



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 2025-133257

DELETE WHICHEVER IS NOT APPLICABLE
(1)REPORTABLE: NO
(2)OF INTEREST TO OTHERS JUDGES: NO
(3)REVISED: YES

In the matter between:

RHYZOTHERM PROPRIETARY LIMITED

Applicant

and

BOSTON SCIENTIFIC INTERNATIONAL B.V.

First Respondent

**BOSTON SCIENTIFIC SOUTH AFRICA PROPRIETARY
LIMITED**

Second Respondent

In re:

BOSTON SCIENTIFIC INTERNATIONAL B.V.

First Plaintiff

**BOSTON SCIENTIFIC SOUTH AFRICA PROPRIETARY
LIMITED**

Second Plaintiff

and

RHYZOTHERM PROPRIETARY LIMITED

Defendant

Delivered: *This judgment was prepared and authored by the Judge whose name is reflected herein and is handed down electronically by circulation to the parties' legal*

representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date and time for hand-down is deemed to be 10:00 on 26 August 2026.

JUDGMENT

SUMMARY:

Rule 35(14) – Upliftment of Bar

ERASMUS, AJ:

INTRODUCTION:

- [1] Two applications were argued before me namely one in terms of Rule 35(14) and the other for upliftment of bar to a Plea.
- [2] Applicant is the Defendant in the main action. It is sued by Respondents (Plaintiffs) essentially for monies due in respect of medical goods sold and delivered.
- [3] The action was defended on 15 August 2025. On the date on which its Plea was due, Applicant served a Notice in terms of Rule 35(14). A host of documents was requested.
- [4] On 29 September 2025, Respondents served their response to the Rule 35(14)-notice. Within half an hour thereafter they served a Notice of Bar.
- [5] Certain correspondence followed in which Applicant's attorney expressed his dissatisfaction with the Rule 35(14)-response and requested extra time to

consider it. Respondents were firm that the Notice of Bar would not be withdrawn.

- [6] Applicant then served a Notice in terms of Rule 30A and a demand for security. The latter was provided. The Rule 30A-notice was premised on the allegation that the Rule 35(14)-notice had not been properly answered. Also, on 2 October 2025, Applicant served a Rule 30(2)(b)-notice complaining that the Notice of Bar was an irregular step.
- [7] On 6 November 2025, Applicant launched an application seeking compliance with Rule 35(14) and setting aside the Notice of Bar as an irregular step.
- [8] As a cautionary measure, Applicant then launched “the second application” for upliftment of the bar – on 20 March 2026.

RELEVANT AUTHORITY:

- [9] It is important to distinguish between Rules 35(12) and 35(14):
- Rule 35(12) entitles a party to seek a specific document referred to in the other party’s pleadings.
 - Rule 35(14) stipulates that after appearance to defend has been entered, a party (Defendant *in casu*) may for purposes of pleading require the other party to make available for inspection within 5 days a clearly specified document in the other party’s possession *which is relevant to a reasonably anticipated issue in the action*.
- [10] There appears to be some debate as to the question whether notices in terms of Rule 35(12) and (14) suspend the period in which a defendant must plead:

10.1 In Potpale Investments (Pty) Ltd v Mkize Gorven J observed that the delivery of a Notice in terms of Rule 35(12) or (14) did not suspend the period for delivery of a further pleading or affidavit.¹

10.2 In Caxton and CTP Publishers and Printers Ltd v Novus Holdings Ltd the Supreme Court of Appeal referred to the Potpale-decision and stated:

*"Whilst there is much to be said for the view expressed by the learned Judge, sight should however not be lost of the fact that it is open to the court, in the exercise of its discretion, to extend the time periods prescribed in terms of the rules whenever a proper case therefor has been made out by the party seeking such indulgence."*²

[11] It speaks for itself that a defendant can abuse Rule 35(12) and (14) as an efficient tool to drag out an action. In each case the court should therefore exercise its discretion as to whether a defendant is really at a disadvantage in pleading without an (alleged) proper response to its Rule 35(12) or (14)-notice.

[12] The requirements for upliftment of a Notice of Bar are trite:

12.1 The applicant must provide a reasonable explanation for its delay.

12.2 The application should be *bona fide* and not made with the object of delaying the opposite party's claim.

12.3 The applicant must show that there has been a reckless or intentional disregard of the rules of court.

¹ 2016 (5) SA 96 (KZP)

² [2022] 2 All SA 299 (SCA)

- 12.4 The applicant's action or application should clearly not be ill-founded;
and
- 12.5 Any prejudice caused to the opposite party could be compensated by
an appropriate order as to costs.³

THE RULE 35(14)-APPLICATION:

[13] In argument before me, counsel for Applicant did not vigorously pursue the Rule 35(14)-application. I shall therefore deal with it only briefly.

[14] In a nutshell, Applicant's argue was that it intends pursuing two defences in the main namely:

- Respondents breached an agreement in respect of a payment plan.
- Respondents breached the implied covenant of good faith and fair dealing. Such defence is allegedly available to it as the Massachusetts Law is applicable to the underlying agreements.

For this purpose, it requires the documents sought in the notice that were not supplied – more pertinently an audit trail and certain credit notes.

[15] It is significant that the Rule 35(14)-notice is quite wide in ambit and that certain documents were indeed supplied – although Respondents contend it was not strictly speaking necessary.

[16] Whether the requisite threshold is that the outstanding documents sought are “essential” or “reasonably required” for Applicant to plead, I am of the view that the Rule 35(14)-application should fail, mainly for the following reasons:

16.1 Rule 35(14) was not meant to justify a fishing expedition or to facilitate delay on the part of a defendant.

³ Smit NO v Brummer NO, 1954 (3) SA 352 (O) at 358A.

16.2 In its Founding Affidavit in the initial application, Applicant made a number of allegations to support its defences – see the Founding Affidavit, paragraphs 10.3 to 10.9, 10.13, 10.15 to 10.17 and 10.19.

16.3 In my view the Founding Affidavit shows that Applicant had sufficient facts or documents to formulate its plea as at receipt of the Rule 35(14)-answer on 29 September 2025.

THE APPLICATION FOR UPLIFTMENT OF THE BAR:

[17] In my view and although Applicant should have either pleaded or sought an extension of time to plead in terms of Rule 27 upon receipt of the Notice of Bar, this is not a case where the doors of the court should effectively be closed to the Applicant. Applicant has provided a reasonable explanation for the delay. Its conduct cannot be classified as reckless or intentional. It *“did not do nothing”* even if it could be criticised for not launching the application for upliftment of the bar earlier. I also do not think that punitive costs are warranted.

ORDER:

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

- (1) Applicant’s application in terms of Rule 35(14) is dismissed.
- (2) The bar flowing from the Notice of Bar delivered on 29 September 2025 is uplifted.
- (3) Applicant is afforded 20 (twenty) court days from date of this order to file its Plea.
- (4) Applicant is ordered to pay the costs of both applications on Scale B.


F J ERASMUS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Electronically delivered and signed.

APPEARANCES:

APPLICANT: Adv J Eastes
INSTRUCTED BY: Morné Coetzee Attorneys
RESPONDENTS: Adv C Bekker
INSTRUCED BY: Bowman Gilfillan Inc.