IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no: **2025-228140**

In the matter between:

VIRTUAL FARMER RSA RF (PTY) LTD **APPLICANT**

(Registration number: 2021/814747/07)

and

RSP FARMING SOLUTIONS (PTY) LTD **FIRST RESPONDENT**

(Registration number: 2017/185907/07)

OOS VRYSTAAT KAAP OPERATION LTD **INTERVENING THIRD PARTY**

(Registration number: 1999/004069/06) **SECOND RESPONDENT**

Neutral citation: *Virtual Farmer RSA RF (Pty) Ltd v RSP Farming Solutions (Pty) Ltd and Another* (2025-228140) [2026] ZAFSHC 106 (20 March 2026)

Coram: DAFFUE J

Heard: 4 December 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, by uploading on case lines and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 20 March 2026.

Summary: Ownership of maize – applicant, the alleged buyer of the maize failed to prove actual delivery – the court also held that the applicant failed to prove delivery by way of *constitutum possessorium* – application dismissed.

ORDER

1 The application is dismissed.

2 The first respondent shall pay its own costs in respect of opposition of the application.

3 The applicant shall pay the second respondent's costs of intervening as well as opposition of the application, inclusive of the costs of counsel on scale C.

JUDGMENT

Daffue J

Introduction

[1] About five years ago, I commented as follows in *Firstrand Bank Limited v Oosthuizen*:[1]

'There is a well-known saying in the Afrikaner community that "'*n boer maak 'n plan*" directly translated into English as "*a farmer makes a plan.*" This saying has a positive connotation insofar as it has always been accepted that farmers will rise above difficult circumstances by making use of innovative and skilful measures. For example, if a combine harvester breaks down at a crucial time during the harvesting season, the farmer will instead of waiting two or three weeks for a new part to arrive, modify the old defective part to get the machine running again. Many more examples can be quoted from personal experience.'[2]

[2] Mr Jacobus Cornelius Prinsloo (Prinsloo) is a director of RSP Farming Solutions (Pty) Ltd (RSP), the first respondent in this application. He is a farmer and apparently the driving force and person in charge of RSP. No doubt, RSP has been in financial distress for quite some time, bearing in mind the facts deposed to in this opposed application. RSP, through Prinsloo, borrowed left, right and centre in order to keep its farming

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[1] *Firstrand Bank Limited v Oosthuizen* [2020] ZAFSHC 258 (12 November 2020).

[2] Ibid para 1.

enterprise afloat. In doing so, Prinsloo clearly did not play open cards with its credit providers. His plans were in direct contrast with the well-known saying mentioned above.

[3] RSP owes Virtual Farmer RSA (RF) (Pty) Ltd (Virtual Farmer), the applicant in these proceedings, in excess of R23 million insofar as it has failed to deliver white maize, as undertaken. It owes Oos Vrystaat Kaap Operation Ltd (OVK), the intervening party and cited as second respondent in this application, about R105 million. These two creditors are at loggerheads as to who is entitled to several tons of white maize harvested by RSP and stored on the farm Welmansrust, Bothaville, RSP's the immovable property.

[4] When this application was heard, Pannar Seeds (Pty) Ltd had already instituted liquidation proceedings against RSP, which underscores RSP's financial distress and its alleged inability to pay a major creditor. The details of Pannar Seeds' alleged claim have not been recorded in the proceedings before this court and it is also unnecessary to deal with that claim any further. Mention is also made in the papers of other creditors.

[5] Well-knowing that it was impossible to settle its indebtedness to the applicant, the second respondent and/or Pannar Seeds, Prinsloo devised a devious plan to avoid complying with its contractual obligations towards the applicant, most probably because of being pressurised by OVK.

A brief factual history

[6] RSP is a member of OVK, who as its credit provider granted a credit facility of R30 million in respect of the 2021/22 summer harvest. OVK's credit facility incorporated a cession of all RSP's present or future claims of whatever nature arising from the cultivation of any crops. The cultivated crops were to be stored in silos and silo certificates relating to such storage, to be ceded to OVK, had to be delivered. OVK granted a credit loan facility to RSP for the 2024/25 summer growing season totalling more than R26 million. Together with its outstanding credit loan facility in excess of R75 million and a 'month account', RSP was indebted to OVK on 27 November 2025 in the amount of R104 261 012. 47.

[7] In 2024, RSP applied for credit from Virtual Farmer to plant white maize and soya beans during the summer of 2024/25. Two written agreements were entered into between

these parties, being annexures VF4 and VF5 to Virtual Farmer's founding affidavit. I shall deal with these agreements later herein. Fact of the matter is that it is not denied that Virtual Farmer extended credit to RSP, inclusive of interest, although RSP denied the correctness of the amount of R37 997 177,71, calculated as on 31 August 2025.

[8] Initially, when RSP had to deliver the harvested white maize in accordance with Virtual Farmer's instructions and the agreements entered into, there was no problem. However, it appeared soon that RSP did not deliver white maize as expected of it. Prinsloo, on its behalf, blamed the heavy rains and the fact that the white maize had to be dried before delivery could take place. When it became evident that RSP would not be able to deliver white maize in accordance with its agreement with Virtual Farmer, a new agreement was entered into on Virtual Farmer's version, being annexure VF7 to the founding affidavit, pertaining to the 2025/26 harvesting season. A third party, Rand Agri settled RSP debt of R23 437 537,43 on condition that it would be repaid from a draw in respect of a new 2025/26 contract. Virtual Farmer's letter dated 27 October 2025 containing the agreement and specifically paragraph 6 thereof, reads as follows:

'RSP will continue to deliver the sorted and cleaned maize on the new 2025/26 contract. Once the 2024/25 outstanding amount is reduced to a reasonable amount as agreed in writing between VFRSA and RSP, then the new 2025/26 contract can be upgraded to a different Option for a higher pre-payment.'

[9] When it appeared to Virtual Farmer that RSP started delivering maize to third parties, it took steps which eventually culminated in an urgent application. OVK got wind of the application and applied for leave to intervene. On 28 November 2025, Loubser J made the following order by agreement between the parties:

'IT IS ORDERED BY AGREEMENT BETWEEN THE PARTIES THAT:

1. The Applicant is granted condonation for its failure to comply with the rules of this Court ("the rules") in respect of form, service and time and relating to motion proceedings and the Applicant shall be heard as one of urgency in rule 6(12), insofar as prayers 2, 3, 4, 5, 6, 7, 8 and 9 hereunder are concerned. The First Respondent reserves his right to dispute the urgency of the application.

2. The Intervening Third Party, Oos Vrystaat Kaap Operations Ltd ("OVK"), is granted leave to intervene in this application and is hereby joined as the Second Respondent to these proceedings.

3. The Respondent, RSP Farming Solutions (Pty) Ltd – shall hereinafter be referred to as

"the First Respondent").

4. The First and Second Respondent, and any person acting by, through or under them, are interdicted and restrained from selling, delivering, disposing of, alienating, encumbering, blending, moving off-site, or in any manner whatsoever dealing with or diminising any maize situated at the Farm Welmansrust, Bothaville, Free State Province ("the premises"), pending the further determination of this application.

5. The First Respondent is directed to file its answering affidavit on or before Monday, 1 December 2025.

6. The Second Respondent is directed to file its answering affidavit on or before Tuesday, 2 December 2025.

7. The Applicant is directed to file its replying affidavit to the First and Second Respondent's answering affidavits on or before Wednesday, 3 December 2025.

8. The application is postponed to Thursday, 4 December 2025.

9. The wasted costs of 28 November 2025 are reserved for determination on 4 December 2025.'

[10] The parties filed answering affidavits in accordance with the aforesaid order. On Thursday night, 4 December 2025, I heard oral arguments after having received written heads of argument from the parties just before then. That day I not only sat in the unopposed motion court the whole day but also had to deal with other urgent applications. Judgment in this application was reserved.

Relief sought

[11] Loubser J granted interim relief to Virtual Farmer to prevent RSP or any other person from selling or in any manner deal with the white maize, save for delivery to Virtual Farmer, pending finalisation of the application.

[12] The relief sought and to be adjudicated by me appears in paragraph 2 of the notice of motion and reads as follows:

'Declaring that the Applicant is the <u>owner</u> of, <u>alternatively entitled to immediate delivery</u> of <u>all</u> white maize situated at the Farm Welmansrust, Bothaville, Free State Province ("the Premises"), <u>which was acquired</u> by the Applicant from the Respondent in terms of the written agreements attached to the Founding Affidavit ("the Maize").' (Emphasis added.)

The parties' contentions

[13] I shall deal with the evidence in more detail. I restrict myself to the following under this heading. Virtual Farmer submitted that it is entitled to relief based on its ownership of all the white maize harvested by RSP. It relies on the written agreements referred to above. In support of an alternative submission, reliance is placed in the founding affidavit on an entitlement to delivery of all the white maize on the aforesaid farm. RSP approached its opposition of the application, relying on an absence of urgency. I made it clear during oral argument that I did not intend to deal with urgency, bearing in mind the history of the litigation. RSP does not deny that it owes Virtual Farmer money, suggesting that an amount of just over R16 million is due. It reiterated that 'there was sufficient maize to cover the maize that still had to be delivered/sold in order to settle the balance in terms of the 2025/2026 season, as well as to OVK, the respondent's other contractual obligation.' Therefore, whilst in essence admitting its liability towards Virtual Farmer, it submitted that 'there is ample maize to pay any claim from the applicant.'

[14] OVK's opposition is on a totally different level than that of RSP. On its version and as creditor of RSP, it established a silo depot on RSP's farm for the purpose of receiving and restoring grain in its own silo bags at this depot. It entered into this agreement due to the fact that it revised RSP's credit facility to R105 million recently. On 27 November 2025, *ie* a day before the application was initially heard, RSP's indebtedness to it was R104 261 012.00. The silo bags in which the grain is stored are clearly marked as OVK's silo bags. Furthermore, a security company was instructed to ensure that the grain silo depot was properly secured. Consequently, all white maize in OVK's silo bags at the depot were in OVK's possession and under its control. Therefore, it denies that Virtual Farmer became the owner of any of the white maize in possession and under control of OVK. OVK also relies on a cession as mentioned above that pre-dates the agreements between Virtual Farmer and RSP.

Evaluation of the evidence and submissions of the parties with reference to some authorities

[15] I quote the following well-known dictum from *National Director of Public*

Prosecutions v Zuma;[3]

'Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the *Plascon-Evans* rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers. The court below did not have regard to these propositions and instead decided the case on probabilities without rejecting the NDPP's version.'[4]

[16] The first issue to be considered is the ownership of the white maize held by OVK in the depot on RSP's farm. There is, in my view, no reason not to accept the evidence presented by OVK. It is far from far-fetched. It is also not false. In fact, the opposite is true. Its version of the silo depot and storage of the white maize in its marked silo bags was not attacked at all, neither in the replying affidavit, nor in the arguments presented on behalf of Virtual Farmer.

[17] It is trite that ownership of movables does not pass upon mere agreement by the parties to transfer ownership. Delivery of such movables, either physically or constructively, is needed for ownership to pass to the purchaser. I refer to the judgment of Corbett JA in *Lendalease Finance (Pty) Ltd v Corporacion De Mercadeo Agricola and Others*.[5]

[18] No proper delivery has taken place *in casu*, save in respect of those trucks which had already transported white maize from RSP's farm to the various buyers in accordance with Virtual Farmer's scheme. The white maize presently on RSP's farm has neither been delivered physically, nor constructively, to Virtual Farmer. In fact, delivery has taken place in accordance with the evidence presented by OVK and thus contrary to any agreement entered into between Virtual Farmer and RSP. OVK's version must be accepted insofar

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[3] *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA).
[4] Ibid para 26.
[5] *Lendalease Finance (Pty) Ltd v Corporacion De Mercadeo Agricola and Others* 1976 (4) SA 464 (A) at 489G-491A.

as I deal with opposed motion proceedings for final relief. There is no reason to reject OVK's version which is much more in line with the objective facts and the probabilities that that of Virtual Farmer.

[19] Virtual Farmer failed to show on what mode of delivery of the white maize it relies. This must be considered by referring to the written agreements relied upon by Virtual Farmer. Another aspect pointing towards Virtual Farmer's failure to prove transfer of ownership by way of delivery is contained in paragraph 2.7 of the definitions clause of the written agreements entered into between Virtual Farmer and RSP. It reads as follows:

'"deliver or "delivery/ies" means the delivery of crops by THE SUPPLIER to THE BUYER, at the CMA storage facilities (warehouse) nominated by NEDBANK, acting as Facility Agent, as may be agreed to from time to time by the parties and initially stated in Annexure 2.'

To put the reader in the picture, RSP is the supplier of the white maize and Virtual Farmer is referred as the buyer.

[20] In terms of paragraph 13.3.11 of annexure VF4, RSP had to 'deliver the crop to the agreed facilities or at such other place and party as may be agreed by the Buyer from time to time . . .' My prima facie view, without coming to a conclusion as it is not necessary for adjudicating the dispute, is that Virtual Farmer never intended to obtain ownership, but merely the right to sell the white maize, once harvested, to third parties. It is recorded in the agreements, that it 'has an exclusive supply agreement with the Off-Takers that buys (sic) all the goods under the programs.' It is apparent that Virtual Farmer has back-to-back agreements with various third parties to whom the white maize is delivered. It is clear from the papers that none of the white maize on the farm was physically delivered to Virtual Farmer.

[21] The only possible mode of delivery dealt with by the parties during oral argument is by way of *constitutum possessorium*. In the absence of actual delivery, there might have been constructive delivery in the form known as *constitutum possessorium*. The requirements for this form of delivery were authoritatively stated by Jansen JA in *Mankowitz v Loewenthal*[6] (*Mankowitz*). I quote:

'The absence of "physical prehension" by the transferee is, however, no obstacle to a delivery by

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[6] *Mankowitz v Loewenthal* 1982 (3) SA 758 (A) 766B-G; see also *Bank Windhoek Bpk v Rajie en 'n Ander* [1993] ZASCA 148; 1994 (1) SA 115 (AD) 141C-142G.

way of *constitutum possessorium*. By agreeing to and intending thenceforth to hold the *res* on behalf of the transferee, the possessor ceases to possess and commences to hold as agent for the transferee, who, by intending to possess through the transferor, now becomes the possessor. The requisites for a *constitutum possessorium*, based on Schorer (ad De Groot's *Introduction*. 2 48. 28), are stated by SOLOMON JA in *Goldinger's Trustee v Whitelaw & Son* 1917 AD 66 at 85 as follows:

"(1) That the grantor be himself in possession of the things to be transferred; (2) that he cease to possess in his own name and begin to possess for another; (3) the consent of the grantee; and (4) some *causa* or *justus titulus*."

For present purposes (2) and (3) are of crucial importance: there must be an agreement to the effect that the transferor henceforth holds on behalf of the transferee. This requires at least some external manifestation of the transferor's intention. A declaration by the transferor to the following effect would make the matter clear: *quod meo nomine possideo, constituto me possidere alieno nomine*, or *constituo me possidere alieno nomine*. According to *Savigny* the intention

"must... necessarily be expressly declared, or necessarily follow from the other circumstances of the case".

(On Possession s 29 - translation by Kelleher.) He states that a *constitutum* is not to be presumed and it is clear that he only infers the intention "from the other circumstances of the case" where there is some other transaction entitling the transferor to remain a holder, eg where he "gives a thing as a gift, and at the same time hires it". (Cf Lauterbach ad D 41.2 s 18.) This is consonant with Schorer requiring a *causa* or *justus titulus* - a *causa detentionis* for the transferor. It is from the existence of this transaction that the transferor's intention to hold on behalf of the transferee is inferred.'

[22] Corbett CJ, writing for a unanimous court in *Marcard Stein & Company v Port Marine Contractors (Pty) Ltd and Others*,[7] (*Marcard*) confirmed the following trite principle accepted in *Mankowitz*. I quote:

'It is clear from this statement [by Jansen JA in *Mankowitz*] that it is essential for transfer by way of *constitutum possessorium* that there should be agreement to the effect that the alleged transferor (in this case Verena) should henceforth hold the property in question on behalf of the transferee (Alvo).'[8]

The Chief Justice continued:

'These documents fail signally to establish any such agreement that would give rise to a delivery by way of *constitutum possessorium*. In fact the only kind of delivery which seems from them to

[7] *Marcard Stein & Company v Port Marine Contractors (Pty) Ltd. and Others* [1995] ZASCA 76; 1995 (3) SA 663 (AD).
[8] Ibid 673A-B.

have been contemplated by the parties was physical, ie actual, delivery.'[9]
I referred to the agreements relied upon by Virtual Farmer and the mode of delivery agreed upon therein, being actual physical delivery as was the case in *Mancard*. Therefore, I conclude that Virtual Farmer is not the owner of any of the white maize presently stored on RSP's farm.

[23] The next question to be considered is whether Virtual Farmer is 'entitled to immediate delivery of all white maize situated at the Farm Welmansrust . . .' which was acquired by it 'in terms of the written agreements' as claimed in the notice of motion.

[24] There is a serious conflict between the versions of Virtual Farmer and OVK on the papers. Virtual Farmer contracted for WM1 (white maize grade 1) to be sold and delivered to it. It has not been proven that any white maize with such a grading is in possession of RSP and/or stored on its farm. In any event, it is not entitled to all white maize in terms of its written agreements. More importantly, the version of OVK cannot be rejected on the papers as untenable and/or false.

[25] OVK's knowledge of and alleged waiver of its security in favour of Virtual Farmer must be put into context. Firstly, annexures 12a and 12b of the written agreement relied upon by Virtual Farmer, annexure VF4 to the founding affidavit, has neither been completed, nor signed by anyone on behalf of OVK. Blank documents were presented to the court as part of annexure VF4. This is disturbing and created doubt in my mind as to what transpired. It was unnecessary for OVK's deponent to deal with these blank documents in its answer to the founding affidavit. Out of the blue, a completed annexure 12a allegedly signed by a certain Aubrey Marais is attached to Virtual Farmer's replying affidavit in response to OVK's answering affidavit. There is no indication as to this person's authority and whether he had been properly mandated to waive OVK's rights. This original document has not been placed before the court. Apparently, it was sent by Prinsloo to Virtual Farmer by email. OVK has not forwarded the document to Virtual Farmer based on the evidence before me.

[26] Bearing in mind the urgency with which the parties approached the matter, as is

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[9] Ibid 673F-G.

evident from the order by Loubser J and the filing of papers thereafter, it was not possible for OVK to respond meaningfully, bearing in mind that Virtual Farmer's replying affidavit was filed on Wednesday, 3 December 2025, the day before the hearing of the opposed application. Virtual Farmer decided to bring an urgent application and it should be blamed for filing incomplete documents. It is just not proper to submit that OVK could have asked for a postponement and relief to file a rejoinder to Virtual Farmer's replying affidavit. I heard this application during the evening of Thursday, 4 December 2025, and have good reason to believe that if such an application was sought by OVK, it would have been opposed vehemently. Having considered the manner in which the matter was placed before the court, the applicant should accept responsibility. I am not prepared to find that the document relied upon in reply formed part and parcel of the written agreement relied upon by Virtual Farmer and/or that the Mr Marais referred to was duly authorised by OVK to waive any of its rights.

[27] The objective evidence shows that OVK increased RSP's credit facility during 2025. Surely, it would not have done so if it was firstly, aware of Virtual Farmer's involvement as a creditor and secondly, that it had waived its security in favour of Virtual Farmer.

[28] Virtual Farmer has not made out a case that it is entitled to delivery of all or any white maize situated on the farm Welmansrust. Consequently, its application stands to be dismissed.

Conclusion

[29] I mentioned in the previous paragraph that the application should be dismissed. RSP is notwithstanding the general rule applicable to litigation, not entitled to any of its costs in opposing the application even insofar as it is a successful party. It clearly caused Virtual Farmer to launch the application proceedings based on its initial compliance with its contractual obligations towards Virtual Farmer and its later retraction and/or failure to comply. Virtual Farmer was fully entitled to launch the proceedings up until the stage when OVK intervened. RSP shall pay its own costs in opposing the application. OVK, as the successful party, is entitled to its costs, inclusive of the costs of senior counsel on scale C.

Order

1 The application is dismissed.

2 The first respondent shall pay its own costs in respect of opposition of the application.

3 The applicant shall pay the second respondent's costs of intervening as well as opposition of the application, inclusive of the costs of counsel on scale C.

[redacted]

J P DAFFUE

JUDGE OF THE HIGH COURT

Appearances

For the Applicant:	P Zietsman SC
Instructed by:	Gerrit Coetzee Attorneys c/o Muller Gonsior Attorneys, Bloemfontein.
For the First Respondent:	A Sander
Instructed by:	EG Cooper Majiedt Inc, Bloemfontein.
For the Second Respondent:	PJJ Zietsman SC
Instructed by:	Phatshoane Henney Inc, Bloemfontein.