftdene Mall v Ethekewini Municipality*¹ judgment which I refer more fully to in paragraph 42 hereunder, which makes it clear that a ratepayer (for example, the applicant in this instance) is required to furnish facts which would adequately enable the Municipality (the respondent in this matter) to ascertain or identify the disputed item or items and the basis for the ratepayer’s objection thereto.

8.4

8.4.1 It is common cause that the applicant has satisfied the legal requirement relative to its complaint being lodged and that the respondent become obliged by law to investigate and report the outcome of its investigations to the applicant.

8.4.2 What is not common cause however is the effect and legal consequence of the way in which the respondent investigated (or on the applicant’s version, did not timeously investigate) the complaint.

9 On 14 May 2019, the applicant’s attorney sent a letter to the respondent in which it advised the respondent of the complaint; essentially confirming that the applicant had lodged a complaint.

¹ (603/2010) [2011] ZASCA 188; [2012] 1 All SA 1 (SCA)

- 10 On 20 May 2019, the respondent addressed an email to the applicant's attorneys advising that the applicant's "query" (as the respondent puts it) was still in process and had been "escalated", to use the respondent's language.

11

11.1 On 22 May 2019, the applicant's attorneys (not being aware of the response of 20 May 2019 to its letter of 14 May 2019) advised the respondent in writing (via email) that it would lodge an appeal; it would appear that the respondent's email of 20 May 2019 and applicant's attorneys' email of 22 May 2019, 'crossed each other in the post' – to use language of what is probably a bygone era – but once the applicant's attorneys had received the respondent's email of 20 May 2019, it addressed a letter to the respondent on 28 May 2019 in which it advised that the applicant will not lodge an appeal, but will await the respondent's decision – that is to say the decision in relation to the complaint which, in terms of the respondent's email of 20 May 2019, had been escalated.

11.2 The papers do not make it clear as to what the applicant would appeal against and by extension, what appeal it would no longer lodge, but I am satisfied that nothing turns thereon.

- 12 Certain of the events that follow the respondent's email of 22 May 2019, addressed to the applicant's attorneys take the form of various demands by the respondent through what appears to be initially a debt collection agency called Revenue Consulting (Pty) Ltd ('Revco') and thereafter two firms of attorneys, and play an important role in this judgment as appears hereafter.

13

13.1 On 15 and 21 November 2019, Revco, addressed emails to the applicant demanding payment of the disputed claim, to which the applicant's attorneys responded on 22 November 2019 setting out the history of the matter and denied that the applicant was liable therefor

and alleged further that the demand for payment is in breach of the relevant By-laws which, says the applicant, bind the respondent.

- 13.2 What follows is a period of silence – at least until 3 March 2020 when Revco advised the applicant's attorney that the account was to be pended – whatever that may mean in the context of the then ongoing issues between applicant and respondent.

14

- 14.1 Notwithstanding Revco's advises to the applicant's attorney that the account was to be pended, on 21 April 2021 (by which time the complaint had not yet been addressed by the respondent), a law firm acting on behalf of the respondent, namely Dali Matlana and Partners, enters the picture and addressed a demand to the applicant for payment of the disputed claim.
- 14.2 The applicant's attorneys responded thereto on 23 April 2021 and not surprisingly re-asserted the applicant's position which is that it denied liability for the disputed claim.

15

- 15.1 I interrupt the sequential narrative of events by pointing out that on the applicant's version, the disputed claim became prescribed on 2 April 2022. The basis therefor, so the applicant argues, is that the respondent's demand for payment of the 15/03/2019 invoice (that incorporated the disputed claim), was to be paid by 1 April 2019 and so, on the applicant's version, the respondent actually knew its debtor, actually knew the amount it claimed from the debtor, actually knew its causa and in a nutshell, knew everything envisaged in s 12(3) of the Prescription Act 68 of 1969 (the 'Prescription Act') to enable it to institute proceedings against the respondent – and presumably (in issuing the 15/03/2019 invoice and demanding payment by 1 April 2019) was satisfied that the disputed claim was due, owing and payable.

15.2 It is as well that I refer at this stage to certain provisions contained in the Prescription Act.

15.3

15.3.1 In terms of s 10(1) read with s 11(d) of the Prescription Act, the period of prescription applicable to a debt is three years. (That the disputed claim is a debt is common cause).

15.3.2 S 12 of the Prescription Act deals with the date on which prescription begins to run, the relevant subsections of which are the following:

15.3.2.1 s 12(1) provides as follows:

‘subject to the provisions of subsection (2), (3) and (4), prescription shall commence as soon as the debt is due’; and

15.3.2.2 s 12(3) provides as follows:

‘A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care’.

16 Back to the sequential narrative. Following on the applicant’s attorneys’ response on 23 April 2021 (see paragraph 14.2 above), there is silence (once again but this time a prolonged silence), from the respondent until 22 January 2024 when another law firm acting on behalf of the respondent – namely Noko Maimela Inc., – addressed a letter to the applicant demanding payment of the disputed claim.

17 Four days later, on 26 January 2024, the applicant's attorney replied to Noko Maimela Inc. and reiterated the applicant's stance, namely that it denies liability for the disputed claim and alleges, inter alia, that the disputed claim had become prescribed.

18

18.1 On 16 February 2024, Noko Maimela Inc. responded to the applicant's attorney denying that the applicant can rely on prescription because, according to the respondent, the disputed claim was interrupted by the applicant making monthly payments of electricity consumption charges.

18.2 It bears mention that the respondent's attorneys do not assert any other basis as to why the applicant cannot rely on prescription, although I accept that if there is or was another basis which was not referred to in the 16 February 2024 response, that omission does not compromise the respondent's ability to raise it at a later time such as, for example, in these proceedings.

19

19.1 On 23 February 2024, the respondent addressed a pre-termination notice to the applicant and demanded payment of the disputed claim and threatened to terminate the supply of services to the applicant's property.

19.2 It was this threat that triggered the urgent application to which there is reference in paragraph 4 above, and it is this urgent application that resulted in the urgent order whereafter the applicant elected to institute this application.

20 Between the period 23 February 2024 (when the respondent addressed the pre-termination notice) and 3 April 2024 (the significance of this date emerges from paragraph 21 hereunder), the events and activities relating to the urgent application play themselves out and the applicant launches this

application and also makes payment of the sum of R7 553 737.00 to the respondent in terms of the urgent order.

21

21.1 On 3 April 2024, the respondent (via its newly appointed attorneys Morata Mogokare Inc.) addressed an email to the applicant, advising it that it had resolved the complaint that had been lodged by the applicant some five years earlier and reiterated that the amount claimed (and which is referred to as the disputed claim in this judgment) is in fact due and owing and that the complaint (re the applicant's challenge to the veracity of the disputed claim) had failed.

21.2 In fact, Morata Mogokare Inc. adopts a somewhat aggressive stance and advised the applicant via a 9-page letter (that can be fairly categorised as expansive and technical in motivating the respondent's decision), that:

21.2.1 the respondent intended 'without further recourse to' the applicant, to take legal steps to claim the outstanding amount (ie, the disputed claim) and;

21.2.2 furthermore (it would appear, *ex abundante cautela*) that the contents of this written communication by Morata Mogokare Inc. to the respondent (ie, the 9 page letter) does not in any way seek to alter the respondent's contention in its letter of 21 January 2019 which forms the basis of the respondent's claim (ie, the disputed claim).

22

22.1

22.1.1 True to its word the following day – ie, 4 April 2024 – and before the applicant would have had a chance to consider the respondent's position in respect of its – the applicant's – complaint and what stance / position it, the applicant, should take in regard thereto, the respondent issued and served

summons against it under case number: 2024-035895 in which the respondent sues for payment of the disputed claim, together with interest and costs.

22.1.2 That the issue and service of summons may have been premature having regard to the provisions of s 11(5) of the By-Laws, was not part of the applicant's case and consequently, I do not deal therewith, but for context, I quote s 11(5) hereunder:

'The Council must:

(a) investigate or cause the query or complaint to be investigated within 14 days, or as soon as possible after the query or complaint was received; and

(b) inform the customer, in writing, of its decision as soon as possible after the conclusion of the investigation, instructing that any amount found to be due and payable must, subject to the provisions of section 21, be paid within 21 days from the date on which the customer is notified thereof, unless an appeal is lodged within that period in terms of subsection (6) or section 12'.

22.2

22.2.1 In fact I think it fair to say that the respondent (in the role of plaintiff) had by 3 April 2024 already prepared the summons (action) it intended to institute against the respondent (in the role of defendant) relative to the disputed claim – thereby brooking no dissent from the applicant and not affording the applicant, should it have been so minded, the opportunity to appeal (s 12 of the By-laws) the respondent's determination of the complaint, such was the newly found enthusiasm – even robustness – to the respondent's approach to the

disputed claim, a complaint that took the respondent five years to resolve against the applicant.

22.2.2 The respondent clearly had no intention of waiting for any possible appeal by the applicant or for that matter to allow the applicant to even catch its breath, so to speak, and perhaps engage the respondent in further discussion – such was the respondent's desire to institute action without delay.

23 The above then is the relevant background and factual matrix.

Issues to be decided

24 A joint practice note was filed in this matter, which defines the issues (some of which however are a repeat of another albeit using different terminology) to be decided as follows (my distilling thereof and my partial terminology):

24.1 whether the applicant, having lodged the complaint in accordance with s 11(1) of the By-laws, is entitled in the circumstances and before the complaint has been resolved to claim that the disputed claim has prescribed;

24.2

24.2.1 whether the respondent is (was) precluded in terms of s 102(2) of the Local Government; Municipal Systems Act 32 of 2000 (the 'Systems Act') from claiming the disputed claim;

24.2.2 the issue referred to in paragraph 24.2.1 above (which, as emerged from the argument advanced by the respondent at the hearing, can be fairly described as the main string to its bow) is repeated in the combined practice note but using different terminology. It is repeated thus; whether the responded was precluded in terms of s 102(2) of the

Systems Act from implementing any of its debt collection and credit control measures in relation to the disputed claim, including serving legal process from 23 April 2019 to 3 April 2024 due to the lodgement of the complaint and whether this alleged impediment interrupted the running of prescription in terms of s 13(1) of the Prescription Act during this period;

- 24.3 whether prescription can run whilst the respondent is precluded (if indeed it is precluded – these words in brackets being inserted by me) by s102(2) of the Systems Act from claiming the disputed claim;
- 24.4 whether the disputed claim which the respondent claims was due on 1 April 2019 had become prescribed by the effluxion of time in terms of the Prescription Act;
- 24.5 whether an agreement was concluded between the parties to ‘pend the claiming of the disputed amount until such time as the respondent resolved the complaint’;
- 24.6 whether there are any foreseeable and material disputes of facts that cannot be resolved on the papers;
- 24.7 whether the applicant’s monthly payments of its current electricity consumption charges since April 2019 constitute a tacit acknowledgement of liability and interrupted the running of prescription in terms of s 14(1) of the Prescription Act;
- 24.8 whether the respondent is entitled in terms of its By-laws or policy to allocate the payment received from the applicant to the oldest debt; and
- 24.9 whether the respondent can allocate payment from the applicant to the disputed claim prior to the dispute being resolved.

- 25 It seems to me that a decision on one or other of the issues referred to above will apply mutatis mutandis to some of the other issues, such is the seepage between some of the identified issues.

Onus; who has what onus?

- 26 The starting point after the factual matrix has been identified, would be to determine which party or parties bears what onus.

- 27 I think it fair to say that there was no dispute between the parties as to where the onus lies and when it shifts (if, on the facts, it does shift) from the one party to the other. This is so because the law in this regard is well settled, but I nonetheless deal therewith hereunder given the common cause (or at very least indisputable) facts in this matter. I must also make this clear; there are many judgments dealing with the onus in prescription matters and that I only refer to a few does not mean I have not considered all those referred to me by the parties.

- 28 A party claiming prescription bears a full onus to prove it. The Supreme Court of Appeal ('SCA') in the judgment of *McLeod v Kwayiya* stated it thus:

'This Court has repeatedly stated that a defendant bears the full evidentiary burden to prove a plea of prescription, including the date on which a plaintiff obtained actual or constructive knowledge of the debt. The burden shifts to the plaintiff only if the defendant has established a prima facie case'.²

'less evidence will suffice to establish a prima facie case where the matter is peculiarly within the knowledge of the opposite party than would under other circumstances be required.'³

but it must be noted that the SCA clarified that the burden which shifts to the plaintiff is an evidentiary burden and not the burden of proof.

² (365/12) [2013] ZASCA 28; 2013 (6) SA 1 at para 1

³ Union Government (Minister of Railways) v. Sykes, [1913 A.D. 156](#) at para [173](#)

- 29 The law in this regard was reaffirmed by the SCA in *Lancelot Stellenbosch Mountain Retreat (Pty) Ltd v Gore N.O and Others*⁴ in which the court states the following:

‘This is so because when a debtor raises the defence of prescription he bears the full evidentiary burden to prove it. And that burden shifts to the creditor only if the debtor has established a prima facie case. In that event, a creditor bears the onus to allege and prove the interruption of prescription through either an express or tacit acknowledgement or liability by the debtor, in terms of s 14 of the Prescription Act’.⁵

- 30 The SCA in *Jugwanth v MTN*⁶ had the following to say:

‘It is settled law that a person invoking prescription bears a full onus to prove it. In *Gericke v Sack*, Diemont AJ explained:

“[It] was the respondent, not the appellant, who raised the question of prescription. It was the respondent who challenged the appellant on the issue that the claim for damages was prescribed; this he did by way of a special plea five months after the plea on the merits had been filed. The onus was clearly on the respondent to establish this defence”.⁷

- 31 In *Absa Bank Limited v de Villiers*⁸, the SCA held that on general principles where it is clear that the prescriptive period has run its course, the defendant has a complete defence and if the plaintiff relies on suspension or postponement of prescription, there is a separate burden of proof that rests on the plaintiff.
- 32 The law relating to onus – where it lay and who has what duty – is one of the few (if not the only) legal issues in respect of which there was consensus between the parties.

⁴ (108/2014) [2015] ZASCA 37

⁵ Ibid at para 10

⁶ [2021] ZASCA 114

⁷ Ibid at para 6

⁸ 2001 (1) SA 481 (SCA)

Applicant's position in regard to the disputed claim

33 The applicant contends that since 2 July 2018, the respondent has been aware of the facts giving rise to the disputed claim and the identity of the applicant and that by 7 November 2018 (when the respondent determined the amount of back – or unbilled – charges following upon its discovery of the incorrect programming of the electricity meter at the Johannesburg property), at the latest, the respondent had acquired all of the necessary information required of it to institute action for the disputed claim, but – at least as I understand the applicant's position –at worst for it; the invoice from the respondent that included charges / line items in respect of the disputed claim dated 15 March 2019 and which calls for payment by 1 April 2019 – ie, the 15/03/2019 invoice – is a clear indication that the respondent had satisfied itself that the disputed claim (which was not yet the subject matter of a s 11(1) By-law complaint; that only occurred telephonically on 23 April 2019) was in fact due and owing.

34 The applicant furthermore avers that:

34.1 at no time prior to the service of the summons on 4 April 2024, did the respondent serve any legal process on it in which it claimed payment of the disputed claim as contemplated in s 15(1) of the Prescription Act;

34.2 the service of summons was more than three years after the disputed claim (which the applicant says, the court can assume is valid), would

34.3 have fallen due within the meaning of s 12 of the Prescription Act, which I quote (where applicable) hereunder;

34.4 there was nothing (including the provisions of s 13(1) of the Prescription Act and of s 102(2) of the Systems Act) preventing the City instituting action in respect of the disputed claim, thereby interrupting prescription;

34.5 prima facie, and based on the demand for payment of the 15/03/2019 invoice by 1 April 2022, the disputed claim prescribed by the effluxion of time by 2 April 2022 at the latest, pursuant to s 10(1)⁹ read with s 11(d)¹⁰ of the Prescription Act;

34.6 the onus thus shifts from the applicant who has established – so the applicant says – the prima facie prescription of the disputed claim to the respondent to prove that either:

34.6.1 the completion of prescription in respect of the disputed claim was delayed under the provisions of s 13 of the Prescription Act; or

34.6.2 prescription in respect of the disputed claim was interrupted by a tacit acknowledgment of liability by the applicant as contemplated in s 14 of the Prescription Act.

The respondent's defences to the applicant's allegation of prescription

35 The respondent raises four defences to the applicant's claim that the disputed claim has prescribed which, in summary, are the following:

35.1 that it, the respondent, was prevented within the meaning contemplated in s 13(1) of the Prescription Act, from interrupting the running of prescription in respect of the disputed claim (which I will call the 'impediment defence');

35.2 that there was an agreement between the parties to 'pend the claiming of the disputed amount' until such time as the respondent resolved the complaint (which I will call the 'suspension defence');

⁹ 'Subject to the provisions of this Chapter and of Chapter IV, a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant law applies in respect of the prescription of such debt'.

¹⁰ 'Save where an Act of Parliament provides otherwise, three years in respect of any other debt'.

35.3 that there are foreseeable and material disputes of fact that cannot be resolved on the papers (which I will call the 'factual dispute defence'); and

35.4 that each payment by the applicant of its current electricity consumption charges since April 2019, constituted a tacit acknowledgement of liability and thus interrupted the running of prescription in terms of s 14(1) of the Prescription Act (which I will call the 'tacit acknowledgement defence').

36 I expand on each of these defences hereunder and then deal with the applicant's rebuttal thereof.

The impediment defence

37

37.1 This defence – which I have called the impediment defence – is one in which the respondent relies on the City's Credit and Control Policy (the 'Policy') to collect revenue owed to it and s 102(2) of the Systems Act, the latter of which prohibits the respondent from collecting the disputed claim and enforcing or implementing its debt control collection mechanisms whilst the complaint is pending.

37.2 S 102(2) of the Systems Act reads as follows:

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

37.3 The relevant portion of s 102(1) of the Systems Act reads as follows:

- '1) A municipality may –
- a) ...
- b) ...

- c) implement any of the debt collection and credit control measures provided for in this chapter in relation to any arrears on any of the accounts of such a person’.

38 In amplification of the impediment defence, the respondent argues that:

38.1 the disputed claim would only ‘... become due and payable and claimable ...’ upon it resolving the complaint and if the complaint were resolved against the applicant, then upon communicating that decision to the applicant in writing and – so goes the respondent’s argument – in the circumstances the disputed claim could not prescribe by the effluxion of time before resolving the complaint, which was only done on 3 April 2024.

38.2 on 3 April 2024, the respondent – having made a decision in regard to the complaint – communicated that decision in writing to the applicant and in the light thereof, the impediment that existed (as contended for by the respondent) was now removed and the respondent was able to pursue the disputed claim (example, institute action) together with interest thereon and the respondent did so – the following day.

39 Without simplifying what appears to be the respondent’s primary or perhaps most dominant argument in its favour and against the applicant’s position, it says that the existence of s 102(2) of the Systems Act is a complete and impenetrable wall preventing it from taking any steps to recover payment and more particularly, the service of processes contemplated in s 15(1) of the Prescription Act.

40 The question that clearly needs to be asked is whether s 102(2) constitutes an impediment within the meaning of s 13(1)(a) of the Prescription Act, which suspended (suspends) the operation of prescription and if so, when did that impediment commence and then when did it cease to exist.

- 41 This impediment defence however needs to be seen in the context of s 11(3) of the By-laws. It is useful to quote part of the provisions of s 11 (3) which reads as follows:

‘(3) if a query or complaint contemplated in subsection (1), is lodged –

(c) ... before or after the due date for payment specified in the account concerned, the customer concerned must pay the full amount of any account, insofar as it relates to rates or the municipal service concerned, rendered in respect of a subsequent period, before or on the due date for payment specified in such account, *except insofar as that account may incorporate the amount in dispute*’. (My emphasis).

- 42 The respondent’s counsel referred me to the judgment in *Body Corporate Croftdene Mall v eThekweni Municipality*¹¹ (the ‘Croftdene judgment’) which counsel argues identifies what is meant by the word ‘dispute’ to be as follows:

‘It is, in my view, of importance that s 102(1) of the Systems Act requires that the dispute must relate to a ‘specific amount’ claimed by the municipality. Quite obviously, its objective must be to prevent a ratepayer from delaying payment of an account by raising a dispute in general terms. The ratepayer is required to furnish facts that would adequately enable the municipality to ascertain or identify the disputed item or items and the basis for the ratepayer’s objection thereto. *If an item is properly identified and a dispute properly raised, debt collection and credit control measures could not be implemented in regard to that item because of the provisions of the subsection.* But the measures could be implemented in regard to the balance in arrears; and they could be implemented in respect of the entire amount if an item is not properly identified and a dispute in relation thereto is not properly raised.’

¹¹ Supra 2 at para 22

43 As I understand the respondent's position, in referring me to the *Croftdene* judgment, the respondent recognises that the dispute or challenge raised by the applicant in relation to the disputed claim – ie, the complaint – was properly identified and properly raised, with the result that it, the respondent, was not entitled because of a legal impediment, to claim same whether in whole or in part – at least until such time as it had determined the complaint against the applicant and then, presumably, in accordance with its determination.

44

44.1 The respondent, relying on the *Croftdene* judgment, as well as s 102(2) of the Systems Act and the By-laws, asserts that until it had responded definitively to the complaint – one way or the other – the applicant was not obliged (assuming of course the complaint was determined against it) to pay the disputed claim – and it, the respondent, was not entitled by law to collect the disputed claim and therefore prescription was effectively suspended.

44.2 In fact, the respondent goes somewhat further and says in relation to the applicant's criticism of its five-year delay in responding to the complaint, that the applicant could (or should) have reviewed its failure to take a decision given that it is settled law that the failure of an organ of State to take a decision (ie, a non-event) amounts to a decision (ie, a positive event) and is reviewable.

45 Continuing to expand and/or amplify its impediment defence, the respondent says that this Court has no jurisdiction to resolve the dispute without it, the respondent, first resolving same as provided for in the judgment of *Body Corporate of Willow and Aloe Grove v City of Johannesburg and Another*¹². (I deal more fully herewith later in this judgment; see paragraph 92 and subsequent paragraphs).

46 In summary, it appears that the respondent's impediment defence can be stated thus:

¹² [2023] ZAGPJHC 1451

46.1 it was precluded by s 102(2) of the Systems Act from serving legal process to interrupt prescription until it determined (obviously against the applicant – in whole or part) the complaint which had been lodged by the applicant on 23 April 2019;

46.2 it was only when it determined the dispute on 3 April 2024 that the s 102(2) impediment ceased to exist with the result that prescription had not, as contended for by the applicant, run its course.

Applicant's response to the impediment defence

47 The applicant proffers three responses (as it calls them) to the impediment defence, namely:

47.1 firstly, properly interpreted, s 102(2) of the Systems Act:

47.1.1 does not preclude the institution of legal proceedings, and none of the provisions of s 13(1)(a) of the Prescription Act avail the respondent and therefore the impediment defence must fail; and

47.1.2 is intended anyhow to safeguard consumers / customers of the City (such as for example the applicant) from the punitive / draconian measures ordinarily available to the City whilst their disputes properly identified and lodged as provided for in the *Croftdene* judgment (the complaint in this instance) are being adjudicated and not to shield the respondent from the running of prescription when it fails to determine such disputes timeously;

47.2 secondly:

47.2.1 even if s 102(2), properly interpreted, precludes the institution of legal proceedings with the result that the

impediment as provided for in s 13 of the Prescription Act is applicable, this cannot be relied upon by the respondent as its failure to determine the complaint for five years, would not be a recognised ground for the postponement or delay of the prescriptive period; and

47.2.2 our law does not allow a creditor (the respondent in this instance) to postpone (suspend) prescription by its own actions – whether deliberate or otherwise;

47.3 thirdly: in any event, even if the two ‘responses’ referred to in paragraphs 47.1 and 47.2 above do not succeed in refuting the impediment defence, then the respondent’s conduct effectively communicated its determination of the complaint (and by extension the impediment claimed by the respondent ended, and that by the time summons was served (4 April 2024), prescription had already run its course.

- 48 The applicant further asserts that there is a difference between commencing an action to interrupt prescription (on the one hand) and proceeding with an action already instituted and recovering the disputed claim (on the other hand).
- 49 In support of the impediment defence, the respondent relies on the *Croftdene* judgment, but the judgment does not address the question of prescription and/or the respondent’s entitlement (or lack of entitlement) to institute action to interrupt the running of prescription prior to it, the respondent, determining a pending dispute properly lodged and which satisfies the observations made by the learned Judge in *Croftdene* quoted in part in paragraph 42 above.
- 50 The applicant however relies heavily on two judgments, the one being *Tarica v City of Johannesburg Metropolitan City*¹³ (the ‘*Tarica* judgment’), a judgment of this court in which the court found (in summary) as follows:

¹³ [2025] ZAGPJHC 46

- 50.1 Ms Tarica has satisfied the requirements set out in *Croftdene* for a 'valid dispute' under s 102(2) of the Systems Act in relation to the amount claimed from her by the respondent in this matter relative to Ms Tarica's municipal account;
- 50.2 in view of the fact that a valid dispute had been raised, s 102(2) of the Systems Act became operative and prohibited the City from allocating payments to the disputed charges;
- 50.3 the City was however obliged (if it wanted to interrupt prescription) to institute legal proceedings before the completion of the period of prescription (which, it must be said, is the applicant's argument in this matter);
- 50.4 the City's argument that its policy precluded it from issuing summons on disputed claims, thereby preventing the debts from prescribing, was without merit. (It bears mention that in this matter – unlike Tarica – the claims that are in issue for purposes of prescription, can be assumed to have, at some stage – been owing);
- 50.5 prescription was governed by the Prescription Act and it operated independently of internal policies or administrative practices of municipalities;
- 50.6 consequently, whilst the City chose to adopt procedures from managing disputes through its credit control and debt collection policy, those procedures did not have the effect of overriding or suspending statutory requirements of the Prescription Act;
- 50.7 the purpose of the policy allowed for the suspension of certain credit control actions, such as disconnections during the resolution of disputes, was to safeguard customers from punitive measures whilst their disputes were being adjudicated;

- 50.8 the right to suspend credit control measures was an internal administrative remedy and did not equate to the legal interruption of a debt's prescription period;
- 50.9 the statutory framework for prescription continues to apply irrespective as to the City's internal mechanisms for dispute resolution; and
- 50.10 the running of prescription could not be altered by a creditor's inaction and the City's decision not to pursue the disputed claim through legal process did not negate the statutory operation of prescription.

51

- 51.1 The respondent argues that the *Tarica* judgment (which we are told is subject to a pending application for leave to appeal) is clearly wrong and that I should only consider it – at worst for the respondent – persuasive, and at best for the respondent, not binding.
- 51.2 I am unpersuaded; whilst the *Tarica* judgment stands, I am bound thereby, unless I can conclude that it is clearly wrong which I cannot.

52

- 52.1 The second judgment the applicant relies heavily upon is *Uitenhage Municipality v Molloy*¹⁴ (the '*Uitenhage*' judgment) in which the Supreme Court of Appeal – confronted with the question as to whether section 30(3) of the previous employment Act precluded an employee, who had not satisfied its conditions, from interrupting prescription through the service of 'any process, whereby the creditor claims payment of the debt' – held that it did not, and that the said section which precluded such employee from 'recovering' any amount due until the section's pre-conditions were satisfied was not a bar to issuing summons.

¹⁴ [1997] ZASCA 112

52.2 By way of analogy, the applicant submits that the respondent was not precluded (ie, impeded) from issuing summons to interrupt prescription until the complaint was resolved; it was simply barred from recovering (by way of a judgment) the amount claimed by it in the court proceedings.

53

53.1 In the alternate to its position in relying on the *Tarica* judgment (if it is found that *Tarica* was clearly incorrect or clearly distinguishable and that the primary reasoning in *Uitenhage* is not applicable), reliance is placed by the applicant on the alternative reasoning in *Uitenhage* where the SCA held that a creditor cannot, by failing to perform a required act within its control, delay the due date of a debt or postpone the running of prescription.

53.2 On this basis, even if s 102(2) of the Systems Act gave rise to an impediment as contemplated in s 13(1)(a) of the Prescription Act, that impediment ceased to exist 14 days after 23 April 2019, being the date on which the applicant lodged its query (or if not within 14 days, then as soon as possible thereafter). Consequently, says the applicant, the debt prescribed several years prior to the institution of action by the City in April 2024.

54 The applicant continues its rebuttal of the impediment defence by referring to the judgment of *Joseph and others v City of Johannesburg*¹⁵ ('Joseph') in which the Constitutional Court held that Municipalities are obliged to provide electricity to residents in the area as a matter of public duty. It emphasises, inter alia, that if debts are not paid to the respondent, it has a constitutional duty to implement debt collection measures – as Jakoob J held 'it is important for unpaid municipal debt to be reduced for all legitimate means' and that in a concurring judgment, Reagan J affirm that 'there can be no doubt that municipalities bear an important constitutional obligation and statutory responsibility to take appropriate steps to ensure the efficient recovery of debt'.

¹⁵ [2009] ZACC 30

- 55 With that platform, the applicant asserts that the respondent's position – namely that it was precluded or barred as a result of what the applicant calls its (the respondent's) own failure to determine the complaint for five years from claiming payment of the disputed claim at any time prior to 3 April 2024 was – is unsustainable.
- 56 The respondent in further support of the impediment defence, relies on s 13(1) of the Prescription Act and on s 102(2) of the Systems Act, the latter of which has been considered in a number of judgments.
- 57 It would be useful to refer to s 11(5) and (6) of the respondent's By-laws, which provide, inter alia, as follows:
- '(5) The Council must –
- (a) investigate or cause the query or complaint to be investigated within 14 days, or as soon as possible after the query or complaint was received; and
- (b) inform the customer, in writing, of its decision as soon as possible after conclusion of the investigation, instructing that any amount found to be due and payable must, subject to the provisions of section 21, be paid within 21 days from the date on which the customer is notified thereof, unless an appeal is lodged within that period in terms of subsection (6) or section 12.
- (6) A customer may, subject to the provisions of section 12, lodge an appeal with the City Manager in terms of section 62 of the Act against a decision referred to in subsection (5) within 21 days of the date of the notification of the decision'.
- 58 I am satisfied that the onus that the applicant had to prove a plea of prescription has been satisfied and so, as provided in *MacLeod* and *Lancelot* the burden now shifts to the respondent and I approach the impediment

defence against, inter alia, the backdrop of the above common cause facts and the shifted onus.

59 It is common cause that the respondent failed to:

59.1 investigate (or at least complete its investigation) of the complaint within the period provided for in s 11(5)(a) of the By-laws which requires the City to investigate a query or complaint 'within 14 days, or as soon as possible after the query or complaint was received' which, in my view, is clearly indicative of the By-laws requiring prompt – even urgent – attention.

59.2 advance any reason or explanation as to why it was not possible to investigate the complaint within the aforesaid 14-day period, or to tender any explanation whatsoever to enable this Court to understand or perhaps even evaluate whether when it did – eventually – revert in regard to the complaint on 3 April 2024 (some five years after the complaint was first lodged), the period between the lodging of the complaint and the determination thereof, was 'as soon as possible after the query or complaint was received' which recognises that depending on the nature, extent and complexity of the complaint a consumer / customer may lodge, that 14 days may in certain cases be insufficient in the circumstances for the City to investigate the query or complaint lodged by the consumer as provided for in s 11(5)(a) of the By-laws and what in the circumstances of this particular matter would have been reasonable and why the respondent might argue for that position.

60

60.1 The respondent's failure to explain what facts, circumstances or events prevented it discharging its duty to investigate the complaint:-

60.1.1 initially within 14 days;

60.1.2 and if that was not possible, then as soon as possible thereafter

is significant, more particularly given the fact that the By-law recognises that whilst ideally the City should resolve the complaint within 14 days, there may well be facts and circumstances that preclude it doing so but then, it must do so 'as soon as possible thereafter'.

60.2 What is soon and what is possible (there is linkage between the two), is of course something that is not within the applicant's knowledge but it certainly is within the respondent's knowledge and yet the respondent has chosen (and I do not think it unfair to say, deliberately) to remain silent in this regard. This omission and its consequence are dealt with more fully hereunder.

61

61.1 It seems to me that the City's position seems to be that, notwithstanding the requirements imposed upon it by s 11(5)(a) of the By-laws, it can nonetheless take as long as it wants to investigate any query, challenge or complaint that satisfies the 39 *van der Merwe* judgment (ie, clearly specified and identified amount) and where that time extends beyond the three year prescription period – indeed extends, I suppose in theory, for years thereafter – the City can, without tendering any explanation as to what precluded it resolving the complaint if not within 14 days, then 'as soon as possible thereafter' avoid the consequences of prescription.

61.2

61.2.1 I think not – certainly not without a sufficiently cogent reason (that satisfies the Prescription Act at least and perhaps even the Systems Act) as to what appears to be an inordinate delay and then certainly not without affording the applicant an opportunity of dealing therewith.

61.2.2 The City is after all an organ of State; it has responsibilities that differ from those of a private individual. It surely cannot suffice for the City to delay for an inordinate (and unexplained) period of time and then rely without further ado on s 102(2) of the Systems Act to shield it from a claim (or risk) of prescription.

61.3 In this instance, there are no facts or circumstances presented to the Court to support the discharge by the respondent of the onus which shifted to it after the applicant had established, *prima facie*, prescription.

62 The applicant asserts that there was no legal impediment to the respondent launching proceedings to recover the disputed claim after the expiry of the 14 day period (that is to say after 7 May 2019) or even after the expiry of a reasonable period beyond the 14 day period and believes that its assertion in this regard is supported by s 25 of the By-laws that provide that the City's failure, *inter alia*, to comply with the provisions of its own By-laws 'does not in any way affect the liability of any person to pay any amount due and payable to the Council as contemplated by these By-laws nor the Council's right to recover such amount'. Conversely – at least as I understand the applicant's position – this failure does not in any way affect the period of prescription running against the City.

63 The applicant also relies on the judgment of *Dodson AJ in 39 van der Merwe Street, Hillbrow CC*¹⁶, that a customer of the respondent could 'perpetuate a dispute indefinitely by simply ensuring that it does not agree to any assertion by the City as to the extent to the customer's indebtedness in respect of particular amounts. On this basis, s 102(2) might become an indefinite shield against the exercise of statutory power of disconnection, notwithstanding continued non-payment'.

¹⁶ [2023] ZAGPJHC 963

64

- 64.1 The respondent argues (as I understand its argument) that it should be permitted (without any plausible explanation – indeed without any explanation whatsoever) to simply not decide a complaint for an indefinite period – (in theory why should the five year period in this particular instance not, for example, be ten years in another matter or even longer, thereby leaving the consumer in limbo) with impunity – ie, without any prejudice to be suffered by it, the City.
- 64.2 The very idea and purpose of prescription (to bring matters within certain timeframes to finality) and the requirement for the respondent to investigate the complaint within fourteen days or ‘as soon as possible after the query or complaint was received’ is, in my view, a clear indication that the respondent cannot remain sanguine, seemingly do nothing about the complaint for years on end and then, without any explanation as to the reasons for what is clearly an extraordinary delay, not suffer the consequences thereof.

65

- 65.1 It must also be borne in mind that the respondent caused two demands for payment of the disputed claim to be made on the following dates:
- 65.1.1 15 and 21 November 2019 – via Revco; and
- 65.1.2 21 April 2021 – via attorneys Dalli Matlana and Partners,
- both dates after the lodging of the complaint (which was lodged on 19 January 2019) and of course after the 14 day period.
- 65.2 How then is a Court to interpret these two demands? The respondent in its answering affidavit, makes no effort to explain away the demands which, I think it fair to say, can only be interpreted to mean that the respondent, having received the complaint, intended to convey to the applicant (perhaps somewhat inelegantly and not necessarily in a

user-friendly fashion – but nonetheless in clear and unequivocal terms) that it had considered the complaint (as it was enjoined to do in accordance with its statutory and constitutional duty) as having no substance, that the complaint was unsuccessful (the disputed claim stood) and that the applicant should make payment thereof.

66 It is surely indisputable that the respondent knew and was constantly alive to the following:

66.1 its constitutional and statutory imperative to collect monies due and owing to it;

66.2 the 14-day period provided for in s 11(5)(a) of the By-laws to investigate the complaint;

66.3 that if it was not possible to complete its investigation of the complaint within the 14-day period, then it should do so as soon as possible thereafter; and

66.4 that any debt due to it (which would include the disputed claim) would ordinarily prescribe after three years,

and yet it took no steps whatsoever to interrupt prescription. In this regard, the applicant contends that the respondent could and should have initiated proceedings prior to the disputed claim prescribing and that the provisions of s 15(2) of the Systems Act was no bar to it doing so. For this proposition, it relies, inter alia, on the reported judgment of *Uitenhage*, the relevant portion of which reads as follows:

‘The basic fallacy in the contention advanced on behalf of the respondent, is that an employer’s debt arising from overtime work or work performed on Sundays, and which is payable at the end of the month in which such work was performed, nevertheless ceases to be “due” for the purposes of section 12(1) of the Prescription Act, merely because some procedural conditions prescribed in section 30(3) have to be satisfied before that debt is

recoverable. If that contention was correct the employee concerned could simply wait for up to twenty years before seeking to fulfil for the first time any of the conditions specified in section 30(3) of the Employment Act. An employer in the position of the appellant could, after the lapse of so many years, find itself presented with a claim for work allegedly done on some Sunday many years ago, without any effective means of counteracting such allegations. Material witnesses might have died in the interim and no records might be available to investigate the claims, because in terms of section 20(3) of the Employment Act an employer is only obliged to retain such records for a period of three years' and

'A creditor against whose claim prescription commences to run, may protect himself or herself from its consequences, by causing the interruption of prescription in terms of section 15 of the Prescription Act through the service of: "any process, whereby the creditor claims payment of the debt"'.

- 67 It seems to me that the respondent's approach in regard to the impediment defence is that it can take as long as it wants, without any explanation as to the delays and with complete impunity (thanks to s 102(2) of the Systems Act) to investigate a complaint and consumers (the applicant in this instance) must simply hope that one day in the future, when and if a complaint is determined against them (as in the case of the applicant in this matter) – they still have the necessary evidence (personnel, documents, witnesses, institutional memory and whatever else a litigant would hope to have available to them by way of arrows in their quiver) to discharge an onus and/or defeat a claim from the City so as to be victorious in litigation. This seems to me to be the very antithesis of the purpose of prescription, as well as the directive embodied in s 11(5)(a) of the By-laws (14 days or as soon as possible thereafter).

68

68.1

- 68.1.1 The respondent asserts that it was always open to the applicant to initiate review proceedings when it, the respondent, had failed to make a decision in respect of the

complaint and it criticises the applicant for not having done so.

68.1.2 This criticism is without foundation; there can be no duty on a debtor to initiate any steps or do any act, matter or thing that has the effect of benefitting a creditor so as to avoid a debt becoming prescribed absent perhaps a specific legal requirement – and there is no such legal requirement in this matter.

68.2 To suggest or hold otherwise, would be to cast some or other onus or responsibility on a debtor to act contrary to its own affairs and interests (which in and of itself may have serious repercussions, including breaching duties of good faith and other responsibilities to a range of stakeholders) in favour of a third party (a creditor) to whom it owes no duty or responsibility – and with whom it may be and probably in most instances, will be, in a hostile or potentially hostile environment. Such a proposition only needs to be articulated, to immediately appreciate its fallacy.

68.3 In any event, and separate and distinct from the rejection of the respondent's assertion / position as referred to in paragraphs 68.1 and 68.2 when would the applicant (at least on the respondent's version) initiate review proceedings? Put another way, by when had the respondent failed to make a decision? Three months after the expiry of the 14 day period? six months? Two years? and so forth and so on. It would be grossly unfair and unreasonable to leave a consumer in this twilight world of uncertainty.

69

69.1 The respondent also relies on the content of the applicant's attorneys' letters of 28 May 2019 and 22 November 2019 as supportive of its position that there is an interruption of prescription.

69.2 In the 28 May 2019 letter, the applicant's attorneys informed the respondent that it would not lodge an appeal as it would not adopt the view that the respondent's failure to respond to the applicant's complaint was deemed to be a refusal to address it and the written decision was thus awaited in due course.

69.3

69.3.1 Whilst I cannot glean from the papers what the applicant would have been appealing against, I do not believe the existence of this letter – whatever it may or may not mean or convey to the respondent – constitutes an impediment to the respondent instituting proceedings if it wished to interrupt prescription.

69.3.2 There was nothing to prevent the respondent, when the prescription clock was nearing the bewitching hour, to advise the applicant that the complaint was still being investigated (ideally with some reason for the delay – if only as a courtesy to a customer / consumer,) and that it, the respondent, intended to institute action in respect of the disputed claim for the sole purpose of interrupting prescription but that having served whatever court proceedings interrupted prescription (perhaps an action; perhaps motion proceedings), the dies would (or could by agreement) be suspended pending the respondent's determination of the complaint. Such an approach would be one that any customer / consumer faced with the position of the applicant could not legitimately resist or object to – and yet the respondent did nothing.

69.3.3 Even if a customer / consumer faced with such an approach by the City were to be uncooperative, there is no reason why the City should not, *ex abundante cautela* and if only to protect its own position, cause court proceedings (action or

motion proceedings) to be instituted and served and to deal with any objection by the customer / consumer thereafter. That, to my mind, would be a responsible safety-first approach to the matter.

69.4 On 22 November 2019, the applicant's attorneys reminded the respondent that the complaint was still pending and that the demand for payment by Revco was premature.

70 These two letters simply identified the applicant's assessment of its position and how it viewed matters. It was for the respondent to determine whether the applicant's assessment was right or wrong and in any event in my view, neither letter could be interpreted to constitute an interruption of prescription, nor did it present the respondent with any benefit it could somehow rely upon to advance or protect its position.

71

71.1 Does s 13(1) of the Prescription and s 102(2) of the Systems Act – properly interpreted – allow the City to take as long as it wants – in this case five years, but ostensibly if the respondent's argument is to be taken to its logical conclusion – any period of time – to investigate the complaint and short of review proceedings, the consumer must tolerate the delay together with all the actual and potential prejudice it may suffer?

71.2 My view is that to afford these sections relied upon by the respondent their literal meaning (or at least a meaning as contended for by the respondent) would give rise 'to an injustice or incongruity or absurdity that is at odds with the purpose of the statute' quoting the *Constitutional Court in Independent Institution of Education (Pty) Ltd v KwaZulu Natal Law Society and others*¹⁷.

71.3 In this judgment the Constitutional Court has said the following on the purposive interpretation of statute:

¹⁷ [2019] ZACC 47 at paras 1 and 2

- [1] It would be a woeful misrepresentation of the true character for constitutional democracy to resolve any legal issue of consequence without due deference to the pre-eminent or overarching role of our Constitution.
- [2] The interpretive exercise is no exception. For, section 39(2) of the Constitution dictates that ‘when interpreting any legislation ... every court, tribunal, or forum must promote the spirit, purport and objects of the Bill of Rights’. Meaning, every opportunity courts have to interpret legislation, must be seen and utilised as a platform for the promotion of the Bill of Rights by infusing its central purpose into the very essence of the legislation itself.’
- [18] To concretise this approach, the following must never be lost sight of. First, a special meaning ascribed to a word or phrase in a statute ordinarily applies to that statute alone. Second, even in instances where that statute applies, the context might dictate that the special meaning be departed from. Third, where the application of the definition, even where the same statute in which it is located applies, would give rise to an injustice or incongruity or absurdity that is at odds with the purpose of the statute, then the defined meaning would be inappropriate for use and should therefore be ignored. Fourth, a definition of a word in the one statute does not automatically or compulsory apply to the same word in another statute. Fifth, a word or phrase is to be given its ordinary meaning unless it is defined in the statute where it is located. Sixth, where one of the meanings that could be given to a word or expression in a statute, without straining the language, ‘promotes the spirit, purport and objects of the Bill of Rights’, then that is the meaning to be adopted even if it is at odds with any other meaning in other statutes.
- [38] it is a well-established canon of statutory construction that “every part of a statute should be construed so as to be consistent, so

far as possible, with every other part of that statute, and with every other unrepealed statute enacted by the Legislature”. Statutes dealing with the same subject matter, or which are *in pari materia*, should be construed together and harmoniously. The imperative has the effect of harmonising conflicts and differences between statutes. The canon derives its force from the presumption that the Legislature is consistent with itself. In other words, that the Legislature knows and has in mind the existing law when it passes new legislation, and frames new legislation with reference to the existing law. Statutes relating to the same subject matter should be read together because they should be seen as part of a single harmonious legal system.

- [41] the canon is consistent with a contextual approach to statutory interpretation. It is now the trite that courts must properly contextualise statutory provisions when ascribing meaning to the words used therein. While maintaining that words should generally be given their ordinary grammatical meaning, this Court has long recognised that a contextual and purposive must be applied to statutory interpretation. Courts must have due regard to the context in which the words appear, even where the words to be construed are clear and unambiguous’.

71.4

- 71.4.1 Guided by the aforesaid decision, I am confident that s 13(1) of the Prescription Act and s 102(2) of the Systems Act do not afford the respondent the license or protection (so to speak) that it claims; it would be at least unjust, probably incongruous and almost certainly absurd – if not all three.
- 71.4.2 If it were otherwise, the prejudicial effect on a consumer / defendant when faced with a claim years later (and the possibility, if not certainty, of not being able to mount a defence so that the battle between City and consumer

would be one that satisfies our constitutional values of fairness, equity and reasonableness) is clear.

72 I therefore find that:

72.1 the applicant has established a prima facie case of prescription and discharged whatever onus it had in this regard;

72.2 the respondent has not discharged the evidentiary burden that shifted to it thereafter; and

72.3 as a result thereof, the impediment defence raised by the respondent is, in the circumstances of this particular matter, unsustainable.

The suspension defence

73

73.1 This defence – which I have called the suspension defence – is premised on the existence of an agreement which the respondent alleges was concluded between it and the applicant ‘to pend the claim of the disputed amount until such time the respondent has resolved the applicant’s dispute / query and notify the applicant in writing’. The applicant disputes that such agreement was ever concluded.

73.2 The importance of this agreement (assuming it was concluded) could not have escaped the respondent’s attention. It would, in and of itself, effectively suspend prescription from, at very least, the date the agreement was concluded (not identified by the respondent) until the resolution of the complaint which, on the respondent’s version, would be 3 April 2024 (when its attorney addressed an email to the applicant’s attorneys referred to in paragraph 21 above), and yet there are no details whatsoever provided as to when and where this agreement was concluded, who represented the parties in concluding the agreement, was it written or oral (or perhaps a combination of both), what were its terms and what were the surrounding

circumstances – what for example, led up to the conclusion of the agreement? So many obvious questions that present themselves when asserting the existence of an agreement of such significance and yet no answers (or put another way, no information) are asserted / tendered by the respondent.

- 74 Were such an important agreement concluded. it seems inconceivable that the respondent (in whose favour that agreement would have been concluded) would not have addressed a letter to the applicant's attorneys confirming the existence of such an agreement and its terms.
- 75 When searching for details about the agreement (not to be confused with the allegation of the existence of an agreement), all one finds is ... nothing.
- 76 Given the significance of such an agreement (if it had been concluded), and the absence of even the barest information relating thereto (and bearing in mind that the respondent would have the onus to establish the existence of such an agreement), I have no hesitation in finding that the respondent's assertion that such an agreement was concluded is implausible I reject it completely.

The factual dispute defence

77

- 77.1 Prior to addressing the factual dispute defence, I must remain cognisant of the Plascon-Evans rule (*Plascon-Evans Paints Ltd v van Riebeeck Paints (Pty) Ltd*¹⁸), which guides a court's approach where there is an argument (usually, if not always, advanced by a respondent in motion proceedings – and on occasions by a court itself) that an irreconcilable dispute of fact exists, which precludes a court in motion proceedings from making a determination when final relief is sought.

¹⁸ [1984] 2 All SA 366 (A)

77.2 This rule has become so entrenched in South African law and has been quoted and followed on so many occasions that it almost seems unnecessary to refer thereto but having said that, it is as well that I quote same, which I do hereunder:

‘... where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondent together with the admitted facts in the applicant’s affidavits justify such an order...

Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted’.

78 The respondent asserts relative to the factual dispute defence that the following questions are to be addressed by the Court in this application and can only be answered by evidence led by witnesses and therefore, says the respondent, the matter cannot be disposed of on motion proceedings. The questions are, according to the respondent (framed by me based on the respondent’s heads of argument), whether:

78.1 the respondent was entitled to claim the disputed claim or was prohibited from claiming same whilst the complaint was pending;

78.2 the disputed claim ‘can be deemed to have prescribed’ without the applicant agreeing that the amount was due and payable and that the respondent could claim it;

78.3 the applicant has accepted the outcome of its query as provided by the respondent;

78.4 the By-law and the administrative law finding that the failure of the respondent taking the decision is a reviewable decision are settled in law; and

78.5 this Court can accept that from 2019 to March 2024, the disputed claim was due and payable prior to the respondent resolving the complaint.

- 79 Even if I accept that the disputes (or questions) identified in paragraph 78 above (which I have extracted and collated from the respondent's heads of argument) are correctly and fairly identified, in my view, none of them prevent my deciding this matter on application for final relief given what are the common cause facts, as well as facts which, though not formally admitted, cannot be denied.
- 80 In addition to the common cause facts, there are three significant common cause omissions that I have had regard to, namely:
- 80.1 in relation to the suspension defence, evidence relevant to the agreement asserted by the respondent is not only sparse, but non-existent;
- 80.2 in relation to the impediment defence, the respondent has failed to tender any explanation – let alone a plausible explanation – as to why, in spite of s 11(2) of the By-laws requiring any dispute (the complaint in this matter) being determined speedily (14 days or as soon as possible), it took five years to deal therewith and when, on 3 April 2024, its attorney advises the applicant of the outcome of the investigation (ie, the decision in relation to the complaint), it repeats – parrotlike – its, the respondent's, initial finding; and
- 80.3 the respondent instituted action more than three years after it had the necessary information to formulate a cause of action in respect of the disputed claim.
- 81 My approach to the framing by the respondent of what it alleges are disputes of facts, is set forth hereunder:
- 81.1 whether the respondent was entitled to claim the disputed claim prior to prescription arising in the ordinary course is a matter of law, but there are common cause facts that do not present uncertainty as envisaged by the *Plascon-Evans* rule. I have dealt with this above;

81.2

81.2.1 in regard to the question as to whether the disputed claim can be deemed to have prescribed without the applicant agreeing that the amount was due and payable and that the respondent could claim it, suggests that until such time as the applicant consents or allows the respondent to institute action against it, the respondent is precluded from instituting action.

81.2.2 Such a proposition, besides not being a dispute of fact, only needs to be articulated to appreciate that it cannot be a sound legal proposition and in any event is, I believe, incorrectly framed as a dispute of fact;

81.3

81.3.1 the question as to whether the applicant has accepted the outcome of its complaint as provided for by the respondent, is also incorrectly framed as a dispute of fact. There has been no suggestion by the respondent in its answering affidavit that once it had determined the complaint, the applicant is obliged to either accept the determination or reject it and in the latter circumstances, presumably exercise some or other right following upon the respondent's determination of the complaint against it prior to the respondent being entitled to initiate proceedings against the applicant.

81.3.2 Once again, to the extent that the respondent frames this as a dispute of fact, it cannot be so categorised and in any event, does not appear from the papers at all – let alone appearing in the papers as a dispute of fact;

81.4

81.4.1 the framing of the question 'the By-law and the administrative law finding that the failure of the of the respondent taking a decision is a reviewable decision are settled in law' is (if to be viewed through the prism of an alleged dispute of fact) incomprehensible. Where the respondent fails to take a decision in circumstances where it has an obligation to do so, such conduct is a reviewable decision and is a well settled legal cause of action (even trite law) and once again is not a dispute of fact.

81.4.2 I cannot, even in the most generous approach to the respondent, identify what is the dispute of fact contended for by it that requires evidence. I have in any event found, as a matter of law, that there was no obligation on the applicant to review the respondent's failure to make a decision on the complaint. Where the dispute lies in relation to the respondent's delay for five years, I know not. There is in fact none. Once again, the respondent incorrectly frames this question (whatever the question may be) as a dispute of fact. To the extent that I can glean a question and/or a dispute, it is not one that precludes my making a final decision on motion;

81.5 as to whether this Court can accept that from 2019 to March 2024, the disputed claim was due and payable before the respondent resolved the dispute is, in my view, once again, a matter of law – not fact and certainly not a disputed fact. It is the legal conclusion that is subject to dispute, not the objective facts which give rise to the competing arguments. If however I am wrong in this regard, and it is a factual situation that requires a determination, then it seems to me there are common cause facts as well as facts that are sufficiently uncontentious which allow a determination in motion proceedings.

- 82 Consequently, I find that there are no disputes of fact (or unanswered questions on the respondent's approach to the matter) that prevent me deciding this matter by way of motion proceedings.

The tacit acknowledgement defence

- 83 Prior to dealing with the tacit acknowledgement defence, I must of course have regard to the law relating thereto and how courts have pronounced on this area of law which has happened on many occasions. I start by referring to *Petzer v Radford (Pty) Ltd*¹⁹, in which the Full Court held that:

'To interrupt prescription, an acknowledgement by the debtor must amount to an admission that the debt is in existence and that he is liable therefor'.

- 84 In *Cape Town Municipality v Allie NO*²⁰ (the '*Allie* judgment') which dealt with s 14(1) of the Prescription Act when dealing with the question as to whether a debtor had made a tacit acknowledgment of liability, states as follows:

'... Full weight must be given to the Legislature use of the word 'tacit' in s 14(1) of the Act. In other words, one must have regard not only to the debtor's words, but also to his conduct, on one's quest for an acknowledgement of liability. That, in turn, opens the door to various possibilities. One may have a case in which the act of the debtor, which is said to be an acknowledgement of liability, is plain and unambiguous. His prior conduct would then be academic. On the other hand, one may have a case where the particular act or conduct which is said to be an acknowledgement of liability is not as plain and unambiguous. In that event, I see no reason why it should be regarded in vacuo and without taking into account the conduct of the debtor which preceded it. If the preceding conduct throws light upon the interpretation which should be accorded to the later act or conduct which is said to be an acknowledgment of liability, it would be wrong to insist upon the later act or conduct being viewed in isolation...

¹⁹ 1953 (4) SA 314 (N) at 317

²⁰ 1981 (2) SA 1 (C) at 5G-H

Thirdly, the test is objective. What did the debtor's conduct convey outwardly?

...

Fourthly, while silence or mere passivity on the part of the debtor will not ordinarily amount to an acknowledgement of liability, this will not always be so. If the circumstances create a duty to speak and the debtor remains silent, I think that a tacit acknowledgement of liability may rightly be said to arise ...'

- 85 The Court in *Allie* recognised that the establishment of a tacit acknowledgement of liability depended on a conspectus of all the relevant facts. It stated further:

'... it is conceivable that there may be circumstances in which it would not be correct to infer an acknowledgment of liability for a balance from the making of a payment simply because, objectively regarded, it is a part payment. There may be something in prior dealings between the parties, or the prior or contemporaneous conduct of the debtor, which would negate such an inference.'

- 86 In *Agnew v Union and South West Africa*²¹, the Court held that determining whether there was an acknowledgement of liability is a factual question relating to the intention of the debtor.

- 87 In *Scally v Feltra (Pty) Ltd*²², the Court held that the test for establishing a tacit acknowledgment of liability should be approached no differently from the test for proving a tacit contract, which requires the party alleging it to show, on a preponderance of probabilities, unequivocal conduct which is capable of no other reasonable interpretation than that the debtor intended to, and did in fact, acknowledge liability.

²¹ 1977 (1) SA 617 (A) at 622H-623C

²² [2019] ZAKZPHC 36 at para 13

88.1 Whilst there may be some criticism as to the manner in which the respondent raised its tacit acknowledgement defence, it seems that its argument is premised on the fact that prescription running on the disputed claim was interrupted by the applicant paying for its current monthly electricity consumption charges and for which the applicant acknowledged liability – ie, electricity consumption charges which were separate and distinct from the charges comprising the disputed claim.

88.2 Put another way; in making payment of certain amounts which were not subject to dispute (and were not part of the complaint), the applicant was tacitly acknowledging that the amounts comprising the disputed claim were, on some or other basis (which the respondent does not explain), conceded by the applicant to be due and owing – and by some (unexplained) leap of logic – no longer part of or subject to the complaint, is simply unsustainable.

88.3 Also; what of s 11(3)(c) of the By-Laws, to which there is reference in paragraph 41 above? This section makes clear that a consumer (the applicant in this instance) has an obligation to make payment of a municipal service account except for the amount that is subject to the complaint. That is exactly what the applicant was doing – and the respondent must surely have known that.

89 If one then applies the law as articulated by the above learned judges (with which I respectfully agree) to the facts in this matter, the following is clear:

89.1 the accounts / debts paid by the applicant were debts that were separate and distinct from any of the debts (causes of action) constituting the disputed claim; they also arose subsequent to the 31 May 2018, which is the end date of the period to which the disputed claim arose;

89.2 the applicant was clearly making payment from time to time (as one would expect a good corporate citizen to do) of its current consumption in respect of electricity charges.

- 90 It seems to me therefore that the respondent cannot seriously contend that the conduct of the applicant in discharging an admitted liability for electricity consumed by it separate and distinct from debts comprising the disputed claim (particularly against the backdrop of the correspondence consistently addressed by the applicant's attorneys, the interdict proceedings referred to in paragraph 4 above and the urgent order), can by any stretch of even the most vivid or creative imagination, be construed as some sort of tacit admission of liability.
- 91 This answer or rebuttal by the respondent must therefore fail; a classic case of a non-sequitur.

Intervention by the Court

- 92 The respondent also argues that because the application was issued on 20 March 2024, prior to the respondent having made known the outcome of its investigations into the complaint (the latter of which occurred on 3 April 2024), this Court does not have authority or any power to intervene. For this proposition the respondent relies on the judgment of *Body Corporate of Willow and Aloe Grove v City of Johannesburg and Another* (the 'Willow judgment') in which the learned judge had the following to say in relation to the nature of the relationship between the parties (that is to say the consumer and the City) and the power of the Court to interfere with the agreement (that is to say the Systems Act, the By-laws, the Policy and the Consumer Agreement between the parties):

'It is not unusual for the exasperated customers of municipalities the country over to have to resort to the courts in a bid to resolve disputes. Regrettably, this is often sought to be done without a consideration of the court's function and powers in the context of the relationship between municipalities and citizens and the understanding that relief sought must comply with the legal prescripts which govern this relationship.'²³

²³ Supra at para 1

[6] In this judgment I examine the legislative scheme which governs the relationship between municipalities and their customers with reference to debt recovery, credit control and dispute resolution. This examination is done with the aim of clarifying the powers and function of the court in this context.²⁴

[102] If there is a relationship of customer/service provider with the municipality then the scheme must be shown to have been followed in good faith. If an applicant is not a customer of the municipality (eg, a tenant) he may approach the court on the basis that procedural fairness is afforded not only to customers of the municipality but to any person whose rights would be materially and adversely affected by the termination of electricity supply or other service.²⁵

[105] Both applications fall to be dismissed because it is not competent for an applicant to seek to circumvent the machinery of the legislative scheme by resorting to court. An applicant may only seek that the municipality comply with its obligations under the scheme. It cannot be sought that the court supplants the municipality's function.²⁶

[106] The dispute resolution machinery in the By-Laws is not an optional feature of the relationship which can be jettisoned in favour of approaching a court when one or the other party becomes dissatisfied'.

In conclusion, the court stated:

'The relationship between customer and the municipality is contractual but also has administrative and statutory components. Were a court to interfere in the determination of the dispute, this would amount to an impermissible incursion onto the contract of the parties. From an administrative perspective, such intervention would amount to an impermissible interference with

²⁴ At para 6

²⁵ At para 102

²⁶ At para 105

decisions which are to be taken by the municipality under the legislative scheme’.

93

93.1 I do not however view this application and the relief sought as one similar to that which the Court in the *Willow* judgment was dealing with. This application does not require me to enter the arena to deal with the complaint, such as whether for example the amount of the disputed claim is correct or not. I am simply required to determine, whether, based on the law as applied to the facts I can rely upon (and by applying the *Plascon-Evans* rule), the respondent can sue for the amounts comprising the disputed claim or whether its ability or right to do so has prescribed. That I can do without entering the arena that the *Willow* judgment warned against.

93.2 To the extent therefore that the respondent relies upon the *Willow* judgment for support, it is distinguishable from this matter, and is of no support to, or comfort for, the respondent’s cause / answer.

94 There is however another reason why I must reject the respondent’s argument that the *Willow* judgment applies to this application and the relief sought by the applicant and that is this; the urgent order allowed the applicant, should it have so elected, to initiate this application and if the respondent was of the view that it was legally impermissible for the applicant to launch this application for relief relative to its claim of prescription, it was open to the respondent to appeal at least this part of the urgent order – but it did not.

Payment of the sum of R7 553 737.00

95 The urgent order compelled the applicant to make payment to the respondent of an amount of R7 553 737,00, ‘which amount forms part of the subject matter of the disputed amount and which payment is made without prejudice to the applicant’s rights and without any admission of liability’.

96 It is part of the applicant's claim in this application that the respondent be ordered and directed to credit the municipal account with, inter alia, this amount plus interest thereon at the prescribed rate.

97

97.1 I see no reason why the respondent, who has clearly received this amount, should not be ordered to do so. The fact that the respondent may have queried (from whom, I know not) where the amount should be allocated, is not a bar to granting the order. It, the respondent, was actively involved in the interdict proceedings which resulted in the urgent order and would presumably have full knowledge as to the facts surrounding the payment and the very specific amount (not a round amount) that the applicant was ordered to pay.

97.2 It is difficult to accept – and I do not accept – that the respondent is unable to properly allocate the amount received by it, but assuming I am wrong and there is some difficulty (which the respondent has not identified), this is a difficulty that cannot be insurmountable and in any event – however difficult it may be – the difficulty should not be visited upon the applicant.

97.3 I would also think that allocating a very specific amount correctly to a very specific indebtedness is basic accounting – something that I believe I can assume is available inhouse to the respondent.

Order

98 The parties were required to tender the orders they proposed be made by the court in this matter. Not surprisingly, they differed.

99 Having regard to what is stated above, the following order is granted:

99.1 departures from the Uniform Rules the terms of the order of court dated 6 March 2024 under case number: 2024/023316 – that is to say the urgent order – are hereby noted and condoned;

- 99.2 the respondent's claim against the applicant in respect of electricity back charges from 1 June 2025 until the end of May 2018 – ie, the disputed claim – has prescribed through the effluxion of time;
- 99.3 the respondent is ordered and directed to reconcile and correct the applicant's electricity account number: 2[...] (ie, the 'municipal account') by reversing those charges which have prescribed (see paragraph 99.2 above) as well as all consequential charges relating thereto, such as interest, legal fees and disconnection / reconstruction fees from the municipal account;
- 99.4 the respondent is ordered and directed to correctly credit the municipal account by the amount of R7 553 737.00, which amount was paid by the applicant to the respondent in terms of the urgent order;
- 99.5 the respondent shall, within ten days of the granting of this order, furnish the applicant with a current updated and adjusted municipal account reflecting the adjustments consequent upon the orders in paragraph 99.3 and 99.4 above;
- 99.6 the reserved costs referred to in the urgent order (ie, the urgent interdict referred to in paragraph 4 above) are to be paid by the respondent on the party and party scale. (I explain the scale in paragraph 100 hereunder);
- 99.7 the reserved costs of the applicant's strike out application are to be paid by the respondent on the attorney / client scale. (I explain the scale in paragraph 101 hereunder); and
- 99.8 the costs of this application are to be paid by the respondent on the party and party scale. (I explain the scale in paragraph 102 hereunder).

100.1 Insofar as the reserved costs in the urgent application are concerned, the applicant contends that the respondent ought not to have opposed same and that the defences (or purported defences as the applicant calls them) raised by it were spurious.

100.2 Whilst there is in my view a strong argument to be had that at least some of the defences raised by the respondent were completely without foundation (and might – had those been the only defences raised by the respondent – been worthy of an adverse cost order on an attorney and client scale), one cannot say the impediment defence raised by the respondent had no prospect of success and was not properly raised in this matter.

101 Insofar as the reserved costs in the applicant's strike out application are concerned, it is to be noted that the respondent was obliged to file its heads or argument and practice note by 3 September 2024 but only did so on 6 May 2025 – some seven months later. That seven-month delay in complying with a Court order is simply unacceptable in the absence of an exculpatory explanation (and none has been proffered) and on that ground alone, a costs order on the attorney and client scale has merit and is so ordered.

102 Insofar as this application is concerned, the applicant succeeded and for the same reasons referred to in paragraph 100.2 above, costs on the attorney and client scale are in my view not merited, and costs on the party and party scale are ordered.

103 All the costs orders – whether party and party or attorney / client – include the costs of two counsel where so employed, and on scale C.

B R KAHN AJ

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