



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

REPORTABLE

Case no:2025-005991

In the matter between:

LASER LOGISTICS (PTY) LTD

APPLICANT

and

WALTEX (PTY) LTD

RESPONDENT

Coram: BHOOPCHAND AJ

Heard: 07 November 2025

Further submissions received on 14 November 2025

Delivered: 21 November 2025

Summary: Claim for payment of a liquidated debt. Monetary claim met with contractual defences, raising both substantive and evidentiary issues. Respondent raised three defences. Firstly, the original agreement had been novated, thereby extinguishing the Applicant's claim. Secondly, the *exceptio non adimpleti contractus*, contending that the Applicant had not fulfilled its own obligations under the contract. Thirdly, the quantum of the amount claimed was incorrectly computed, rendering the claim overstated or inaccurate. Subsequent payment arrangements to reduce the Respondent's indebtedness, the failure to

prove expressly or by inference from conduct did not constitute an intention to novate the original credit agreement. The defence of the *exceptio non adimpleti contractus* does not apply to outstanding arrears in circumstances where the Respondent claims reciprocity of contractual obligations. Respondent was unable to satisfy its payment obligations. The Court was satisfied that the computation of the amount owing was correct and the explanation provided by the Applicant for the alleged discrepancies was acceptable. Implications of issuing a certificate constituting *prima facie* proof of the amounts stated therein with respect to each party's obligations and when *prima facie* evidence becomes conclusive.

ORDER

- 1 The Respondent is directed to pay the Applicant R 1 651 207.03 (one million, six hundred and fifty one thousand, two hundred and seven rand, and three cents)
- 2 Interest on the sum reflected in the preceding paragraph at the prescribed rate of interest per annum, *a tempore morae* to date of payment, and
- 3 Costs of suit on an attorney and client scale.

JUDGMENT

Bhoopchand AJ:

[1] The Applicant sought an order directing the Respondent to pay it R1 651 207.03 (one million six hundred and fifty-one thousand two hundred

and seven rand and three cents) together with interest and costs. The Applicant provides logistics services, and the Respondent is a manufacturing company. They began a commercial relationship on 16 February 2016 by concluding a written credit agreement embodied in a credit application.

[2] Under the terms of the agreement, the Applicant undertook to provide logistics services and extend a credit facility of R300 000 to the Respondent. The Applicant would issue monthly invoices payable within thirty days of presentation for the services it rendered to the Respondent. The agreement made provisions for the payment of interest, default on payments, exclusion of the agreement being considered a waiver of rights or a novation upon condonation of a breach, and legal costs. The National Credit Act 34 of 2005 did not apply to the credit agreement as the Respondent recorded that it had an annual turnover or asset value in excess of R1 million.

[3] The Respondent fell into arrears with its payments as early as January 2017. The Respondent was in arrears of R2 170 646.21 on 20 June 2024. On 21 June 2024, the parties concluded an agreement whereby the Respondent would settle the arrear balance by making weekly payments of R35 000 each Friday. The credit agreement would remain in place. The Applicant would provide the Respondent with services on a cash on delivery (COD) basis, to be payable within twenty-four hours of presentation of the invoice for the previous week on a Monday morning. If the Respondent failed to make a timeous payment, the full outstanding balance would become immediately due. The Respondent breached the payment agreement.

[4] On 16 October 2024, the Applicant's attorney informed the Respondent that it had failed to make payment of the R35 000 on 4 October 2024 and 11 October 2024. The Respondent was informed that it had to pay the full outstanding balance of R1 787 029 immediately. The Applicant demanded

immediate payment of R70 000 under the payment agreement, failing which it would enforce its rights to claim payment of the full balance. On 22 October 2024, Applicant's attorney demanded that the full outstanding balance be paid by 28 October 2024.

[5] On 24 October 2024, the Respondent requested an indulgence until 30 October 2024 to negotiate further terms with the Applicant, as it had cash flow problems. On 25 October 2024, the Applicant agreed to grant the Respondent the indulgence it sought. On 31 October, the Applicant's attorney wrote to the Respondent informing it that it had ceased payments and had breached the weekly payment agreement three times. The Respondent had failed to reduce the outstanding debt as well as pay the COD amounts of R25 219.64 and R12 003.21. The Applicant stated that it would cease providing services to the Respondent unless payment in full of R177 222.85 had been made by 1 November 2024. If the Respondent made this payment, the Applicant would be prepared to resume the services. The latter was subject to the parties concluding an acceptable acknowledgement of debt agreement. The Respondent responded on the same day, stating it had financial difficulties and that it needed to continue trading to meet its various financial obligations. The Respondent acknowledged its commitment to settle its debt but did not make a counterproposal on how it intended to pay the debt.

[6] On 6 November 2024, the Applicant's attorney informed the Respondent that it required a payment of R400 000 by 31 December 2024, weekly payments of R40 000 commencing on 11 November 2024, and payments of R200 000 every three months beginning on 31 March 2025 until the outstanding balance had been settled in full. The proposal would be open for acceptance until 12h00 on 11 November 2024. The Respondent did not accept the proposal. The Respondent stated that it could not make the weekly payments of R35 000

previously agreed to. It would make payments when its cash flow allowed it to do so. On 3 December 2024, the Applicant's attorney demanded payment under section 345(1) of the Companies Act 61 of 1973 as read with section 9 of schedule 5 of the Companies Act 71 of 2008, of R1 650 291.49 within three weeks.

[7] According to the Applicant, the Respondent responded on 13 December 2024 by recording its position. It had paid R177 222.85, but despite the payment, the Applicant declined trading with it. The Respondent had to utilise alternative suppliers. The Respondent contended that the Applicant had purported to alter the terms of the original agreement in November 2024 by increasing the weekly payment and instituting large lump sum payments. The Respondent demanded a new repayment agreement if the Applicant did not intend to render services to it. The Respondent understood that if it made the payment of R177 222.85, then the agreement was paused until a new payment agreement was concluded. The Respondent was unable to make payments since it had paid the R177 222.85.

[8] The Applicant clarified that its stance was that the Respondent had to make the payment of R177 222.85 by 4 November 2024 for it to resume rendering services to the Respondent on a COD basis. The latter proposal was subject to the parties concluding an acceptable acknowledgement of debt agreement regarding the settlement of the more substantial balance under the credit agreement. The Respondent did not tender any payment counterproposal for the settlement of the balance. The Respondent had declared it was unable to commit to a repayment agreement and that its compliance under the payment agreement would be conditional on its financial position and ability to pay

[9] The Respondent owed the Applicant the full outstanding balance of R1 651 207.03. The Applicant provided a certificate with an updated statement

of account as per the original credit application and contract. The Respondent did not deny its indebtedness to the Applicant but had failed to pay despite numerous demands. The Applicant ceased trading with the Respondent.

[10] The Respondent admitted that it fell into arrears with its payments but denied that the balances calculated at the various stages of their engagement since first falling into arrears in January 2017 were correct. The Respondent contended that it had not applied its mind to the precise amount that had to be paid but asserted that the Applicant had rendered incorrect invoices and had overcharged it. The Respondent admitted the payment agreement entered into between the parties on 21 June 2024. The Respondent denied that its payment of R177 222.85 was contingent upon an acceptable acknowledgement of debt being agreed to before the Applicant would resume its services to it.

[11] The Respondent contended that the Applicant would engage with it and negotiate an acknowledgement of debt after it had paid the R177 222.85 and continued to make weekly payments of R35 000 and render services on a COD basis. The Respondent stated that it needed to remain cash flow positive by continuing to trade. The Applicant would make that impossible if it ceased to provide services to it on a COD basis. Flowing from the Applicant's refusal to provide it with services, the Respondent suffered huge decreases in income and cash flow, making it impossible to pay the Applicant. The Respondent could not find alternative service providers who were willing to provide their services at the same rate as the Applicant.

[12] The Respondent contended that the final statement of account did not reflect the credits due to it and showed discrepancies between the debits allowed and the allocated balance. The Respondent denied that the capital amount owing to the Plaintiff was payable. The Respondent contended that by introducing the acknowledgement of debt requirement and imposing additional payments, the

Applicant proceeded to change the 21 October 2024 agreement unilaterally. The Respondent ended its answer by stating that it remained willing to negotiate and enter into an acknowledgement of debt for the payment of any amount owing to the Applicant, provided that funds are available.

[13] In reply, the Applicant asserted that the Respondent had paid an amount of R170 000 to it on 6 November 2024, R7 222.85 short of the amount demanded. The Applicant denied that by simply paying the R170 000, the Respondent could resume paying R35 000 weekly, as the agreement did not provide for this. The Respondent acknowledged that it was unable even to make the weekly payments. The Respondent expected the Applicant to render its services to keep it afloat with no assurance as to whether and when payment would be made for those services. The Applicant indulged the Respondent on several occasions, whereas the Respondent did not reciprocate by honouring its payment obligations.

[14] The Applicant had provided the Respondent with monthly statements of account. The Respondent did not dispute the amounts reflected in the statement. The Respondent's late denial of the amounts casts doubt on its good faith. The Applicant provided a comprehensive statement of the Respondent's account since their trading relationship began. It reflected all invoices, payments received, and credits passed when the account had been incorrectly debited. The Respondent did not dispute the balances before filing its answering affidavit. The Respondent had ample opportunity to propose agreeable terms of repayment to the Applicant prior to the Applicant instituting this application.

[15] The Applicant asserted that the Respondent's bald and unsubstantiated denial of the accuracy of the amount claimed did not give rise to a genuine dispute. The Respondent did not identify any incorrect entry in the composite statement. The Applicant offered to submit the source documents in support of

the statement. The Respondent had numerous opportunities to dispute the quantification of its indebtedness to the Applicant. It failed to do so. The Respondent made no genuine attempt to negotiate an acknowledgement of debt. The Respondent's invitation of late, to negotiate the acknowledgement of debt, was insufficient considering that it stated its repayment terms would be subject to its financial position.

THE RESPONDENT'S DEFENCES

Novation

[16] The Respondent had correctly dropped its defence that the subsequent payment arrangements were a novation of the original credit agreement. An intention to novate is, in any event, not presumed and must be proved either by an express declaration of the parties or by way of necessary inference, including the conduct of the parties, from all the circumstances.¹ The original contract was not replaced. The credit agreement provided that condonation of any breach of its provisions would not be construed as a novation.

Exceptio Non Adimpleti Contractus

[17] The Respondent raised the *exceptio non adimpleti contractus* as a defence to the claim. The Respondent did not dispute the terms of the original agreement or that it was in arrears with its payment obligations. The Respondent pointed to the 21 June 2024 agreements and their subsequent amendments, to assert that the Applicant's obligation to deliver services to the Respondent on a COD basis and the obligation of the Respondent to make payment under the payment agreement as amended were reciprocal. There is a presumption of reciprocity in contracts where parties undertake obligations to each other. The Respondent

¹ French v Sterling Finance Corporation (Pty)Ltd 1961(4) SA 732 (A) at 736 G-H

contended that the Applicant had failed to perform the services and did not tender to perform them. The Applicant was thus not entitled to payment by the Respondent.

[18] The *exceptio non adimpleti contractus* is a defence rooted in reciprocity. A party to a reciprocal contract may withhold their performance until the other party has performed or is ready to perform.² The Applicant's refusal to continue rendering logistics services until the Respondent settled its arrears and acknowledged its indebtedness falls squarely within this principle. However, the Applicant's suspension of its services to the Respondent is not a breach, but a lawful exercise of its rights under the defence. It has not received the agreed counter-performance. The Applicant rendered logistics services, and the Respondent was in arrears for those services as its payment obligations remained unfulfilled.

[19] Reciprocity existed in the amended agreement to the extent that the Applicant agreed to deliver services on a COD basis. The Respondent's obligation to pay arose upon delivery. The *exceptio* cannot be used to withhold payment for services already received, or to demand continued services while in breach, nor is it a shield against liability for past breaches. The Applicant's suspension of services in response to repeated defaults is a lawful exercise of its rights under the principle of reciprocity and does not constitute a breach. The amended agreement did not extinguish the original debt, and it is common cause that the amended agreement was not a novation. The Respondent remained responsible for the arrears as it was not released from paying them. The Respondent explicitly stated that it was not in a financial position to pay for

² *Grand Mines (Pty) Ltd v Giddey NO* (183/97) [1998] ZASCA 99; 1999 (1) SA 960 (SCA); (23 November 1998) at para 12

even the COD-based services. Readiness to perform is a prerequisite for the defence. The Respondent's reliance on the *exceptio* is misplaced.

[20] The Respondent alleged that for the Applicant to enter into a payment agreement with the Respondent and then to refuse to perform and unilaterally amend the agreement, demanding an acknowledgement of debt and seeking additional payments, was deceitful and contrary to public policy. The Respondent complained that the Applicant was not entitled to escape the consequences of the payment agreement by relying on the clause in the credit agreement requiring that amendments to the credit agreement must be signed by both parties.³

[21] The Respondent anticipated that the Court would raise the *Shifren* principle regarding entrenched clauses in a written agreement against its previous submission.⁴ The suggestion by the Respondent that the Applicant was deceitful in seeking an acknowledgement of debt and specifying an increased payment schedule is difficult to understand. The Applicant's insistence on an acceptable acknowledgement of debt and refusal to perform without it does not constitute unilateral amendment. It is a commercial response to repeated breaches. The Respondent's contention that this conduct was deceitful or contrary to public policy is not supported by *Brisley*. Unless the acknowledgement of debt was signed and the Applicant waived the clause, the original contract remained binding on the parties. *Brisley* affirms the binding nature of non-variation clauses. Public policy supports the enforcement of contracts freely and voluntarily entered into. Good faith and fairness do not override clear contractual terms, especially where parties have agreed to formalities for amendments.⁵

³ *Brisley v Drotsky* 2002 (4) SA 1 (SCA) ('*Brisley*') 90E-92C

⁴ *SA Sentrale Ko-op Graanmaatskappy Bpk v Shifren en Andere* 1964 (4) SA 760 (A) at paras 6-10, para 1 at 10H-12F and 9DE-EF

⁵ *Brisley* supra at paras 88-94

[22] A debtor's refusal to pay, without lawful justification, undermines the legal system's credibility and the economy's stability. Courts and legislatures generally reject excuses that amount to strategic avoidance. This includes tactics like delaying payment and disputing clear obligations.

[23] In a final attempt to stave off payment of the amount owing to the Applicant, the Respondent disputed its computation. The Respondent shrugged off the certificate signifying the amount owing by it as providing nothing more than *prima facie* proof. Respondent's Counsel identified three line items of the statement that were allegedly incorrect. The first relates to the invoice for 30 June 2023, which reflected a debit of R180 224.49 and an allocated balance of 114 892.27. The second related to the line item of 30 November 2023, which reflected a debit amount of R157 774.50 and an allocated balance of R32 774.50. The third relates to 31 March 2024 and concerns the distribution (invoice) for March 2024. It reflected a debit of R256 971.70 and an allocated balance of R176 328.88. The allocated balance across these three line items reflects an amount of R270 975.04

[24] Following the belated identification of the disputed items in the statement, and to ensure that the Court did not grant an order premised upon an incorrect amount claimed, the parties were allowed to address the alleged discrepancies. The Applicant explained why the amounts of R180 224.49, R157 774.50, and R256 971.70 were debited to the Respondent's account instead of the amounts of R114 692.27, R32 774.50 and R178 328.88, respectively. The Applicant stated that the Respondent made several payments over the period encompassing the invoices from 30 June 2023 to 31 March 2024. The payments did not correspond to any invoice amounts in the debit column, as the Respondent paid sporadically and in amounts that did not match the amounts of the unpaid invoices. When payments were received from the

Respondent, they were allocated to the oldest historical debt first, and in accordance with accepted accounting practice. This was the reason for the variance between the debit and allocated balance columns in the summarised statement. In the impugned line items identified by the Respondent, the payments made by the Respondent were credited towards the relevant invoice to the extent that there was money left over after the prior historical debt had been settled. There was a difference of R915.54 in the final balance calculated by the Applicant, but the Applicant opted to claim the lower amount of R1 650 291.49.

[25] The Respondent persisted in disputing the amount claimed, asserting that the explanation given by the Applicant did not explain the discrepancies between the allocation of the R180 224.49 and the R157 774.50 in the statements. The Respondent identified Clause 1 of Part B of the credit agreement, which provided that the certificate shall be *prima facie* proof of the amounts stated therein, and it shall rest with the Respondent to prove that such amount is not owing. The Respondent contended that this was not strictly correct. *Prima facie* evidence did not place an onus on a party to disprove; it placed a burden of rebuttal on that party. The Applicant must still prove on a balance of probabilities that the Respondent owes the amount claimed to it. *Prima facie* evidence called for an explanation, failing which it might become conclusive, but it does inevitably become conclusive if the Respondent fails to respond. The Respondent contended further that it will only become conclusive when all the circumstances are considered, which is the correct finding to make.

[26] The Applicant's reconciliation of the statement, though necessitated by the Respondent's irregular payment pattern, accords with accepted accounting practice and the legal principle that, in the absence of express allocation, payments may be applied to the oldest outstanding debts. The Applicant's explanation that payments were sporadic and allocated to the oldest debt first is

consistent with accepted accounting norms and common law principles of debt allocation.⁶ Failing agreement, the law has devised a set of residual rules which apply to determine the ranking of the different obligations to be discharged. The different obligations must be between the same parties. Older debts are settled before more recent ones.⁷

[27] The Respondent asserted that the certificate clause provides only prima facie proof of indebtedness; it does not displace the Applicant's burden to prove the claim on a balance of probabilities. *Prima facie* evidence calls for an answer, and if none is forthcoming, it may become conclusive, i.e., the clause creates a rebuttable presumption. In this case, the Applicant has provided a coherent reconciliation of the account, supported by accepted accounting practice and consistent with the payment history. The Respondent has not offered a credible alternative calculation or rebuttal. Hence, if the court is satisfied, in all the circumstances, that the evidence is reliable and sufficient, it may accept the outstanding debt as calculated to be the amount the Respondent owes to the Applicant.

CONCLUSION

[28] The Court is satisfied that the Applicant has discharged its burden, whereas the Respondent has failed to satisfy the evidentiary burden to show that the amount claimed is not owing. The exceptions raised, the *adimpleti non contractus*, novation, and incorrect amount, are unsupported by cogent evidence and do not withstand scrutiny. The Court is satisfied that the Applicant has provided a cogent and credible explanation for the discrepancies.

⁶ G Bradfield *Christie's Law of Contract in South Africa* 7 ed (2016) at 497 Van der Merwe et al., *Contract: General Principles*, Chapter 14, Termination of Obligations, 5th ed.

⁷ *Pfeiffer v First National Bank of Southern Africa Ltd* [1998] ZASCA 50; 1998 (3) SA 1018 (SCA); [1998] 3 All SA 397 (A) (28 May 1998) at b1026 D-E, *Standard Bank of South Africa Ltd v Oneanate Investments (Pty) Ltd (in liquidation)* [1997] ZASCA 94; 1998 (1) SA 811 (SCA) at 829H – 832G

[29] The Applicant sought costs on an attorney and client scale, including the costs of Counsel on scale B. The costs order sought is not competent. If a party seeks a punitive costs order, it is not entitled under rules 67 read with 69 to claim Counsel's costs separately. As the contract catered for attorney and client costs, the Court shall order accordingly.

ORDER

1. The Respondent is directed to pay the Applicant R 1 651 207.03 (one million, six hundred and fifty-one thousand, two hundred and seven rand, and three cents),
2. Interest on the sum reflected in the preceding paragraph at the prescribed rate of interest per annum, a tempore morae to date of payment, and
3. Costs of suit on an attorney and client scale.

AJAY BHOOPCHAND

Acting judge

High Court

Western Cape Division

Judgment was handed down and delivered to the parties by e-mail
on 21 November 2025

Applicant's Counsel: Liuba Stansfield
Instructed by: Bernadt Vukic Potash & Getz
Respondent's Counsel: E.S. Grobbelaar
Instructed by: Smith & De Jongh Attorneys