



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

Not Reportable

Case No: 2025-211597

In the matter between:

KIVESH DAYANATH DHANRAJ

APPLICANT

and

CLIVE GOMIS

FIRST RESPONDENT

PAMELA PATRICIA GOMIS

SECOND RESPONDENT

GALETTI COMMERCIAL AND

THIRD RESPONDENT

INDUSTRIAL (OTY) LTD

Coram: Yake AJ

Heard: 21 May 2026

Delivered: Electronically on 31 August 2026

Summary: Contract – Specific performance - auction mandate not void *ab initio*—condition of sale valid, countersigned by the third respondent on behalf of

the first and second respondent - actual and ostensible authority —Stay of proceedings refused— discretion of the court —right to claim damages remedy available to the first and second respondent.

ORDER

1. The applicant's claim for specific performance is granted.
 2. The first and second respondents are directed to perform their obligations under the contract of sale concluded pursuant to the auction mandate and conditions of sale, including effecting transfer of the property including to take all necessary steps to effecting transfer of the property described as Erf 1[...], Atlantis Industrial, Cape Town, also known as [...] C[...] S[...] Street, Atlantis Industrial, Cape Town, into the name of the applicant.
 3. In the event that the first and second respondents fail to take such steps within fourteen (14) days of this order, the Sheriff of the Court and/or a duly authorised representative of the third respondent is empowered to take such steps on their behalf to give effect to the transfer.
 4. The first and second respondents' counter-application for a stay of proceedings pending the determination of the declaratory action under case number 2026/109735 is dismissed.
 5. The first and the second respondents are ordered to pay costs of the application, jointly and severally, one paying the other absolved, and such cost to include counsels' costs on scale B.
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JUDGMENT

Introduction

[1] The respondents are the registered owners of immovable property situated at Erf 1[...], Atlantis Industrial, Cape Town, also known as [...] C[...] S[...] Street, Atlantis Industrial, Cape Town ('the property'). On 23 May 2025, they concluded a written Auction Mandate ('the mandate') with the third respondent, duly represented by Mr Wesley Cowan. The mandate was signed by themselves and countersigned by the third respondent on 29 May 2025 and was to commence upon signature by the last party and terminate on the later of 90 business days thereafter, or 45 business days after the auction date, being 6 October 2025. The salient terms of the mandate were the following:

- (a) The respondents appointed the third respondent as auctioneer to dispose of the property on the terms and conditions set out in the mandate;
- (b) The respondents conferred upon the third respondent a sole and exclusive mandate to market and sell the property by way of public auction or private treaty, and to do all things necessary to attend to the auction, subject to the mandate's terms and conditions;
- (c) A reserve price was fixed at R3 000 000 (three million rand), excluding VAT, or such lesser price as might be agreed to and accepted in writing;
- (d) The auction date and time were set for 3 July 2025 at 12h00; and
- (e) The respondents acknowledged that they had read and understood the third respondent's conditions of sale and undertook to be bound by the terms thereof.

[2] The mandate further provides that, in the event of the highest bid or a bid exceeding the reserve price being obtained at the auction, the third respondent would procure the purchaser's signature on the conditions of sale and deliver same to the respondents for consideration and countersignature. The respondents, subject to clause 7.1.5, retained the discretion to accept or reject the offer within five business days of signature by the purchaser, failing which the offer would lapse.¹

[3] In the event that the auctioneer secures a written offer to purchase the property for a price equal or greater than the reserve price in respect of either an auction sale or private treaty sale, then the seller shall be obligated to countersign the conditions of sale or private treaty sale within five business days following the date of signature of either agreement by the purchaser and should the seller fail or refuse to do so, then the auctioneer shall be entitled (but not obliged) to sign such agreement on the seller's behalf and the seller hereby appoints the auctioneer as the seller's duly authorised agent and attorney *in rem suam* for such purpose.²

[4] Should either party breach its obligations in terms of the mandate and fail to remedy such breach within five days of written notice from the aggrieved party calling upon the offending party to remedy such breach, the aggrieved party shall be entitled to either enforce specific performance of the offending party or to cancel the mandate immediately on written notice to the offending party, and in either event to recover damages from the offending party.³

[5] Pursuant to the mandate, the third respondent advertised and arranged for the auction which was held on 3 July 2025 at 12h00. At the end of the auction, the applicant emerged as the highest bidder, offering the reserve price of R3 100

¹ Record page 002-14 clause 1.1.3.

² Record page 002-16 clause 7.1.5.

³ Record page 002-17 clause 10.1.

000 (three million one hundred thousand rand). A written agreement styled ‘conditions of sale’ was executed and duly signed by applicant.

[6] In terms of clause 1.1.3 of the mandate, the respondents were obliged to signify their acceptance or rejection of the offer within five business days of signature, failing which clause 7.1.5 expressly authorised the third respondent to sign on their behalf. Notwithstanding the conditions of sale being presented to them on the same day by the third respondent for countersignature, the respondents failed or refused to countersign. Consequently, on 17 July 2025, Ms Antoinette Chait, acting in her capacity as representative of the third respondent, affixed her signature to the conditions of sale on behalf of the respondents. This act purported to conclude a valid and binding agreement between the applicant and the respondents.

[7] Following the countersignature, the third respondent caused a letter to be addressed to the respondents on 22 July 2025, advising them that it had signed the agreement on their behalf. On 24 July 2025, the respondents in response denied that the third respondent had any mandate to countersign on their behalf and purporting to revoke the mandate. This resulted in the applicant’s attorneys addressing a letter to the respondents on 30 September 2025, demanding compliance with the obligations arising under the mandate and the conditions of sale. The respondents failed and or refused to comply.

[8] The respondents’ refusal to perform precipitated the applicant’s invocation of clause 10 of the mandate which stipulates that in the event of either party breaching any of its obligations under the mandate and failing to remedy such breach within five days after receipt of written notice from the aggrieved party calling upon the offending party to do so, the aggrieved party shall be entitled either to enforce specific performance of the offending party’s

obligation or to cancel the mandate forthwith on written notice, and in either event to recover damages from the offending party.

[9] Pursuant thereto, the applicant instituted the present application, which was served on the respondents on 27 November 2025. The respondents filed their notice of intention to oppose on 10 April 2026, followed by their answering affidavit on 17 April 2026. The applicant thereafter delivered his replying affidavit on 30 April 2026. The matter was duly set down for hearing on 21 May 2026.

[10] On 12 May 2026, the respondents instituted action proceedings under case number 2026/109735. In that action they seek, first, a declaratory order that the mandate is void *ab initio* on account of an alleged lack of consensus between themselves and the third respondent; and secondly, an order declaring the conditions of sale void by reason of the third respondent's purported lack of authority. On 14 May 2026, four days prior to the scheduled hearing, the respondents filed a counter-application in which they sought a stay of the present proceedings pending the determination of the aforesaid action. That counter-application was opposed by the applicant on 15 May 2026.

[11] The third respondent, while not opposing the applicant's claim for specific performance application, has entered opposition to the respondents' counter-application for a stay of proceedings. The third respondent maintains that the mandate and conditions of sale were validly concluded and that the respondents are bound thereby.

Issues for determination

[12] Against the backdrop of the facts outlined above; the relief sought by the applicant, the opposition advanced by the respondents, together with their

counter-application, the following issues arise for determination:

- (a) Whether the auction mandate concluded between the respondents and the third respondent is void *ab initio* for want of consensus.
- (b) Whether the third respondent lacked the requisite authority to countersign the conditions of sale on behalf of the respondents.
- (c) Whether the conditions of sale are rendered invalid by reason of the third respondent's alleged lack of authority to countersign the agreement on behalf of the respondents.
- (d) Whether the respondents have established a proper basis for the stay of these proceedings pending the determination of the declaratory relief instituted under case number 2026/109735.
- (e) Whether, on a proper construction of the mandate and conditions of sale, the applicant is entitled to the relief of specific performance compelling transfer of the property.

[13] These issues will be addressed in turn, with reference to the applicable principles of law and the evidence placed before the Court.

Analysis

Validity of the Auction Mandate

[14] The starting point is that the principle of consensus ad idem is the foundation of contractual validity. A contract is valid and enforceable only where the parties are ad idem on its material terms. Absent consensus on essential terms, no binding mandate can arise, and any purported mandate or contract is void *ab initio*.⁴ This is the foundation of the respondents' claim in this matter. However, the law equally recognises that in certain instances, a contract purportedly concluded on behalf of another may nonetheless be

⁴ *Jordan v Farber* Case [2009] ZANHC 81 15 December 2009 (unreported).

enforceable, provided the person acting possessed actual authority or ostensible authority to do so.

[15] I shall in due course revert to the question of authority; both actual and ostensible, when considering whether the third respondent was empowered to countersign the conditions of sale and the respondents' ensuing challenge thereto.

[16] Ms Thiart, counsel for the respondents, contends that the auction mandate is void *ab initio* for want of consensus. The foundation of this submission is that the respondents are uneducated, do not speak English, and possess only limited ability to read and write in that language. In consequence, counsel submits, the representatives of the third respondent, Mr Ridgway and his colleague, attended at the respondent's property on 23 May 2025 to explain the mandate to them in Afrikaans.

[17] Counsel further contends that the respondents were informed that the reserve price could not be fixed at R5 700 000, as they had requested, since such a figure would deter prospective buyers. Instead, they were advised that the reserve price would be set at R3 000 000 to encourage attendance and bidding at the auction. It was further represented that, notwithstanding such reserve, the respondents would not be bound to accept any offer below R5 700 000, even if above the reserve price, and that they retained the right to "walk away" from the sale should the offer fail to meet their expectations.

[18] It is contended that, believing the aforesaid representations concerning the reserve price to be true, the respondents affixed their signatures to the mandate. Counsel submits that, had the respondents appreciated that the mandate bound them to sell the property upon the auctioneer securing a written offer equal to or exceeding the reserve price of R3 000 000, they would not have signed. On this footing, it is argued that the respondents did not fully

comprehend the import of the mandate, having been misled as to the effect of the reserve price.

[19] Counsel placed reliance upon the authority of *Spenmac (Pty) Ltd v Tattrim CC*⁵ (*'Spenmac'*), wherein the Supreme Court of Appeal dismissed the appeal and upheld the High Court's order declaring the agreement void *ab initio* on the basis of misrepresentation. Counsel contends that the reasoning in *Spenmac* finds application in the present matter. She submits that the respondents were induced to enter into the mandate under false pretences, having been misled as to the terms governing the reserve price.

[20] Counsel further submitted that this Court is not presently in a position to adjudicate the question of misrepresentation, which properly falls to be determined at trial upon the tendering of evidence by Mr Fourie of Fourie, Basson & Veldtman Attorneys, the firm engaged to attend to the conveyancing should the property be sold. In the result, counsel maintains that the mandate is void *ab initio*, as no true consensus was reached regarding the reserve price. It is notable, however, that no confirmatory affidavit was filed by Mr Fourie to set out the substance of the evidence he would tender were the applicant's application not to succeed.

[21] Conversely, Mr Steyn, counsel for the applicant, contends that *Spenmac* finds no application in the present matter. In *Spenmac*, it was submitted, the misrepresentation arose from a mutual error: both parties laboured under the mistaken belief that the owner of the unit possessed a right to veto any subdivision of the adjoining unit, which was not the case. In consequence, there was no consensus as to the subject matter, namely the nature of the unit.

⁵ *Spenmac (Pty) Ltd v Tattrim CC* [2014] ZASCA; 2015 (3) SA 46 (SCA); [2014] 2 All SA 549.

[22] Counsel argues that the present matter is distinguishable from *Spenmac*, in that in the present matter consensus was achieved, as the respondents signed the written mandate, which was thereafter countersigned by the third respondent. The mandate expressly records the respondents' acknowledgment of the auctioneer's conditions of sale and their agreement to be bound thereby. Their subsequent denial of consensus, counsel submits, is inconsistent with their conduct of affixing their signature in the written mandate.

[23] Counsel further submits that any dispute between the respondents and the third respondent is collateral to the applicant's claim for specific performance. It was submitted that the respondents have not challenged the validity of the sale agreement concluded with the applicant. At most, their version may ground a claim for damages against the third respondent, but it cannot serve to invalidate the mandate or defeat the applicant's contractual rights.

[24] Counsel further submitted that, even if the sale agreement was tainted by misrepresentation, the respondents cannot evade liability by resiling from the agreement concluded with the applicant, having regard to the doctrine of ostensible authority. Reliance is placed upon the authority of *JZ Brink v Humphries & Jewell (Pty) Ltd*,⁶ wherein it was held that a contract may only be declared void *ab initio* where the misrepresentation induces a fundamental mistake. Counsel contends that no such fundamental error is present in the instant matter. Accordingly, the mandate cannot be impugned on this basis, and the respondents remain bound by its terms.

[25] Similarly, Mr Smith, appearing on behalf of the third respondent, aligned himself with the submissions advanced by Mr Steyn, contending that *Spenmac*

⁶ *JZ Brink v Humphries & Jewell (PTY) Ltd* [2004] ZASCA 131; [2005] 2 All SA 343 (SCA); 2005 (2) SA 419 (SCA).

finds no application in the present matter. Counsel argued that there was mutual agreement between the respondents and the third respondent to execute the mandate, and that such execution was undertaken willingly. It was further submitted that it would be commercially irrational for the third respondent to propose a bidding price and to proceed with the auction in circumstances where he was aware that such price did not represent the true bidding value. Counsel maintained that the respondents were content with the mandate; had they been dissatisfied, they possessed the option to terminate it, which they elected not to exercise. Their dissatisfaction, it was contended, lies not with the mandate itself, but with the purchase price ultimately achieved. In the result, Mr Smith submitted that no misrepresentation occurred, and that the mandate is accordingly not void *ab initio*.

[26] It is trite that the respondents' case is premised upon the assertion that the third respondent misrepresented to them that they would not be bound to accept the reserve price should they be dissatisfied with the amount offered. On this footing, they maintain that no true agreement was reached between themselves and the third respondent, and that the mandate is accordingly unenforceable. It is therefore apposite to determine whether misrepresentation has indeed occurred.

[27] Misrepresentation is defined by the Supreme Court of Appeal in *Quartermark Investments (Pty) Ltd v Mkhwanazi and Another*,⁷ 'as a false statement of fact, not law or opinion, made by one party to another before or at the time of the contract, concerning some matter or circumstance relating to it'. The court went further to state that:⁸

⁷ *Quartermark Investments (Pty) Ltd v Mkhwanazi and Another* [2013] ZASCA 150; 2014 (3) SA 96 (SCA); [2014] 1 All SA 22 (SCA) para 10.

⁸ *Ibid* para 10.

‘A party seeking to avoid a contract on the ground of misrepresentation must prove that: (a) the representation relied upon was made; (b) it was a representation as to a fact; (c) the representation was false; (d) it was material, in the sense that it would have influenced a reasonable person to enter into the contract; and (e) it was intended to induce the person to whom it was made to enter into the transaction sought to be avoided.’

[28] In determining whether consensus was achieved, the Court must consider both the express terms of the mandate and the conduct of the parties. The mandate; reduced to writing and signed by the respondents, expressly appointed the third respondent as auctioneer, conferred upon him a sole and exclusive mandate to market and sell the property by way of auction or private treaty, and fixed a reserve price of R3 000 000. The mandate further recorded the respondents retained the discretion to accept or reject the offer within five business days of signature, failing which the third respondent will sign on their behalf. These provisions are clear and unequivocal.

[29] It is common cause that the property was sold at auction on 3 July 2025 at the reserve price of R3 100 000. It is not disputed that, on the very day of the auction, the third respondent informed the respondents that the property had been sold at the reserve price and that they were required to countersign the conditions of sale, which had already been signed by the applicant. The respondents failed to do so. Thereafter, the third respondent addressed numerous WhatsApp communications, urging them either to sign the conditions of sale or to raise any queries regarding the mandate. Once again, the respondents failed to act, and the first respondent expressly indicated that he had no questions concerning the mandate. In my view, had the respondents entertained any issues with the mandate or the conditions of sale, this was the opportune moment to raise such concerns. Their failure to do so underscores their acquiescence and is inconsistent with their subsequent denial of consensus.

[30] On 7 July 2025, the third respondent reminded the respondents that the five-day period afforded to them to accept or reject the offer was expiring. Despite repeated reminders, the respondents did not exercise their contractual right to reject the offer. On the contrary, by their own admission, they were fully aware that they were not bound to accept any price below R5 700 000. Yet, notwithstanding such knowledge, they failed to notify the third respondent of any rejection of the offer.

[31] The respondents' contention that the third respondent misrepresented to them that they could "walk away" from the offer if dissatisfied with the reserve price is not borne out by the facts. The facts show that the third respondent did precisely what the mandate required: he reminded them that their time to exercise the right of election was expiring. Their failure to act upon that advice cannot be transmuted into evidence of misrepresentation. The respondents' deliberate inaction, coupled with the first respondent's express indication that he had no questions with the mandate, constitutes tacit acceptance. It underscores their full appreciation of the reserve price and dispels any suggestion of misrepresentation. Rather, it supports the inference of acquiescence.

[32] The respondents' allegation of misrepresentation remains wholly uncorroborated. Save for their oral assertions, no documentary or independent evidence has been tendered to substantiate the claim. The letter from Mr Fourie, being premised solely upon what he was told by the respondents, does not advance their case. On the contrary, it underscores the absence of any independent confirmation and cannot serve to establish that misrepresentation in fact occurred. Furthermore, the respondents' reliance upon their limited education and linguistic constraints cannot, without more, suffice to displace the presumption of consensus. On the contrary, the record reflects that the mandate was explained to them in Afrikaans, their home language, whereafter they duly

appended their signatures. Absent evidence of misrepresentation, duress, or mistake, the mere assertion of non-consensus cannot suffice to invalidate a written agreement. The presumption of consensus arising from the respondents' signatures on the written mandate accordingly stands.

[33] Reliance by Ms Thiart upon the *Spenmac* matter is in my view misplaced. There is a clear distinction between *Spenmac* and the present case. In *Spenmac*, the agreement was vitiated by a mutual error at the time of its conclusion. No such circumstance obtains here. On the facts presented, the respondents engaged with the third respondent in relation to the auction process, and the mandate was executed pursuant thereto. Consensus was present, and the mandate validly came into existence. The respondents were fully apprised of its terms and duly affixed their signatures thereto. At no stage did they impugn its validity. They cannot now, belatedly, seek to challenge its enforceability merely because they are dissatisfied with the purchase price ultimately achieved.

[34] I subscribe with the dictum of *JZ Brink* wherein it was held that a contract may only be declared void *ab initio* where the misrepresentation induces a fundamental mistake.⁹ In my view, no misrepresentation of any kind by the third respondent was present in this matter. Even if I were to be persuaded that the mandate was tainted by misrepresentation — which I am not; the respondents would nonetheless remain bound. The doctrine of ostensible authority would operate to protect the applicant, who contracted in good faith on the strength of the mandate. If any remedy lies for the respondents, it would be in the form of a claim for damages against the third respondent, not in avoidance of the mandate or the sale agreement.

⁹ *JZ Brink v Humphries & Jewel (PTY) Ltd* [2004] ZASCA 131; [2005] 2 All SA 343 (SCA); 2005 (2) SA 419 (SCA).

[35] Accordingly, I find that the mandate is not void *ab initio*, as the respondents contend. On the contrary, the mandate is binding upon them. It therefore follows that the mandate was validly concluded and is enforceable against the respondents. Consequently, their challenge to the validity of the mandate on the basis of lack of consensus is without merit and must fail.

Lack of authority

[36] Having found that the mandate was validly concluded and enforceable, the enquiry now turns to whether the third respondent possessed the requisite authority to countersign the conditions of sale on behalf of the respondents, thereby binding them to the agreement concluded with the applicant. This enquiry requires consideration of the scope of the mandate conferred upon the third respondent, the nature of the authority envisaged therein; whether actual authority or ostensible authority is present; and the effect of the respondents' subsequent conduct in relation to the conditions of sale.

[37] The applicant contends that the mandate expressly empowered the third respondent to conclude the transaction and to sign the conditions of sale on behalf of the respondents. The third respondent, for his part, aligns himself with this contention and affirms that his countersignature was affixed pursuant to the authority conferred upon it under the mandate. The respondents, by contrast, deny that the third respondent was authorised to countersign the conditions of sale. They maintain that any authority to bind them contractually was absent. Their case is that the countersignature affixed by the third respondent was *ultra vires* and incapable of binding them.

[38] It is trite that where authority is absent, any purported agreement may be rendered void or unenforceable.¹⁰ The Court must therefore determine whether the third respondent possessed the requisite authority, whether actual or ostensible; to bind the respondents to the conditions of sale concluded with the applicant.

[39] The distinction between the two forms of authority is apposite. Actual authority arises from a mandate or authority expressly or impliedly conferred by the principal upon the agent. It is rooted in the internal relationship between principal and agent, and where such authority exists, the agent's acts are binding upon the principal. By contrast, ostensible authority arises not from the internal mandate but from the principal's outward representations or conduct, which induce a third party reasonably to believe that the agent is authorised. Put differently, ostensible authority is the authority of an agent as it appears to others.¹¹ As such the doctrine ostensible authority serves to protect innocent contracting parties who act in good faith on the strength of such representations, and it operates by way of estoppel to prevent the principal from denying the agent's authority to the prejudice of the third party.

[40] In considering a similar question regarding an allegation about no authority, the court in *Unicab Taxis (Pty) Ltd v Kammies*,¹² the Court held that:

‘It is clear from the papers that Mullins was sent by Kahn to represent Unicab Taxis and that he signed the agreement on the latter's behalf. The legal principle in this regard had been established as far back as 1929 in the case of *Monzali v Smith* 1929 AD 382 at 385 where the Court held:

“Where any person, by words or conduct, represents or permits it to be represented that another person has authority to act on his behalf, he is bound by the acts of such

¹⁰ *Moraitis Investments (Pty) Ltd and Others v Montic Dairy (Pty) Ltd and Others* [2017] ZASCA54; 2017 (5) SA 508 (SCA); 3 All SA 485 (SCA) para 9.

¹¹ *Makate v Vodacom (Pty) Ltd* [2016] ZACC 13; 2016 (6) BCLR 709 (CC); 2016 (4) SA 121 (CC) para 46

¹² *Unicab Taxis (Pty) Ltd v Kammies* [2000] ZALC 150; (2000) 21 ILJ 2478 (LC) para 15 - 16.

other person with respect to anyone dealing with him as an agent on the face of any such representation, to the same extent as if such other person had the authority which he was so represented to have.” (My emphasis)

[41] Later on the Constitutional Court canvassed the matters of actual and ostensible authority in *Makate v Vodacom (Pty) Ltd*.¹³ The court said the following:

‘Actual authority and ostensible or apparent authority are the opposite sides of the same coin. If an agent wishes to perform a juristic act on behalf of a principal, the agent requires authority to do so, for the act to bind the principal. If the principal had conferred the necessary authority either expressly or impliedly, the agent is taken to have actual authority. But if the principal were to deny that she had conferred the authority, the third party who concluded the juristic act with the agent may plead estoppel in replication. In this context, estoppel is not a form of authority but a rule to the effect that if the principal had conducted herself in a manner that misled the third party into believing that the agent has authority, the principal is precluded from denying that the agent had authority.

The same misrepresentation may also lead to an appearance that the agent has the power to act on behalf of the principal. This is known as ostensible or apparent authority in our law. While this kind of authority may not have been conferred by the principal, it is still taken to be the authority of the agent as it appears to others ...

[T]he presence of authority is established if it is shown that a principal by words or conduct has created an appearance that the agent has the power to act on its behalf. Nothing more is required. The means by which that appearance is represented need not be directed at any person. In other words, the principal need not make any representation to the person claiming that the agent had apparent authority.’

Further the court quoting *MEC for Economic Affairs* provided that:¹⁴

‘It is well-established that to hold a principal liable on the basis of the agent’s apparent authority, the representation must be rooted in the words or conduct of the principal, and not merely that of his agent.’

¹³ *Makate v Vodacom (Pty) Ltd* supra at 14 para 45 – 47.

¹⁴ *Ibid* para 153.

[42] Notably, both forms of authority are present in this matter: firstly, clause 7.1.5 of the mandate which was signed by the respondents and countersigned by the third respondent; expressly authorised the third respondent to sign the conditions of sale. This underscores that the third respondent acted within the scope of the mandate conferred upon him, and that his countersignature upon the conditions of sale was sufficient to bind the respondents contractually. Secondly, even if the actual authority were disputed, the respondents' conduct in permitting the third respondent to negotiate, their acquiescence during the auction process, and failing to repudiate his actions; clothed him with ostensible authority. The principle is well settled: where a principal, by representation or conduct, induces reliance upon an agent's authority, the principal is estopped from denying such authority to the prejudice of an innocent contracting party.

[43] There is nothing on paper that demonstrates that the third respondent acted ultra vires or without the respondents' consent. The argument that the respondents had already communicated their dissatisfaction with the purchase price and considered the matter closed is undermined by the contemporaneous WhatsApp correspondence. The WhatsApp messages demonstrate repeated requests by Mr Ridgway, for the respondents to sign the conditions of sale. On 3 July 2025, Mr Ridgway forwarded the conditions of sale document and sought the respondents' signature. No reply was forthcoming. On 4 July 2025, he again requested to meet with the respondents, and on 7 July 2025 he reminded the first respondent that the five-day acceptance period was expiring, expressly asking whether there were any questions about the mandate. Interestingly, the first respondent replied, *'No, no question.'* As evident, at no stage did the respondents raise dissatisfaction with the purchase price or assert unwillingness to proceed. Had they harboured any reservations, queries, or objections to the mandate, they had ample opportunity to raise such concerns but elected not to

do so. This underscores that the respondents were fully aware of the contents of the mandate and the conditions of sale.

[44] On 8 July 2025, Mr Ridgway informed the first respondent that the applicant was willing to increase the offer and amend the conditions of sale. The first respondent without any hesitation agreed to meet.¹⁵ This conduct is wholly inconsistent with the respondents' later assertion that they had already rejected the offer and considered the matter concluded. Their subsequent attempt to revoke the mandate cannot retrospectively invalidate acts lawfully performed under it. Their silence in the face of repeated requests, coupled with their express acknowledgment that no questions remained, reinforces the conclusion that the third respondent acted within the scope of his authority when countersigning.

[45] In my view, the applicant was entitled to assume that the countersignature was validly affixed pursuant to authority under the circumstances. Accordingly, I find that the third respondent possessed actual authority, or at the minimum possessed ostensible authority, to countersign the conditions of sale, and that such countersignature bound the respondents to the agreement concluded with the applicant. The applicant, contracting in good faith, was entitled to rely upon such representation.

Binding Conditions of sale

[46] Having determined that the mandate was validly concluded and that the third respondent possessed actual or ostensible authority to countersign, the next issue to determine is whether the conditions of sale may nonetheless be impugned. Put differently, the question is whether the conditions of sale, signed by the applicant and countersigned by the third respondent, were binding upon

¹⁵ WhatsApp messages p009-52 to 009-61.

the respondents. The respondents contend that the conditions of sale are invalid by reason of the third respondent's alleged lack of authority to bind them.

[47] This contention cannot be sustained. The conditions of sale were executed pursuant to the mandate, which expressly authorised the third respondent to sign it. The respondents had acknowledged in the mandate that they had read and understood the conditions of sale and undertook to be bound thereby. Their subsequent attempt to deny authority is contradicted by the written mandate.

[48] It is trite that a contract may be set aside inter alia on the grounds of misrepresentation, duress, undue influence, fraud or *iustus error*. In *Cindi v Commission for Conciliation, Mediation and Arbitration and others*,¹⁶ it was held that:

‘It is in this regard trite that the validity of an agreement in terms of the general principles of contract can be challenged on the following grounds:

- impossibility of performance.
- duress and/or undue influence.
- Misrepresentation and/or fraud.’

[49] The principle is well established: where a party has expressly undertaken to be bound by a set of conditions and has authorised an agent to sign on its behalf, the conditions so executed are binding unless vitiated by fraud, duress, or material misrepresentation. None of these vitiating factors has been established on the evidence before this Court.

[50] Where authority has been established, the countersignature operates as the act of the principal through its agent. In such circumstances, the document executed constitutes a valid contract of sale, enforceable against the respondents. In the present matter, the applicant successfully bid the sum of

¹⁶ *Cindi v Commission for Conciliation, Mediation and Arbitration and others* [2015] ZALCJHB 236; [2015] 12 BLLR 1207; (2015) 36 ILJ 3080 (LC) para 17 – 18.

R3 100 000 at the auction and duly executed the conditions of sale. In terms of the mandate, the respondents were required to accept or reject the offer within five business days. They failed to do so within the stipulated period. On 17 July 2025, the third respondent's representative affixed his signature to the conditions of sale on behalf of the respondents, thereby purporting to conclude the agreement.

[51] The respondents' contention that the absence of actual authority renders the conditions of sale void misconceives the distinction between void contracts and contracts that are merely voidable. A contract concluded by an agent acting without actual authority, but clothed with ostensible authority, is not void; it binds the principal unless and until it is set aside. Equally, where the countersignature is affixed by an agent acting pursuant to a valid mandate, it cannot be said that the contract is void *ab initio*. The law recognises that the act of the agent, when authorised, is the act of the principal. To hold otherwise would undermine commercial certainty and permit principals to evade obligations by retroactively disavowing their agents' acts.

[52] Having regard to the express terms of the mandate, and in the absence of any substantive challenge by the respondents to the validity of the conditions of sale as concluded between the applicant and the third respondent, the contention that the agreement was not binding upon them cannot be sustained. In my view, the conditions of sale were validly concluded and are binding upon the respondents. The respondents are accordingly obliged to perform in accordance with the terms of the contract of sale.

Stay of proceedings

[53] Turning to the respondents' counter-application for a stay of proceedings. It is noted that this application was brought on 14 May 2026, while the main

application was already ripe for hearing on 21 May 2026. For convenience, the parties in the counter-application will be referred to in the same manner as in the principal application for specific performance. The respondents sought to invoke urgency in order to secure suspension of the matter at the eleventh hour. It is therefore incumbent upon the Court to determine the question of urgency before considering the substantive merits of the application.

[54] It is trite that urgent applications are governed by Rule 6(12) of the Uniform Rules of Court which provides:

‘(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 is reasonably 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 shall 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 in due course.’

[55] The principles governing urgent applications require that the applicant demonstrate circumstances justifying deviation from the ordinary rules of the court. As such the Rule empowers the Court to dispense with the ordinary rules relating to form and service where circumstances justify urgency. The Rule provides for two requirements that must be set forth in the founding affidavit in order to satisfy the requirements of the rule; firstly, the circumstances relating to urgency which has to be explicitly set out and, secondly, the reasons why the applicants in this matter could not be afforded substantial redress at a hearing in due course.¹⁷ Put differently, the respondents must demonstrate genuine urgency and must in their founding affidavit, set out explicitly the circumstances which

¹⁷ *Salt and Another v Smith* 1991(2) SA 186 (NM), at 187A.

render the matter urgent and the reasons why they contend that they cannot be afforded substantial redress in due course.¹⁸

[56] Whether the respondents have succeeded in satisfying the requirements for urgency must be determined by the contents of the founding affidavit.¹⁹ The Court must therefore be satisfied that the respondents will not obtain substantial redress at a hearing in due course. Mere lip service to the requirements of Rule 6(12)(b) will not suffice.

[57] In *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)*,²⁰ Coetzee J held with reference to Rule 6(12)(b), the following;

‘Practitioners should carefully analyse the facts of each case to determine, for the purposes of setting the case down for a hearing, whether a greater or lesser degree of relaxation of the Rules and of the ordinary practice of the Court is required. The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith. Mere lip service to requirements of Rule 6 (12) (b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm which is involved in the time and day for which the matter be set down.’

[58] In assessing urgency, the Court must weigh whether the respondents have established a genuine need for immediate relief, or whether the application constitutes a tactical manoeuvre designed to delay adjudication of the applicant's claim. Only if urgency is established can the substantive application for a stay of proceedings be entertained.

[59] Gleaning from the founding affidavit of the first respondent, the grounds for urgency are set out in paragraphs 34 and 35 thereof. In those paragraphs, the

¹⁸ *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* [1977] 2 All SA 156 (W) 157-158; 1977 (4) SA 135 (W) 136C-137G.

¹⁹ *IL&B Marcow Caterers v Greatermans* [1981] 2 All SA 378 (C); SA 1981(4) SA 108(C) at 111A.

²⁰ *Ibid* 23 at para 137F.

first respondent tenders an apology for bringing the application at such a late stage, alleging that he had hoped the applicant would desist from pursuing the matter upon receipt of their answering papers indicating an intention to institute action proceedings. Such reasoning falls short of establishing the requisite grounds for urgency. A mere hope that the applicant might abandon its claim cannot justify deviation from the ordinary rules of the court. Notably, no confirmatory affidavit was filed by the second respondent to confirm the factual basis for urgency.

[60] In opposing the application, Mr Steyn argued that the respondents were aware of the case as early as 17 July 2025, yet they took no steps to address it. Instead, they harboured the hope that the proceedings would simply dissipate. The applicant accordingly submits that any urgency is self-created.

[61] Similarly, Mr Smith contended that although summons was issued on 12 May 2026, the respondents had knowledge of the matter as far back as 22 July 2025 when they consulted with their erstwhile attorney, Mr JC Fourie. They were advised of the misrepresentation and knew their right then but did nothing to terminate the mandate or institute any litigation. Counsel argued that, in these circumstances, there is no basis upon which urgency can be sustained as it is self-created.

[62] From the founding affidavit of the first respondent, it is evident that the urgency of this application is premised upon the miscalculation that, upon filing their answering affidavit, the applicant would abandon pursuit of the matter. This is a disturbing premise. The respondents knew as far back as 30 September 2025, when they received the letter of demand from the applicant's attorneys, that the applicant intended to approach the Court for specific performance should they fail to comply.

[63] Subsequent thereto, the respondents were served with the applicant's application on 27 November 2025. At no stage did the applicant indicate any intention of withdrawing the application. The respondents' contention that they hoped the applicant would desist after receipt of their answering affidavit is untenable. Their answering affidavit was filed only on 17 April 2026, almost five months after service of the application, and their papers are silent as to why they did not at that stage bring the counter-application. The respondents are required to explain the full period of delay or inaction. They have failed to do so. This omission undermines their attempt to invoke urgency and renders their explanation inadequate.

[64] What is concerning is that the respondent waited until 12 May 2026; merely five days before the matter was ripe for hearing; to issue summons. The replying affidavit had already been filed on 30 April 2026. This sequence of events reveals that the counter-application was not driven by genuine urgency but was instead a dilatory tactic calculated to avoid compliance with their contractual obligations. The respondents' reliance on mere expectation that the applicant might abandon its claim cannot justify the invocation of urgent relief. The absence of a substantive factual basis renders the application procedurally defective and undermines the assertion that immediate judicial intervention was required.

[65] In my view, the respondents' failure to act timeously, coupled with their reliance on speculative expectations, militates against the grant of urgent relief. Their conduct demonstrates that any urgency was self-created rather than arising from objective circumstances warranting deviation from the ordinary rules of the court. Accordingly, the Court finds that the grounds for urgency as stated in the first respondent's founding affidavit do not meet the requirements of Rule 6(12)(b). On the basis of urgency alone, the counter-application stands to be dismissed.

[66] For completeness, it is necessary to consider whether there is any merit in the respondents' application for a stay of proceedings. The principle governing a stay of proceedings is that the Court retains a discretion, exercised judicially, to suspend the matter where the interests of justice so require. A stay of proceedings will ordinarily be granted to avoid duplication, inconsistent findings, or prejudice to a party. Conversely, where the issues are capable of immediate resolution, and delay would occasion injustice, a stay is not warranted. The Supreme Court of Appeal in *Clipsal Australia (Pty) Ltd and Others v Gap Distributors and Others*²¹ confirmed that the Court enjoys an equitable discretion to suspend proceedings. The exercise of such discretion is not mechanical but must be informed by considerations of fairness, judicial economy, and the avoidance of prejudice.

[67] The respondents' counterapplication for a stay of proceedings is premised upon the pendency of the declaratory action allegedly instituted under case number 2026/109735 against the applicant and the third respondent. In that action, they seek declaratory relief impugning both the mandate and the conditions of sale. They argue that the determination of those issues is a prerequisite to the adjudication of the present application, and that continuation of these proceedings would be premature.

[68] In support of their application, the respondents rely upon the reasoning in the *Spenmac* matter, contending that the overlap between the declaratory action and the present application warrants suspension of the latter. They further emphasise the prejudice they would suffer if the stay of proceedings were refused: they have resided in the property since 2021 with four children and one grandchild; they face a municipal debt of R412 315.36 which they intended to discharge from the proceeds of sale; and they assert that the sale price of

²¹ *Clipsal Australia (Pty) Ltd and others v Gap Distributors and others* [2009] ZASCA 49; [2009] 3 All SA 491 (SCA); 2009 BIP 251 (SCA); 2010 (2) SA 289 (SCA) para 19.

R3 100 000 would not enable them to both settle their debt and acquire alternative accommodation. They maintain that refusal of the stay would result in the loss of their home and livelihood.

[69] The application is opposed by both the applicant and the third respondent. Mr Steyn submits that there are no prospects of success in the respondents' application. Counsel emphasises that the trial in the declaratory action will, in all probability, only be heard in 2028; a delay of which the respondents are fully aware. He contends that it would not be in the interests of justice for the present matter to be stayed pending such distant proceedings, as this would unjustly defer the applicant's right to expeditious relief.

[70] Similarly, Mr Smith argued that the respondents' reliance on the pending action is misplaced, given their prior knowledge of the matter and the protracted timeline before trial. Counsel contends that there is no legitimate basis upon which the stay of proceedings should be granted. In addition, Mr Smith argues that the grant of such relief would be contrary to the interests of justice, as it would unduly delay the applicant's right to expeditious adjudication. Moreover, counsel points out that the remedy sought in the respondents' summons is misconceived. Instead of seeking declaratory relief, the respondents ought properly to have claimed damages against the third respondent if they believed themselves aggrieved. The reliance on declaratory proceedings, in circumstances where damages would have been the appropriate remedy, underscores the lack of merit in the respondents' case.

[71] It is trite that the grant of a stay of proceedings is a discretionary remedy and will not be granted merely for the asking. The Court must be satisfied that the interests of justice warrant such relief. The discretion is exercised with reference to considerations of convenience, fairness, and the avoidance of

prejudice. A stay will not lightly be granted where its effect would be to delay the enforcement of a valid contractual right.

[72] The party seeking for a stay must demonstrate that the pending proceedings are directly relevant to the issues before the Court, and that the determination of those proceedings will materially affect or dispose of the present matter. The Court must also weigh the competing interests of expedition and finality against the avoidance of duplication and further guard against unnecessary delay in the resolution of the application. Where the issues in the pending action overlap substantially with those in the application, and where the risk of conflicting judgments is real, a stay of proceedings may be warranted. Conversely, where the application is capable of determination on its own footing, without dependence on the outcome of the action, the interests of justice may militate against a stay. Ultimately, the enquiry is whether the grant of a stay will best serve the proper administration of justice, balancing the need for judicial economy with the parties' right to have their disputes resolved without undue delay.

[73] The respondents have not advanced any cogent reasons as to why they belatedly instituted an action seeking declaratory relief. Their reliance on the alleged voidness of the mandate and conditions of sale has already been considered and found to be without merit. Furthermore, their reliance on personal hardship, while not irrelevant, cannot by itself dictate the exercise of discretion. The enquiry remains whether the declaratory action is so integrally connected to the present application that the latter cannot properly be determined without awaiting the outcome of the former. Having regard to the applicant's entitlement to expeditious relief, particularly in relation to transfer of the property, the respondents' case falls short.

[74] Moreover, the declaratory action appears to replicate the issues already before this Court. The validity of the mandate and the conditions of sale are squarely in issue here. To stay these proceedings pending the outcome of another action on the same issues would serve no purpose other than duplication and delay. The respondents have not demonstrated that the outcome of the declaratory action will necessarily dispose of the issues raised herein. Nor have they shown that the continuation of the application will occasion prejudice beyond the ordinary burdens of litigation. On the contrary, the applicant has already performed its obligations under the conditions of sale and is entitled to transfer of the property. To stay these proceedings would unjustly postpone the applicant's right to specific performance and undermine the efficacy of the auction process.

[75] The declaratory action is directed at the very issues already before this Court; namely, the authority of the third respondent and the validity of the conditions of sale. To stay these proceedings would serve only to postpone the inevitable adjudication of questions that fall squarely within the Court's competence here and now. Moreover, the applicant has a direct and pressing interest in the expeditious resolution of the dispute, particularly in relation to the transfer of property. The respondents, having themselves participated in the negotiation and execution of the agreement, cannot rely upon the pendency of a parallel action to defer performance indefinitely.

[76] In the exercise of discretion, I find that no compelling basis exists to stay these proceedings. The relief sought in this application is capable of determination without awaiting the outcome of the declaratory action. In these circumstances, the interests of justice do not favour the grant of a stay of proceedings but favour their continuation to finality. Accordingly, the counter-application must fail. The proceedings will not be stayed, and the applicant's claim for specific performance falls to be determined on its merits.

Specific performance

[77] Having disposed of the counterapplication for a stay of proceedings, I turn to the applicant's claim for specific performance. The applicant seeks immediate enforcement of contractual obligations arising from the mandate and conditions of sale. The relief sought is quintessentially one of compelling performance in accordance with the agreement concluded between the parties.

[78] It is well established that specific performance is a primary remedy for breach of contract and seeks to ensure that the other contracting party performs as he undertook to do.²² It is premised upon the principle that a party to a valid and binding contract is entitled, as of right, to demand performance of the obligations undertaken by the other contracting party.²³ Specific performance, which an innocent party may choose to enforce, is an order to perform a specified act or to pay money in pursuance of a contractual obligation²⁴ Once the applicant has proved his case, he is by law entitled to specific performance and his claim will be granted subject to the court's discretion.

[79] The *locus classicus* dealing with specific performance is the judgment of Innes CJ in *Farmers' Co-op Society (Reg) v Berry*²⁵ where the court held that:

‘*Prima facie* every party to a binding agreement who is ready to carry out his own obligation under it has a right to demand from the other party, so far as it is possible, a performance of his undertaking in terms of the contract. As remarked by Kotze, C.J., in *Thompson v Pullinger* (1 O.R., at p. 301), “the right of a plaintiff to the specific performance of a contract where the defendant is in a position to do so is beyond all doubt.” It is true that Courts will exercise a discretion in determining whether or not decrees of specific performance should be made. They will not, of course, be issued

²² Van Huyssteen et al *Contract: General Principles* 4ed, 2012 at 327.

²³ See LTC Harms, *Amler's Pleadings*, 10ed at 116.

²⁴ RH Christie *The Law of Contract* 5ed, 2006 at 522.

²⁵ *Farmers' Co-op Society (Reg) v Berry* 1912 AD 343 at 350.:

where it is impossible for the defendant to comply with them. And there are many cases in which justice between the parties can be fully and conveniently done by an award of damages. But that is a different thing from saying that a defendant who has broken his undertaking has the option to purge his default by the payment of money. For in the words of *Storey (Equity Jurisprudence, Sec. 717 (a))* “it is against conscience that a party should have a right of election whether he would perform his contract or only pay damages for breach of it.” The election is rather with the injured party, subject to the discretion of the Court.”

[80] As such a party wishing to claim specific performance in terms of the contract must (a) allege and prove the terms of the contract; (b) allege and prove compliance with any antecedent or reciprocal obligations or must tender to perform them.²⁶ (c) allege non-performance by the defendant, and (d) claim specific performance. The reverse onus lies with the defendant to allege and prove performance. If the party is successful in proving his case, the court has a discretion to grant his claim. The discretion must be exercised with reference to the facts as they exist when performance is claimed and not as they were when the contract was concluded.

[81] De Villiers AJA in *Haynes v King Williamstown Municipality*,²⁷ held:

‘It is, however, equally settled law with us that although the Court will as far as possible give effect to a plaintiff’s choice to claim specific performance it has a discretion in a fitting case to refuse to decree specific performance and leave the plaintiff to claim and prove his *id quad interest*. The discretion which a Court enjoys although it must be exercised judicially is not confined to specific types of cases, nor is it circumscribed by rigid rules. Each case must be judged in the light of its own circumstances. As examples of the grounds on which the Courts have exercised their discretion in refusing to order specific performance, although performance was not

²⁶ *SA Cooling Services (Pty) Ltd v Church Council of the Full Gospel Tabernacle* [1955] 3 All SA 257 (D) at 260-261; 1955 (3) SA 541 (D); *RM Van de Ghiste (Pty) Ltd v Van de Ghiste* 1980 (1) SA 250 (C) at 252-253.

²⁷ *Haynes v King Williamstown Municipality* 1951 (2) SA 371 (A) at 378G-379.

impossible, may be mentioned: (a) where damages would adequately compensate the plaintiff; (b) where it would be difficult for the Court to enforce its decree; (c) where the thing claimed can readily be bought anywhere; (d) where specific performance entails the rendering of services of a personal nature...(e) where it would operate unreasonably hardly on the defendant, or where the agreement giving rise to the claim is unreasonable, or where the decree would produce injustice, or would be inequitable under all the circumstances.’

[82] The mandate was validly concluded, the third respondent possessed authority to countersign the conditions of sale, and the conditions of sale were validly executed. The applicant has duly performed its obligations under the agreement, having successfully bid the sum of R3 100 000 and executed the conditions of sale. The respondents, by contrast, have failed to perform their reciprocal obligation to effect transfer of the property.

[83] The Court will ordinarily grant the relief where a valid and binding agreement exists, unless considerations of equity or impossibility dictate otherwise. The discretion to refuse specific performance is exercised sparingly, and only where enforcement would result in undue hardship or injustice. In *Tamarillo (Pty) Ltd v B N Aitken (Pty) Ltd*,²⁸ it was held that the onus will rest on the respondent to allege and prove why the order for specific performance should not be granted. In this regard the respondent raises principally the following defences, namely mandate void *ab initio*, lack of authority, invalid condition of sale, debt and undue hardship.

[84] The respondents’ opposition rests upon grounds already considered and rejected: the alleged voidness of the mandate, the purported lack of authority, the invalidity of the conditions of sale. None of these contentions withstand scrutiny. Their further reliance on personal hardship, while sympathetic, does not constitute a legal defence to enforcement of contractual obligations. The law

²⁸ *Tamarillo (Pty) Ltd v B N Aitken (Pty) Ltd* 1982 (1) SA 398 (AD) at 442.

recognises hardship, but it does not permit parties to escape obligations freely undertaken merely because performance has become inconvenient or financially burdensome.

[85] The respondents have not demonstrated any equitable considerations that would justify the refusal of specific performance. Their reliance upon personal hardship, dissatisfaction with the purchase price, and the pendency of a declaratory action cannot outweigh the applicant's contractual right to transfer. To deny specific performance in these circumstances would undermine commercial certainty and the integrity of the auction process.

[86] The applicant, by contrast, has demonstrated a clear contractual entitlement. The agreement was negotiated, executed, and remains binding. The applicant has complied with its obligations and is entitled to reciprocal performance. The respondents' continued occupation of the property, coupled with their refusal to perform their reciprocal obligations, constitutes a clear breach of contract. In the exercise of discretion, I find no merit in the respondents' opposition to the applicant's claim. Their grounds of resistance have already been considered and rejected, and no equitable considerations have been advanced that could justify withholding relief. Furthermore, no exceptional circumstances exist to deny the applicant the remedy of specific performance. The applicant has established a valid contractual entitlement, and the respondents are accordingly directed to perform their obligations under the agreement, including effecting transfer of the property to the applicant in accordance with the mandate and conditions of sale. Accordingly, the applicant's claim for specific performance must succeed.

Costs

[87] What remains is the question of costs. The general principle is that costs follow the result. The applicant has succeeded both in resisting the respondents' counterapplication for a stay of proceedings and in securing the relief of specific performance. On the other hand, the respondents' opposition was not only unsuccessful but also misconceived, particularly in their reliance on declaratory proceedings where damages would have been the appropriate remedy. Their conduct has occasioned unnecessary delay and expense.

[88] While the Court retains a discretion to award costs on a punitive scale, such an order is reserved for instances of vexatious or frivolous litigation. In the present matter, although the respondents' case lacked merit, it cannot be said to have been pursued in bad faith or with improper motive. As such there is no basis upon which to depart from the general rule. Accordingly, the respondents are ordered to pay the costs of the main application. The costs shall be on the ordinary party-and-party scale including costs of counsel on scale B.

Order

[89] In the result, I make the following order:

- (a) The applicant's claim for specific performance is granted.
- (b) The first and second respondents are directed to perform their obligations under the contract of sale concluded pursuant to the auction mandate and conditions of sale, including effecting transfer of the property including to take all necessary steps to effecting transfer of the property described as Erf 1[...], Atlantis Industrial, Cape Town, also known as [...] C[...] S[...] Street, Atlantis Industrial, Cape Town, into the name of the applicant.
- (c) In the event that the respondents fail to take such steps within fourteen (14) days of this order, the Sheriff of the Court and/or a duly authorised representative of the third respondent is

empowered to take such steps on their behalf to give effect to the transfer.

- (d) The first and second respondents' counter-application for a stay of proceedings pending the determination of the declaratory action under case number 2026/109735 is dismissed.
- (e) The first and the second respondents are ordered to pay the costs of the application, jointly and severally, one paying the other absolved, and such cost to include counsels' costs including costs of counsel on scale B.

S YAKE
ACTING JUDGE OF THE HIGH COURT

Appearances

For the Applicant:	Mr Steyn
Instructed by:	Heerschop Pienaar Inc. Attorneys C/O Heerschop Pienaar Inc. Attorneys (Cape Town)
For the Respondents:	Ms A. Thiar
Instructed by:	Dunster Attorneys Inc.

For Third Respondent:

Mr Smith

Instructed by:

Wright Attorneys Inc.

C/O Kruger Incorporated