<u>IN THE HIGH COURT OF SOUTH AFRICA</u>

<u>GAUTENG DIVISION, JOHANNESBURG</u>

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

Date: 30 July 2026

Signature: [redacted]

<u>CASE NO</u>: 128406/2024

<u>DATE</u>: 30 July 2026

In the matter between:

BC FUNDING SOLUTIONS (PTY) LIMITED Applicant

and

KELVIN ESTATE HOME OWNERS ASSOCIATION Respondent

Coram: M van Nieuwenhuizen, AJ

Heard on: 16 March 2026

Delivered: **30 July 2026**

Flynote: Civil procedure - motion proceedings - supplementary affidavit - leave to file supplementary answering affidavit - respondent seeking to introduce new and contradictory defences after delivery of answering affidavit - explanation that it consulted counsel who identified additional defences available held inadequate - no new facts or supervening circumstances - respondent relying in answering affidavit on provision contained in the Indian Companies Act, 2013 as though it formed part of the South African Companies Act - reliance in heads of argument on contractual provisions not contained in the written agreement - respondent further seeking a postponement to file yet another supplementary affidavit raising additional defences - Court holding that further affidavits are exceptional, that motion proceedings do not permit litigation by instalments or repeated reconstruction of a party's case, and that the interests of justice, prejudice, finality and the proper administration of justice require refusal of leave - application dismissed with costs.

JUDGMENT

M VAN NIEUWENHUIZEN, AJ:

INTRODUCTION

[1] The applicant seeks an order compelling the respondent to comply with its alleged payment obligations in terms of a loan agreement concluded between the applicant and the respondent on the 28th of September 2019 (*"the Loan Agreement"*).

[2] The applicant's claim arises from the respondent's failure to pay over collected Recoverable Ceded Debts (as defined in the Loan Agreement) to the applicant.

[3] The applicant seeks payment in the amount of R1 148 805,21, being the amount of Recoverable Ceded Debts collected by the respondent but not paid to the applicant, together with interest thereon at the rate prescribed in the Loan Agreement.

[4] The respondent, in its answering affidavit, acknowledges that it owes the applicant monies under the Loan Agreement. The respondent also raises what the applicant terms as *"meritless defences"*, which it claims excuse it from its payment obligations. It is common cause that the respondent made a payment in the amount of R109 443,35 in January 2025 in terms of the Loan Agreement after the proceedings commenced.

[5] The applicant argues that the respondent's defences do not constitute

legally valid grounds for avoiding payment in terms of the Loan Agreement and the applicant is entitled to claim specific performance in the form of payment.

FACTUAL BACKGROUND

[6] The applicant's business secures funding from individuals, companies and trusts to provide loans for community schemes. These loans primarily address debt problems, cashflow concerns, and finance maintenance and capital projects.

[7] On 28 September 2019, the applicant and the respondent concluded a written Loan Agreement in terms of which the respondent was granted a loan facility in the amount of R5 200 000,00.

[8] The first drawdown amount of R2 600 000,00 was advanced to the respondent on the 30th of September 2019, and a further amount of R300 000,00 was advanced on the 29th of July 2020, bringing the total amount advanced of R2 900 000,00.

[9] The *"Recoverable Ceded Debts"* are defined in the Loan Agreement as the arrear levies, special levies and charges on the effective date as indicated in Annexure **"6"** of the Loan Agreement, plus interest and charges charged by the respondent monthly on these debts throughout the duration of the Loan Agreement.

[10] The Loan Agreement states that the loan is only repayable by way of the collection of Recoverable Ceded Debts by the respondent (from its members – the home owners) and on payment of those collected amounts to the applicant. Therefore, the applicant contends that the respondent's obligation to diligently collect these debts and promptly remit payments to the applicant constitutes the fundamental mechanism of repayment under the Loan Agreement, rendering these obligations essential to the very purpose and enforceability of the contract.

[11] In January 2020, the respondent made an early repayment of R1 727 504,41 which reduced the total indebtedness to R1 080 151,37 as of January 2020.

[12] It is the applicant's case that since the early repayment, the respondent has collected but not paid over Recoverable Ceded Debts to the applicant which have been steadily increasing.

[13] The applicant argues that despite multiple engagements and attempts by the applicant to resolve the respondent's payment failures, the respondent has failed to remedy its breaches of the Loan Agreement and has instead sought to oppose this matter in circumstances where it has no *bona fide* defence.

THE APPLICATION FOR LEAVE TO FILE A SUPPLEMENTARY AFFIDAVIT

The applicable principles

[14] It is trite that in motion proceedings the parties are generally required to place their entire case before the Court in three sets of affidavits, namely the founding, answering and replying affidavits. The admission of further affidavits is not a matter of right but lies within the Court's discretion.

[15] In *Transvaal Racing Club v Jockey Club of South Africa*[1] the Appellate Division recognised that a Court has a discretion to admit further affidavits where the interests of justice require it. That discretion, however, must be exercised judicially, having regard to all the relevant circumstances. Similarly, *James Brown and Hamer (Pty) Ltd v Simmons NO*[2] makes clear that a litigant seeking such an indulgence must provide a satisfactory explanation for the omission, demonstrate the materiality of the additional

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1 *Transvaal Racing Club v Jockey Club of South Africa* 1958 (3) SA 599 (A)

2 *James Brown and Hamer (Pty) Ltd v Simmons NO* 1963 (4) SA 656 (A)

matter and satisfy the Court that its admission will not occasion undue prejudice.

[16] The discretion is not intended to permit litigation by instalments. As was observed in *Shephard v Tuckers Land and Development Corporation (Pty) Ltd*,[3] parties are expected to place their full case before the Court in their principal affidavits. Further affidavits are permitted only where justice genuinely require it and not where they are sought merely to improve or reconstruct a deficient case.

The respondent's explanation

[17] The explanation advanced by the respondent is that, after delivering its answering affidavit, the respondent took legal advice from counsel and were advised that there are additional defences and allegations which the respondent should have made in its answering affidavit. The aforesaid explanation is inadequate. The respondent does not contend that further facts emerged after the answering affidavit had been delivered. It also does suggest that any relevant evidence only became available subsequently. The factual material upon which the proposed supplementary affidavit relies was, on the respondent's own version, throughout within its knowledge. The only change was that it consulted with counsel and the legal advice thereafter received. The seeking of legal advice from counsel cannot, without more, entitle a litigant to re-formulate its case. Were that sufficient, motion proceedings would lose the certainty and finality that the Rules of Court are designed to achieve.

The nature of the proposed affidavit

[18] The proposed supplementary affidavit does not merely amplify or clarify the answering affidavit. It introduces defences which were never

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[3] *Shephard v Tuckers Land and Development Corporation (Pty) Ltd* 1978 (1) SA 173 (W)

previously pleaded and which are, in material respects, inconsistent with the factual and legal position originally adopted. The respondent therefore seeks, not to supplement its case, but to advance a different one.

[19] The aforesaid is reinforced by the broader course of the litigation.

[20] In its answering affidavit the respondent relied upon what it asserted to be a provision of the South African Companies Act.[4] It subsequently emerged, after the applicant had identified the issue in its replying affidavit, that the provision relied upon does not appear in the South African Companies Act but the provision relied upon is a provision contained in the Indian Companies Act of 2013. The respondent offered no explanation for this error.

[21] The respondent's heads of argument similarly relies upon contractual clauses which, upon examination of the agreement, forming part of the record, does not say what the respondent states they say. The respondent has furthermore raised additional defences in its heads of argument which were not previously raised in its answering affidavit. The aforesaid matters are relevant because they demonstrate that the respondent's case has undergone repeated reformulation as the proceedings have progressed. The application for leave to file a supplementary affidavit was bought only after the deficiencies in the answering affidavit had been exposed in the replying affidavit.

The request for further postponement

[22] During the hearing of the application the respondent went further. It raised further issues and defences that was not raised in either in its answering affidavit, its proposed supplementary affidavit or even in its heads of argument. It was only after the Court raised the fact that these further

[4] Act 71 of 2008

issues and *"defences"* were not raised in its answering affidavit, proposed supplementary affidavit and has not even been addressed in its heads of argument, that the respondent requested a postponement in order to file yet another supplementary affidavit raising additional defences. No explanation was furnished as to why those defences could not have been included in the answering affidavit. It was also not suggested that they arose from newly discovered facts or subsequent events.

[23] The request serves only to reinforce the conclusion that the respondent has not presented a settled case but seeks successive opportunities to reshape its defence. The Rules of Court do not contemplate such an iterative process. The Court's discretion to admit further affidavits exist to avoid injustice. It does not exist to enable a litigant to refine its case repeatedly after shortcomings have been identified by its opponent or during argument.

Prejudice

[24] Although the applicant prudently delivered a conditional supplementary affidavit dealing with the new allegations, that cannot be construed as acquiescence in the respondent's application. The applicant has at all times maintained that *"the respondent should not be permitted to introduce new matter and defences after the close of pleadings"*. The prejudice lies not merely in the opportunity to answer new allegations. It lies in being required to meet an ever-changing case, with the attendant delay, increased costs and disruption to the orderly determination of the dispute. If the respondent's approach were to be sanctioned, there would be little prospect of finality. Each newly identified weakness could be met with a further affidavit, a further postponement, or a further re-formulation of the defence. This is not the purpose of motion proceedings.

The request for the Court's reasons

[25] The respondent also requested that the Court indicate its reasons before

judgment was delivered or any order was granted.

Conclusion

[26] Considering the matters as a whole, I am not persuaded that the interests of justice favour the admission of the proposed supplementary affidavit into evidence –

[26.1] the explanation for the omission is unsatisfactory;

[26.2] no new facts have emerged;

[26.3] the proposed affidavit advances materially different and inconsistent defences;

[26.4] the respondent's conduct throughout the proceedings, including its reliance on inapplicable, foreign statutory provisions, reliance on contractual terms not contained in the agreement, its further defences advanced in its heads of argument and further defences contained in oral argument that was not raised in its answering affidavit, its proposed supplementary affidavit or even in its heads of argument, its application to deliver further affidavits, and its request for a postponement to raise yet more defences, demonstrates an attempt to reconstruct rather than supplement its case;

[26.5] the prejudice to the applicant is manifest and the proper administration of justice require that litigation eventually reach finality.

[27] The application for leave to file the supplementary answering affidavit accordingly falls to be dismissed. The request for a postponement in order to file yet a further supplementary affidavit in order to raise further defences not previously raised also falls to be dismissed.

MATERIAL BREACH OF THE LOAN AGREEMENT

[28] The applicant argues that the respondent is in breach of the Loan Agreement in the following material respects:

[28.1] It has failed to pay over collected Recoverable Ceded Debts to the applicant;

[28.2] It has used collected Recoverable Ceded Debts for purposes other than paying the applicant;

[28.3] It has failed to take all reasonable steps to ensure the collection of arrear levies on a timely basis (although no relief is sought, against the respondent in respect of this failure).

[29] The respondent admits the first two breaches listed above, stating in paragraph 14 of its answering affidavit that:[5]

"Due to miscommunication between the director and the managing agent the arrears levy collected was not paid over to BC Funding but used for the day to day running of the estate."

[30] I agree with the applicant's contention that this admission, on oath, is fatal to the respondent's entire defence. Not only does it confirm the validity of the Loan Agreement, but the respondent also concedes the material breaches thereof and assumes responsibility for failing to pay over to the applicant the arrear levies collected, i.e. the Recoverable Ceded Debts.

[31] Crucially too, the respondent fails to challenge the certificate of indebtedness (annexed as **"BC6"** to the founding affidavit) which, under clause 13 of the Loan Agreement, constitutes conclusive proof of its

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[5] CaseLines 002-128

indebtedness to the applicant.

THE RESPONDENT’S DEFENCES

[32] The respondent in its answering affidavit, raises various defences:

[32.1] The Loan Agreement is invalid;

[32.2] The wrong proceedings were instituted by the applicant;

[32.3] The *in duplum* Rule is applicable to the applicant's relief sought;

[32.4] The matter is one which *“clamours”* for business rescue;

[32.5] The matter should be referred to mediation.

[33] The aforesaid defences are dealt with hereinbelow.

The validity of the Loan Agreement

[34] The respondent disputes the validity of the Loan Agreement by:

[34.1] alleging that the board of directors of the respondent did not have the relevant authority to conclude the Loan Agreement as they did not obtain the consent of the home owners;

[34.2] alleging a *iustus error* in that the directors at the time of concluding the Loan Agreement, were under the impression that the interest rate contained in the Loan Agreement differed to what it actually is.

[35] The respondent, however, makes concessions throughout its answering which effectively acknowledge the validity of the Loan Agreement. For example, the respondent acknowledges that arrear levies should have been paid to the applicant but that they were not due to a

"miscommunication and that *"the error will not be repeated"*.[6]

[36] The respondent also says that the *"outstanding loan of R2 760 302,74 of BC Funding can easily be repaid when the legal actions are finalised and the money received"*. The legal actions in this context refers to the litigation that the respondent is obliged to commence against its home owners for the payment of arrear levies and charges (which, in turn, become the Recoverable Ceded Debts).

[37] Importantly, the respondent's initial early repayment of R1 727 504,41 to the applicant in or during January 2020, and its further payment after the application had been instituted of R109 443,35 confirms its acknowledgment of the validity of the Loan Agreement and its obligations thereunder.

[38] The respondent alleges that the Loan Agreement is invalid as it was concluded *"without the consent of the home owners as required by section 180 of the Companies Act 71 of 2008"*.

[39] The respondent's position on the invalidity of the Loan Agreement is fundamentally flawed for the following reasons:

[39.1] Section 180 of the South African Companies Act (71 of 2008) regulates *"adjudication, hearings before the companies tribunal"* and contains none of the borrowing power provisions alleged by the respondent in its answering affidavit;[7]

[39.2] My attention was drawn to the fact that the respondent relied on section 180 of the Indian Companies Act, 2013 rather than the South African Companies Act by the applicant's counsel who

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6 Paras 14 and 15 of the answering affidavit, CaseLines, 002-128

7 Annexure **"RA3"** to the replying affidavit

argued that he delved into the matter. It emerged that the respondent relied on section 180 of the Indian Companies Act, 2013 which section of the Indian Companies Act deals with *"**restrictions on powers of board**"*. Section 180(1)(c) of the Indian Companies Act reads as follows:

"1. The board of directors of a company shall exercise the following powers only with the consent of the company by special resolution, namely:-

…

(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its [paid up share capital, free reserves and securities premium], apart from temporary loans obtained from the company's bankers in the ordinary course of business.

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawal either by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause."

The same wording as in this section appears in paragraph 9 of the respondent's answering affidavit.[8]

[39.3] The respondent's memorandum of incorporation (*"MOI"*) gives extensive powers to the board of directors to take decisions on behalf of the respondent, as evidenced by the relevant part of the MOI.[9]

[39.4] Under section 61(1) of the South African Companies Act 71 of 2008 *"the business and affairs of a company must be managed by or under the direction of the board, which has the authority to exercise all the powers and perform any of the functions of the company, except to the extent that this act or the company's Memorandum of Incorporation provides otherwise"*; and

[39.5] Significantly, the signatories of the Loan Agreement, representing the respondent, warranted that they were authorised to enter into the Loan Agreement and bind the respondent to its terms and conditions.

[40] The respondent furthermore challenges the validity of the Loan Agreement alleging a mistake in that its *"then directors"* were under the mistaken belief at the time of entering into the Loan Agreement, that the interest rate in terms of the Loan Agreement was 2% per <u>year</u> (not per month). One can infer that the respondent is attempting to rely on the legal defence of *iustus error* to escape its obligations under the Loan Agreement. It is also significant to note that the deponent to the answering affidavit was not a director at the time and the allegations deposed to by her does not fall within her own personal knowledge.

[41] A party to an agreement who raises the defence of a mistake and wishes

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[8] CaseLines 002-127

[9] Annexure **"RA5"** to the replying affidavit

to escape contractual liability must prove not only that the mistake is material but also that it is reasonable.

[42] The alleged mistake of the respondent is not reasonable (or even plausible) considering that:

[42.1] at paragraph 1 of the directors' resolution an interest rate of 2% per month is expressly recorded as being applicable to the Loan Agreement;

[42.2] in an email dated 28 November 2023, authored by the managing agent of the respondent, a proposed agenda item is recorded which is the *"reduction in the current interest rate of 2% per month, compounded and calculated monthly"*.

[43] The applicant argued that the *caveat subscriptor* doctrine in our law finds applicability and is the principle that reaffirms that the person (or persons) who puts his/their signature to a document knows what this document contains and therefore will be bound to the document.[10]

[44] The *caveat subscriptor* Rule has long been one of the cornerstones of the South African Law of Contract – over a century ago, in *Burger v Central South African Railways,* Chief Justice Innes expounded the seminal statement of the Rule as follows: *"It is a sound principle of the law that a man, when he signs a contract, is taken to be bound by the ordinary meaning and effect of the words which appear over his signature".*[11]

[45] The respondent's position on invalidity is contradictory to the common cause facts on the papers.

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[10] *ABSA Bank Ltd v Trzebiatowsky and Others* (2240/2010) [2012] ZAECPEHC 13; 2012 (5) SA 134 (ECP) (23 February 2012) at para 25

[11] *Burger v Central South African Railways* 1903 TS 571

The correct legal proceedings

[46] The respondent contends that this matter should be referred to trial as there are disputes of fact that exist between the parties.

[47] In *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd*[12] the court held that the respondent who raises a dispute of fact must show that there is a real, genuine or *bona fide* dispute based on the material facts.

[48] Despite alleging *"multiple disputes of fact"* the respondent, in its answering affidavit, makes multiple bald denials and fails to specify and provide details of the alleged disputes of fact.

[49] In *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*[13] the Appellate Division (now known as the Supreme Court of Appeal) summarised the ways in which a dispute of fact arises: A real, genuine, and *bona fide* dispute of fact can exist only where the Court is satisfied that the party who purports to raise the dispute has in his affidavit <u>seriously and unambiguously addressed the facts said to be disputed</u>. There will of course be instances where a bare denial meets the requirements because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the Court will generally have difficulty in finding that the test is satisfied. I say *"generally*

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[12] *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 115 (T)

[13] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 ZASCA 51; 1984 (3) SA 623 (A) at 634E-635C

because factual averment seldom stands apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision".

[50] In *Hyprop Investments Ltd and Another v NCS Carriers and Forwarding CC and Another*[14] the Court summarised the principal ways in which a dispute of fact arises, as enunciated in *Room Hire*, as follows:

[50.1] Where the respondent denies all material allegations and produces, or will produce, positive evidence by deponents or witnesses to the contrary;

[50.2] Although admitting the applicant's evidence, the respondent may allege other facts which the applicant disputes;

[50.3] Where the respondent claims lack of knowledge and puts the applicant to the proof but produces evidence, or indicates that he intends leading evidence, to demonstrate the unreliability of the applicant's averments and that certain essential facts are untrue.

[51] The respondent has not shown any real, genuine or a *bona fide* dispute of material fact that would justify the referral of this matter to trial. Its blanket, non-specific, vague and unsubstantiated denials throughout its answering affidavit do not constitute genuine disputes of fact. Further, its odd reliance on inapplicable/fictitious provisions of the South African Companies Act, admission of its indebtedness to the applicant and contradictory averments regarding the validity of the Loan Agreement altogether demonstrate the lack of a *bona fide* defence.

[52] The respondent has admitted to the applicant's underlying claim namely

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[14] *Hyprop Investments Ltd and Another v NCS Carriers and Forwarding CC and Another* 2013 (4) SA 607 (GSJ) at 78

that it collected Recoverable Ceded Debts but did not pay them over to the applicant as required by the Loan Agreement.

[53] In the circumstances, application proceedings are appropriate for the determination of this matter. There is no genuine dispute of fact, alternatively, any dispute of fact is capable of resolution on the papers by this Court.

The *in duplum* Rule

[54] The respondent contends that pursuant to the *in duplum* Rule, the amount of interest due in terms of the Loan Agreement cannot exceed the capital amount of the loan.

[55] The applicant argues that it, however, is not claiming the entire loan indebtedness in the application, nor interest, but only the amount of R1 073 208,95 as at 10 March 2025, being the unpaid Recoverable Ceded Debts collected by the respondent.

[56] The *in duplum* Rule, therefore, finds no application to the applicant's claim and does not constitute a valid defence for the respondent. It is entirely irrelevant in the context of this application.

Business rescue

[57] The respondent suggests that business rescue proceedings would be appropriate in place of the current proceedings. This suggestion is misconceived and irrelevant to the present application – the respondent has not alleged or placed any evidence before this Court to show that it is *"financially distressed"* as defined in section 128(1)(f) of the Companies.[15]

[15] Act 71 of 2008

[58] It is inappropriate for the respondent to allege that business rescue proceedings are required in order for it to repay its loan to the applicant. This defence too must fail.

Mediation

[59] The respondent seeks that the matter does not proceed to a hearing until mediation has run its course, and that mediation could *"resolve the matter"*.

[60] The applicant argues that the introduction of Rule 41A of the Uniform Rules of Court, which came into effect on 9 March 2020, brought about a new focus on mediation as an alternative method of dispute resolution. In terms of Rule 41A, parties are now required to <u>contemplate</u> mediation and the possibility of settlement before launching into any new litigation proceedings, making this voluntary process a mandatory consideration when litigating.

[61] On 30 January 2025, the applicant's attorneys served a notice in terms of Rule 41A on the respondent's attorney. In terms of this notice, the applicant opposed the referral of this matter to mediation because the applicant has already provided the respondent with several opportunities to remedy its breaches (to no avail). Also, the applicant argues that the matter is simply one of non-payment and not susceptible to mediation and should mediation proceedings commence the applicant will continue to be financially prejudiced.

[62] The applicant argued that it has complied with its obligations in terms of Rule 41A (and cannot be compelled to mediate this matter). In any event, the respondent did not respond to the applicant's Rule 41A notice. Finally, as recorded in the Rule 41A notice, the applicant has already engaged in extensive attempts to resolve the matter amicably with the respondent as detailed in its founding affidavit, to no avail.

CONCLUSION

[63] The applicant has established:

[63.1] the existence of a valid Loan Agreement;

[63.2] the respondent's material breaches of the Loan Agreement by, *inter alia* failing to pay over to the applicant the collected Recoverable Ceded Debts;

[63.3] the absence of any genuine dispute of material facts that would justify a dismissal of the application or referral to trial;

[63.4] the applicant's right to enforce the Loan Agreement and claim specific performance.[16]

[64] The respondent's admissions and conduct, including its payment of R109 443,35 to the applicant after institution of the application, confirms its acknowledgment of the validity of the Loan Agreement and its obligations thereunder.

[65] Accordingly, the respondent's defences are without merit and appear to be designed to delay or avoid its contractual obligations. Its answering affidavit contains demonstrable contradictions and falsehoods that severely undermine its credibility.

[66] The applicant has established a right to specific performance and its entitlement to the relief sought in its Notice of Motion.

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[16] *Farmers' Co-op Society (Reg) v Berry* 1912 AD 343 at 350; *Kloofzicht Property (Pty) Ltd and Others v Beryl Property (Pty) Ltd* (20008/2022) [2023] ZAGP JHC 1157 (12 October 2023) at 12

COSTS

[67] The applicant argued that the respondent's conduct throughout the proceedings justifies a punitive costs order, but in any event the Agreement makes provision for costs on the attorney client scale.[17]

ORDER

[1] Accordingly, I make the following order:

[1.1] The respondent's application for leave to file its proposed supplementary answering affidavit is dismissed;[18]

[1.2] The respondent's application for a postponement to file yet a further supplementary affidavit is similarly dismissed;

[1.3] The applicant's draft Court order marked **"X"** is made an order of Court.[19]

[redacted]

M VAN NIEUWENHUIZEN
Acting Judge of the High Court of South Africa
Gauteng Division, Johannesburg

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines or Court Online. The date for hand-down is deemed to be on 30 July 2026.

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[17] Clause 25.10 of the Agreement

[18] CaseLines, 002.37

[19] CaseLines, 021-1 to 021-2

HEARD ON:	16 March 2026
DATE OF JUDGMENT:	30 July 2026
FOR APPLICANT:	Adv K Naidoo
INSTRUCTED BY:	Eversheds Sutherlands (SA) Inc. Ref: R Thackwell Email: robthackwell@eversheds-sutherland.co.za
FOR RESPONDENT:	Adv K Mothiba
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