REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-073318

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

3.06.2026 [redacted]
DATE SIGNATURE

In the matter between:

FIDELITY FIRE SOLUTIONS (PTY) LTD Applicant

and

FIREBLOCK CC Respondent

JUDGMENT

CRUTCHFIELD J

[1] The applicant, Fidelity Fire Solutions (Pty) Ltd, seeks the upliftment of a bar in terms of rule 27 of the uniform rules of court, together with relief ancillary thereto. The respondent, Fireblock CC, opposes the application and seeks the dismissal of the application together with costs.

[2] An applicant must show good cause in order to succeed in procuring the upliftment of a bar in terms of rule 27. The requirements of good cause include a reasonable explanation for the delay, in this case the applicant's delay in delivering the plea, a triable defence and that the applicant is *bona fide*, meaning that the applicant genuinely intends to proceed with the litigation and is not intent on simply delaying the respondent in its quest for a judgment.

[3] A court is vested with a wide discretion in respect of the upliftment of a bar.

[4] The applicant is the defendant in the action proceedings issued by the respondent *qua* plaintiff.

[5] The respondent delivered the notice of bar calling for delivery of the applicant's plea on 11 July 2025. The applicant's plea ought to have been delivered on or before 18 July 2025.

[6] The respondent sells products used in the extinguishing of fires. The applicant delivers private fire solutions, including equipment. The source of the litigation between the applicant and the respondent lies in two distribution agreements concluded between the parties. The agreements afford the applicant the right to distribute the fire extinguishing products of the respondent through Africa.

[7] In terms of the agreements, the applicant would distribute two products, lithium gel and agri powder, purposed at extinguishing fires caused by lithium-ion batteries. The litigation arose from the applicant becoming aware of defects in the respondent's products during late 2024, early 2025. Defects in the respondent's 2-litre fire extinguisher were confirmed by the certification manager of the company that performed the audit on the respondent's 2-litre fire extinguisher.

[8] It emerged from investigations and discussions undertaken by the applicant that the respondent's lithium gel product had a microbial presence that made it unsafe and allegedly unreliable, so the applicant contends. Furthermore, the applicant alleges that the lithium gel and agri powder were not able to extinguish fires caused by lithium ion batteries.

[9] As a result of the developing and evolving factual matrix described briefly above, the applicant alleges that it was unable to deliver its plea timeously. Investigations were undertaken during late 2024 and early 2025. Discussions with the respondent and various role players involved continued into May 2025. The respondent disclosed during January/February 2025 that the problems encountered by the applicant in respect of the 2-litre fire extinguishers might be replicated in the 9-litre fire extinguishers.

[10] The parties agreed to terminate the agreements on various terms, in circumstances where the applicant had paid the respondent just short of the full amount owing under the agreements. The payment was approximately R100 000 short of the full amount.

[11] The applicant explains at length in the founding papers, the delay in delivering its plea and the reasons for that delay, including that the applicant required expert evidence. An expert report in respect of the defects in the respondent's products was delivered on 10 July 2025, one day prior to delivery of the respondent's notice of bar upon the applicant.

[12] The applicant, upon receipt of the notice of bar, was aware that it would not be in a position to comply with the bar and requested the respondent to allow the applicant additional time, which the respondent refused. Subsequently, however, the applicant became aware that it in fact needed even more time than it had requested from the respondent.

[13] It is not necessary for me to refer to the content of the expert report received by the applicant on 10 July 2025, other than to say that as a result thereof, the applicant considered it necessary to obtain a further expert report in respect of certain issues that remained unresolved and were left unanswered by the expert report received on 10 July 2025. Accordingly, the applicant required the further time referred to by me above.

[14] The applicant, in the interim, prepared its plea together with the counterclaim, and those pleadings, in draft format, were included in the applicant's application to uplift the bar.

[15] The applicant submitted that the pleadings can be delivered within a reasonably short period of time in the event that I exercise my discretion to uplift the bar.

[16] The applicant, at this stage, does not need to demonstrate a defence or a counterclaim that will succeed at trial. The applicant needs only to show a plea or a counterclaim, in this case both, that are good in law and raise an issue or issues that are triable before a court in the future. The applicant, on the draft pleadings before me, does indeed raise such triable issues in respect of its defence and counterclaim.

[17] The applicant sets out the reasons for the delay in delivering the plea, the investigations into the respondent's products and the potential pecuniary liability and the potential damages to be suffered by the applicant as a result of the alleged defects described above, in some detail.

[18] There is no reasonable doubt on the papers before me that the applicant is *bona fide* in its desire to proceed with the litigation and to recover its alleged damages, such as it is able to prove before a court.

[19] The respondent referred to various procedural conduct on the part of the applicant, such as the applicant delivering a rule 7 notice, a rule 35(12) notice that resulted in a rule 30 application and the necessity for the applicant to be compelled to provide its heads of argument. Furthermore, the respondent submitted that the applicant's ongoing use of the respondent's trademark indicated *mala fides* on the part of the applicant such as ought to prevent the applicant from obtaining the upliftment of the bar. I am not persuaded that the applicant was *mala file* in its conduct described by the respondent, and that this court's discretion should be exercised against the applicant pursuant to such conduct described by the respondent as being *mala fide*.

[20] The interests of justice require that the applicant be permitted an opportunity to ventilate its defence to the respondent's particulars of claim together with its counterclaim, before a court.

[21] A significant and far-reaching injustice would be caused to the applicant and to the administration of justice as a whole, if I were to refuse to uplift the bar, thus

preventing the applicant from ventilating its defence and prosecuting its counterclaim, and permitting the respondent to proceed to default judgment against the applicant. The prejudice to the respondent, in the event that I allow the upliftment of the bar, is able to be compensated by the costs order that I intend to make.

[22] Such an outcome as would result from my refusing the upliftment of the bar, in the face of the issues raised by the applicant, would constitute a violation of justice.

[23] As to the costs of the application heard by me, the applicant seeks an indulgence and should be ordered to pay the costs of the applicant's application. The respondent however should be ordered to pay the costs of the opposition to the applicant's application.

[24] In the circumstances, I grant the following order:

1. The notice of bar served by the respondent on the applicant on 11 June 2025, is uplifted in terms of rule 27.

2. The applicant is ordered to deliver its plea and counterclaim under case number 2025-073318 within 15 (fifteen) days of the delivery of this judgment on 3 June 2026.

3. The applicant is ordered to pay the costs of the application and the respondent is ordered to pay the costs of the opposition to the application.

[redacted]

CRUTCHFIELD J
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:	Adv HC Van Zyl instructed by Albert Jacobs Inc Attorneys.
For the Respondent:	Adv Ogunrobi instructed by Beder-Friedland Inc Attorneys.
Date of the hearing:	1 June 2026.
Date of the judgment:	3 June 2026.