IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Case no: 2025-174899

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED	Applicant
and	
ABSOLUTE WIND (PTY) LIMITED	First Respondent
FASTLIFT CRANES (PTY) LIMITED	Second Respondent
M AND M TRAINING AND RIGGING CC	Third Respondent
LIEBHERR-AFRICA (PTY) LIMITED	Fourth Respondent

Neutral citation: **Standard Bank of South Africa Limited v Absolute Wind (Pty) Limited and Others** (Case no 2025-174899) [2026] ZAWCHC

Coram: **TOEFY AJ**

Heard: 2 February 2026

Delivered: 12 May 2026

ORDER

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a) The First Respondent is ordered and directed to deliver to the Applicant within 20 (twenty) days of the date of this order:

   i) the 2009 440 Ton Liebherr All Terrain Crane, Model LTM1400-7.1, having serial number 0[...] ("**the Crane**"), by delivering the Crane to the Third Respondent, **M AND M TRAINING AND RIGGING CC** ("**M&M**") on behalf of the Applicant, at 2[…] S[...] Road, Killarney Gardens, Cape Town;

b) at the same time as delivering the Crane as provided for in paragraph a (i) above, the First Respondent is ordered and directed to deliver to the Applicant, care of M&M:

   i) the keys to the Crane (together with any spare or duplicate sets of keys), together with all and any means of gaining access to, utilising and operating the Crane;

   ii) the NATIS certificate in respect of the Crane, together with all documents required to bring about a change in the NATIS records to reflect the Applicant as the Title Holder of the Crane; and

   iii) all accessories, manuals, service records and manufacturer codes required to operate the Crane.

c) Within 10 (ten) days of the delivery of the Crane as specified in paragraph a (i) above, the First Respondent is required to sign and deliver to the Applicant all such documents as are necessary to amend the records of NATIS to reflect the Applicant as the Title Holder of the Crane, failing which, the Sheriff of the above Honourable Court is authorised and empowered to sign all such documents as may be necessary, on behalf of and in the stead of the First Respondent, to give effect thereto.

d) The Applicant is ordered, in line with its undertaking and for purposes of taking delivery and securing the release of the Crane from the Fourth Respondent, to discharge the obligations of the First Respondent to the Fourth Respondent, totalling an amount of R1 674 092.14 and the Third Respondent (M&M), is directed to make payment of the amount owed by it to the Fourth Respondent, in accordance with the undertaking provided by it.

e) The First Respondent is ordered to pay the costs of suit of the application, including the costs of senior counsel, on Scale C.

JUDGMENT

Toefy AJ:

[1] The applicant, the Standard Bank of South Africa Ltd, seeks to enforce a sale agreement in terms of which the first respondent, Absolute Wind (Pty Ltd) ('Absolute Wind') is to deliver a crane, being a 2009 440-ton Liebherr All Terrain Crand Model LTM 1400-7.1 ('the crane') to the applicant or its nominee.

[2] The applicant states that Absolute Wind is the owner of the crane and that the latter appointed the second respondent, Fastlift Cranes (Pty) Limited ('Fastlift'), through a mandate agreement as its agent to acquire a purchaser of the crane. Fastlift, the applicant contends, acted in accordance with the mandate agreement by entering into a sale agreement with the applicant whereby the applicant purchased the crane. The applicant has paid Fastlift the purchase price. The applicant seeks to enforce the sale agreement against Absolute Wind as the principal of Fastlift.

[3] One the other hand, Absolute Wind states that, while it initially authorised Fastlift to procure a purchaser of the crane in accordance with the mandate agreement, this changed when Fastlift itself purchased the crane from Absolute Wind and then on-sold the crane to the applicant.

However, Fastlift has paid Absolute Wind only a fraction of the purchase price it received from the applicant. Because of this, Absolute Wind has not delivered the crane to Fastlift.

[4] Absolute Wind's defence is therefore that the applicant must enforce specific performance against Fastlift, as the latter purportedly sold the crane to the applicant as the owner, rather than agent acting on behalf of Absolute Wind. Accordingly, Absolute Wind contends that it is not the principal (whether disclosed or not) and bears no liability to the applicant.

Factual Background

[5] During 2024, the fourth respondent, M and M Training and Rigging CC ('M&M') had expressed an interest in purchasing the crane from Absolute Wind.

[6] M&M inspected the crane in late 2024 with the assistance of a representative of Fastlift, one Mr Bradley Medcalf. At the time, the crane bore the branding and colours of Absolute Wind.

[7] M&M required financing to purchase the crane and approached the applicant for such finance. It subsequently entered into a financing agreement with the applicant in terms of which the applicant would purchase the crane from the Absolute Wind. The applicant would acquire ownership of the crane but would grant M&M possession of the crane and the right to use the crane until it paid all amounts due to the applicant under the financing agreement. M&M would thereafter become the owner of the crane.

[8] On 13 May 2025 Absolute Wind and Fastlift entered into the abovementioned mandate agreement for the sale of the crane ('the mandate agreement'). In terms of the mandate agreement, Fastlift was given the "*irrevocable sole selling rights in respect of the crane*" at a price of R25,000,000.00 plus VAT. Fastlift would be entitled to 5% (plus VAT) on the amount of R25,000,000.00 as commission if it obtained a written offer from a purchaser who is willing and able to purchase the crane.

[9] The mandate agreement is signed by Shehaam Hassiem on behalf of Absolute Wind and by Bradley Medcalf on behalf of Fastlift. It is titled:

> "**CONFIRMATION OF MANDATE AND SALES AGREEMENT FOR 440T LIEBHERR**"

[10] Relevant parts of the mandate agreement provide:

"1 Absolute Wind Pty Ltd (Crane owner) records and warrants that it is the lawful owner of [the crane].
[Absolute Wind] hereby irrevocably instructs [Fastlift] to procure a willing and able purchaser for the [crane] at a purchase price of:

[the crane] at R25'000'000.00 + 15% VAT (Ex-works – Liebherr Johannesburg).

2

2.1 Absolute Wind agrees that commission at 5% (FIVE) plus 15% VAT on the above purchase prices, shall be payable to Fastlift if Fastlift obtains a written offer from a purchaser who is willing and able to purchase the crane.

2.2 The commission shall be payable in full as soon as Absolute Wind receives or becomes entitled to receive any part of the purchase price.

3 Fastlift shall have the irrevocable sole selling rights in respect of the crane/machines until midnight on 30th May 2025.

4-7 …

8 Absolute Wind records that they have agreed to arrange the transport of the crane from Liebherr in Springs to the new owners in Cape Town at a total cost of R651 666.77 + 15% VAT. (Total cost of crane transport R850'000.00 plus 15% VAT being split three ways between all parties) including the additional parts still left behind in Epping, for example the intermediate luffer, head and +-100t of counterweights and any other parts pertaining to the crane.

Absolute Wind to invoice new owners directly for the transport at a predetermined date/time for the transport, we expect this approximately 3 to 4 weeks after the receipt of payment and when the crane is ready to be transported.

9…

10 This agreement may not be amended or cancelled unless this is done in a further written document signed by both parties.

11…"

[11] On the same day, 13 May 2025, Fastlift issued an invoice to the applicant for one:

"Used- Liebherr Mobile Crane Model LTM1400- 7.1 All Terrain Crane…in favour of M&M Training and Rigging CC…"

[12] The "rate" for the crane was captured in the invoice as R25'000'000.00 plus 15%, i.e. R3'750'000.00. The total amount due was R28'750'000.00.

[13] On the next day, 14 May 2025, Absolute Wind provided the applicant with a written confirmation that –

"[Fast Lift] has been invoiced for the sale of a Mobile Crane Liebherr LTM 1400 – 7.1 serial number[…], to the value of R25'000'000.00 excluding VAT.

This letter also confirms that [Fast Lift] has a 30-day account with Absolute Wind (PTY) Ltd."

[14] On 16 May 2025, the applicant and M&M entered into an Instalment Sale Agreement, which I have referred to above as the financing agreement.

[15] On 19 May 2025, the applicant paid the full amount of R28’750’000.00 to Fastlift for the purchase of the crane. The invoice was made out to Fastlift and there was no mention of Absolute Wind therein.

[16] On 20 May 2025, Absolute Wind issued an invoice to Fastlift for the “Sale of [the Crane]” for an amount of R27’312’500.00. This amount is the portion of the purchase price due by Fastlift to Absolute Wind (inclusive of VAT) less the 5% commission which is due to Fastlift.

Was Fastlift an Agent or Owner?

[17] The applicant contends that the documents and the sequence of events referred to above indicate that the arrangement between Absolute Wind and Fastlift was that of principal and agent, and that when Fastlift concluded the purchase agreement with the applicant it did so in its capacity as Absolute Wind’s agent. Absolute Wind became obliged to deliver the crane to the applicant in accordance with the purchase agreement, the applicant contends, upon the following acts: (1) Fastlift having issued the invoice to the applicant on 13 May 2025; and (2) the applicant having paid Fastlift the amount so invoiced on 19 May 2025.

[18] The submission concludes that once the purchase agreement was entered into, a *vinculum iuris* was created between the purchaser, being the applicant and the seller, being Absolute Wind.

[19] The applicant further contends that it does not matter whether it was aware at the time of entering into the purchase agreement that Fastlift was

an agent of Absolute Wind because the latter would then be an undisclosed principal – an agent/principal mechanism recognised in our law - and which would nevertheless create a direct contractual nexus between the applicant and Absolute Wind.

[20] Absolute Wind, in its written submissions (quoting extensively from LAWSA) took issue with the legal mechanism of an undisclosed principal by setting out the position in Roman-Dutch law, which did not cater for the undisclosed principal. However, it is trite that the English Law doctrine of the undisclosed principal is part of our law – as awkwardly as it may fit into our contract law. A judgment of the Supreme Court of Appeal reported as recently as 2023 considered whether the facts of the case before it fulfilled the requirements of the doctrine of the undisclosed principal.[1] The court had no hesitation in conducting such analysis and expressed no uncertainty on the applicability of the undisclosed principal.[2]

[21] Absolute Wind's key defence is that Fastlift entered into the purchase agreement with the applicant, not as an agent of Absolute Wind, but as the owner of the crane. Thus, even though the mandate agreement was entered into on 13 May 2025, Fastlift decided to itself buy the crane from Absolute Wind and then, when it issued the invoice to the applicant (also on 13 May 2025) and received payment on 19 May 2025 from the applicant, it was acting as the owner of the crane. Absolute Wind contends that the applicant must enforce the purchase agreement against Fastlift as Absolute Wind is not a party to such agreement.

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[1] *Nel v De Beer and Another* 2023 (2) SA 170 (SCA) para 21.

[2] See further *SA Metal and Machinery Company (Pty) Ltd v Kleck* 2005 1 All SA 44 (E), 57 where the Court remarked that "*The doctrine of the undisclosed principal, while its development may be somewhat anomalous, is justified on the grounds of commercial convenience… It recognises that in the world of contractual relations, parties may well be acting on behalf of another but fail to disclose that fact when concluding a contract.*"

[22] Fastlift however, but for some R680’00.00, has failed to pay the purchase price to Absolute Wind, who in consequence has not delivered the crane to Fastlift. Absolute Wind will not deliver the crane to Fastlift until it receives all outstanding money from Fastlift.

[23] The evidence relied upon by Absolute Wind include that the mandate agreement is titled “Confirmation of Mandate <u>and Sales Agreement”</u>.

[24] This, Absolute Wind states, is important as it shows that when the mandate agreement was concluded both Fastlift and Absolute Wind contemplated that a sale agreement between them may ensue.

[25] Absolute Wind further states that this also explains why no other agreement of sale was entered into between itself and Fastlift. Furthermore, it states that this also explains why, on 14 May 2025, the 30-day credit arrangement was afforded to Fastlift when the latter “*indicated that it would be purchasing the crane itself”*.

[26] Absolute Wind states in its answering affidavit that:

> “*The upshot of all of this is that [Absolute Wind] granted Fastlift a mandate to sell the crane in question on its behalf originally, but subsequently sold the crane to Fastlift for Fastlift to on-sell on the basis that Fastlift would be afforded a credit facility of 30 days with [Absolute Wind].*”

[27] The sequence of events proffered by Absolute Wind shows a very tight timeline. On 13 May 2025, the mandate agreement/sales agreement was entered into. On the very same day, Fastlift must have decided to opt to

buy the crane and then on-sell to the applicant because Fastlift issued an invoice to the applicant for the crane on 13 May 2025.

[28] When asked in Court about how the mandate agreement regulates the sale agreement between Absolute Wind and Fastlift the following was submitted on behalf of Absolute Wind– (1) the mandate agreement does not preclude Fastlift from being the purchaser itself; and (2) the compensation remains the same, in that Fastlift will still be entitled to a 5% commission.

[29] Further, Absolute Wind alleged that the motivation for Fastlift changing the contractual structure to a sale and on-sale, was that M&M did not want Absolute Wind to know that the ultimate buyer was M&M since it is a direct competitor of Absolute Wind. In this way, the only contractual nexus in which Absolute Wind is involved is the sale between itself and Fastlift.

[30] With regard to the confirmation of 14 May 2025 that Absolute Wind provided to the Applicant that it invoiced Fastlift for the sale of the crane, this was proffered as evidence that Absolute Wind sold the crane to Fastlift and the latter had 30 days to pay the purchase price.

[31] This sale from Absolute Wind to Fastlift then culminated in the invoice dated 20 May 2025 being issued by Absolute Wind to Fastlift for an amount which deducted the 5% commission from the purchase price.

The Applicant's response

[32] The applicant contends that Absolute Wind's version of events shifted seismically. The initial position adopted by Absolute Wind was that Fastlift was acting as the former's agent and in accordance with the

mandate agreement (this position is consistent with a letter penned by Absoulte Wind's attorneys on 25 July 2025 addressed to Fastlift and to which I return later herein). This shifted to the position now adopted in the answering affidavit – i.e. Fastlift changed the contractual structure to purchasing the crane from Absolute Wind and then on-selling it.

[33] First – the applicant argues that the mandate agreement is aimed at authorising Fastlift to obtain a purchaser and to accordingly act as Absolute Wind's agent. But for the reference to a 'sales agreement' in the heading and the very last provision of the mandate agreement, there is no other indication that the document encapsulates a potential sale between Absolute Wind and Fastlift.

[34] The language and structure of the mandate agreement are those of a mandate and not a sale – it firstly instructs Fastlift to procure a purchaser. Second, it contemplates compensating Fastlift through a commission for obtaining such a purchaser – which is a typical form of compensation for agents. Third, it does not explicitly deal with compensating Fastlift through the same mechanism of a commission should it purchase the crane itself. Fourth, Fastlift is given the "*irrevocable sole selling rights in respect of the crane/machines until midnight on 30th May 2025*" – this too supports the applicant's position that the mandate agreement is aimed at mandating Fastlift rather than standing as an independent sale agreement.

[35] In my view, the plain language of the mandate agreement is that of a mandate – not a sale agreement.

[36] Second, the applicant contends that the issuance on 19 May 2025 of the invoice by Absolute Wind to the Fastlift for the amount of the purchase

price (plus VAT) less the 5% commission is also consistent with the agent/principal relationship as contemplated in the mandate agreement.

[37] Third, and perhaps most forceful, is the applicant's reliance on a letter by Absolute Wind's attorneys addressed to Fastlift on 25 July 2025 – over two months after the purported sale of the crane by Absolute Wind to Fastlift. In this letter, Absolute Wind demands payment from Fastlift of the outstanding balance. The letter, in relevant parts, provides –

> "2 We refer to the mandate agreement entered into between [Fastlift] and [Absolute Wind] on or about 13 May 2025 … whereby-
>
> 2.1. Fastlift was to procure a willing and able purchaser for [the crane]…at a purchase price of R25,000,000.00 plus VAT; and
>
> 2.2. Fastlift had sole selling rights of the crane until 30 May 2025.
>
> 3 We are instructed that-
>
> 3.1. On 14 May 2025, [Absolute Wind] addressed a letter to Fastlift confirming its 30-day account with our client.
>
> 3.2 A purchaser, [M&M] was secured and purchased the crane for a purchase price of R28,750,00.00, wherein [the Applicant], on behalf of M&M, paid the full purchase price into Fastlift's bank account on or about 19 May 2025…
>
> 3.3 On 20 May 2025, [Absolute Wind] invoice Fastlift for the amount of R27'312'500.00…
>
> 3.4 On or about 18 July 2025, Fastlift made payment to [Absolute Wind] to the amount of R682'812.50 (which is a fraction of the purchase price).
>
> …
>
> 3.6 M&M would like to take delivery of the crane, however, [Absolute Wind] cannot make delivery until the full purchase price is paid to [Absolute Wind]. Fastlift is in breach of the mandate agreement and consequently places an undue burden on [Absolute Wind]….
>
> 4 You are therefore indebted to [Absolute Wind] to the amount of R26,629,687,50 ("**Outstanding Amount**")."

[Underlining added]

[38] The above letter of demand by the attorneys of Absolute Wind makes no mention of a purchase and sale agreement between Absolute Wind and Fastlift. Instead, the letter of demand explicitly relies on the 'mandate agreement'. Further, Absolute Wind demanded payment of the balance of the amount received by Fastlift from the applicant. Lastly, the letter of demand expressly characterises Fastlift's behaviour as being in breach of the mandate agreement.

[39] This letter was sent some two months after the purported sale between Absolute Wind and Fastlift took place. Yet, the attorneys of Absolute Wind made no mention of such sale and instead sought to enforce the mandate agreement. This is in direct conflict with the version put up by Absolute Wind in its answering affidavit and persisted with in legal argument.

[40] The contents of this letter were explicitly raised by the applicant in- and attached to its founding affidavit. Absolute Wind chose not to explain the clear contradiction between the contents of the letter and its affidavit. It also chose not to provide any explanation in legal argument. Instead, it offered the letter as an example of a material dispute of fact which– it was submitted in Court – can only be resolved by oral evidence. However, the letter by its attorneys is the antithesis of a dispute of fact. Its contents are in complete harmony with the applicant's version and are only in conflict with Absolute Wind's own later account of the events.

[41] It was only on 11 September 2025 that the attorneys of Absolute Wind appear to have begun pivoting and stated in a letter to the applicant's

attorneys that "*at this stage it is apposite to point out that the transaction that our client initially envisaged did not materialise*".

[42] However, this new version of events is contrary to the mandate agreement and the letter of demand by Absolute Wind's own attorneys (which remained unexplained). Furthermore, the invoice of 13 May 2025 of Fastlift to the Applicant; and the letter of confirmation of 14 May 2025 of Absolute Wind are both not inconsistent with there being an agent/principal relationship.

[43] Absolute Wind also fails to provide any further documentary evidence of the alleged sale agreement between itself and Fastlift. For instance, no communication, such as a letter or other form of communication in which Fastlift indicates that it has decided to, itself, purchase the crane.

[44] There is another reason why Absolute Wind's version of events stands to be rejected – a further theory on the chain of events is provided by Absolute Wind in its answering affidavit. At paragraph 70 Absolute Wind's deponent (a director, Mrs Shehaam Hassiem) states:

> "It appears that Fastlift in any event disregarded [Absolute Wind's] mandate and acted fraudulently when it materially restructured the transaction between it and [Absolute Wind]."

[45] This theory contradicts Absolute Wind's version that the sale was always contemplated in the mandate agreement. But the fundamental difficulty with this is that if the mandate agreement always contemplated that a sale may ensue, then it would not be fraudulent for Fastlift to have activated the sale/purchase component of the mandate agreement. On the other hand, this theory of a fraudulent restructuring of the agreement, is

consistent with the position adopted in the letter of the attorneys of Absolute Wind dated 25 July 2025 which relied on the mandate agreement and not a sale. This would be so because the mandate agreement could only be restructured (i.e. amended) if the amendment was reduced to writing. But Absolute Wind abandoned its reliance on the principal/agent structure.

[46] While this theory is raised speculatively, it leaves a confused and self-defeating answering affidavit.

Are there material and *bona fide* disputes of fact?

[47] The defence that Fastlift itself purchased the crane and then sold it to the applicant is in direct conflict with the applicant's case, which contends that Fastlift acted as the agent of Absolute Wind.

[48] If Fastlift acted as agent when concluding an agreement with the applicant, this would render Absolute Wind liable as the principal. This is so in the case of the standard situation of representation where the principal acquires rights and incurs liabilities (and the agent/representative none).

[49] Similarly, where there is an agent/undisclosed principal relationship, and the agent enters into the agreement it is authorised to conclude with a third party (i.e. Fastlift being the agent and the applicant being the third party respectively) a *vincula iuris* is created between the parties to the agreement – <u>and</u> an alternative *vincula iuris* is created between the third

party and the undisclosed principal (i.e. the applicant and Absolute Wind respectively).[3]

[50] On the other hand, on Absolute Wind's version, there is no contractual nexus at all between it and the applicant, as Fastlift purchased the crane from Absolute Wind and then sold it to the applicant.

[51] The two versions are therefore in conflict with one another. Absolute Wind submits that, on the *ratio decidendi* set out in *Plascon Evans,* where there is a dispute of fact and a final order is sought in motion proceedings, such order may be granted if it is justified based on the "*facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent…*". [4]

[52] On this basis, the resolution of the dispute of fact in this matter will be resolved by finding in favour of the respondent, a conclusion advanced by Absolute Wind.

[53] However, this rule has exceptions. Where there is a dispute of fact, the above rule will not apply where the denial by the respondent of a fact alleged by the applicant fails to "*raise a real, genuine or bona fide dispute of fact.*"[5] It is not sufficient for a respondent to resort to bare denials. It must put up a contrary version to show that there is a real, genuine or *bona fide* dispute of fact.

[54] Furthermore, the respondent's version may be rejected by the court adopting a robust approach where such version is "*fictitious, or so far-*

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[3] *LAWSA*, Agency and Representation (Vol 1- Third Edition, 2014), para 178 and the authorities cited therein at footnotes 2 and 3.
[4] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A), 634h-I.
[5] *Ibid*; *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1163-5; *Da Mata v Otto NO* 1972 (3) SA 858.

fetched and clearly untenable that it can confidently be said, on the papers alone, that it is demonstrably and clearly unworthy of credence."[6] This position has emerged based on some 80 years of jurisprudence, was, 20 years ago, described by the Supreme Court of Appeal as follows:

> "More than 60 years ago, this Court determined that a Judge should not allow a respondent to raise 'fictitious' disputes of fact to delay the hearing of the matter or to deny the applicant its order. There had to be a '*bona fide* dispute of fact on a material matter'. This means that an uncreditworthy denial, or a palpably implausible version, can be rejected out of hand, without a recourse to oral evidence." [7]

[55] Based on the authorities cited above and in light of the analysis in paragraphs [32] to [46] above, I find that the version advanced by Absolute Wind in its answering affidavit, is palpably implausible and lacks credibility. I therefore reject its version. Further, I accept the version advanced by the applicant – which is consistent with the contents of the letter by the attorneys of Absolute Wind dated 25 July 2025. Accordingly, the Applicant must succeed.

Factors impeding delivery of the crane

[56] The crane is currently in Springs, Gauteng being held by Liebherr who was commissioned by Absolute Wind to effect maintenance and repairs thereto in 2023. Liebherr holds a debtor and creditor lien against Absolute Wind over the crane. An amount of R1 674 092.14 is owing to Liebherr for such maintenance and repairs.

[57] In order to secure the release of this lien, the applicant has undertaken in its founding affidavit to settle Liebherr's invoices in respect of such lien.

[6] *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA), para 56.
[7] *Ibid*, para 55.

[58] Furthermore, Liebherr holds a second debtor and creditor lien over the crane. On or about 15 May 2025, M&M requested Liebherr to carry out additional work on the crane. As a result, further work was indeed effected by Liebherr to the value of approximately R2'317'678.46, which amount is owed by M&M to Liebherr. Together with its replying affidavit filed by the applicant, M&M provided an affidavit confirming its undertaking to discharge all amounts it owed Liebherr.

[59] Once these undertakings are honoured, Liebherr will no longer hold a lawful lien over the crane and will be obliged to release the crane.

[60] Absolute Wind has raised a third stumbling block – being the transport costs of the crane from Springs to Cape Town. However, the travel and transport arrangements and attendant costs are dealt with in paragraph 8 of the mandate agreement as quoted earlier herein (see paragraph [10] above). Accordingly, this is no impediment to the delivery of the crane.

Costs and Conclusion

[61] With regard to the costs of this application, there is no reason why costs should not be granted in the applicant's favour. This includes the costs of Part A, which was necessitated by Absolute Wind's failure to provide an undertaking beyond 19 September 2025 that it would not, pending a resolution being found between the parties, dispose of or otherwise encumber the crane.

[62] Accordingly, I make the following order:

a. The First Respondent is ordered and directed to deliver to the Applicant within 20 (twenty) days of the date of this order:

i. the 2009 440 Ton Liebherr All Terrain Crane, Model LTM1400-7.1, having serial number 0[...] (“**the Crane**”), by delivering the Crane to the Third Respondent, **M AND M TRAINING AND RIGGING CC** (“**M&M**”) on behalf of the Applicant, at 2[…] S[...] Road, Killarney Gardens, Cape Town;

b. at the same time as delivering the Crane as provided for in paragraph a (i) above, the First Respondent is ordered and directed to deliver to the Applicant, care of M&M:

i. the keys to the Crane (together with any spare or duplicate sets of keys), together with all and any means of gaining access to, utilising and operating the Crane;

ii. the NATIS certificate in respect of the Crane, together with all documents required to bring about a change in the NATIS records to reflect the Applicant as the Title Holder of the Crane; and

iii. all accessories, manuals, service records and manufacturer codes required to operate the Crane.

c. Within 10 (ten) days of the delivery of the Crane as specified in paragraph a (i) above, the First Respondent is required to sign and deliver to the Applicant all such documents as are necessary to amend the records of NATIS to reflect the Applicant as the Title Holder of the Crane, failing which, the Sheriff of the above Honourable Court is authorised and empowered to sign all such documents as may be necessary, on behalf of and in the stead of the First Respondent, to give effect thereto.

d. The Applicant is ordered, in line with its undertaking and for purposes of taking delivery and securing the release of the Crane from the Fourth Respondent, to discharge the obligations of the First Respondent to the Fourth Respondent, totalling an amount of R1 674 092.14 and the Third Respondent

(M&M), is directed to make payment of the amount owed by it to the Fourth Respondent, in accordance with the undertaking provided by it.

e. The First Respondent is ordered to pay the costs of suit of the application, including the costs of senior counsel, on Scale C.

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A TOEFY

ACTING JUDGE OF THE HIGH COURT

Appearances

For applicant: N Konstantinides SC

Instructed by: Van Hulsteyns Attorneys

For first respondent: R Stelzner SC

Instructed by: Cliff Decker Hofmeyr Inc, Cape Town.