

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 021874-2024

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
15/1/2026	
DATE	SIGNATURE

In the matter between:

RECTRON

Applicant

and

ERZ TELECOM (PTY) LTD

First Respondent

ERAHIM GHOOD

Second Respondent

This Judgment is handed down electronically by circulation to the applicant's legal representatives and the respondents by email, publication on Case Lines. The date for the handing down is deemed 15 January 2026.

JUDGMENT

MALI J

Introduction

- [1] This is an application for summary judgment for payment in the sum of R5,274,858.12 and interest thereon at the rate of 11.75% per annum from 30 June 2023 to date of final payment.
- [2] On or about June 2021, and at Ormonde, the first respondent, duly represented by the Second Respondent who also stood surety for the first respondent, entered into a written agreement (the agreement). The agreement was for the sale and delivery of goods to the first respondent at its special instance and request between the period of June 2021 to July 2023. The first respondent bought the goods to sell them to the public through an online system known as Takealot.
- [3] The applicant delivered the goods as per agreement. According to the applicant the first respondent breached the agreement by failing, neglecting and/or refusing to make payment of outstanding invoices and statements provided to the first respondent within the 30-day period as stipulated in terms of the agreement. This led to the applicant issuing a letter of demand to the respondents on 30 January 2024. The respondents failed to remedy the breach thus the applicant ultimately applied for summary judgment.

Issue

- [4] The issue for determination is whether there is a triable issue raised by the respondents, so as not to summary judgment in favour of the applicant.

Respondents' defences

- [5] The defence relied upon by the first respondent is firstly, that an unlawful and intentional misrepresentation was made, alternatively the misrepresentation was made wrongfully and negligently. The misrepresentation induced the first respondent to enter into the said agreement with the applicant. The alleged material misrepresentation made by the applicant pertained to the nature and quality of the goods. It is alleged that some of the goods sold were defective and/or faulty and/or not in a proper working condition, and thus not fit for resale to the public through Takealot.

- [6] Furthermore, the first respondent insisted on the issues it raised in its counterclaim, firstly that it claimed for the cancellation of the contract on the basis that the applicant had made intentional or negligent misrepresentation. Secondly that the first respondent had suffered further damages in lost profit on the intended sale of the goods purchased in an amount of R540 631.37. The first respondent tendered the goods back to the applicant.

Arguments

- [7] The applicant's arguments are that it is not liable to the first respondent for any representation, implied warranty or common law duty, nor for any consequential loss or damage (including loss of profit), arising from its actions or omissions related to the supply, resale, or third-party use of the goods. In support of this argument the applicant relies on clause 22.3 of the agreement which provides: *"the dealer acknowledges that, in entering into this agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provisions except as expressly provided herein, and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law."*
- [8] The applicant further submitted that whether due to negligence or otherwise the first respondent acknowledged that it entered into the agreement without relying on any representation, warranty, or provision not expressly included in the agreement, and that all implied conditions, warranties, or terms implied by statute or common law were fully excluded allowed by law.
- [9] Further reference is made to clause 3.4 where it is stated that applicant would not be bound by any express or implied term, representation, warranty, promise or the like not recorded in the agreement, whether it induced the contract between the plaintiff and first defendant or not. Consequently, the first respondent had no right to withhold payment for any reason whatsoever. The first respondent was not entitled to set off or deduct any amount due to it by the applicant against any debt owed by the first respondent to the applicant, nor would any payment be withheld by virtue of any alleged counterclaim against the

plaintiff by the first respondent; as stipulated in clause 6.9 including any counterclaim the respondents may bring.

[10] According to the applicant, the parties agreed to a 'pay now sue later' provision. In this regard the court was referred to the case of **DSV South Africa (Pty) Ltd t/a DSV Air and Sea v Phoenix Neomed (Pty) Ltd**¹ where the contract stated that the right to sue the applicant was only open to the customer on payment of the disputed amount. The court is persuaded to follow the same.

[11] Second, and in relation to the allegation about defective goods, the parties had agreed in terms of 14.1 *"that the first defendant must inspect all goods upon delivery and note any damaged items on the delivery note."* Claims are only valid if the delivery note is endorsed and written notice is given to the plaintiff/applicant within 3 business days providing full details. The first respondent bears the burden of proving any damaged goods or that its order was not complied with and if the goods supplied were defective, the first respondent would be entitled to claim replacement or repair within 1 year of delivery, provided the defect is due to the plaintiff's actions or omissions. The first respondent should have notified the applicant of the defect within 10 days of discovery and allow reasonable opportunity of inspection. The applicant's decision regarding the defect will be binding, and liability is limited to the purchase price of the goods as per the agreement.

[12] Third, and in relation to the claim of damages suffered and counterclaim, the parties agreed that: *"16.1 the plaintiff would not be liable for any loss or damage arising from the use or inability to use the goods, regardless of the plaintiff's negligence (Clause 13.1.4); and 16.2 the defendants have no right to withhold payment for any reason whatsoever, nor to set off or deduct any amount due to the first defendant by the plaintiff against any debt owed by the first defendant to the plaintiff, nor would any payment be withheld by virtue of any alleged counterclaim against the plaintiff by the first defendant (Clause 6.9)."*

¹ (2022-011215) [2023] ZAGPJHC 1028 (13 September 2023) at [20]

- [13] Respondents admit that they were obliged to comply with the prescripts that are in place in the agreement about allegedly defective goods. The respondents do not plead or allege in their affidavit that any of the contractually- required steps were taken in relation to the so-called defective goods; and this defence, too, is not available to them.

Respondents' arguments

- [14] The respondents insist on the defence of fraudulent misrepresentation. Fraud led to the conclusion of the contract. It was argued that the applicant cannot plead contract amid fraud. It is not possible to contract out of liability for fraudulent misrepresentation. It is unnecessary to allege and prove that the representor intended to occasion the loss the representee suffered. All that is necessary to allege and prove is that the representor made an intentionally false representation, irrespective of motive. The loss must have followed because the representee acted on a false representation.

Discussion

- [15] A defendant is required to satisfy the Court by affidavit that the defendant has a bona fide defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence, and the material facts relied upon therefore". Rule 32(3) (b). In ***Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture***², the purpose for summary judgment is emphasised as follows "*It was intended to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavouring to enforce their rights*". The respondents must show a legally cognisable defence of fraudulent misrepresentation on the face of things, and whether the defence is genuine or bona fide as held in ***Tumileng Trading CC v National Security and Fire (Pty) Ltd***.³

² [2009] All SA 407 para 31

³ 2020 (6) SA 624 (WCC) at para [13]

[16] It is common cause between the parties that the terms governing their contractual relationship are expressly defined in the agreement. These terms form the foundation upon which this dispute should be adjudicated. In essence the agreement contains non -representation clauses as gleaned above, i.e clause 22.3 amongst others. Without reproducing all the clauses of the agreement, the following clauses are worth mentioning.

[17] In terms of clause 12, read in conjunction with clause 12.6 of the agreement, the first respondent had an explicit duty to inspect the goods upon delivery and immediately report any defects by endorsing the delivery note. The delivery notes provided confirm that the first respondent acknowledged the satisfactory quality of the goods at the time of delivery. The respondent/s never reported any dissatisfactions and neither reported any defects in the delivered goods, as outlined in the agreement. Clause 13.1.1 unequivocally states that all goods were sold "voetstoots," with no warranties, guarantees, or representations binding upon the Applicant unless explicitly included in the written agreement. This clause decisively counters the Respondents' claims of misrepresentation. The provisions of clause 13.1.1 are clear: any reliance on alleged misrepresentations regarding the quality or condition of the goods is legally unfounded, as it directly contravenes the express terms of the agreement which the first respondent accepted.

[18] Of importance is that clause 13.1.2 of the agreement, provided a clear remedy for addressing defects-requiring notification within 10 days of discovery of defects. Clause 13.1.3 mandates that any claim regarding defects must be made in writing, specifying the alleged defect, supported by the original tax invoice, and that the goods must be returned to the applicant (at the respondent's expense) in their original undamaged packaging. The first respondent's failure to adhere to these requirements further invalidates any claims related to the defective nature of the goods.

[19] Clause 6.9 explicitly prohibits withholding payments for any reasons, including annexed counterclaims, thereby nullifying the first respondent's defense related to withholding due payments. The agreement, and its material express terms, which the Respondents have agreed are binding upon them, therefore clearly provide ample mechanisms for reporting defective goods. Further, Clause 13.1.8.1 of the agreement expressly provides that the Applicant incurs no liability towards the first Respondent until the full payment for the goods has been received. Clause 28 of the agreement explicitly excludes any liability for consequential losses. In relation to the respondents' defence of counterclaim taking into consideration the provisions of the agreement I am inclined to agree with the decision of DSV South Africa above.

[20] Finally, even if this Court accepts that the respondents may have valid defences and/or claims against the applicant for non-performance misrepresentation, the respondents must in terms of the agreement first make payment before enforcing the rights to claim. Moreover, in the face of respondents' omissions of the terms of the agreement, the respondents did not show a *bona fide* defence and related to the claim of fraud at all. The respondents did not provide details in relation to the alleged defects informing fraudulent misrepresentation. If one considers that the respondents in their plea alleged to have spent over R52 million buying goods from the applicant from 2021 to 2023 it is improbable to that they were induced or defrauded by the same applicants, they claim to have a history of conducting good business with.

Conclusion

[21] It is therefore concluded that the respondents have raised no *bona fide* defence other than delaying the claim of the applicant.

Order

[52] In the result the following order is made.

1. Summary Judgment against the First and Second Respondents jointly and severally, the one paying the other to be absolved, for: -

(a) Payment in the sum of R5,274,858.12

(b) Interest thereon at the rate of 11.75% per annum from 30 June 2023 to date of final payment.

(c) Costs on the attorney and client scale.



NP MALI
JUDGE OF THE HIGH COURT
JOHANNESBURG

Heard on: 19 August 2025

Delivered on: 15 January 2026

Appearances:

For the Applicant: R Blumenthal

Instructed by: NVDB Attorneys

For the Respondents: H.P. West

Instructed by: ST Attorneys (SKANDER TAYOB)