IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION)

Case No. 2026-095065

CAPE POINT WINE (PTY) LTD	**First applicant**
CPW PROPERTIES (PTY) LTD	**Second applicant**

and

SYBRAND VAN DER SPUY	**First respondent**
SERINA INVESTMENTS (PTY) LTD	**Second respondent**

Coram:	**Pangarker J**
Hearing date:	**18 May 2026**
Judgment delivered:	**9 June 2026**

Summary: Urgent application for interim interdict – *Requirements of Uniform Rule 6(12) considered – Whether the applicants delayed launching the application after the occurrence of the incident which gave rise to the application – Whether the explanation for the delay is cogent - Requirement in terms of Rule 6(12)(b) that the applicants must*

set out reasons why they claim that substantial redress cannot be obtained at a hearing in due course, is a peremptory requirement - Whether the applicants have fulfilled all the requirements of Rule 6(12)(b) and met the threshold for urgency

ORDER

The application is struck from the roll with costs, including the costs of two counsel where so employed (scale C).

JUDGMENT

PANGARKER J

Introduction

[1] In the picturesque coastal suburb of Noordhoek, storm clouds are brewing above the Chapmans Peak Estate, home to the Cape Point Vineyards Estate (the Estate). The Estate houses, *inter alia*, a restaurant and a winery, the latter sourcing grapes from the various vineyards located on the Estate.

[2] The current application, launched on an urgent basis, is but another step in an ongoing series of litigation instituted between Stephen Alexander Newton **(Newton)**, the sole director and owner of Cape Point Wine (Pty) Limited **(WineCo)**, and owner of CPW Properties (Pty) Ltd **(CPW Properties)**, and Sybrand van der Spuy **(van der Spuy)**, the sole director, owner and controlling mind of Serina Investments (Pty) Limited **(Serina)**. As the applicants' counsel stated during the hearing, Newton and van der Spuy, and their respective juristic entities involved in the commercial transactions forming the

subject matter of the Estate and various disputes between them, are *'at daggers drawn'*[1].

The parties' commercial relationship and disputes

[3] The business relationship between the parties is governed by a relatively complex suite of agreements concluded in Cape Town and London between 2022 to 2024. In 2022, Newton and van der Spuy commenced exploring a business relationship related to the Estate. This culminated in a Memorandum of Understanding **(MOU2)** concluded in February 2024. A second Memorandum of Agreement was concluded in September 2024, referred to herein as **MOU5**.[2] It is common cause and apparent from the application, that Newton and van der Spuy each have more than one company associated with them.

[4] Newton and van der Spuy and their companies are embroiled in various disputes which emanate from the broader transaction: the sale of the winery and various properties by van der Spuy and his companies, including Serina, to Newton and his companies, including WineCo and CPW Properties. The winery business is separate from the restaurant business. The parties have not yet concluded their negotiations and the final instalment of these complex agreements. To the extent necessary, the backdrop to the broader dispute, which is set out in great detail in the founding affidavit, is described below.

[5] The parties to the MOU2 agreed on a sectional title scheme in respect of the consolidated property comprised of various portions making up the immovable property to be registered as Erf 5[...] Noordhoek. The immovable property comprises portions of Farm De Goede Hoop No. 934. Van der Spuy and his companies will dispose of the wine business as a going concern to Wine Newco, an as yet to be identified company of

[1] The Cambridge Dictionary *(dictionary.cambridge.org)* describes *'at daggers drawn'*, as a state of extreme unfriendliness and mistrust
[2] FA3 and FA4

Newton's which would take transfer of the wine business from van der Spuy Investments.

[6] The transaction related to the restaurant business was implemented through its transfer to Cape Point Vineyards (Pty) Ltd **(CPV)** which is majority-owned by van der Spuy. WineCo is 75% indirectly owned by Newton through a company, The Alexander Collection (Pty) Ltd. The sectional title scheme is described in MOU2 as follows:

> ***"Sectional Scheme"*** *means the proposed sectional title scheme in respect of the Remainder and the buildings thereon, which scheme shall be known as the Cape Point Vineyards Sectional scheme situated at Cape Point Vineyards, Silvermine Road, Noordhoek, Cape Town, comprising 2 (two) sectional title units, 1 (one) exclusive use area and 2 (two) real rights to extend, as depicted in the fully approved sectional plan S.G. No. D63/2023:"*

[7] WineCo occupies a portion of the sectional title scheme which includes office space, an underground wine cellar, a warehouse, outdoor storage and parking in a building or separate property which is not located on the Estate. The separate property is Erf 7[...], situated approximately 1,2 kilometres to the west of the Estate[3] off Noordhoek Main Road. Serina is the owner of the building and Erf 7[...].

[8] In terms of the MOU2, the WineCo portion (as described by the applicants) is due to be transferred to the second applicant, CPW Properties. The space currently occupied by WineCo will constitute section 1 of the proposed sectional title scheme made up of the building and surrounding area and the two exclusive use areas. The remainder of the building, occupied by Serina and another tenant, would be section 2[4].

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[3] See FA7, FA8

[4] More specifically, in terms of clause 2.1.4 of MOU2, the cellar, currently occupied by WineCo and its employees, refers to:

[9] It is common cause that the sectional title scheme has, as yet, not been registered. The transfer of the winery to Newton's yet to be identified company has also not yet occurred. Serina is required to transfer the cellar space, currently partially occupied by WineCo, to a company to be identified, which shall be 75% owned by The Alexander Collection. CPW Properties was identified as the new company and accepted it's right to transfer of the WineCo portion in terms of the MOU2. The intention of the parties is that CPW Properties[5] would then lease the portion of the cellar complex to WineCo.

[10] The applicants allege that CPW Properties has a clear right to the transfer of the portion of the cellar complex, pending the transfer of such portion by Serina. Furthermore, it is alleged that WineCo took occupation of such portion in 2024 in anticipation of such transfer and conducts the winery business from this portion of the cellar complex. To clarify, it is undisputed that the building which houses the cellar complex is owned by Serina, which is owned and controlled by van der Spuy.

[11] It is also not in dispute that WineCo and its employees occupy such portion of the cellar complex[6], notwithstanding that transfer as described above has not yet been registered in CPW's name. In addition to the cellar, WineCo uses the parking spaces and warehouse in the cellar complex. It is also important to note that there is a single office in section 1 which is not occupied by WineCo: it is occupied by Mary-Ann de Wet (de Wet), a financial director of Cape Point Vineyards **(CPV)** who is also a qualified chartered accountant.

> ***"Cellar"*** *means section 1, the exclusive use areas associated therewith and the real right to extend in the proposed sectional scheme to be known as Chapman's Peak Estate Sectional Scheme situated at Chapmans Peak in the City of Cape Town, comprising 2 (two) sectional title units, 5 (five) exclusive areas and a real right to extend, as depicted in the fully approved sectional plan S.G. No. D535/2022."*

[5] The affidavits also refer to Cellar Newco, the as yet to be identified company
[6] Portion 1

[12] From an overview of the various affidavits and annexures filed in the application, both Newton and van der Spuy express their intentions to implement the suite of transactions which are broadly described above. Notwithstanding the expressions of intent, and to illustrate the current *"daggers drawn"* status, they (and some of the entities associated with them) are engaged in arbitration proceedings before the arbitrator, LA Rose-Innes SC, a member of the Cape Bar, in which they dispute various matters. My understanding is that Newton and WineCo referred matters to arbitration, to which van der Spuy and his companies raised a counterclaim. Newton and his companies thereafter raised a further counterclaim in the arbitration proceedings, which proceeds later during the year.

[13] The arbitration proceedings aside, and again in broad/general terms, Newton also accuses van der Spuy of defaming him by corresponding with his business associates and encouraging them not to do business with him (Newton). Van der Spuy alleges, *inter alia*, that Newton is dishonest in that *"no agreement with him is worth the paper it is written on"*[7]*.* According to van der Spuy, there are only two options: all-out war or settlement.

[14] On the other hand, Newton recently instituted various High Court applications against van der Spuy: an application to interdict him (van der Spuy) from trespassing on land on the Estate, which is owned by Newton's Alexander Land, and an application by Newton and Hannes Meyer, chief executive officer of CPV, to interdict van der Spuy from publishing defamatory statements about them.

[15] Aside from the above, in March van der Spuy launched an urgent application in the arbitration seeking an interim interdict to prevent WineCo from making and selling wine from certain vineyards on the Estate[8]. Subsequently, Newton sought a variation of the arbitration award and an interlocutory application in the arbitration proceedings. To place the above in further context, the arbitrator (in van der Spuy's urgent application),

[7] RA8 – email by van der Spuy to Stuart Makin on 30 December 2025
[8] In par 34 of the replying affidavit, Newton informs that the application was largely dismissed

granted one of van der Spuy's companies, Noordhoek Wine Estate (Pty) Ltd **(NWE)**, the right to inspect the third-party cellar in Somerset West which was being used by WineCo.

[16] When van der Spuy attempted to exercise the right personally, Newton and WineCo applied urgently for a variation of the award to preclude NWE from nominating van der Spuy, on behalf of the company, to exercise the right to inspect the third party cellars on its (NWE's) behalf. The motivation behind this step was, according to Newton, van der Spuy's belligerent behaviour. The arbitrator granted the urgent variation application, thus precluding NWE from nominating van der Spuy as the person responsible to conduct the inspection of the third-party cellar.

[17] According to the applicants, various incidents occurred in June 2025, following on van der Spuy's attempt to cancel the MOU2. The validity of the cancellation was disputed by Newton and this led van der Spuy to withdraw the purported cancellation. The applicants allege that van der Spuy has entered the office of Anzette Visser (Visser), assistant winemaker at WineCo, and issued threats regarding the movement of furniture; that he stormed into the portion of the cellar complex occupied by WineCo, interrupted a meeting, and accosted Willem Vorster (Vorster)[9] who had earlier commented on the suitability of van der Spuy's wife (Erna Swart) as a director of WineCo; and, furthermore, that van der Spuy he entered the WineCo meeting and threatened to lock the employees in the cellar.

[18] The result of these incidents recorded in correspondence and emails exchanged between the parties' attorneys, was that in 2025 WineCo installed an electronic access-control system, capable of being activated by persons whose fingerprints are registered with WineCo, including employees and licensees. Van der Spuy's fingerprints are not stored with WineCo, yet in August and November 2025, he gained access to WineCo's portion of the cellar to photograph wine labels and in the process, it is alleged that he

[9] Vorster is Chief Operating Officer and Chief Financial Officer of Fish Hoek Company Investments Ltd, the holding company of Newton's business interests and representative of the Alexander Collection

interrupted a photo shoot by Emma Swanepoel (Swanepoel), the marketing manager at the Alexander Estate. Van der Spuy gained access via innocent and/or unsuspecting WineCo employees who are authorised to enter the WineCo portion of the cellar.

[19] On 18 March 2026, Vorster gave de Wet notice to vacate the single office in the cellar complex to make space for WineCo personnel[10]. On 30 March and 7 April 2026 respectively, Vorster followed up with a WhatsApp message[11] to de Wet indicating she had not yet vacated the office, that arrangements could be made to move her items with care and that her items/furniture could be collected at her convenience. Despite these follow-ups, de Wet did not vacate her office. Matters came to a head the next day.

The pepper spray gun incident

[20] On 8 April 2026, van der Spuy entered the WineCo portion of the cellar offices and proceeded to de Wet's office, directing her to accompany him outside. She refused, and he entered the adjacent boardroom where Vorster was working. Vorster and Swanepoel observed that van der Spuy was in possession of a black object/device which resembled a handgun and which they both believed to be a firearm.

[21] According to Newton, who relies on the versions of the incident presented by Vorster and Swanepoel[12], van der Spuy shouted that de Wet would not vacate her office, that he was there to help protect her (and would bring dogs and security officers if necessary) and he waved the "weapon" in the air. At this stage, de Wet remained in her office. Vorster informed van der Spuy that the office area formed part of the space allocated to WineCo. Meanwhile, from her position at the front office, Swanepoel observed that van der Spuy carried the unidentified object and she confirms Vorster's account that van der Spuy spoke in a loud, agitated and threatening manner.

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[10] The applicants refer to "licensees"
[11] WV1
[12] Newton was not present at the cellar offices on the day of the incident; Vorster and Swanepoel deposed to affidavits

[22] Van der Spuy eventually left the boardroom, and Vorster and Swanepoel state that they heard him inform de Wet that she would not be leaving her office. Shortly thereafter, van der Spuy and de Wet passed through the front office and exited to the parking area where it was observed and heard that van der Spuy verbally instructed and physically demonstrated to de Wet, how to turn the safety off the device and how to pull the trigger in order to shoot. Van der Spuy thus discharged and fired a projectile from the device, which struck the ground.

[23] On the way back to de Wet's office, van der Spuy was heard to instruct her that *"if they bother you, just shoot them"*[13]. The reference to *"they",* according to the applicants, is a reference to WineCo and its employees. Thereafter, van der Spuy left the device with de Wet and returned to Vorster, where a heated exchange ensued with van der Spuy accusing WineCo of squatting in the cellar complex, which Vorster denied. Furthermore, van der Spuy made clear that de Wet would not vacate her office.[14]

[24] Vorster explains in his affidavit that WineCo has occupied the space for years and that van der Spuy previously allocated the office space between CPV and WineCo employees. During the heated exchange, van der Spuy is alleged to have taken up a threatening stance and blocked the doorway of the boardroom. Vorster asked van der Spuy to leave, which he initially refused to do, but eventually he left of his own accord. Vorster thereafter went to de Wet's office requesting to see (what he believed was) the firearm. De Wet informed Vorster that she did not intend to use the device.

[25] At this point, it is necessary to state that the device/"weapon" was not a firearm but rather, in simple terms, a pepper spray gun.[15] From the photograph taken by Vorster after the incident, it is evident that the device certainly resembles a black firearm. Vorster and Swanepoel indicate that they reasonably believed that van der Spuy was

[13] Founding affidavit, p38
[14] It is also alleged that van der Spuy made disparaging remarks about Newton
[15] FA21, RA3

armed with a firearm and that he had encouraged de Wet to shoot them as well as WineCo employees.

[26] On the same day, Vorster laid criminal charges against van der Spuy at Fish Hoek SAPS, which eventually lead to his arrest on a charge of pointing a firearm. it is apparent from the affidavits filed, that the charge was later changed to assault. In view of the incident on 8 April, the applicants seek an interim interdict against the respondents as set out later in the judgment.

[27] The applicants contend that once the extent and existence of WineCo's right to occupy the current portion of the cellar and to exclude van der Spuy prior to transfer, is finally determined, either by way of arbitration or a civil action, the need for interim relief would no longer exist. Newton adds that if van der Spuy is barred from WineCo's portion of the cellar complex, he would still be able to access the remainder of the area, including section 2 and the common area.

[28] The applicants rely on two *prima facie* rights. Firstly, WineCo's contractual right to exclusive and undisturbed possession of the portion of the cellar complex (which it currently occupies) in view of van der Spuy's repeated incursions into that section and his interruption of the work of WineCo employees, licensees and contractors. Secondly, the right of WineCo employees and licensees to bodily integrity and to not be threatened with violence. In view of van der Spuy's recent conduct, Newton alleges that the rights of these persons have also been infringed. It is necessary to indicate that the persons referred to have not been identified nor have any individual employees, licensees and contractors of WineCo been cited in the application.

[29] As for the requirement of a well-grounded apprehension of irreparable harm if interim relief is not granted, Newton relies on the conduct of van der Spuy during the course of 2025 and 2026 in that he had interrupted work despite receipt of a cease and desist warning from the applicants' legal representatives and had accessed their

occupied portion despite the installation of an electronic security system specifically aimed at preventing his access to the WineCo section. The applicants submit that they have a well-grounded apprehension that van der Spuy's incursions would continue if an interim interdict were not granted.

[30] Newton relies on the pepper spray gun incident in order to support the view that allowing van der Spuy to continue to enter the WineCo portion poses a real threat to the physical and bodily safety of its employees and licensees, and that there is a real apprehension that he would continue to threaten them with physical violence[16]. As for the balance of convenience, the applicants contend that the granting of interim relief favours the applicants. It was submitted that in the event that an interim interdict is granted but the transfer of section 1 to CPW Properties does not occur, then neither van der Spuy nor Serina would be prejudiced, as the latter has no commercial reason to be in the WineCo portion of the cellar. Only de Wet has an office in that section and should van der Spuy wish to communicate with her, Newton suggests that he does so in another area of the building or via text or call to de Wet. Newton is insistent that any inspection of the cellar area should be conducted by someone other than van der Spuy, whose conduct as described is in any event unlawful.

[31] Newton also submits that Serina has the right to claim the costs of WineCo's occupation (in the interim) and this claim can only be enforced after a debatement of account, thus submitting that WineCo's occupation of the cellar portion is not prejudicial to the respondents. It is argued that if interim relief is not granted, and it is later determined that WineCo was permitted to occupy the current portion of the cellar complex pending transfer, then WineCo and its employees and contractors would be severely prejudiced as its work would be interrupted by van der Spuy. It is further submitted that WineCo has a right to peaceful and undisturbed possession of the

[16] Newton also refers to a dispute which occurred between him and van der Spuy (and their respective entities) regarding the planting of trees in front of the signage for the Alexander Estate at the entrance to the Cape Point Vineyards Estate. Newton is of the view that security officers and dogs posted by van der Spuy (at the signage and trees) posed a threat to WineCo and its employees. This yet another dispute between van der Spuy and Newton.

current portion of the cellar complex and its employees have the right not to be threatened by physical violence.

[32] The applicants allege that they have no other satisfactory remedy available because despite repeated requests that van der Spuy does not access the WineCo portion, these requests have fallen upon deaf ears; so too, the installation of an access control system has failed to keep him out. In addition, the conduct complained of cannot be remedied nor quantified by damages.

[33] Turning to urgency, the applicants submit that the firearm incident occurred on 8 April 2026 and in the days following the incident, WineCo and it's legal representatives were occupied with laying criminal charges at Fish Hoek SAPS and preparing the various affidavits forming the subject matter of this application. Furthermore, the applicants' junior counsel, who is steeped in the complexity of the parties' commercial relationships and disputes, returned to work on 14 April 2026, after being abroad. On the same day, he was provided with a high-level brief of the firearm incident. Newton explains that over the rest of that week, the legal representatives put together a full brief for counsel and the applicants and legal representatives considered whether to bring this application[17].

[34] On 20 April the applicants decided to launch the application and the legal representatives immediately began drafting same. In conclusion, Newton states that the matter is urgent and that the applicants will not be afforded substantial address if the matter is heard in the ordinary course which, he is advised, would only be in 2027.

The opposition

[17] Founding affidavit, p49

[35] Van der Spuy and Serina dispute the urgency of the application. Firstly, the contention in the answering affidavit is that the facts do not justify such an approach because the harm as alleged by the applicants occurred on 8 April 2026. The other pertinent points raised by the respondents is that the conduct complained of – van der Spuy's interference in a photo shoot and accessing the WineCo portion via the access control entry - all occurred in 2025. The current application was only launched on 24 April 2026, some two weeks after the alleged incident. Van der Spuy contends that such delay is hardly befitting of applicants who fear for their lives, as alleged in the applicants' affidavits.

[36] In respect of the justification for the delay, in that junior counsel was abroad and had only returned on 14 April 2026, the respondents submit that the implication is that it took several days subsequent to the incident occurring, to consider bringing the application, consult and draft an application, which was supposedly so urgent as the employees of WineCo felt threatened. However, the Court is asked to take into account that the respondents were only afforded one Court day to oppose the application and four Court days to file an answering affidavit. The respondents regard the applicants' conduct as untenable and abusive.

[37] Insofar as the merits are concerned, van der Spuy opposes the application on the ground that an interim interdict would amount to awarding exclusive use of the cellar complex to the applicants. Put another way, the building in which the cellar complex is housed is owned by Serina, and van der Spuy is its sole director and controlling mind. Van der Spuy is of the view that the applicants enjoy no prospects of success in the final determination of either of the *prima facie* rights in respect of the cellar complex[18].

[38] Van der Spuy also makes it clear that Serina is not obligated to transfer the relevant portion of the cellar complex to CPW Properties. In addition, the provisions of the MOU2 amount to an agreement to agree between the parties and an undertaking to

[18] As described above

negotiate in good faith with the intention of concluding a transaction document for the transfer of the portion of the cellar complex. Furthermore, the respondents emphasize that several agreements still need to be negotiated between the parties and concluded before transfer of the portion of the cellar complex can occur.

[39] Van der Spuy also denies that WineCo occupies the portion of the cellar exclusively and submits that its occupation currently is on a temporary basis, pending negotiation and conclusion of the outstanding documents required to give effect to the intended transfer of the wine business. WineCo's occupation occurred in anticipation of the implementation and conclusion of the transactions referred to above. In the event that the parties fail to conclude the transaction documents, and the transaction is not implemented, then the wine business would have to be restituted and the loss compensated by Newton.

[40] Van der Spuy also states that the respondents have unfettered access to the entire complex for more than 30 years, and when the electronic access system was installed in 2025, his access was unlawfully restricted for the sole purpose of preventing him from making necessary enquiries as to whether WineCo was carrying out the unlawful Alexander initiative, which he regards as a rebranding strategy, and which legitimacy is the subject of arbitration proceedings. Serina, as the owner and insured of the building, carries the risk of loss or damage in respect of the entire building and hence inspection of the cellar complex is necessary.

[41] The respondents are of the view that the applicants cannot seriously contend that any of the rights advanced by Newton[19] relate to CPW Properties, which has failed to assert any rights worthy of protection for purposes of the interim interdict. In respect of these rights, all alleged to be enjoyed by the employees and licensees of WineCo, van der Spuy is of the view that an interdict cannot be sought by a company on behalf

[19] This is a reference to the contractual rights of WineCo to exclusive and undisturbed possession of the portion of the cellar complex and the right of its employees and licensees to bodily integrity, and not to be threatened with violence

of the employees and licensees, where these individuals are not identified. According to him, the interdict is a violation of his personal freedom and the application should be dismissed. Alternatively, it is submitted that the application should be struck from the roll with costs as the urgency is self-created.

[42] In respect of the incident of 8 April, van der Spuy denies that he was in possession of a firearm. The device which he had in his possession dispensed pepper spray, and he denies that there was any threat of physical violence towards any WineCo employees. The device was intended for de Wet to protect her against any physical removal from the office which Vorster had previously threatened to carry out.

[43] Van der Spuy also admits that he told Vorster that de Wet was not going to be evicted and that she would be entitled to defend herself against threats. He admits handing over the pepper spray gun to de Wet but denies pointing and/or waving it at Vorster or anyone else. He emphasises that de Wet is employed as a bookkeeper and occupies her office fin the cellar complex for several years. The area also comprises toilets, a kitchen and other common use areas, and the restaurant also collects wine from the cellar.

[44] Thus, preventing him access to these areas is seriously prejudicial to the restaurant business and will restrict van der Spuy's ability to carry on the business. It is also so that the cellar complex is in any event not exclusively used by WineCo as various staff members of the restaurant are able to access it.

[45] Furthermore, the building also comprises other tenants which rent space from Serina and van der Spuy would have to ensure that various portions of the building are accessible to these tenants. Van der Spuy's response to the allegations that he makes repeated incursions into the area occupied by WineCo is that the applicants do not allege any business interruption which could possibly warrant the granting of an interim restraining order.

[46] De Wet deposed to an affidavit and confirms that she occupies an office space since February 2023 and has free and unfettered access to the cellar complex, including bathrooms, kitchen and common areas. She had become fearful that Vorster would use force to evict her from the office and expressed this fear to van der Spuy. She also confirms the 8 April incident and generally corroborates van der Spuy's version as to the occurrence.

[47] De Wet denies that van der Spuy pointed the pepper spray gun at Vorster. He held the device pointing towards the ground. She also explains that at no stage after van der Spuy's departure, had Vorster indicated that van der Spuy had pointed a firearm at him or that he was assaulted. She denies that van der Spuy intimidated, threatened or insulted Vorster and/or WineCo employees.

The applicants' reply

[48] In reply, the applicants indicate that they are entitled to a narrowly tailored interdict which excludes van der Spuy from accessing the area which they occupy in the cellar, pending the final determination of WineCo's right of occupation. In this regard, they deny that the respondents are entitled to resist the interdict as van der Spuy entered the premises, brandishing a weapon and encouraging de Wet to use the weapon on WineCo employees. Secondly, the argument that the overarching transactions and documents have not been concluded does not assist the respondents as WineCo has a right of occupation. Thirdly, the applicants deny that van der Spuy has enjoyed unfettered access to the wine business portions/section of the cellar complex since WineCo took occupation.

[49] Newton states that until recently, de Wet was an employee of both WineCo and CPV, but her employment ceased which resulted in WineCo demanding that she

vacates the office. As for the 8 April incident, van der Spuy had encouraged her to shoot Vorster if attempts were made to remove her from the office. As for van der Spuy's averment that other employees utilize toilets, the kitchen and other areas of the wine section, Newton's response is that their access occurs with permission of WineCo and that this conduct is not inconsistent with WineCo's right of occupation.

[50] In respect of the pepper spray gun, Newton relies on a Google search to explain the nature and characteristics of the device which van der Spuy possessed[20]. In view of this information, Newton emphasises that the pepper spray gun is in fact a weapon that can disable a threat, is incredibly powerful and while it is non-lethal, it is still capable of serious harm in close quarters such as an office space. He thus concludes that by encouraging de Wet to use the weapon on WineCo employees, which is not denied, he incited her to commit assault.

[51] Newton states that the building in respective of section 2 can be accessed from outside through entrances that open into the common area. He denies that it would be necessary for van der Spuy to access this area for Serina to exercise any rights it has as owner. Newton is also of the view that Serina can/should nominate any representative other than van der Spuy from performing an inspection of the wine cellar.

[52] Newton takes issue with the respondents' version that the applicants are guilty of self-created urgency and that an urgent hearing would be inappropriate. The applicants disagree with van der Spuy's reference to Court days in respect of the computation of time related to the filing of affidavits, submitting that such reference is misleading in light of the various public holidays which occurred after service of the application. The applicants indicate that the application was served on Friday 24 April and van der Spuy was required to file a notice of opposition by Tuesday 28 April, which was four calendar days later. The answering affidavit was required by 6 May 2026, which was twelve calendar days after service of the application. The argument is that this time-period is

[20] RA3

reasonable in the circumstances[21]. Newton emphasises that the respondents do not allege that they were prejudiced by the timelines indicated in the Notice of Motion.

[53] In Vorster's affidavit supporting the replying affidavit, he denies the De Wet account of the pepper spray gun incident and states that it is inconsistent with his version. Furthermore, and with reference to correspondence and WhatsApp messages to de Wet, he denies that he ever threatened her or forced the issue of the eviction, and in all instances, he was respectful, gave her the opportunity to move out of the property and offered WineCo's assistance with her furniture and belongings.

The Notice of Motion

[54] The applicants seek the following relief on an urgent basis:

> *"1. Condonation is granted for the applicants' non-compliance with the prescribed forms, time periods, and service requirements and leave is granted for the application to be heard as one of urgency in terms of Uniform Rule 6(12).*
>
> *2. The first respondent ("Mr van der Spuy") is interdicted from entering-*
>
> *2.1 section 1 of the proposed sectional-title scheme at Erf 7[...] Chapman's Peak, Cape Town as depicted in the registered sectional plan SG No. D535/2022 (the "cellar complex"), a copy of which is annexed marked "A", and*
>
> *2.2 the exclusive-use areas associated with section 1 of the cellar complex, namely CP1, CY1, and P1, as depicted in sectional plan SG No D535/2022.*

[21] The applicants also indicate that an unsigned version of the answering affidavit was served on 10 May 2026, sixteen days after service of the application

without the prior written permission of the first applicant ("WineCo)".

3. *Mr van der Spuy is interdicted from threatening any employee or contractor of WineCo with violence or physical harm.*

4. *The interdicts in prayers 2 (inclusive) and 3 above shall operate as interim interdicts pending the earlier of –*

   4.1 *the transfer of section 1 of the cellar complex to the second applicant ("CPW Properties"); or*

   4.2 *the final determination by a court or arbitrator (to the extent that arbitration has been agreed to by the parties to this application) of the existence and extent of WineCo's right to occupy the cellar complex and to exclude Mr van der Spuy therefrom pending the transfer of section 1 of the cellar complex to CPW Properties.*

5. *WineCo shall launch proceedings for the determination referred to in prayer 4.2 above within twenty days of the handing down of judgment in this application, failing which the interim interdicts in prayers 2 (inclusive) and 3 above shall lapse.*

6. *Mr van der Spuy shall pay the costs of this application, including the costs of two counsel on Scale C."*

Discussion: urgency

[55] With these facts and circumstances set out above, I turn to the issue of urgency. It is common cause that the pepper spray incident occurred on 8 April 2026 and that on 24 April 2026, the application was delivered and uploaded onto the Court online system. To the extent that submissions were made regarding the length of time that lapsed from

the date of the incident to the date of the application, the computation of time and issues related to urgency, I must emphasise that rule 1 of the Uniform Rules of Court (the Rules) stipulates that ***"court day"*** refers to a day that is not a public holiday, Saturday or Sunday and only Court days are included in the computation of any time expressed in days prescribed by the rules or fixed by any Court order[22]. The Rules, certainly for the purposes of computation of time related to applications in terms of rule 6(12), do not refer to ordinary days.

[56] From the above definition, dates and time periods as per the Notice of Motion, and on my computation of the *dies*, I conclude that twelve days[23] had lapsed from the date of the pepper spray incident (8 April) to the date of launching the application (24 April). From the evidence tendered in this matter, junior counsel was briefed on 14 April 2026, meaning that by then, four Court days had passed since the occurrence of the incident. According to the Notice of Motion, the respondents were afforded time until 28 April to deliver a notice of opposition to the application.

[57] In this regard, it must be remembered that 27 April was a public holiday and is therefore not included in the computation of time awarded to the respondents to deliver their notice of opposition. Thus, 28 April was the last day to deliver a notice of opposition and is included in the computation of time. The result, therefore, is that the respondents were afforded one day from date of delivery of the application to deliver their notice of opposition. In this regard, the respondents' submissions are thus accepted.

[58] The respondents' answering affidavit was due to be delivered by 6 May 2026, thus allowing them five days (to deliver their answering affidavit).[24] However, I note from the documents filed of record that the answering affidavit was delivered on 13 May 2026, five days after its due date in terms of the Notice of Motion. There is no

[22] Rule 1 Definitions
[23] Court days – see Rule 1
[24] 1 May 2026 was a public holiday and is thus excluded from the computation of time periods, as per Rule 1

explanation for this delay, nor a condonation application or an order which regulates the extension of time to deliver the answering affidavit. This issue was also not addressed by the parties during the hearing on the urgency of the application. Furthermore, it was apparent from counsels' submissions that they did not agree on the computation of time when considering the question of urgency, hence the necessity of having to embark upon the above exercise involving the calculation of *dies.*

[59] Applications brought as a matter of urgency are governed by rule 6(12). Rule 6(12)(a) and (b)[25] read as follows:

> *(12)*
>
> *(a) In urgent applications, the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as it deems fit.*
>
> *(b) In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.*

[60] A Court faced with what the applicant considers to be an urgent application is, where it is alleged that there was a delay in bringing the application or where the issue of a delay is raised, required to consider the following aspects in order to determine whether the application may be entertained as an urgent application:

[60.1] the circumstances and explanation for any delay in bringing the application;

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[25] Sub-rule (c) is not set out above

[60.2] whether such explanation is cogent;

[60.3] the circumstances which the applicant avers renders the matter urgent; and

[60.4] the reasons why the applicant states/claims that it cannot be afforded substantial redress at a hearing in due course.

The onus in respect of fulfilling the requirements of rule 6(12) rests squarely upon an applicant who approaches the Fast Lane Court and/or Urgent Duty Judge for relief.

[61] Turning to this matter, while counsel for the applicants submitted in reply that the respondents had not indicated any prejudice in respect of the shortened time periods to respond to the founding affidavit, and had in fact delivered answering and confirmatory affidavits, my view is that any failure by the respondents in this regard, does not absolve the applicants from overcoming the peremptory requirements of rule 6(12)(b). To be clear, the applicants elected to approach the Fast Lane Court and are therefore bound to fully comply with the provisions of rule 6(12).

[62] The respondents allege and have submitted that the applicants delayed the bringing of this application. The question of delay in a rule 6(12) application and the requirement of showing that an applicant cannot obtain substantial redress at a hearing in due course was considered in some detail in ***East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd***[26]*,* an unreported judgment which was cited with approval recently by Slingers J in ***Venter and Another v Els and Another***[27]***.***

[63] In ***East Rock Trading***, Notshe AJ held as follows:

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[26] [2011] ZAGPJHC 196
[27] 2024 (4) SA 305 (WCC) par [19]

"[6] The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.

[7] It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his cases in that regard.

[8] In my view the delay in instituting proceedings is not, on its own a ground for refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given. The important issue is whether, despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course. A delay might be an indication that the matter is not as urgent as the applicant would want the Court to believe. On the other hand a delay may have been caused by the fact that the Applicant was attempting to settle the matter or collect more facts with regard thereto.[28]

[9] It means that if there is some delay in instituting the proceedings an Applicant has to explain the reasons for the delay and why despite the

[28] See: Nelson Mandela Metropolitan Municipality v Greyvenouw 2004 (2) SA 81 (SE) at 94C–D; Stock v Minister of Housing 2007 (2) SA 9 (C) 12I–13A.

delay he claims that he cannot be afforded substantial redress at a hearing in due course. I must also mention that the fact the Applicant wants to have the matter resolved urgently does not render the matter urgent. The correct and the crucial test is whether, if the matter were to follow its normal course as laid down by the rules, an Applicant will be afforded substantial redress. If he cannot be afforded substantial redress at a hearing in due course then the matter qualifies to be enrolled and heard as an urgent application. If however despite the anxiety of an Applicant he can be afforded a substantial redress in an application in due course the application does not qualify to be enrolled and heard as an urgent application."[29]

(footnotes included)

[64] Bearing the above in mind and the explanation for the time period from the date of the incident to the launching of the application on 24 April, my view is that the applicants delayed bringing the application and/or did not act with haste. To clarify, it took them twelve Court days from the date of the incident to approach the Fast Lane Court. In this regard, counsel for the respondents was correct when he submitted that approximately two weeks had lapsed since the incident to the date of delivery of the application for an interim interdict, and where the applicants allege that employees of WineCo were threatened with assault by the "firearm" brandishing van der Spuy.

[65] As clarified in ***East Rock Trading***[30], the delay in applying in terms of rule 6(12) is not the end of the enquiry as to whether the Court should exercise its discretion in terms of rule 6(12)(a) and determine that the matter be heard as an urgent application. I am required to consider the explanation for the delay and whether it is cogent[31]. On the applicants' version, WineCo and their attorneys were occupied with lodging the criminal charge against van der Spuy and preparing the affidavits for this application in the days following the incident.

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[29] My emphasis
[30] Supra
[31] Venter supra, par [19]

[66] Objectively considered, there is no reasonable explanation why the lodging of criminal charges related to the pepper spray gun incident and the preparation of affidavits would have to occupy Vorster, Newton and/or WineCo for several days after the incident. However, not to be too critical, I do point out that large parts of the founding affidavit deal with the parties' commercial relationship, the disputes related thereto, the litigation, the historical conduct of van der Spuy and then, the 8 April incident.

[67] Without drawing any conclusions regarding any alleged criminal conduct/offence, it seems that this was not a drawn-out incident. It was witnessed by Vorster and Swanepoel, not Newton, and the applicants are of the view that van der Spuy was in possession of a firearm and threatened the employees by waving the device in the air and firing a projectile toward the ground.

[68] This explanation, that in the days following the incident the attorneys were preparing the affidavits in support of the application, is reasonable. However, the application plus supporting affidavits and annexures thereto comprise 235 pages, relatively voluminous for an interdict application relating to a once-off pepper spray gun incident. To be fair to the applicants, and bearing in mind the approach adopted in ***East Rock Trading*** to the delay issue, this explanation must be considered with the rest of Newton's explanation regarding the time it took the applicants to launch the application.

[69] On 14 April, once their junior counsel had returned from abroad and was back in chambers, he was provided with the brief of the "firearm incident". It was submitted that he was steeped in the complexity of the commercial disputes and agreements between Newton and van der Spuy and their respective entities. This being the case, it then took the rest of the week of 14 April for the applicants and their legal representatives to consider whether to bring the application. Thereafter, and only on 20 April, they decided to launch this application. A further four days then passed before the application was eventually delivered on 24 April.

[70] Having considered the entire explanation for the delay in bringing the application, I am of the view that the explanation for such delay is not cogent. To clarify, a total of twelve days lapsed before the application was eventually launched. With due respect to the legal representatives, and to the extent that it is made out that the matter was extremely urgent, thus warranting one day's notice to deliver a notice of opposition, I am asked to simply accept that the time period after the incident (taken up by laying a criminal charge, waiting for counsel to return from abroad, preparing affidavits and then, eventually, deciding to launch the application) was brief and reasonable. My view, however, is that this explanation for delay is unconvincing. To add, this was not a situation where, for example, the time in-between the incident and 24 April was partially spent on attempting to resolve the dispute between the parties.

[71] As indicated in ***East Rock Trading***[32], the delay in launching the application is but a factor in whether to refuse to consider the application as urgent. The crucial question, notwithstanding a finding that the explanation for delay is unconvincing, is whether, despite the delay, the applicants can or cannot be afforded substantial redress at a hearing in due course. To answer this question, it is necessary to emphasise that in terms of rule 6(12(b) the applicants are required to provide reasons why they claim they cannot be afforded substantial redress in the ordinary course. As seen from the authorities referred to in this judgment, the substantial redress requirement is the determining factor in respect of the urgency issue.

[72] Paragraphs 8 to 15 and 99 to 101 of the founding affidavit address the reasons for the interdict and why an urgent hearing is justified. The requirements for an interim interdict aside, the only paragraph which addresses the "substantial redress" aspect is paragraph 101, the last paragraph of the founding affidavit, where Newton states as follows:

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[32] Supra

101. In the circumstances, this matter is urgent, commensurate with the timetable set out in the notice of motion and that the applicants will not be afforded substantial redress in the event that this matter is heard in the ordinary course (which I am advised will only be in 2027).

[73] Having regard to the peremptory requirement and the wording of rule 6(12)(b), read with the authorities referred to above, the conclusion I reach is that the applicants have failed to set forth the reasons why they claim they cannot be afforded substantial redress at a hearing in due course. The content of paragraph 101 of the founding affidavit is nowhere near fulfilling this peremptory requirement. All it states is that the applicants will not be afforded substantial redress if the application is heard in the ordinary course, which will be in 2027.

[74] To be clear, crucially missing from paragraph 101, and the rest of the founding affidavit, are the reasons why the applicants say or claim that they would not be afforded substantial redress at a hearing in due course. The preceding paragraphs[33] of the founding affidavit, under the heading *"An urgent hearing is justified"* in no way set out the reasons why the applicants cannot be afforded substantial redress at a hearing in due course. I must also add that the requirement that an applicant has to provide reasons why they claim that they cannot not be afforded substantial redress at a hearing in due course is not the same as the factors relevant to an interdict applications regarding imminent or irreparable harm if interim relief is not granted or that no other satisfactory remedy is available[34].

[75] It was required of the applicants to have expressly provided their reasons, in the founding affidavit, as to why they claim that waiting for the application to be heard at a hearing on the semi-urgent or opposed roll at a later stage, in the normal course of the rules, would not/could not afford them substantial redress or remedy against the respondents. The averments under the *"Balance of convenience"* heading, which

[33] Paragraphs 99 – 100.4
[34] East Rock Trading supra, par [7]

addresses the possibility of prejudice if interim relief is not granted and it is later determined that WineCo was permitted to occupy the portion of the cellar complex pending transfer to CPW Properties, does not assist the applicants in their failure to fully comply with rule 6(12)(b) insofar as the substantial redress requirement is concerned. Stated differently, the *"balance of convenience"* factors relate to the substantive relief sought which is an interim interdict, and not to the reasons why substantial redress cannot be obtained at a hearing in due course.

[76] Merely as a comment in passing, the substantial redress that the applicants seek in this application is an interim interdict which would preclude van der Spuy from entering the cellar portion of the complex and exclusive use areas of the building. He would require WineCo's prior written permission to do so, pending the transfer of section 1 of the cellar complex to CPW Properties or the determination of a Court or arbitrator of WineCo's occupational right. He would thus be interdicted from entering the area and from threatening WineCo's employees with violence[35].

[77] However, it is not for the Court to come to an applicant's rescue and read in a fulfilment of the substantial redress requirement as stipulated by rule 6(12)(b). It makes sense that where applicants approach the Fast Lane Court/Urgent Duty Judge on truncated timelines and seek condonation for such non-compliance with the ordinary rules in terms of rule 6(12)(a), that they are required to clearly and specifically set out in the founding affidavit, the reasons why they claim they cannot be afforded substantial redress in the ordinary course of the rules and procedure. In this matter, the applicants have failed to do so.

[78] In view of the above findings, I accordingly conclude that the applicants have failed to fully comply with the requirements of rule 6(12)(b) and have thus also failed to make out a case for urgency. Accordingly, the application will be struck from the roll. The merits of the dispute are thus not determined.

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[35] See par 2 – 4 of the Notice of Motion (para 5 and 6 are excluded as they refer to WineCo launching an action or proceeding to arbitration on the occupational right issue, and costs) .

[79] As for costs, counsel for the respondents submitted that the application is an abuse. My view is that the failure to fully comply with the peremptory requirements of rule 6(12)(b) and the delay in bringing the application, do not render the application an abuse of process. Furthermore, I would also not go so far as to find that the application was malicious or based upon ulterior motives. The detail and history of the matter indicate that these are extremely litigious parties, that there are numerous disputes which are largely unresolved and that this will not be the last dispute between them in this Court. In the circumstances, a costs order in the normal course will follow on scale C.

Order

[80] In the result, I grant the following order:

The application is struck from the roll with costs, including the costs of two counsel where so employed (scale C).

M PANGARKER
JUDGE OF THE HIGH COURT

Appearances:

For Applicants: S Miller SC

P Olivier

Instructed by:	Bernadt Vukic Potash & Getz Cape Town Per: G T Ford
For Respondents:	F Sievers SC D Robertson
Instructed by:	STBB Cape Town Per: M Bey