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

Case Number: 2025-049929

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

In the matter between: -

AH VEST LIMITED t/a JOY FOODS LIMITED

Applicant

and

CORRUSEAL CORRUGATED GAUTENG (PTY) LTD

Respondent

IN RE:

CORRUSEAL CORRUGATED GAUTENG (PTY) LTD

Plaintiff

And

AH VEST LIMITED t/a JOY FOODS LIMITED

Defendant

JUDGMENT

Van Aswegen AJ

INTRODUCTION:

- [1] In this matter, the Applicant is the Defendant in the main action, while the Respondent is the Plaintiff. For ease of reference, the parties will be referred to as the Plaintiff and the Defendant, respectively.
- [2] The principal claim is based on the alleged breach of a credit agreement concluded during *September 2015* pertaining to the sale and delivery of goods from the Plaintiff to the Defendant. The breach concerns the purported failure to make payment of the outstanding balance of *R981 656.59* (“principal debt”) following a formal demand.¹
- [3] This application concerns an indulgence sought by the Defendant for the upliftment of the bar and an extension of time to deliver its Rule 30A(1) notice.
- [4] The Plaintiff opposes this application, principally on the grounds that the Defendant did not provide a comprehensive explanation for the delay and failed to disclose a *bona fide* defence.

SEQUENCE OF DELIVERY OF PLEADINGS AND NOTICES:

- [5] At the outset it seems common cause that the pleadings and notices were delivered at the time mentioned here in after.
- [6] The Summons and Particulars of Claim were served on the Defendant on *22 April 2025*.² Subsequently, the Defendant delivered a Notice of Intention to Defend on *7 May 2025*.³

¹ Case Lines 002-32

² Case Lines 003-2

³ Case Lines 003-7

[7] The Defendant thereafter had to deliver its Plea or an Exception as specified in Rule 22 of the Uniform Rules of Court.

[7.1] Rule 22 states as follows:

“22. Plea

(1) Where a defendant has delivered notice of intention to defend, he shall within 20 days after the service upon him of a declaration or within 20 days after delivery of such notice in respect of a combined summons, deliver a plea with or without a claim in reconvention, or an exception with or without application to strike out.” (my underlining)

[8] Accordingly, the Defendant’s Plea or an Exception in terms of Rule 22 was due on *4 June 2025*.

[9] The Defendant failed to deliver its Plea or Exception by *4 June 2025*. Accordingly, the Plaintiff delivered a Notice of Bar on *6 June 2025*.⁴

[10] The Notice of Bar gave notice to the Defendant to deliver its Plea within five (5) days of delivery of the said notice - on Friday *13 June 2025*. The said Friday marked the beginning of a long weekend.

[11] The Defendant failed to timeously deliver its Plea or Exception on *13 June 2025* and was *ipso facto* barred.

[12] On Tuesday, *17 June 2025*, which followed a public holiday on Monday, *16 June 2025*, the Defendant’s attorney emailed the Plaintiff’s attorneys. In the email, the attorney requested a short extension to serve the Defendant’s pleading and documents later that morning.⁵

⁴ Case Lines 004-58

⁵ Case Lines 004-64

- [13] The Plaintiff's attorney's response was that the Defendant was *ipso facto* barred from filing its Plea, and that a formal application was required to uplift the Bar and condone the late filing of the Plea. Consideration would only be given to uplift the bar after an explanation for the delay had been tendered and the Defendant's defence had been disclosed.⁶
- [14] Subsequently the Defendant's Exception and Rule 30A notice were served on the Plaintiff's attorneys on 17 June 2025.⁷ The Defendant's application for the upliftment of the Bar was launched the day thereafter on 18 June 2025⁸ and served on 25 June 2025.⁹
- [15] The Plaintiff opposed the application¹⁰ and delivered its answering affidavit on 18 July 2025.¹¹ No replying papers had been delivered.

REQUIREMENTS FOR THE UPLIFTMENT OF BAR:

- [16] In evaluating the upliftment or removal of bar it is necessary to look at the requirements for such an application.
- [17] The upliftment of bar allows a party, who was previously prevented from pleading due to missing court time limits, to request permission from the court to present their defence. The process requires the delivery of a notice of motion, an affidavit, and demonstrating "*good cause*," such as providing a reasonable explanation for the delay.
- [18] *Good cause* in such an application in essence encapsulates:
- [18.1] a reasonable and valid explanation for the delay/default;
 - [18.2] a *bona fide* defence (prima facie case) and

⁶ Case Lines 004-64

⁷ Case Lines 003-30

⁸ Case Lines 004-4

⁹ Case Lines 004-82

¹⁰ Case Lines 004-84

¹¹ Case Lines 004-99

[18.3] that the application is not made with the object of delaying the opposite party's claim.

CASE LAW ON GOOD CAUSE:

[19] In case law, "good cause" has been defined as explained here in below.

[20] In *Smith, N.O v Brummer, N.O. and Another 1954 (3) SA 352 (OPD)*, the court said the following about what constitutes *good cause*:

“ In an application for removal of bar the Court has a wide discretion which it will exercise in accordance with the circumstances of each case. The tendency of the Court is to grant such an application where:

- (a) the applicant has given a reasonable explanation of his delay;*
- (b) the application is bona fide and not made with the object of delaying the opposite party's claim;*
- (c) there has not been a reckless or intentional disregard of the Rules of Court;*
- (d) the applicant's action is clearly not ill-founded, and*
- (e) any prejudice caused to the opposite party could be compensated for by an appropriate order as to costs;*

The absence of one or more of these circumstances might result in the application being refused”. (my underlining)

[21] The court briefly explained what is meant by "good cause" in *Van Aswegen v Kruger 1974 (3) SA 204 (OPD)* as follows:

“The supposition that a defendant who applies for condonation in terms of Rule 27 (3) of the Uniform Rules of Court of his late entry of appearance to defend must set out a prima facie defence with supporting facts to satisfy the Court that his intention to defend is bona fide is not correct. The requirement of a bona fide defence would be adequately satisfied where

the defendant avers that he has a bona fide defence, and he makes averments which if proved would constitute a defence." (my underlining)

- [22] In summary Nestadt J defined *good cause* in *Ford v Groenewald* 1977 (4) SA 225 (TPD) as follows:

"Where application is made in terms of Rule of Court 27 for the removal of bar, the Applicant who approaches the Court for such indulgence must give a reasonable explanation under Oath for his ignoring the Rule of Court and his affidavit must show a bona fide defence: the defence need not be set out in detail. It is sufficient if it is set out shortly." (my underlining)

- [23] Kannemeyer J similarly In *Flugel v Swart* 1979 (4) SA 493 (ECD) held:

"In order to show "good cause" in terms of Rule 27 (1) an applicant must give a reasonable explanation under oath for his failure to comply with the Rule of Court in question and he must also, in his affidavit, disclose a bona fide defence which need not be set out in any great detail. It is sufficient if it is set out shortly." (my underlining)

ASSESSMENT OF CASE LAW:

- [24] It is abundantly clear that an Applicant seeking the removal of a bar must demonstrate *good cause*.¹² This necessitates submitting an affidavit addressing the merits¹³ and outlining the defence. Whilst it is not required for the affidavit to include every detail relied upon by the Applicant to establish its defence,¹⁴ it must nonetheless indicate that a valid defence exists.

¹² *Madinda v Minister of Safety and Security* [2008] 3 All SA 143 (SCA).

¹³ *Du Plooy v Anwes Motors (Edms) Bpk* 1983 (4) SA 212 (O).

¹⁴ *Nathan (Pty) Ltd v All Metals (Pty) Ltd* 1961 (1) SA 297 (D).

- [25] Courts have however demonstrated caution in articulating an exact definition of '*good cause*',¹⁵ instead exercising judicial discretion based on the unique circumstances presented in each case.¹⁶
- [26] The tendency is to grant such an application where:
- [26.1] the Applicant has given a reasonable explanation of his delay;
 - [26.2] the application is *bona fide* and not made with the object of delaying the opposite party's claim;
 - [26.3] there has not been a reckless or intentional disregard of the rules of court;
 - [26.4] the Applicant's action or defence is not ill-founded; and
 - [26.5] any procedural prejudice caused to the opposite party can be compensated for by an appropriate order as to costs.¹⁷
- [27] Nevertheless a court possesses a discretion that needs to be applied judicially, taking into account the facts of each case to ensure fairness to both parties.¹⁸ This discretion is not absolute or unrestricted; it must follow established legal principles.¹⁹ While courts have avoided further defining these principles to preserve the flexibility provided by the rules, the rules intentionally grant a broad discretion, and it is important not to limit this scope.²⁰
- [28] Certain factors are generally considered relevant in evaluating condonation. The importance of each factor depends on the unique circumstances of the

¹⁵ Du Plooy v Anwes Motors (Edms) Bpk supra.

¹⁶ Nathan (Pty) Ltd v All Metals (Pty) Ltd supra

Smith v Brummer, Smith v Brummer 1954 (3) SA 352 (O). See also Silverthorne v Simon 1907 TS 123; Ford v Groenewald 1977 (4) SA 224 (T); Oostelike Tvlse Ko-op Bpk v Aurora Boerdery 1979 (1) SA 521 (T); Flugel v Swart 1979 (4) SA 493 (E); Feldman v Feldman supra.

¹⁸ S v Yusuf 1968 (2) SA 52 (A) at 53

¹⁹ Kathrada v Arbitration Tribunal 1975 (2) SA 673 (A)

²⁰ Kgobane v Minister of Justice 1969 (3) SA 365 (A);

case. None of these factors are decisive on their own; they should be evaluated together and balanced against one another.²¹

[29] Several factors,²² can be considered by a court. These factors include the extent of non-compliance, the reasons for any delay,²³ the prospects of success, the significance of the case, the type of relief sought, the other party's interest in finality, prejudice to the opposing side²⁴ that cannot be remedied by costs, the court's convenience, preventing unnecessary holdups in justice, and the level of negligence by those responsible for not complying.

[30] *In Bertie van Zyl (Pty) Ltd and Another v Minister for Safety and Security and Others 2010 (2) SA 181 (CC)* the Constitutional Court in paragraph 14 held that the test for condonation did not only consider lateness. The test also encapsulates whether it was in the *interests of justice* to grant condonation. This, Defendant's counsel, argued is a wider test than merely "*good cause*" to be shown.

[31] Amongst the relevant factors to be considered and assume prominence are the extent and cause of the delay together with the prospects of success. In assessing the delay this court has to review the reasons provided for the delay.

EVALUATION OF EXPLANATION FOR DELAY:

[32] The explanation for the delay, in delivering the Exception and Rule 30A notice, is proffered by Mr. Mujib Petker ("Mr. Petker"), a director of Petker & Associate Attorneys and the attorney for the Defendant, in a Founding Affidavit.

²¹ The Applicant must show something which the court considers sufficient to justify it in granting an indulgence: *Rose v Alpha Secretaries Ltd 1947 (4) SA 511 (A)* 517;

²² *Beweging vir Christelik-Volkseie Onderwys v Minister of Education* [2012] 2 All SA 462 (SCA)

²³ *Beweging vir Christelik-Volkseie Onderwys v Minister of Education* supra

²⁴ *TLE (Pty) Ltd v The Master of the High Court and Others 2012 (2) SA 502 (GSJ)* at [12].

[33] The Plaintiff criticises the fact that there is no affidavit filed by the Defendant to corroborate Mr. Petker's version. I am of the opinion that Mr. Petker has personal knowledge in respect of the exchanged correspondence between the attorneys and counsel as well as in respect of the preparation of the Exception and Rule 30A Notice. The Defendant would not be able to contribute as he did not author the correspondence and did not actively assist in the preparation and service of the Exception and Rule 30A Notice.

[34] When considering the explanation for the delay, the Applicant must honestly, openly and frankly provide the reasons for the entire period of delay.²⁵ This is necessary in order to determine how the delay had occurred.

[35] In *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC) at paragraph 22 the court held that the explanation must cover the entire period of delay:

"An applicant for condonation must give a full explanation for the delay. In addition, the explanation must cover the entire period of delay. And, what is more, the explanation given must be reasonable..."

[36] The Plaintiff's counsel argued that there are two periods which the Defendant had to address, namely:

[36.1] from date of service of Notice of Intention to Defend 7 May 2025 until 4 June 2025 when the Plea had to be delivered and

[36.2] from Notice of Bar 6 June 2025 until 17 June 2025 when the Exception and Rule 30A notice were served on the Plaintiff's attorneys.

²⁵ *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC) 454G-H.

PERIOD 7 MAY 2025 TO 4 JUNE 2025

- [37] It is evident from Mr. Petker's affidavit that the delay was only addressed as from the time the Notice of Bar was served on *6 June 2025* until *17 June 2025* when the Exception and Rule 30A notice were served. Mr. Petker did not deal with the period *7 May 2025 until 4 June 2025* (from Notice of Intention to Defend to when the Plea was initially due)
- [38] Counsel for the Defendant, Adv Kok, argued that the delay requiring consideration pertains solely to the period commencing from the issuance of the Notice of Bar, *6 June 2025*, as the Defendant seeks an indulgence regarding the interval between *6 June 2025* and *17 June 2025*. He acknowledged that the duration between the Notice of Intention to Defend and the delivery of the Plea (*7 May 2025 until 4 June 2025*) falls outside the current explanation and remains unaccounted for.
- [39] The Defendant requests leniency for failing to comply with the Notice of Bar, asking for the bar to be lifted and permission to be granted for the filing of its Exception and Rule 30A notice. This indulgence is requested for the period from the Notice of Bar, *6 June 2025* up to service of the Exception and Rule 30A notice on *17 June 2025*. In my opinion, the timeframe between *7 May 2025 and 4 June 2025* (from the Notice of Intention to Defend to the original due date for the Plea) is irrelevant to the court's decision regarding whether to grant condonation. Mr. Petker's affidavit covers the entire period for which the Defendant seeks indulgence.

PERIOD 6 JUNE 2025 TO 17 JUNE 2025

- [40] Mr. Petker's account of what was done since served with the Notice of Bar can be formally summarized as follows:
- [40.1] A Notice of Bar was served via e-mail on him on Friday *6 June 2025*

- [40.2] On Monday, 9 *June 2025*, he forwarded the Notice of Bar via e-mail to inform the counsel in this matter that, should the next pleading not be filed within five (5) days, the Defendant would automatically be barred.²⁶
- [40.3] He calculated and acknowledged that the Defendant was required to comply with the five-day period stipulated in the Notice of Bar by 13 *June 2025*.
- [40.4] On 10 *June 2023*, the counsel, e-mailed Mr. Petker stating he had only the Notice of Bar and no other documents in the matter.²⁷
- [40.5] On the evening of 10 *June 2025*, a comprehensive brief containing all pleadings was provided to counsel.
- [40.6] On 11 *June 2025*, Mr. Petker and legal counsel had attended to a different matter in Durban.
- [40.7] On 12 *June 2025* at 14:44, counsel transmitted the draft Exception and Rule 30A notice to Mr Petker via e-mail for his review.
- [40.8] On the afternoon of 12 *June 2025*, counsel contacted Mr. Petker to confirm whether Mr. Petker had received the documentation. At that time, Mr. Petker was in Pretoria handling a matter for another client.
- [40.9] On Friday, 13 *June 2025*, Mr Petker was in Cape Town attending to a legal matter. The day marked the beginning of a long weekend, and his secretary was on leave. His office is exclusively staffed by him and his secretary.

²⁶ Annexure MP2 at 004-56

²⁷ Annexure MP3 at 004-60

- [40.10] Emails addressed to Mr Petker's office email (l[...]) are received by a server, which he accesses remotely using Any Desk.
- [40.11] Mr Petker could not access his e-mails via Any Desk on *13 June 2025* due to a full-day power outage at the office park where his offices are situated, which at the time still remained unresolved. The power outage was confirmed in Annexure "*MP3a*" ²⁸ to his affidavit.
- [40.12] On *17 June 2025*, Mr. Petker reached out to the Plaintiff's attorneys to ask for leniency regarding the late delivery. Monday, *16 June 2025*, was a public holiday.
- [40.13] The Plaintiff's attorneys responded that the Defendant had to bring a formal application for upliftment of the bar.²⁹
- [40.14] Subsequently on *17 June 2025* Mr. Petker served the Exception and Rule 30A notice³⁰ and indicated that an application for upliftment of the bar would follow.
- [41] Based on the aforesaid, it is clear that the Defendant was supposed to deliver the Exception on *13 June 2025* and that it was late by a day it was served on *17 June 2025*. (*Monday 16 June 2025 being a public holiday*). The extent of the delay is therefore minimal.
- [42] The Defendant has provided a reasonable and legitimate justification for the delay after the Notice of Bar was served at its attorneys' offices. It is clear that there was no undue delay after the Notice was served, instead, the actions taken by the Defendant's legal team were prompt and efficient.

²⁸ Case Lines 004-62

²⁹ Annexure MP4 at 004-63

³⁰ Annexure MP5 at 004-67

[43] The exception and Rule 30A application were served one day late, on *17 June 2025*. Mr. Petker promptly contacted the Plaintiff's attorneys on *17 June 2025* to request an indulgence for the late service. The Plaintiff's attorneys requested a formal application for the upliftment of the bar. Accordingly, the pleading and Rule 30A notice were served, and the Plaintiff's attorneys were notified that an application for upliftment of the bar would follow. This application was subsequently initiated on *18 June 2025*. The Plaintiff's attorney was clearly aware that the Defendant intended to contest the main action.

[44] The delay was minimal. The conduct of Mr. Petker and his counsel upon receipt of the Notice of Bar further demonstrates that the Defendant consistently intended to contest the proceedings. Additionally, the power supply outage was beyond Mr. Petker's control.

[45] The Constitutional court in *F v Minister of Safety and Security and Others* 2012 (1) SA 536 (CC) at paragraph 34 held that:

'It is trite that the interests of justice require that all issues pertaining to a matter be ventilated fully and for all parties to be given the opportunity to state their case as comprehensively as possible'.

[46] The Defendant seeks an indulgence in respect of upliftment of the bar. The Defendant has in detail addressed the period as from the time of the Notice of Bar on *6 June 2025* to *17 June 2026*. The delay for which there had to be a detailed explanation is from Notice of Bar stage which Mr. Petker has done.

[46.1] The Defendant's counsel's explanation why the initial period was not dealt with is valid and accepted by the court. It is clear that the indulgence sought is for the upliftment of the Bar – the relevant period is therefore from Notice of Bar *6 June 2025* to *17 June 2025*.

- [47] The Defendant is seeking the upliftment of the Bar and had to adequately explain why it did not deliver its pleading within the five (5) day time frame.
- [48] Upon consideration of the delay this court cannot find that there was reckless or intentional disregard of the Rules of Court. To the contrary Mr. Petker acted diligently and swiftly upon receiving the Notice of Bar indicative of the Defendant's intention to seriously contest the main action. The explanation tendered is in my opinion reasonable and plausible.
- [49] The Defendant's attorney had honestly, openly and frankly provided the reasons for the period of delay as from the Notice of Bar stage.³¹ This was necessary in order to determine how the delay had occurred.
- [50] In light of the extent of the delay, being but a mere one day, and the detailed explanation for the delay as from the Notice of Bar stage, I am of the opinion that there is a reasonable, bona fide explanation for the delay.
- [51] The second enquiry is in respect of the Defendant's prospects of success.

PROSPECTS OF SUCCESS

- [52] The Defendant has not delivered a Plea but choose to raise and serve an Exception and a Rule 30A notice of an irregular step.
- [53] Rule 23 dealing with exceptions states:
- "Where any pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may apply to the registrar to set it down for hearing within 15 days after the delivery of such exception: Provided that—*

³¹ Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae) 2008 (2) SA 472 (CC) 454G-H.

- (a) *where a party intends to take an exception that a pleading is vague and embarrassing such party shall, by notice, within 10 days of receipt of the pleading, afford the party delivering the pleading, an opportunity to remove the cause of complaint within 15 days of such notice; and*
- (b) *the party excepting shall, within 10 days from the date on which a reply to the notice referred to in paragraph (a) is received, or within 15 days from which such reply is due, deliver the exception."*

[54] The Defendant alleges that the Particulars of Claim does not disclose a cause of action. The exception is advanced on two grounds:

[54.1] It is submitted that, on the face of the credit agreement - POC1 - all directors were required to execute the document on behalf of the Defendant. As only one director (there are two) signed the agreement, the Defendant contends that the agreement was not validly concluded, as it lacked proper authorisation from all directors.

[54.1.1] The Particulars of Claim accordingly lacks the necessary averments to sustain a cause of action.

[54.2] Secondly, the Defendant contends that, as per the conditions of credit agreement, contained in POC1, *"Invoices are payable in full in accordance with the terms as specified in the letter confirming approval of your account (should the credit application be accepted)."*

[54.2.1] The Particulars of Claim contains no allegation pertaining to any letter confirming the approval of the Defendant's account or the payment terms;

[54.2.2] It accordingly follows that the Particulars of Claim lack averments with regards to agreed payment terms and accordingly the Defendant cannot be in breach of any payment terms;

[54.2.3] The Particulars of Claim accordingly lacks the necessary averments to sustain a cause of action.

[55] The Plaintiff argues that the exceptions lack merit, noting that the credit agreement was pleaded in paragraphs 4–6 as a jurisdictional fact. It further argues that the validity of the agreement is a defence on the merits, not an exception.

[56] The Plaintiff further asserts that it is common cause that the Defendant acted under the credit agreement in its interactions with the Plaintiff, and thus cannot now reject the agreement's validity. The Plaintiff also notes in its heads of argument that the Defendant does not dispute owing money to the Plaintiff, but instead relies on technicalities to avoid fulfilling its obligations. The allegation that the Defendant does not deny the indebtedness to the Plaintiff is not on the pleadings before me and cannot be accepted.

[57] An exception is taken to a pleading (summons, plea, or counterclaim) in law, if it is legally flawed, intended either to dismiss baseless cases or clarify unclear claims. Exceptions apply when pleadings are vague and embarrassing or lack required facts to support a cause of action or defence.

[58] It accordingly tests the legal foundation of the Plaintiff's claim.

[59] The Defendant is contending that the Particulars of Claim lacks essential averments pertaining to:

[59.1] the authorisation and conclusion of the credit agreement in light of the requirement of signature by all the directors as reflected in *POC1* and

[59.2] that no allegations are made pertaining to any letter confirming the approval of the Defendant's account or the payment terms.

[60] Adv Kok, for the Defendant, referred me to *Marais v Standard Credit Corporation Ltd*³² ("Marais").

[61] In *Marais'* case, the Court dealt with an application for rescission where the summons lacked an essential averment (that the initial payment required by the Credit Agreements Act had been made).

[62] The Court in *Marais'* case determined that alleging the fulfilment of a statutory suspensive condition is integral to the cause of action. In the absence of such an allegation the summons is excipiable on the basis that it discloses no cause of action. The court further found that an order granted pursuant to such a defective summons lacks legal foundation and is therefore considered "*erroneously granted*" for the purposes of Rule 42(1)(a).

[63] This court is not called upon to and need not decide the exception. However, it has to consider whether the grounds for exception may challenge the Plaintiff's cause of action or are patently unfounded.

[64] This court is of the opinion that the grounds raised are not unfounded as it relates to and centres upon the Plaintiff's pleaded cause of action in that:

[64.1] it relates to the validity of the credit agreement,

³² 2002 (4) SA 892 (WLD)

- [64.2] whether there has been acceptance of the credit application as pleaded by the Plaintiff and
- [64.3] whether there is a confirmation letter relating to the Defendant's payment terms as pleaded in paragraph 5.7 of the Particulars of Claim.³³
- [65] The Plaintiff argued and contended that the payment terms are ninety (90) days after statement as pleaded in the latter part of paragraph 5.7 of the Particulars of claim. The aforesaid allegation is however made in paragraph 5.7 where it is also alleged that the payments terms would be specified in a letter confirming the approval of the Defendant's account. The terms of payment in my mind seems dubious or uncertain.
- [66] In *P.L.J. van Rensburg en Vennote v Den Dulk*³⁴ (as referenced in *Anwes*³⁵), it is evident that the court allows not only a defence based on the merits, but also a defence on legal grounds. However, when a defence is made on legal grounds, the court reviewing the request for indulgence must evaluate whether the defence has any reasonable prospect of success.
- [67] In this case, the Defendant intends to argue that not attaching the specific confirmation letter detailing the payment terms - which the Plaintiff itself identifies as a condition of the credit agreement - means an essential term of the agreement had not been pleaded. If this argument is legally valid (for current purposes, it only needs to be shown as not obviously without merit), then the Particulars of Claim could be subject to exception, similar to what occurred in *Marais* referenced herein before.
- [68] The possible invalidity of the credit agreement, as a result of only one signature where there are two directors which ought to have signed may also have a direct bearing on the enforceability of the claim.

³³ Case Lines 002-35

³⁴ 1971(1) SA 112 (W)

³⁵ Du Plooy v Anwes Motors (Edms) Bpk 1983(4) SA (O)

[69] The exception to the Plaintiff's pleaded claim constitutes a legal objection that challenges the adequacy of the pleading (the summons), alleging it is fundamentally defective - due to insufficient averments—and therefore incapable of supporting the Plaintiff's cause of action. Typically, an exception seeks dismissal of the case without proceeding to evidentiary consideration. In contrast, a defence (Plea) addresses the substantive merits by admitting or denying allegations and presenting additional facts intended to refute the claim.

[70] The Defendant is entitled to raise an exception if, as alleged, all averments were not pleaded to sustain the Plaintiff's cause of action.

[71] In *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA*³⁶ the Court held that:

“Exceptions should be dealt with sensibly. They provide a useful mechanism to weed out cases without legal merit. An over – technical approach destroys their utility. To borrow the imagery employed by Miller J, the response to an exception should be like a sword that ‘cuts through the tissue of which the exception is compounded and exposes its vulnerability...³⁷”

[72] When considering an exception, the Court will assess whether on all possible readings of the pleaded facts no cause of action is made out. Furthermore, the pleadings must be read together as a whole, and no paragraph is to be considered in isolation.

[73] If upheld, the grounds for exception may directly challenge a Plaintiff's claim. An exception resolves a defective claim swiftly and efficiently.

³⁶ 2006 (1) SA 461 (SCA).

³⁷ *Davenport Corner Tea Room (Pty) Ltd v Joubert* 1962 (2) SA 709 (D) 715H.

- [74] In the interest of justice a defective claim should be excepted to in order to avoid a Plea and a costly trial where the cause of action is legally defective.
- [75] This court cannot rule out the possibility that the Defendant's exception raised do have a reasonable prospect of success. It does legally challenge the Plaintiff's claim.

PREJUDICE TO THE PLAINTIFF:

- [76] The Defendant has adequately explained his delay as from Notice of Bar; the application is genuine and not intended to stall the opposing party's claim; there has been no reckless or deliberate violation of the Court Rules and the Plaintiff knew that the Defendant intended to contest its claim.
- [77] The Defendant's exception could potentially provide a valid legal challenge to the Plaintiff's claim, and any prejudice to the Plaintiff can be addressed through an appropriate costs order. The Exception was a mere one day late which minimalizes any prejudice to the Plaintiff. The Defendant has further tendered payment of the application for upliftment of the Bar (and for condonation) and from that point of view any possible prejudice can be cured by a suitable costs order.
- [78] The Defendant has shown both a reasonable explanation to its delay as well as reliance on an Exception which legally challenges the Plaintiff's action and has good prospects of success.

RULE 30A NOTICE:

- [79] If the bar is uplifted the Defendant also seeks to file its Rule 30A notice. Such a notice is employed to enforce compliance when a party did not adhere to the Rules of Court or a court order. The principal function of such a notice is to require the defaulting party to remedy a procedural deficiency

within ten (10) days; failure to do so may result in an application for a court order mandating compliance.

[80] The Defendant's Rule 30A notice concerns the Plaintiff's compliance with Rule 18(6) of the Uniform Rules of Court.

[80.1] This rule requires any party referring to a contract in their pleadings to specify:

[80.1.1] whether the contract is written or oral,

[80.1.2] to indicate when and where it was entered into,

[80.1.3] who the contracting parties were and

[80.1.4] if a contract is written, a copy must be attached to the pleading.

[81] The Defendant states in its Rule 30A notice that the Plaintiff has failed to plead in its Particulars of Claim whether the contract is written or oral; where and by whom the contract has been concluded; and whether the document referred to as the "*Agreement*" that is annexed to the Particulars of claim is a true copy of the contract or of the part relied upon.³⁸

[82] The provisions of Rule 18(6) are unambiguous, designed to ensure that the Defendant is fully informed of the case it is required to address.

[83] In the event of upliftment of the bar, the Defendant seeks an order:

[83.1] that the time period within which it may file its Notice in terms of Rule 30A(1) be extended to a date five (5) days from the date of this order.

³⁸ Case Lines 003-26

CONCLUSION:

- [84] In this matter the Defendant has shown *good cause* for the upliftment of the bar.
- [85] The extent of the delay since the Notice of Bar was served was brief, merely one day. The explanation tendered is reasonable and the technical and power outage problems encountered by the Defendant's attorney was real. The Defendant's legal teams prompt response after the bar was enforced, additionally demonstrates the Defendant's good faith. It is evident that the Defendant always intended to challenge the Plaintiff's claim and that this was communicated to the Plaintiff.
- [86] The Defendant challenged the Plaintiff's cause of action by way of exception. This exception potentially affects the validity of the agreement and raises issues regarding the certainty of the payment terms. The Defendant's exception presents a legal, technical argument based on grounds that are not patently unfounded. While it may not amount to a comprehensive substantive defence on the merits, it is nonetheless valid from a legal perspective.
- [87] The Defendant's Exception constitutes a legitimate effort to examine and test the basis of the Plaintiff's claim, thereby adequately satisfying the requirement for an indulgence.
- [88] The court possesses a wide discretion. In this matter the legitimacy of the Plaintiff's claim is questioned. If the Defendant was not *ipso facto* barred, the Defendant was entitled to invoke rule 23. I hold the view that this entitlement persists if the bar is removed.
- [89] An indulgence does not only rely on an explanation for default it also as alluded to here in before, encapsulates the interest of justice. I firmly belief that all litigants should be allowed to fully challenge and ventilate any claim. whether it is pleading on the merits or by means of an exception, attacking

the legal foundation of a claim. Any party has the right to a fair hearing as set out in section 34 of the Constitution. The interest of justice furthermore dictates that a party who always intended to contest a claim, had given a reasonable, bona fide explanation for the delay and challenges the Plaintiff's action on bona fide grounds should be allowed to be afforded an opportunity of defending the claim. To disallow the upliftment of the bar would be to shut down the doors of litigation and deprive the Defendant from participation in a fair trial.

[90] The Defendant has shown *good cause* and that it is in the interest of justice to uplift the bar.

[91] The Defendant additionally seeks an order that the time period within which the Applicant/Defendant may file its exception is extended to a date five (5) days from the date of this order.

COSTS:

[92] In respect of costs a party is, fully entitled to oppose an application for an indulgence (such as one for the upliftment of bar), especially if there has been a lengthy delay. In such circumstances the party is fully entitled to take up the attitude that an Applicant should be required to satisfy the court that relief should be granted.³⁹

[93] If the aggrieved party however opposes the application for relief he may be ordered to pay his own costs or the costs caused by his opposition unless he has placed facts before the court which could reasonably be expected to affect the court's discretion with regard to the granting of such relief.

[94] In this application there has been no lengthy delay, a mere one day. The Plaintiff's argument that the recklessness of the delay cannot be assessed without an explanation for the period between the Notice of Intention to

³⁹ Gool v Policansky 1939 CPD 386 at 39

Oppose and *4 June 2025* lacks persuasive merit, as the Defendant's attorneys seek the upliftment of the bar and the indulgence sought relates to the Notice of Bar. The period commences with the Notice of Bar being served on *6 June 2025* until service of the Exception and Rule 30A notice on *17 June 2025*. The Defendant's legal team acted promptly following the issuance of the Notice of Bar, thereby negating any claim of recklessness. The Plaintiff was duly notified of the pleading contesting its action and was requested to initiate a formal application to uplift the bar, which was undertaken without undue delay.

- [95] In addition, there exists a potential legitimate objection in respect of the viability of the Plaintiff's claim that warrants consideration. If the bar were not in place, the Defendant would be entitled to invoke rule 23; this entitlement persists if the bar is subsequently lifted.
- [96] Exceptions are raised before a Plea, so that parties do not have to respond to claims that are fundamentally invalid or flawed.
- [97] It is not improper to contest the validity of a claim prior to pleading to it.
- [98] The Defendant has shown *good cause* for lifting the bar. The explanation tendered was reasonable, and the Plaintiff's claim could be subject to exception. The one-day delay is negligible.
- [99] In this matter, there is no reason why costs should not follow the event. The Defendant was successful in obtaining the upliftment of the bar, and accordingly, the Plaintiff should bear the costs incurred in opposing the upliftment of the bar.
- [100] The Defendant, as tendered, is to pay the unopposed costs associated with the upliftment of the bar.
- [101] I accordingly make the following order:

Order

- [1] The bar is uplifted.
- [2] The time period within which the Applicant/Defendant may file its Notice in terms of Rule 30A (1) is extended to a date five (5) days from the date of this order.
- [3] The time period within which the Applicant/Defendant may file its exception is extended to a date five (5) days from the date of this order;
- [4] The Respondent/Plaintiff is directed to pay the opposed costs of this application on a party and party scale inclusive of counsel's fees on scale B;
- [5] The Applicant/Defendant is directed to pay the unopposed costs of the upliftment of the bar on a party and party scale inclusive of counsel's fees on scale B;

**S VAN ASWEGEN
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

Delivery date: 28 April 2026

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