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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case no. 2025/027539

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED.

DATE: 17 November 2025

SIGNATURE:

In the matter between:

INSCAPE EDUCATION GROUP (PTY) LTD

Applicant

(Reg. no. 2002/028979/07)

and

CAMPUS OF PERFORMING ARTS (PTY) LTD

Respondent

(Reg. no. 2009/011772/07)

JUDGMENT

The judgment and order are published and distributed electronically.

PA VAN NIEKERK, AJ

INTRODUCTION:

[1] Applicant is a company with limited liability duly incorporated in terms of the Laws of the Republic of South Africa with registered address in Florida Park,

Gauteng. Applicant is a registered private Higher Education Institution and have *inter alia* secured the premises of three distinct campuses situated respectively in Midrand, Durban and Pretoria.

[2] Respondent is a company with limited liability duly incorporated in terms of the Laws of the Republic of South Africa with its registered address situate at Midrand, Gauteng. Respondent trades as a contemporary Music College which provides courses to students who intends to pursue a career in the music business.

[3] In the Notice of Motion Applicant claims the following relief against Respondent:

- "1. That the respondent be ordered to pay and cause the applicant to be paid the sum of R3 185 232.02, in respect of arrear rentals, owed to the applicant;*
- 2. Interest on the aforesaid amount at the prescribed mora tore interest rate, calculated from date of issue of the application to date of final payment;*
- 3. Costs of suit;*
- 4. Further and/or alternative relief."*

[4] It is common cause that the Applicant entered into three separate written lease agreements with Respondent in terms whereof three different campuses situated respectively in Midrand, Durban and Pretoria were leased to Respondent. The purpose of these lease agreements were namely to enable Respondent to provide the educational programmes in which Respondent specialises.

[5] The Midrand Campus is situated at Stand 4[...], Halfway Gardens, Extension 24, 3[...] A[...] Road, Midrand, the Durban Campus is situated at Portion 39 of Erf 4[...] Brickfield, situate at 6[...] - 6[...] P[...] M[...] Ridge, Overport, Durban while the Pretoria Campus is situated at Erf 8[...], Waterkloof, Pretoria.

[6] The rental agreement in respect of the Midrand Campus commenced on 1 September 2021 and was concluded for an initial period of approximately 3 years, terminating on 31 December 2024. The rental agreement in respect of the Durban

Campus commenced on 1 December 2021 and would have endured for a period of approximately 2½ years, terminating on 31 May 2024. The rental agreement in respect to the Pretoria Campus commenced on 1 October 2021 and would have endured for a period slightly longer than 3 years, terminating on 31 December 2024. In the Applicant's Founding Affidavit it is alleged that the Respondent exhibited a deplorable transactional history by constantly short paying, and/or underpaying resulting in an arrears amount due and owing to Applicant of R3 185 232.02 calculated as a combined outstanding liability in respect of all three rental agreements. It is common cause in the application that Respondent vacated the Durban and Pretoria Campuses on 31 December 2023, and vacated the Midrand Campus on 31 December 2024.

[7] In amplification of the averment that the arrear rental indebtedness amounts to R3 185 232.02 a certificate of balance was annexed to the Founding Affidavit, together with a full statement of account. The certificate of balance is a document bearing the letterhead of Zeelie Auditors,("the auditor's certificate") is dated 26 February 2025, and contains the following:

"Based on information received by us we confirm the following:

*1. Balance owed by Campus of Performing (Pty) Ltd to Inscape Education Group (Pty) Ltd as at 31 December 2024: **R3 185 232.02 (Three Million, One Hundred and Eighty Five Rand, Two Hundred and Thirty Two Rand and Two Cents)**"*

The Statement of Account is a document on the letterhead of Applicant, dated 22 January 2025, bearing the following heading:

"Confirmation of outstanding monies owed to Inscape (Pty) Ltd by the Campus of Performing Arts (Pty) Ltd'.

The document specifically refers to a Lease Agreement entered into in respect of the Midrand Campus, a subsequent Lease Agreement amendment in relation to the Midrand Campus, a Lease Agreement in relation to the Durban Campus and a

Lease Agreement in relation to the Pretoria Campus. Annexed to that letter is a detailed Statement of Account which reflects transactions from the 11th of October 2021 until 1 December 2024. This Statement of Account includes the following information:

[7.1] An invoice number under the heading "*reference*";

[7.2] A short description of every invoice transaction;

[7.3] A debit as well as a credit column where different amounts are reflected either as a debit or a credit against the balance which is also reflected on this account;

[7.4] Under the heading "*campus*" the transactions are classified either as "*Midrand*", or "*Pretoria*" or "*Durban*".

[7.5] Under the heading "*description*" the Statement of Account refers to *inter alia* "*utility charges*", "*rent*", and where credits are reflected on the account, a description of the source of such of credits, being ABSA Bank. On the aforesaid Statement of Account there is further reference to "*Midrand diesel*", "*July diesel/MOR*", "*Elec*" (clearly referring to electricity) as well as "*generator*".

[8] In summary, a perusal of the Statement of Account confirms the amount claimed by Applicant, as certified by the Auditor, which consist of various transactions as reflected in the account in relation to the Midrand Campus, Durban Campus and Pretoria Campus consisting of rental, diesel-, electricity-, and other expenses.

[9] Applicant avers that the claim is a liquidated claim as it is certified by the auditor and therefore stands as *prima facie* proof of the amount. Applicant relies in this respect on a provision in each of the three lease agreements which read as follows;

"a certificate signed by the Lessor's Auditors of the amount due by the Lessee and the date on which it is payable in terms thereof shall be prima facie evidence of the correctness of the contents thereof"

[10] Applicant avers that the amounts remain unpaid, notwithstanding the fact that Respondent vacated the Pretoria and Durban campuses on 31 December 2023 and the Midrand campus on 31 December 2024, and notwithstanding the fact that invoices were rendered to Respondent as reflected in the statement of account.

RESPONDENT'S GROUNDS OF OPPOSITION:

[11] The Opposing Affidavit filed on behalf of Respondent disclose the following grounds of opposition to the relief claimed by Applicant namely:

[11.1] The auditor's certificate does not comply with the terms of the respective agreements and therefore does not constitute prima facie evidence of the arrear rental in respect of the three agreements, as the founding affidavit refers to one certificate in respect of all three lease agreements combined. This fact renders the Respondent to be incapable of determining how the amount in respect of each separate agreement is computed. Further, the amount as certified by the auditor is incorrect as it clearly includes impermissible debits on invoices which are not rental and thus falls outside the scope of the lease agreements.

[11.2] The Applicant's representative fraudulently misrepresented to Respondent the floor size of the Midrand campus. On 28 March 2024 Respondent realised that it was paying "*too much*" as it then transpired that the floor size of the Midrand Campus was not 898 square metres as misrepresented to Respondent, but was in fact 547 square metres. This, according to Respondent, voids the agreement in relation to the Midrand campus. Respondent is silent on reasons why, prior to this date, Respondent was substantially in arrears on rental payments in respect of all three agreements and/or why the lease agreements in respect to the Durban- and Pretoria campuses are not enforceable.

[11.3] The Lease Agreements do not provide for expenses in relation to diesel, generators costs or any other costs as a result of which Applicant is not entitled to claim such amounts from Respondent;

[11.4] The municipal charges levied by Respondent has never been substantiated by municipal accounts provided by Applicant to Respondent

and it was an implied alternatively tacit term of the rental agreements that municipal charges would be correctly and validly levied by the Municipality.

[12] As a general remark it must be noted that the Respondent's Opposing Affidavit has the following features:

[12.1] Respondent boldly denies being indebted to Applicant for any amount. On a perusal of the agreements, which will be dealt with hereunder, this denial implies that Respondent avers that it has paid each invoice in relation to each of the three lease agreement within 7 days after such invoice was rendered. However, there is no challenge to the Applicant's Statement of Account where same specifically reflects arrear rental payments in respect of each of the three lease agreements, and neither does the Respondent provide any tangible proof that all rental payments in respect of all three agreements were duly settled; A perusal of the Respondents answering affidavit, on closer scrutiny, disclose that the real dispute raised by Respondent relates only to Respondent's liability for arrear rental in respect of the Midrand campus, and other expenses (not being rental) for which Respondent was invoiced by Applicant in relation to the three lease agreements.

[12.2] Whereas Respondent challenged the contents of various invoices rendered by Applicant to Respondent in relation to the three respective campuses, these challenges was raised for the first time in the Respondent's Opposing Affidavit notwithstanding the fact that Respondent vacated the Pretoria Campus and Durban Campus on 31 December 2023 and the Midrand Campus on 31 December 2024. The Opposing Affidavit is silent on the reason why these disputes were not previously raised, notwithstanding the fact that the invoices were rendered by Applicant and received by Respondent.

[13] In response to the Respondent's grounds of opposition as set out above, the Applicant raised the following arguments;

[13.1] A "*time bar clause*" in the Lease Agreements prevents the Respondent from raising any disputes on its liability to pay the rendered invoices;

[13.2] The terms of the Lease Agreements exclude the Respondent's defence based on an alleged miscalculation of the rental amount in relation to the Midrand property and bars the Respondent from relying on any alleged misrepresentations made when the parties entered into the agreement;

[13.3] The auditor's certificate of balance relied upon by the Applicant constitutes *prima facie* evidence of the correctness of the contents in terms of the provisions of the agreement. The operational costs consisting of generator expenses, diesel and ancillary expenses as invoiced by Applicant to the Respondent is an obligation of the Respondent confirmed in correspondence between the parties, which Respondent has consistently paid and as a result of which the Respondent's acquiescence to such payments now bars the Respondent from disputing such payments.

[13.4] In response to Respondent's criticism on the combined auditor's certificate, Applicant annexed three separate certificates to the replying affidavit reflecting the individual liability of Respondent in relation to each lease agreement, the sum total of which corresponds with the original combined certificate annexed to the founding affidavit.

ISSUES FOR DETERMINATION:

[14] On a proper analysis of the respective affidavits, the following issues as raised by the Respondent stands to be determined namely:

[14.1] Did the Applicant provide *prima facie* evidence of the outstanding amounts by annexing the auditor's certificates? Respondent argued that the annexing of the three separate certificates to the replying affidavit prejudiced Respondent as the Applicant had to disclose its cause of action in the founding affidavit and not in reply.

[14.2] Having regard to the terms of the respective lease agreements, and more specifically the Midrand Campus agreement, should the Respondent's allegation of fraudulent misrepresentation on the floor size of the Midrand Campus be upheld? Whereas Applicant argued that the terms of the agreement as well as the time bar clause prevents the Respondent from relying on this ground as a defence, Respondent essentially argued that

fraudulent misrepresentation is an absolute defence. During argument it was common cause that this defence could only be raised in relation to the Midrand lease agreement.

[14.3] Is the Respondent liable for the operational costs such as generator expenses, diesel, maintenance and electricity which were included in the invoices rendered to Respondent?

[15] These issues are dealt with separately below.

PRIMA FACIE PROOF OF AMOUNTS BY AUDITOR'S CERTIFICATE:

[16] In paragraph [9] above reference is made to the clause in each lease agreement which provides for prima facie evidence of the amount outstanding by way of an auditor's certificate. Respondent's argument that the certificate annexed to the founding affidavit does not comply with the agreement and that Applicant cannot rely on the three separate auditor's certificates annexed to the replying affidavit cannot be upheld. The auditor's certificate in the founding affidavit is accompanied by a complete statement of account which has the features as set out in paragraphs [7.1] to [7.5] above. That statement of account clearly reflects all transactions in relation to all three lease agreements based on invoices which were rendered to Respondent, and the separate as well as combined liability of Respondent in respect to all three lease agreements can readily be determined by reference to that statement of account. Not only did the Applicant attach this statement of account to the founding affidavit, but it is common cause in the application that the debits on the statement of account were reflected in invoices (identified in the statement of account) rendered on a monthly basis to Respondent.

[17] Respondent is not prejudiced by the three separate auditor's certificates annexed to the replying affidavit, as they only serve to certify the individual liability of Respondent in relation to each lease agreement, which individual liability is in any event also determinable from the statement of account as explained above.

[18] Apart from a general statement that certain debits for items which do not constitute rental were impermissibly included on the invoices, Respondent disclosed

no facts to upset the prima facie evidence provided by the auditor's certificates of the outstanding amounts in terms of the Respondent's obligations under the three lease agreement.

TIME BAR CLAUSE

[19] Each of the respective lease agreements contains a "*Time Bar Clause*" (TBC) which reads as follows:

"1.3 In the event that the Lessee disputes any amount calculated by the Lessor in terms of 1.4 then the Lessee shall notify the Lessor in writing of the item and amount it disputes within 7 (seven) days after the posting by the Lessor of the Lessee's account therefore, failing which the Lessee shall be deemed to have waived its right to dispute any such amount. The Lessor shall, on receipt of such written notification, request its auditors to determine the amount payable by the Lessee and a certificate signed by the Lessor's auditors of the amount due by the Lessee and the date on which it is payable shall then be prima facie evidence of the amount so due.

1.4 Any amount due by the Lessee to the Lessor in terms hereof shall be payable within 7 (seven) days after delivery to the Lessee of a notice advising the Lessee thereof or in the event of a dispute arising, within 7 (seven) days after the delivery to the Lessee of the certificate referred to in 1.4.2 hereof."

[20] On a proper interpretation of this TBC, Respondent contractually waived its right to dispute a liability imposed on it by Applicant when Applicant rendered an invoice to Respondent which was not challenged by Respondent in terms of the TBC clause. The TBC contains the contractually agreed procedure and time frame within which Respondent was allowed to raise any dispute to such a liability failing which the agreement provides that the right to raise such dispute is waived.

[21] The respective lease agreements further each contain a clause that the lessor shall be reimbursed for the cost of replacing, repairing or making good any broken, damaged or missing items (clause 9.4 of Annexure A to the lease agreements). The lease agreements each further contain a clause that the lessee shall pay for

replacement of all florescent bulbs, starters, ballads and incandescent bulbs used in the lease premises (clause 9.9 of Annexure A to the lease agreements). In clause 14 of Annexure A to the respective lease agreements it is stipulated that the lessor shall only be responsible for insurance of the building against fire, and the payment of municipal assessment rates and taxes payable in respect of the property.

[22] On a perusal of the respective lease agreements it is therefore clear that the lease agreements did not only make provision for the payment of the agreed monthly rentals in respect of the three different campuses but also envisaged the liability of Respondent for expenses ancillary to its occupation and use of the respective campuses without quantifying such liability. It is therefore no surprise that the lease agreements contain the clauses as set out in paragraph [19] above, as such clauses would have been unnecessary in the event of the liability of Respondent being restricted to a fixed monthly rental. This fact is further illustrated by the contents of the e-mails preceding the conclusion of the Midrand lease and the amendment of that lease, annexed by Respondent to the answering affidavit, where substantial reference is made to "operational costs" and which costs are fluctuating monthly and calculated with reference to various items not constituting rental.

[23] A perusal of the Statement of Account, as referred to above, contains items which are clearly expenses ancillary to the Respondent's occupation of the respective campuses, such as electricity, generator costs, repairs and maintenance and diesel (clearly used for the generators). These expenses were included in the invoices rendered on a monthly basis to Respondent, a fact which is clear from the statement of account as well as Respondent's answering affidavit where the Respondent annexes various invoices.

[24] It is common cause that the Respondent never disputed the contents of any of the invoices and only raised the issue of the alleged inaccuracy of the invoices based on an averment that the Respondent was not liable for certain of the expenses as reflected on the invoices, for the first time in the Respondent's Opposing Affidavit and outside the time limit and procedure as agreed in the TBC clauses of the respective lease agreements.

[25] In terms of the TBC as quoted supra, Respondent is barred from raising such disputes now, as that right was waived in terms of the TBC. A TBC is enforceable in law¹ and Respondent did not raise any issue on the legality of the TBC as it appears in the respective lease agreements.

[26] It was argued on behalf of Respondent that, should it be found that Respondent was induced by fraudulent misrepresentation on the floor size of the Midrand Campus to agree to the rental amount in terms of that contract, such alleged fraudulent misrepresentation would prevent the Applicant from relying on the TBC or any other term of the agreement to escape the consequences of such alleged fraudulent misrepresentation. In my view, this argument advanced by Respondent has the following inherent flaws:

[26.1] The alleged misrepresentation as a defence, should it be upheld, can only be upheld in respect of the Midrand Campus on the facts as advanced in the Respondent's Opposing Affidavit. Such defence would therefore not affect the Applicant's claims in respect of the Durban Campus or the Pretoria Campus;

[26.2] More significant, the Respondent avers in the Answering Affidavit as follows:

"26.12 Further on 28 March 2024, Mr Mulligan sent a breakdown of his calculations which reflected 547 m2, and 48.82 m2 as our percentage of the common area used which amounts to a total of 595.82 m2. A copy of the email is attached hereto as Annexure "G5".

26.13 Upon assessing the floor plan and Mr Mulligan's breakdown, I realised that the Respondent had not and was not paying the correct amount of rental in respect of the Midrand lease.

26.14 This is because the agreement was premised upon an amount of rental per square metre".

¹ See: *Barkhuizen v Napier* 2007 (5) SA 323(CC)

[26.3] On the Respondent's version the Respondent therefore became aware of the alleged fraudulent misrepresentation on 28 March 2024. On a perusal of the Statement of Account referred to above, the Applicant rendered invoices in the amount of R167 400.00 (rental based on the agreement as stipulated in terms of the agreement) during every subsequent month after March 2024 until December 2024, and in respect of which the Respondent paid an amount of R55 000.00 on 26 April 2024. It is common cause that none of these invoices rendered since March 2024 were ever disputed by Respondent.

[26.4] In circumstances where Respondent became aware of the alleged fraudulent misrepresentation in relation to the calculation of the rental amount in respect of the Midrand Campus but thereafter inexplicably remained silent and never protested the subsequent invoices rendered by Applicant to the Respondent until the date of filing of the opposing affidavit, the Respondent cannot escape the provisions of the TBC.

[27] It therefore follows that it is clear that Applicant was entitled to raise invoices against Respondent in respect to all three lease agreements which did not only include fixed monthly rental, but also other expenses, which invoices Respondent never disputed in terms of the TBC and in respect of which it is common cause that Respondent paid such ancillary expenses from time to time. After allegedly discovering the Applicant's fraudulent misrepresentation during 28 March 2024, Respondent continued to occupy the Midrand campus, received invoices based on the alleged incorrect floor size calculation, failed to dispute such invoices in terms of the TBC, and even effected a partial payment on one such invoice.

[28] It therefore follows that Respondent waived the right to dispute liability for any amounts as reflected in the invoices rendered to Respondent by Applicant which remain outstanding.

ALLEGED FRAUDULENT MISREPRESENTATION:

[29] The facts upon which Respondent relies for its assertion that it was fraudulently induced to enter into the Midrand lease agreement, are succinctly summarised as follows:

[29.1] Preceding the parties entering into the Midrand lease agreement on 1 September 2021, Applicant's representative addressed email correspondence to Respondent's representative which contained a calculation of the rental, based on a cost per square metre. In that calculation, the square metres for the Midrand Campus were reflected as 898 square metres.

[29.2] On 13 June 2023 the Midrand lease agreement was amended to set a basic rental payable as R155 000.00 per month from 1 May 2023. In the negotiations leading up to the amended lease agreement, the Applicant's representative sent an email dated 15 February 2023 to the Respondent's representative, once again indicating that the rental amount is based on a rate per square metre ;

[29.3] In this regard the Respondent's Opposing Affidavit contains the following averment:

"26.9 The amount of R155 858.72 is the rate that was ultimately agreed upon. It is self-evident that it was calculated per square metre and that the Applicant was working on 898 metre² as being the area being leased and charging accordingly'.

[30] The email correspondence upon which Respondent relies for this assertion does not support the averment as made in the Respondent's Opposing Affidavit as quoted supra. The email serves to provide rationalisation for an amount of rental to be agreed upon, based on a comparison to market related rentals per square metre in the specific area where the Midrand Campus is situated. In the email it is stated that:

"COPA's rental includes operational expenses for which COPA is charged pro rata according to the square metreage occupied; COPA 42%, Inscape 58% - an average over 3 months described below ... "

[31] From a perusal of the string of email correspondence annexed by Respondent to the Opposing Affidavit it appears that the emails refer to a total area of 1796 square metres occupied by both Applicant and Respondent and which consist not only of office space, but also of certain shared facilities;

[32] The specific email relied upon by Respondent to assert that it was misrepresented to Respondent prior to the conclusion of the amended lease for the Midrand Campus that the floor size leased to Respondent amounts to 898 square metres, does not support that assertion; The email serves to illustrate that the parties negotiated a rental rate based on the occupation of certain floors, the sharing of common facilities, and a *pro rata* contribution towards "*operational costs*". In my view, close scrutiny of this specific email does not support the Respondent's contentions as set out in the paragraphs quoted supra, and can never be held to constitute clear evidence of fraud.

[33] In any event, where the Respondent relies on fraudulent misrepresentation the *onus* is on the Respondent to prove such fraudulent misrepresentation with clear undisputed facts² and the court will not infer fraud without any clear facts, especially in motion proceedings. In my view, the averments made by Respondent in the Opposing Affidavit and a scrutiny of the email correspondence upon which Respondent relies in this regard do not constitute clear evidence of fraud.

[34] All three lease agreements contain a provision for rental to be paid in a quantified amount without any reference to floor size or rates per square metres. Respondent's attempt to introduce evidence that the rental as agreed in the Midrand lease was incorrectly calculated on a misrepresentation of the floor size of the Midrand Campus, cannot be upheld for the following reasons:

² See: *Odendaal v Ferraris 2009(4) SA 313 (SCA)*

[34.1] The agreement contains a clause which reads:

"12.1.1 This lease constitutes the entire contract between them and that no provisions, terms, conditions, stipulations, warranties or representations of whatsoever nature, whether express or implied have been made by any of the parties or on their behalf except as recorded herein".

[34.2] Under the heading of "rental" the agreement (prior to amendment) contained the following clause:

"7.1 The basic rental payable by the lessee to the lessor during the period of lease shall be

R52384.15 per month from 1 October 2021 to 31 December 2021

R104 768.31 per month from 1 January 2022 to 31 December 2022

R174799.60 per month from 1 January 2023 to 31 December 2023

R188783. 57 per month from 1 January 2024 to 31 December 2024".

[35] After the Midrand lease agreement was amended, it contained the following clause:

"3.3 It is recorded that:

3.3.1 Clause 7.1 of the original lease agreement be amended and substituted with clause 3.3.2 of this agreement.

3.3.2 The basic rental payment by the lessee to the lessor during the period of lease shall be

R155000.00 per month from 1 May 2023 to 31 December 2023

R167 400.00 per month from 1 January 2024 to 31 December 2024

3.3.3 All other lease terms remain effective as contained in the original lease agreement".

[36] It is clear that the agreements refer to a fixed amount of rental, and from the terms of the agreements it cannot be inferred that the rental amounts are quantified by reference to a rate per square metre. Absent a finding that the Respondent

entered into the Midrand lease agreement induced by fraud on the floor size of the premises and absent a claim for rectification of the terms of the agreement, the incorrect floor measurement defence therefore cannot stand.

CONCLUSION:

[37] The Applicant provided prima facie evidence of the total outstanding amount due and owing to it by Respondent in terms of the three lease agreements, and the Respondents failed to provide any sustainable defence to that claim. In the premises, the Applicant is entitled to the relief as claim in the Notice of Motion as a result of which the following order is made:

ORDER

1. Respondent is ordered to pay to Applicant the amount of R3,185,232.02 (three million one hundred and eighty five thousand two hundred and thirty two rands and two cents) with interest on the aforesaid amount at the prescribed *mora tore* interest rate, calculated from date of service of the application to date of payment'
2. Respondent is ordered to pay the costs of the application.

P A van Niekerk
Acting Judge
Gauteng Division of the High Court of South Africa