

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2020/19785

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
24 November 2025 DATE	 SIGNATURE

In the matter between:

STEELEDALE (PTY) LTD (in Business Rescue)

Applicant

and

**SCAW SOUTH AFRICA (PTY) LTD t/a
SCAW METALS GROUP**

First Respondent

REINFORCING STEEL CONTRACTORS (PTY) LTD

Second Respondent

JUDGMENT (LEAVE TO APPEAL)

Mahomed J

INTRODUCTION

[1] This is an application for leave to appeal to the Full Bench of this court. The applicant appeals the whole of a judgment I handed down on 29 April 2025. It

contends that my interpretation of the clauses 12.1 and 12.2¹ of the lease agreement which it relies on, is incorrect. The business rescue practitioner on behalf of the applicant, sought interdictory relief, to remove certain assets off the respondent's premises, which the applicant leased in the 80's and for an order that the respondent is not to interfere with the business rescue process. Blou SC submitted that the rights conferred as set out in the clauses is clear and there are no factual disputes, Plascon Evans has no application in casu, the relief ought to have been granted.

[2] It was further argued that the clauses permit the applicants to remove "all removable assets" upon termination of the lease and that the applicant is not obliged to restore the property in any way. Counsel explained the applicant received a piece of land, the plant was bespoke and the applicant installed weighbridges and gantries and other structure with the specific intention to operate the steel works. He referred me to clause 6.4 of the lease which provides for removal, and he contends supports the applicant's version that it owns the items and can remove them upon termination. The clauses conferred contractual rights on the applicants which included a right to remove its property.

[3] Mr Blou submitted it is a matter for interpretation and that another court will arrive at a different interpretation and therefore leave must be granted. He reminded the court that the validity of the clauses was never attacked and therefore no argument beyond the clauses and their meaning, can succeed.

¹ Judgment para 5

- [4] He contended that Barne's subsequent behaviour, the offers to purchase the assets on three separate occasions for significant amounts must confirm that he knew the items belonged to the applicant.
- [5] Daniels SC for the respondent argued that the items the applicant seeks to remove have acceded to the property and belongs to the respondent, they do not form part of the applicant's estate and cannot be sold by the business rescue practitioner. He contended that court is called upon to draw inferences and determine the issue on probabilities. The motion court is not designed to determine matters on probabilities. He submitted the issue of ownership is fundamental, having regard to the action proceedings in which the applicant claims it holds an improvement lien, on the property. It cannot hold a lien over property it claims it owns.
- [6] He further submitted that the judgment was correct in that, oral evidence will need to be led, the business rescue practitioner has only recently learnt of the applicant and its business, he arrived long after the lease was concluded, the court cannot rely entirely on his evidence. Mr Daniels argued that the assets acceded to the property and expert evidence would have to be led at the trial to confirm the accession. It was submitted that the clauses provide that all removable assets may be removed, "if they are removable" and only an expert can assist the court in that regard. He proffered there must be a process of discovery, a trial and evidence from experts, for an understanding of the intention of the parties at the time the lease was entered into. Mr Daniels submitted that, whether the items are removable is an objective fact and not a question of interpretation. He submitted the application must be refused with costs.

[7] Earlier in this judgment I referred to certain anomalies raised by both parties and in the light of those facts, see paragraphs 4, 5 and 6 above, I am inclined to grant the applicants the leave sought. If this is indeed a matter of interpretation, another court may arrive at a different conclusion. Mr Blou in this application alerted me to the language employed in clause 6.4 of the agreement which may assist parties at another hearing of this matter.

[8] Condonation for the delay in filing the notice of appeal is not disputed and is granted.

Accordingly, leave to the Gauteng Division of the High Court Johannesburg is granted, the costs to be in the appeal.

I make the following order:

1. Condonation for late filing of the notice is granted.
2. Leave to appeal is granted to the Gauteng Division of the High Court Johannesburg.
3. Costs of this application shall be costs in the appeal.



Mahomed J
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of hearing: 20 November 2025

Date of Judgment: 24 November 2025

Appearances:

Blou SC for appellant instructed by Fluxmans Inc

Daniels SC for respondent instructed by Eversheds

Sutherland Inc