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

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

CASE NUMBER: 2024-061238

In the matter between:

J AND B PUB AND GRILL (PTY) LTD

APPLICANT

And

ARROW LINE FOUR CC

RESPONDENT

Heard: 2 March 2026

Delivered: 15 April 2026

Headnote: Lease — renewal — option to renew — requirement of written notice — whether notice validly given — notice delivered by email to lessor’s attorney — attorney engaged in ongoing correspondence relating to lease — no response to enquiry regarding authority — whether attorney had ostensible authority to receive notice — whether domicilium clause prescribes exclusive mode of delivery — whether notice clear and unequivocal — Electronic Communications and Transactions Act 25 of 2002,

s 23 — notice deemed received when capable of retrieval — failure by attorney to read email immaterial — risk of non-communication between attorney and client borne by principal — request for confirmation of mode of delivery does not render notice conditional — form not to prevail over substance — renewal validly exercised — counter-application for ejectment dismissed.

JUDGMENT

WINDELL J:

Introduction

[1] On 29 June 2023 the applicant, J and B Pub and Grill (Pty) Ltd and the respondent, Arrow Line Four CC, concluded a written lease agreement. In terms of the lease the applicant leased certain premises, situated at Portion 1 of Erf 7[...], SE7, Vanderbijlpark, from the respondent for purposes of conducting its business, which comprises of a restaurant, bar, entertainment facilities, and a golf driving range.

[2] The respondent placed the leased premises at the applicant's disposal, which were duly occupied in accordance with the terms of the agreement. It is common cause that the applicant complied with its obligations under the lease agreement.

[3] The initial lease period was recorded as commencing on 1 July 2023 and terminating on 30 June 2024 (incorrectly reflected in the agreement as 31 June 2024). The lease agreement made provision for renewal upon expiry of the initial period.

[4] The applicant contends that the lease agreement was validly renewed. The respondent disputes the validity of the renewal and has threatened to evict the applicant following the expiry of the lease on 30 June 2024. The applicant accordingly seeks declaratory relief confirming the renewal and directing the respondent to comply with its obligations under the lease agreement.

[5] The respondent has instituted a counter-application in which it seeks, inter alia, a declaration that the lease agreement terminated on 30 June 2024 and an order ejecting the applicant from the premises.

[6] The validity of the alleged renewal lies at the heart of both the application and the counter-application.

The facts

[7] Both the applicant and the respondent employed attorneys to assist the parties with the negotiations and the conclusion of the lease agreement. The attorneys so employed were respectively Mr. Tonie van Tonder ('Van Tonder') and Mr. Steven Meise ('Meise').

[8] In terms of clause 17 of the lease agreement, the applicant must exercise its right of renewal of the agreement by giving the respondent written notice not less than three months before the date on which the renewal period starts. The renewal period would commence on 1 July 2024 as recorded in the agreement.

[9] On 29 November 2023, Meise, acting on the respondent's instructions, addressed correspondence by email to the applicant, for the attention of its director, Mr

Pelser. In that letter, Meise recorded that he acted on behalf of the respondent and reminded the applicant of its obligations under the lease agreement, including to maintain the premises in a clean and good condition, to take proper care of the equipment, to prevent damage, nuisance or interference with installations, and to comply with all applicable laws.

[10] The applicant was further required to ensure that specific areas of the property, including the driving range, playground and ablution facilities, were properly maintained, and that no unauthorised electrical work was undertaken. The respondent also demanded that the applicant provide an undertaking within ten days that it would comply with its obligations under the lease agreement.

[11] On 8 December 2023, within the stipulated 10-day period, attorney Van Tonder, acting on behalf of the applicant, responded by email to Meise's letter. The applicant confirmed that it had complied, and would continue to comply, with its obligations under the lease agreement, and observed that the requirements raised by the respondent largely reflected obligations already contained in the agreement.

[12] The applicant nevertheless raised concerns regarding the respondent's conduct, in particular delays in completing building works, including the kitchen and ablution facilities, and the disruptive effect of ongoing construction on its business operations. It also complained of unannounced visits by the respondent's representative, which were said to interfere with the management of the business, and asserted its entitlement to the undisturbed use and enjoyment of the premises.

[13] The applicant then expressly recorded that it exercised its option to renew the lease agreement, with the result that the lease would be renewed at the end of the current lease period. The applicant further requested Meise to indicate whether he was authorised to accept the notice of renewal on behalf of the respondent, or whether formal notice should be given at the respondent's chosen *domicilium citandi et executandi*. The applicant also sought confirmation of receipt of the letter.

[14] It is common cause that attorney Meise received the email and the letter dated 8 December 2023. He did not respond to the enquiry regarding his authority to accept the notice, nor did he indicate that the notice ought to be delivered elsewhere. In fact, he did not respond at all.

Issues for determination

[15] The central issue is whether the applicant validly exercised its option to renew the lease agreement, and in particular whether the written notice contained in the letter dated 8 December 2023 constituted a proper exercise of that option in terms of clause 17.4 of the lease.

[16] This requires a determination of whether the applicant's letter, addressed and delivered to the respondent's attorney, constituted valid written notice to the respondent, having regard to the terms of the lease agreement, the parties' prior course of dealings, and the role of the respondent's attorney in relation to the lease.

[17] The following ancillary issues arise:

1. Whether the respondent's attorney was authorised, whether expressly, impliedly, or ostensibly, to receive the notice of renewal on behalf of the respondent;
2. Whether delivery of the notice by email constituted a permissible and effective mode of notice under the lease agreement;
3. Whether the lease agreement required that notice of renewal be delivered strictly to the respondent at its chosen domicilium citandi et executandi; and
4. Whether the notice of renewal was clear, unequivocal and unambiguous in conveying the applicant's intention to exercise its right of renewal.

Legal framework

[18] A renewal clause in a lease confers on the lessee a contractual right to renew the lease, provided that the right is exercised in the manner and within the period stipulated in the agreement. Upon due exercise of that right, the lease is automatically renewed upon the giving of notice, and no further act by either party is required.

[19] Where the agreement prescribes a particular mode of notice, the enquiry is whether strict compliance is required or whether substantial compliance suffices. This depends on the proper interpretation of the agreement, having regard to its language, purpose, and context.¹

¹ See *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18; *University of Johannesburg v Auckland Park Theological Seminary and Another* 2021 (6) SA 1 (CC) paras 64–69; *Capitec Bank Holdings Ltd v Coral Lagoon Investments 194 (Pty) Ltd* 2022 (1) SA 100 (SCA) paras 46–50.

[20] A *domicilium citandi et executandi* clause in a contract ordinarily identifies an address at which notices may validly be delivered. Its purpose is to ensure that notices delivered at that address are effective, whether or not they come to the attention of the party concerned.² Unless the contract stipulates that notice must be given exclusively at that address, such a clause is generally permissive rather than prescriptive.³

[21] It is trite that notice given to an authorised agent constitutes notice to the principal.⁴ Authority may be actual or ostensible. Actual authority may be express or implied. Ostensible authority arises where the principal, by words or conduct, represents that the agent is authorised to act on its behalf, and a third party reasonably relies on that representation.⁵

[22] In the context of contractual disputes, attorneys frequently act as representatives in relation to communications concerning the contract. Whether an attorney is authorised to receive a notice depends on the scope of the mandate, assessed objectively in light of the parties' dealings.

[23] Modern commercial practice recognises email as an accepted means of communication. In terms of section 23 of the Electronic Communications and Transactions Act 25 of 2002, a data message is deemed to be received when it enters the addressee's information system and is capable of being retrieved.

Evaluation

² *Amcoal Collieries Ltd v Truter* 1990 (1) SA 1 (AD) at 6A-D.

³ See Christie's *The Law of Contract in South Africa*; 8th Edition 2022 p.90 (paragraph 2.3.6)

⁴ *Makate v Vodacom Ltd* 2016 (4) SA 121 (CC) paras 45.

⁵ *Supra* paras 48–50.

[24] The respondent's denial of the validity of the notice of renewal can be summarised as follows. Although receipt of the letter dated 8 December 2023 is admitted, it is contended that the respondent's attorney did not read the letter or become aware of its contents before the expiry of the period within which the option had to be exercised. It is further contended that the respondent's attorney was not mandated at the relevant time to represent the respondent in relation to the lease agreement and was therefore not authorised to receive the notice of renewal on behalf of the respondent. In addition, the respondent contends that the notice is legally defective on the basis that it was not delivered to the respondent at its chosen *domicilium citandi et executandi*, as required by the lease agreement.

[25] The starting point is clause 17.4 of the lease agreement, which requires the exercise of the option to renew by written notice within a stipulated period. It is common cause that such notice had to be given by no later than 31 March 2024.

[26] It is further common cause that the applicant's notice, contained in the letter dated 8 December 2023, was given well before the contractual deadline. The dispute thus does not concern compliance with the temporal requirement, but rather the validity of the manner in which notice was given.

[27] The applicant's letter of 8 December 2023 expressly recorded its election to renew the lease. The language employed is clear and unequivocal and conveyed, without ambiguity, the applicant's intention to exercise its option. The respondent's contention that the notice was equivocal because it was accompanied by an enquiry as to whether formal notice should be delivered at the *domicilium* cannot be sustained.

That enquiry clearly related only to the mechanics of delivery and did not qualify or suspend the exercise of the option.

[28] The respondent's principal contention is that its attorney lacked authority to receive the notice of renewal. The evidence, however, establishes that Meise acted on behalf of the respondent in relation to the lease and disputes arising therefrom. On 29 November 2023 he addressed correspondence to the applicant on the respondent's behalf, demanded compliance with the lease, and required a response within ten days. The applicant responded within that period, on 8 December 2023, in the same channel of communication, and included in that response the notice of renewal. In these circumstances, the authority conferred on Meise extended to the handling of communications relating to the lease, including the receipt of the notice of renewal.

[29] In any event, even if Meise did not have actual authority to receive the notice, the respondent, through its conduct, created the impression that he was authorised to do so. The respondent's attorney acted on its behalf in relation to the lease and engaged directly with the applicant on matters arising from the lease relationship. It was therefore reasonable for the applicant to understand that the attorney was authorised to deal with communications concerning the lease, including the receipt of a notice of renewal. This accords with the principle that a principal may be bound by the conduct of an agent where the appearance of authority is created and reasonably relied upon by the other party.⁶

⁶ *Makate v Vodacom Ltd supra*.

[30] This impression was not displaced by any conduct on the part of the respondent or its attorney. On the contrary, when the applicant expressly enquired whether the notice would be accepted by the attorney or whether it should be delivered at the domicile, no response was provided. In the context of ongoing engagement between the attorneys, such silence reinforced the appearance of authority. Any internal limitation on mandate not communicated to the applicant cannot avail the respondent. It is well established that ostensible authority may bind a principal even where the agent acts contrary to the principal's instructions, provided that the appearance of authority was created by the principal and reasonably relied upon by the other party.⁷

[31] As to the mode of delivery, the parties had adopted email as their means of communication. The correspondence initiating the exchange was sent by email, and the notice of renewal was transmitted and received in the same manner. In terms of section 23 of the Electronic Communications and Transactions Act 25 of 2002, the notice is deemed to have been received when it entered the addressee's information system and was capable of being retrieved.

[32] It is of no consequence that the email was not read at the time it was received. Receipt, not subjective awareness, is determinative, and a party cannot avoid the consequences of a communication that has come into the possession of its chosen representative.

[33] It follows that the notice, having been received by the respondent's attorney acting within the scope of his authority, was effectively brought to the attention of the

⁷ *Minister of Police v Kunene & Others* [2020] 1 All SA 451 (GJ) para 41.

respondent. The respondent's reliance on the domicilium clause is therefore misplaced. Whilst the notice of renewal constitutes a contractual notice with legal consequences and falls within the ambit of clause 18, the clause does not stipulate that such notice must be given exclusively at the domicilium address. Its purpose is to ensure that notice delivered at that address will be effective, not to exclude other modes of communication. In these circumstances, to insist on strict delivery to the domicilium address would elevate form over substance and undermine the commercial efficacy of the agreement.

[34] The authorities relied upon by the respondent, including *Meyer v Neveling*,⁸ are distinguishable. In those matters, strict compliance with delivery provisions was required, or the attorney was not acting within any apparent mandate. In the present matter, there is no prescriptive or restrictive provision in the lease agreement requiring exclusive delivery at the domicilium, and the established course of dealing between the attorneys supports the conclusion that notice to the respondent's attorney was sufficient.

[35] In these circumstances, the respondent's lack of actual knowledge of the notice until a later stage does not avail it. The notice was received through its authorised representative, and the purpose of the notice provision was thereby fulfilled.

Conclusion

⁸ *Meyer v Neveling* 1981 (3) SA 994 (D&CLD)

[36] The applicant has established that it validly exercised its option to renew the lease agreement by way of the written notice dated 8 December 2023. The renewal is valid and binding on the parties.

[37] In the result the following order is made:

1. It is declared that the lease agreement that was concluded between the parties on 29 June 2023 was validly renewed, with the renewal period commencing on 1 July 2024.
2. The respondent is ordered to comply with its obligations in terms of the lease agreement, and to give full and undisturbed use and enjoyment of the leased premises, situated at Portion 1 of Erf 7[...], SE7, Vanderbijlpark to the applicant for the duration of the renewal period of five (5) years, commencing on 1 July 2024.
3. The respondent's counter-application is dismissed.
4. The respondent is to pay the costs of the application and the counter-application, including the costs of senior counsel, on Scale C.

L. WINDELL

JUDGE OF THE HIGH COURT

**GAUTENG LOCAL DIVISION,
JOHANNESBURG**

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 15 April 2026.

APPEARANCES

For the applicant:	P G Cilliers SC
Instructed by:	Antonie van Tonder Incorporated
For the respondent:	F P Strydom
Instructed by:	Meise Nkaiseng Incorporated
Date of hearing:	2 March 2026
Date of judgment:	15 April 2026