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

CASE NO: 010985/2025

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

.....

SIGNATURE

DATE

In the matter between:

OCEAN ECHO PROPERTIES 203 CC

APPLICANT

And

GROOTMAN TRADE AND INVESTMENT (PTY) LIMITED TRADING AS

JIMMYS

KILLER

PRAWNS

RESPONDENT

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on Caselines. The date for hand down is deemed to be on **27 January 2026**.

JUDGMENT

MALI J

Introduction

- [1] This application for eviction from a commercial property originates from the urgent court where it was removed from the roll due to lack of urgency. The eviction is based on the cancellation of the lease agreement.
- [2] The applicant is the property management company which is duly authorized to manage commercial property for Lezmin 2358 CC (Lezmin). Lezmin lets out commercial space for rental, among others Shops 17 and FC7 and FC8, Ormonde Shopping Centre situated at 1[...] C[...] Road, O[...], Johannesburg (the property).
- [3] The respondent is a duly registered company trading as a restaurant and occupies Units F[...] F[...] and Shop 1[...] at the property (the business premises).

Background facts

- [4] On or about July 2023 the parties entered into a fixed term lease agreement commencing on 1 August 2023 expiring on 31 July 2026. On or about July 2024 the respondent was in arrears in the amount of R102,885. 15, thus in breach of the terms of the lease agreement. On 29 November 2024, the Applicant sent the respondent a letter of cancellation via email correspondence informing the respondent about the cancellation of the lease agreement. In the same correspondence the respondent was asked to vacate the business premises immediately or by no later than 31 December 2024. On 29 November 2024 the applicant signed a lease agreement with a new tenant, which intended to take the occupation on 1 March 2025.
- [5] The respondent shortly after receiving the notice of cancellation held a meeting with the applicant and made a nominal payment of R20 000. The respondent also requested to move the business premises to another part of the property. The parties concluded that, that option was not viable. Applicant insisted on the cancellation of the lease and eviction. The respondent refused; hence the applicant launched this application in the urgent court.

Application for postponement

- [6] Mr Noufill Caseem Hossem was the sole shareholder and Director of the respondent. During the hearing of this application, it transpired that Mr Hossem died on 27 May 2025. This information was brought to light by his mother, an executrix of his estate when she just appeared in court and applied for postponement of the application, without filing any papers. One of the reasons she advanced was that the company had been

deregistered, but she had intentions to continue with the business. I dismissed the application for postponement by Mrs Hossem, among others for the want of *locus standi* in the proceedings. The hearing proceeded accordingly.

Issue

- [7] The initial issue for determination was whether the cancellation of the lease agreement was valid thus justifying the eviction. However, because of the information about the deregistration, the respondent's counsel raised the point in limine that the proceedings be stayed against the respondent company as it had been deregistered. At the end of the hearing, I requested that both parties file supplementary heads of argument regarding the issue of deregistration.

Arguments

- [8] The applicant's case is that the respondent has breached the terms of the contract therefore the implementation of clause 7 of the agreement was applicable. Clause 7 provides as follows:

"Cancellation & Holding Over

7.1 Should the Lessor cancel this lease, the Lessee shall be obliged to immediately vacate the leased premises, failing which the Lessor shall be entitled to obtain an urgent court order for ejection of the Lessee or any person or persons who occupy the leased premises on its behalf or who may be on the leased premises without impairing the right of the Lessor to claim outstanding

rental as well as any other amounts which may be due to it or compensation for damages resulting from the breach of the lease by the Lessee.

7.2 Should the Lessee remain in occupation of the leased premises after the contract of lease agreement has been cancelled as mentioned above, the Lessee shall be liable to pay further rental and other charges for the duration of the occupation, which amount paid shall constitute liquidated damages payable by the Lessee to the Lessor.”

[9] Furthermore, it is not in dispute that when the lease was terminated, the respondent was in arrears with its payment obligations. This immediately vested the applicant with entitlement to validly cancel the Lease. The cancellation of the Lease was preceded by 2 letters of demand affording a 7-day notice period for the respondent to remedy its breach, as required in terms of the lease. The respondent failed to remedy the breach.

[10] The submission made on behalf of the respondent in the answering affidavit was that the arrears were not due to its own fault. Amongst others was the increase in potato prices and that it spent money on renovations in the process of rebranding the restaurant. It is also stated that the applicant has vendetta against the respondent. Belatedly technical points were raised on behalf of the respondents. First, the respondent's cancellation of the lease agreement is invalid due to non-compliance with clause 12.3.5 of the lease agreement. Secondly, the respondent company is deregistered thus the proceedings against the respondent must be stayed.

[11] Although respondent does not dispute that the applicant has a right to cancel the lease, the main challenge is that the lease was not properly

cancelled because it was not properly hand delivered and/or sent via the (sic) pre-paid registered mail". This is in breach of Clause 12.3.5 which provides that: *"The parties record that whilst they may correspond via e-mail during the currency of this agreement for operational reasons, no formal notice required in terms of this Agreement, or any amendment of or variation of this agreement may be given or concluded via e-mail."*

[12] In essence is that the notices and cancellation letters were sent via e-mail thus not formal enough. The applicant has not pleaded cancellation within the context of materially defective notice. This non-compliance renders the cancellation invalid. As earlier indicated this argument is belatedly made in the supplementary which was filed after the applicant's answering affidavit without the leave of the court.

[13] The court was urged to embark on the interpretation exercise. In reference to ***Natal Joint Pension Fund v Endumeni Municipality***¹, the submission on behalf of the respondent is clear from the language of the lease agreement that a cancellation procedure requires a formal written notice. It is also clear that whilst the parties may correspond via e-mail for practical commercial and operational purposes, no formal notice required in terms of the agreement may be given via e-mail. The requirement of formal notice in the event of a breach and for cancellation purposes indicates that the drafters of the lease agreement intended that where actions whose consequences would be material to the existence of the contract, a formal procedure needed to be followed.

¹ 2012] ZASCA 13; [2012] 2 All SA 262 (SCA) para 18

[14] Regarding the de-registration of the respondent company, respondent argued for the stay of proceedings. The argument is that because the respondent company has been de – registered in terms of 82(3) of the Companies Act 71 of 2008 ("the Companies Act"), therefore the proceedings should be stayed with no order as to costs.

Discussion

[15] I first deal with deregistration. The argument proffered on behalf of the applicant is that the information about the deregistration was part of the postponement application, which was dismissed, thus this Court is *functus officio*. Any issue arising from the dismissed postponement application must be disregarded.

[16] It is common cause that the respondent company has been deregistered for failure to comply with the annual returns requirement in terms of section 82(3) of the Companies Act. Section 82(3) states that:

"In addition to the duty to deregister a company contemplated in subsection (2)(b), the Commission may otherwise remove a company from the companies register only if - (a)(ii) the company has failed to file an annual return in terms of section 33 for two or more years in succession."

[17] The effect of removal of company from register is that (1) :A company is dissolved as of the date its name is removed from the companies register unless the reason for the removal is that the company's registration has been transferred to a foreign jurisdiction, as contemplated in section 82(5). see Subsection (2) provides that the removal of a company's name from the companies register does not affect the liability of any former director or

shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the register. Furthermore subsection (3) provides that any liability contemplated in subsection (2) continues and may be enforced as if the company had not been removed from the register.

[18] Subsection (4) provides that at any time after a company has been dissolved-

“(a) the liquidator of the company, or other person with an interest in the company, may apply to a court for an order declaring the dissolution to have been void, or any other order that is just and equitable in the circumstances; and

(b) if the court declares the dissolution to have been void, any proceedings may be taken against the company as might have been taken if the company had not been dissolved.

[19] In this application no one has shown interest. In my view maybe the applicant would have applied for the declaratory envisaged in (a) above. In ***Newlands Surgical Clinic (Pty) Ltd v Peninsula Eye Clinic (Pty) Ltd***, it is held that the ‘reinstatement’ in s 82(4) has automatic retrospective effect.² In ***ABSA Bank Ltd v Companies and Intellectual Property Commission of South African and Others*** it is held that:

“Although no order has been sought in that regard, I should perhaps make clear that the order to be granted in this appeal does not validate the default judgment which Absa purported to take against the dissolved Voigro or the liquidation proceedings

² (A29/13) [2013] ZAWCHC 57; 2013 (4) SA 194 (WCC); [2013] 3 All SA 34 (WCC) (19 April 2013) para 66

which Absa instituted against Voigro in April 2012. Since Voigro did not exist at the time the default judgment was granted or at the time the liquidation proceedings were instituted and the provisional order granted, the default judgment is a nullity as are the liquidation proceedings and the provisional order.³ Mr Vivier accepted that this would be the position and did not ask for a validating order.”

[20] The respondent company is no longer in existence, thus any order against it would be a nullity. Therefore, to grant the order for the stay of the proceedings would be appropriate. Nevertheless, the deregistration of the respondent company is not in the affidavits of any of the parties. This point *in limine* was not brought through a party in the proceedings. Because of the manner this point was introduced I am not inclined to finalise this application based on the deregistration. I turn to deal with the validity of the cancellation.

[21] It is trite that a party wishing to rely on the cancellation of an agreement because of its breach – must allege and prove: (i) the breach of the agreement; (ii) that the right to cancellation has occurred because the breach was material or if the agreement contains a cancellation clause, that its provisions have been complied with; and (iii) that clear and unequivocal notice of rescission was conveyed to the other party, unless the agreement dispenses with such notice.

[22] As indicated above, the affidavit dealing with the alleged irregular procedure in serving the letter to the respondent was raised irregularly on its own. The affidavit was filed without the leave of the court. It is trite that there are three affidavits allowed in motion proceedings, (i) the founding affidavit (ii) the answering affidavit and (iii) the replying affidavit.

[23] Even if I am wrong in the above regard, it is not in dispute that the applicant sent two letters of demand to the respondent. The respondent

reacted to both by amongst others holding meetings with the applicant for relaxed payment terms and requesting the change of shop within the same premises.

- [24] The argument proffered on behalf of the respondent is that the court in embarking on the interpretation exercise must not consider the notice sent via email correspondence. This disregards the use of another tool that must employed in the process of interpretation, viz the trite principle which is the examination of the subsequent conduct of the parties. In ***Kooij and Others v Middleground Trading 251 CC and Another***³, the SCA held as follows:

“It is true that a Court can, when interpreting a contract, have regard to the parties’ subsequent conduct in order to determine what they intended.^[9] This Court has, however, made it clear that the use of such evidence is circumscribed. It laid down that such evidence may be accepted subject to three provisos. First, the evidence must be indicative of a common understanding of the terms and meaning of the contract. Second, the evidence may be used as an aid to interpretation and not to alter the words used by the parties. Third, that evidence must be used as conservatively as possible.”

- [25] There is undisputed evidence that the there was a common understanding between the parties that a valid cancellation notice was issued against the respondent. The respondent further acted upon it.

³ (1249/18) [2020] ZASCA 45 (23 April 2020) para

[26] For the foregoing reasons the application for eviction must succeed.

ORDER

In the result the following order is granted.

1. The respondent and all those occupying the leased premises by, through or under it, be evicted from the leased premises situated at: Units F[...], F[...] and Shop 1[...] Ormonde Shopping Centre, 1[...] C[...] Road, O[...].
2. The respondent and all those holding by, through or under it, are ordered and directed to vacate the leased premises by no later than 6 February 2026.
3. Failing the respondent complying with prayer 2 above, the Sheriff, or his/her lawfully appointed deputy is authorised and directed to evict the Respondent and all those occupying the leased premises by, through or under it, from the leased premises.
4. The respondent is ordered and directed to pay the costs of this application on scale C.

N.P. MALI
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION

APPEARANCES:

Counsel for the Applicants: Adv. A Laher

Applicants attorney: Harris Incorporated

Counsel for the Respondent: Adv. R Mufamadi

Respondent attorney:	Daswa Shandukani Attorneys
Hearing date:	24 July 2025
Final Heads filed:	8 August 2025
Delivered:	27 January 2026