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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2024-146837

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

1 September 2026

DATE

SIGNATURE

In the matter between:

CEB INVESTMENTS (PTY) LTD

Applicant

and

A-M CONSULTING ENGINEERS (PTY)

First Respondent

AUSWELL MASHABA

Second Respondent

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically and by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for handing down is deemed to be 1 September 2026.

JUDGMENT

CARELSE AJ

Introduction

- [1] This opposed application concerns the enforcement of obligations arising from a commercial lease and an associated deed of suretyship. The applicant seeks payment of arrear rental and damages arising from the first respondent's

occupation and subsequent vacation of commercial premises. The principal issues are whether the arrear rental has been established on the papers, whether the second respondent remains liable as surety, and whether the damages claim is capable of final determination in motion proceedings.

- [2] The respondents oppose the application on five principal grounds. Firstly, they contend that the applicant has failed to establish the arrear rental claimed because the rental was incorrectly calculated throughout the lease and that, properly reconciled, the first respondent is in credit. Secondly, they deny that one Magaya had authority to acknowledge the arrear indebtedness or to furnish the repayment undertaking of 31 May 2024 on behalf of the first respondent. Thirdly, they contend that genuine disputes of fact arise which render the application unsuitable for determination in motion proceedings. Fourthly, they dispute the applicant's claim for restoration damages. Finally, the second respondent contends that the suretyship ceased to operate because the suretyship only applied in respect of the first lease agreement and not to the new second lease agreement that commenced in June 2020 because it constituted a new and independent lease agreement.

Background

- [3] The following material facts are either common cause or are not genuinely disputed on the papers and may be accepted for purposes of this application.
- [4] The applicant is the registered owner of the immovable property described as portion 4, Erf 5[...] R[...] Ext 11, Midrand, known as A[...] House and situated at 2[...] B[...] Avenue, Randjespark Ext 11, Midrand ("the Premises").
- [5] On 13 March 2015, the parties concluded a written lease agreement in terms of which the first respondent leased the Premises from the applicant for an initial three-year period from 1 June 2015 to 31 May 2018, with an option to renew ("the Lease"). The agreed commencement rental was R225 830.00 per month

excluding VAT, subject to annual escalation at 8.5%, and the first respondent had to furnish a rental bank guarantee of R677 490.00 as a deposit.¹

[6] The Lease imposed the following material obligations on the first respondent:

- a. to maintain in good order and repair the interior of the Premises together with the electrical, water, gas, drainage, sanitary and air-conditioning installations and all appurtenances (clause 21);
- b. to redeliver the Premises on expiry or termination in good order and repair, fair wear and tear accepted (clause 21);
- c. to make good and repair at its own cost on demand any damages, breakages or, in the alternative, reimburse the applicant for the cost of replacing, repairing or making good any broken, damaged or missing articles caused as a result of the first respondent's occupation. In particular, the first respondent had to pay for the replacement of all fluorescent tubes, starters, ballasts and incandescent bulbs used in the Premises (clause 21);
- d. to give the applicant written notice within 30 days of the commencement date, of any defects in the Premises with particulars of any appurtenances (all installation and appliances in the premises including any keys, locks, windows, sewerage pans, basins, water taps and fittings) which were defective or missing, failing which the first respondent was deemed to have accepted the Premises as complete, without defect and in good order and repair (clause 20); and
- e. to pay interest on any overdue amounts at 1.5% per month or part thereof (clause 36).

[7] The first respondent did not give written notice of any defects within 30 days of the commencement of the Lease on 1 June 2015 and is accordingly deemed

¹ Although the signatures on the Lease (FA3) bear dates of 11 and 12 March 2015 respectively, nothing turns on that because the parties are ad idem that the lease agreement was concluded on 13 March 2015.

under clause 20 of the General Conditions to have accepted the Premises as being in good order and without defect at commencement.²

- [8] On or about 11 March 2015, the second respondent, in his capacity as executive chairman and director of the first respondent, signed a deed of suretyship as surety and co-principal debtor for the first respondent's obligations under the Lease, which was incorporated as Annexure B to the Lease (the Suretyship).
- [9] In terms of the Suretyship the second respondent bound himself jointly and severally as surety and co-principal debtor for any sum the first respondent " *may now and from time to time hereafter owe or be indebted to the [applicant] under or arising out of an agreement of lease ("AGREEMENT") between the Landlord and the Tenant in respect of and/or in respect of any other cause of indebtedness or obligation of whatsoever nature and howsoever arising, due by the [first respondent] to the [applicant], including legal costs and charges on an attorney and client scale.*" Clause 2.5 extended the Suretyship to claims that the applicant may have acquired or may in the future acquire against the first respondent. Clause 2.8 of the Suretyship further provided that the first respondent's indebtedness shall be proved by a certificate of balance signed by the applicant's auditors, which certificate shall be binding on the second respondent, constitute conclusive proof of indebtedness, and be a valid liquid document in any competent court for judgment purposes. While clause 2.2 provides that all acknowledgements of indebtedness and admissions by the first respondent shall be binding on the second respondent.
- [10] The parties thereafter recorded the continuation of their contractual relationship in the following four successive written agreements executed between 2018 and 2023:
- a. On 14 May 2018, the parties concluded a written addendum (RA3) titled "*Addendum to Agreement of Lease dated 13 March 2015*", which

² While the absence of a defect notice could have been stated more explicitly, it is sufficiently established by the admitted lease term read with the absence of any allegation in the answering affidavit that such notice was given.

extended the existing Lease³ on the same terms and conditions for a further two years to 31 May 2020. RA3 was signed by the second respondent personally on behalf of the first respondent and was accompanied by a directors' resolution also signed by the first respondent. It was recorded that the rental, which was current at the time, escalated at 8.5% per annum and required the first respondent to increase the bank guarantee to R865 350.93 and extend it to 31 August 2020.

- b. On 29 April 2020, the parties concluded a *"Lease Renewal Agreement"* (FA4), the schedule to which describes the commencement date as the *"2nd Renewal Commencement Date"* and the duration as the *"Duration of 2nd Lease Renewal"*, for an initial three-year period from 1 June 2020 at R200 630.00 per month, with a two-year renewal option. FA4 required the first respondent to furnish a replacement bank guarantee of R635 701.50, which it failed to do. Linda Zwelenhlanhla Cele, the first respondent's then CEO, signed FA4 on its behalf.
- c. On 29 March 2022, due to the first respondent's failure to provide the required bank guarantee, a further addendum (RA6) was entered into, which converted the guarantee obligation into a cash deposit of R635 701.50 payable in 13 monthly installments of R50 000.00. Nine installments, totalling R450 000.00, were received by the applicant, although the respondents characterise these payments as an overpayment.
- d. On 25 May 2023, the parties concluded a further addendum (FA5), which expressly described itself as amending *"the Lease Agreement that they entered into on 13 March 2015 and renewed on 30 April 2020"*, and extended the lease for one further year from 1 June 2023 to 31 May 2024 at R228 852.54 per month excluding VAT. Linda Zwelenhlanhla Cele, the first respondent's then CEO, signed FA4 on its behalf.

³ Although para 4 of "RA3" refers the existing lease of "1 June 2025" it is not in dispute that "RA3" in fact extended the Lease concluded on 13 March 2015 (FA3).

- [11] The Lease expired by effluxion of time on 31 May 2024 and the first respondent vacated the Premises during June 2024. On 30 May 2024, before vacation of the Premises, Karen Evans (“Evans”), the applicant's managing agent, emailed Nkululo Magaya (“Magaya”), the first respondent's financial manager, and Linda Cele, a director and CEO of the first respondent, recording the handover conditions and requesting a written repayment undertaking in respect of the outstanding arrear rental at the time.
- [12] The following day, 31 May 2024, Magaya replied, stating that the outstanding amount would be repaid in 12 equal monthly installments commencing at the end of June 2024.
- [13] The applicant arranged two post-vacation inspections. Clifford du Preez (“Du Preez”), a director of Fairleads Electrical (Pty) Ltd and a wireman’s licence holder with more than 40 years’ experience, inspected the electrical installation in June 2024 and identified 18 categories of missing, damaged, or non-compliant electrical items. He prepared a detailed quotation of R70 972.42 inclusive of VAT for the work required to remedy the deficiencies and to issue a certificate of electrical compliance. The work was subsequently carried out and the invoice settled by using a portion of the cash deposit then held by the applicant.
- [14] On 21 June 2024, Bradley Connor (“Connor”), a director of BMSA Affiliated Services (Pty) Ltd, inspected the Premises and quantified the reasonable cost of the general restoration of the Premises at R475 630.60 inclusive of VAT.
- [15] On 2 October 2024, separate letters of demand were addressed to the first and second respondents calling upon them to pay the outstanding indebtedness. The respondents failed to make payment, and these proceedings were thereafter launched. On 10 December 2024, the applicant's auditors issued a certificate of balance certifying a net indebtedness of R1 704 835.17.
- [16] Against that common cause background, the respondents raise the following issues as requiring the dismissal or, in the alternative, the referral to oral evidence of the application:

- a. the applicant has failed to establish the arrear rental because the applicant incorrectly accounted for the rental throughout the lease, with the result that the first respondent contends that it is in credit;
- b. Magaya lacked authority to acknowledge the arrear indebtedness or to give the repayment undertaking dated 31 May 2024 on behalf of the first respondent;
- c. those disputes render the application unsuitable for determination in motion proceedings;
- d. the applicant has failed to establish its restoration claims, and in particular the claim for general restoration damages, because Connor's assessment does not establish the commencement condition of the Premises and because his evidence cannot properly be accepted on the papers; and
- e. the Suretyship ceased to bind the second respondent when FA4 was concluded because FA4 constituted a new and independent lease rather than a continuation of the 2015 Lease.

Motion proceedings: dispute of fact

[17] Motion proceedings, unless concerned with interim relief, are the vehicle for resolving legal issues on the basis of common cause or undisputed facts; they are not designed to determine probabilities or to resolve genuine disputes of fact.⁴ The Court's task is not to resolve every factual disagreement appearing from the affidavits but to determine whether the disputes are genuine, *bona fide* and material to the relief sought.

[18] Where genuine disputes of fact arise, the Court ordinarily decides the matter on the facts stated by the respondent together with those facts admitted by the applicant. That principle, however, presupposes a real, genuine and bona fide dispute of fact.⁵ A respondent does not create such a dispute by resorting to bald, ambiguous or unsubstantiated denials, particularly where the relevant

⁴ *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) at para 26.

⁵ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H–635C.

facts lie peculiarly within its own knowledge. Nor is the Court required to accept a version that is so far-fetched or clearly untenable that it can confidently be rejected on the papers. The Court must adopt a robust, common-sense approach when considering whether a genuine dispute of fact exists.⁶

Arrear rental

[19] The arrear rental of R1 158 232.15 is calculated from the statement of account balance of R1 559 355.73 as at 1 May 2024, adjusted by recording a payment of R60 122.05, substituting actual May 2024 utility costs of R48 876.42 for the estimate of R50 000.00 used in the 30 May 2024 email, and reserving the R450 000.00 deposit for application against restoration costs.

[20] The respondents' challenge to the arrear rental cannot be sustained. The applicant has produced the Lease, every written extension and addendum, annual ledger statements covering the period from July 2016 until June 2024, and the auditors' certificate of balance. Against that documentary record, the respondents merely assert that they were overcharged throughout the lease and that a credit balance of approximately R133 450.00 exists in their favour. The respondents do not identify any specific incorrect debit, omitted credit, duplicated charge or erroneous escalation. Nor have they produced any counter-reconciliation, accounting analysis or contemporaneous financial records demonstrating that the applicant's calculations are incorrect. In those circumstances, the respondents have not engaged meaningfully with the applicant's accounting evidence and have not raised a genuine dispute of fact regarding the arrear rental.

[21] One issue nevertheless remains. The second respondent denies that Magaya had authority to acknowledge the arrear indebtedness or to furnish the repayment undertaking of 31 May 2024. He states that he gave Magaya no authority to make any such undertaking and professes no knowledge of the

⁶ *Wightman t/a JW Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA) at para 13; *Buffalo Freight Systems (Pty) Ltd v Crestleigh Trading (Pty) Ltd* 2011 (1) SA 8 (SCA) at paras 20–21; and *Soffiantini v Mould* 1956 (4) SA 150 (E) at 154G–H.

email exchange. Before considering that denial, it is necessary to examine the context in which the issue arose.

[22] The founding affidavit did not specifically allege that Magaya possessed authority to bind the first respondent. The founding affidavit relied upon communications sent by the first respondent's financial manager in the ordinary course of the parties' dealings and was not required to anticipate a defence that authority would later be placed in issue. Only in the answering affidavit did the second respondent specifically deny Magaya's authority. The replying affidavit accordingly dealt with that defence by explaining the events of 21 May 2024 and annexing Evans' confirmatory affidavit. That evidence is properly responsive and does not amount to a new case in reply.⁷ The second respondent also did not under Rule 6(5)(e) apply for leave to file a further affidavit to contest the meeting allegations, as was open to him.⁸ Quite apart from the evidence concerning the meeting of 21 May 2024, the authority finding stands on the founding affidavit materials alone. Those materials establish the following:

- a. Magaya was the Financial Manager of the first respondent;
- b. he had previously, on 12 February 2024, communicated with Evans on the first respondent's behalf about its financial difficulties. The following were copied in the email: Linda Cele <l[...]> (a director and the CEO of the first respondent) and Nirashni Jainath <n[...]>;
- c. Evans' email seeking the undertaking was addressed not only to Magaya but also to Cele, a director and CEO of the first respondent, and to a Lerato Sibisi;
- d. Magaya replied confirming the undertaking; and
- e. no evidence of any instruction limiting his authority has been placed before this court.

⁷ *Mostert and Others v FirstRand Bank t/a RMB Private Bank and Another* 2018 (4) SA 443 (SCA) at para [13]; *J.M.G. v M.J.W and Another* [2023] ZAWCHC 201 (11 August 2023) at para 44.

⁸ *J.M.G.W v M.J.W and Another* footnote 7 above at para 45.

[23] No affidavit has been obtained from Magaya disputing either the email or his authority to send it. Nor is there any evidence that the undertaking was repudiated or withdrawn after it was sent, even though the evidence suggests it, at the very least, came to the attention of the first respondent's CEO and director. In those circumstances, the second respondent's bare denial of authority does not raise a genuine dispute of fact.⁹

[24] I am accordingly satisfied that Magaya possessed at least implied authority to acknowledge the arrear indebtedness and to furnish the repayment undertaking of 31 May 2024 on behalf of the first respondent.

[25] Consequently, I am satisfied that the arrear rental claim is established.

Electrical repairs

[26] The claim for R70 972.42 in respect of the electrical installation stands on a materially different footing from the claim for general restoration. It is supported by the sworn affidavit of Du Preez, a qualified wireman's licence holder with more than 40 years' experience, who identified 18 categories of missing, damaged or non-compliant electrical items requiring remediation before a certificate of compliance could be issued. The obligations identified by Du Preez are, on the applicant's case, obligations falling within the first respondent's contractual obligations under the Lease. The work identified by him has since been carried out, and the invoice paid.

[27] The significance of payment is not that it creates liability. Liability arises from the contractual obligations assumed by the first respondent under the Lease. Payment establishes only that the amount claimed represents expenditure actually incurred by the applicant in performing work that the first respondent was contractually obliged to perform or reimburse. The amount claimed, therefore, no longer represents a mere quotation but an expense actually incurred by the applicant and is thus fixed or determined.¹⁰ The respondents have produced no expert evidence disputing Du Preez's findings, identifying unnecessary work or suggesting that any item falls outside the first

⁹ *Wightman* footnote 6 above at para 13.

¹⁰ *Kleynhans v Van der Westhuizen NO* 1970 (2) SA 742 (A) at 749F.

respondent's contractual obligations. Nor have they sought an order directing that Du Preez be called for cross-examination. On the papers before me, the electrical claim is therefore established.

General restoration damages

- [28] The claim for R475 630.60 in respect of the general restoration of the Premises stands on a different footing. Unlike the electrical repairs, this claim has not crystallised into an actual expenditure. It remains an estimate of the cost of future remedial work and therefore constitutes a claim for unliquidated contractual damages.¹¹
- [29] Motion proceedings are particularly unsuited to the prosecution of claims for unliquidated damages.¹² That distinction is important because the amount ultimately recoverable depends not only upon liability but upon proof of the measure of the applicant's loss. Connor's inspection was confined to the condition of the Premises during June 2024. He was not requested to determine their condition at the commencement of the Lease in June 2015, and his report does not attempt to do so.
- [30] The first respondent challenges assessment on three grounds: (a) that Connor cannot quantify the restoration obligation without knowledge of the commencement condition; (b) that Connor has a financial interest in performing the work; and (c) that the Premises were left clean.
- [31] The last of these, which is a positive factual allegation, is unsupported by any details of the cleaning of the premises, inspection report, photograph or handover checklist, and raises no genuine dispute of fact. The first two, however, raise legitimate methodological questions. The deeming provision in clause 20 of the Lease operates in the applicant's favour on the burden of proof: the first respondent gave no defect notice within 30 days of commencement and is deemed to have accepted the Premises in good order. But the deeming provision does not supply the baseline that Connor's assessment lacks. In a nine-year commercial tenancy, the boundary between

¹¹ *Id* at 749G-751A.

¹² *Economic Freedom Fighters v Manuel* 2021 (3) SA 425 (SCA) at para 105.

compensable damage and fair wear and tear calls for expert assessment that takes account of the commencement condition. To award a final monetary sum on the strength of a report that makes no such assessment, prepared by a contractor with a financial interest in performing the work, without the ability to test that evidence, would be to grant a sum that this court cannot be satisfied represents an accurate measure of the compensable loss. Complicating matters further is the fact that the applicant sold the Premises in January 2025, after the institution of these proceedings, and a portion of the restoration works has not been completed, the applicant attributing the shortfall to a diminution in the sale price. This component of the case is therefore not suitable for final determination on the papers.

- [32] The applicant could not reasonably have anticipated that the commencement condition of the Premises would become a central issue in dispute. The dispute is confined to a narrow compass and is capable of convenient determination by oral evidence. In those circumstances, a referral under Rule 6(5)(g), rather than dismissal of the claim or referral to trial, is the appropriate course. At the hearing the parties should address whether, in light of the sale of the Premises during January 2025, the applicant's damages fall to be assessed by reference to the reasonable cost of reinstatement or by reference to any diminution in the realised sale price.¹³

The suretyship

- [33] The second respondent's defence to personal liability rests entirely on the contention that FA4 was not a renewal of the continuing Lease but a new and independent agreement and that the Suretyship consequently lapsed. The question is one of legal interpretation of the documents.
- [34] Properly construed, FA4 did not extinguish the 2015 Lease and substitute an entirely new contractual relationship. Several features of the contractual documentation point clearly in the opposite direction. FA4 is titled "*Lease Renewal Agreement*"; its schedule uses the terms "*2nd Renewal*

¹³ *Standard Bank of SA Ltd v Neugarten* 1987 (3) SA 695 (W) at 699C–E. *Repas v Repas* [2023] ZAWCHC 24 (13 February 2023) at paras 33, 41 - 42.

Commencement Date" and *"Duration of 2nd Lease Renewal"*. This is terminology that is intelligible only if a first renewal has already occurred. FA5 describes itself as amending *"the Lease Agreement that they entered into on 13 March 2015 and renewed on 30 April 2020"*, and on the respondents' characterisation of FA4 as a new agreement, that description would be inexplicable.

[35] RA3, which the second respondent signed personally, is titled *"Addendum to Agreement of Lease dated 13 March 2015"* and extends *"the existing lease"* for two years to 31 May 2020. The second respondent, therefore, has personal knowledge that the first extension in 2018 was a continuation of the 2015 agreement; FA4's *"2nd Renewal"* terminology presupposes RA3 as the first renewal. In their heads of argument, the respondents abandoned the earlier contention that the lease continued by tacit relocation from June 2019 to April 2020. RA3 extended the Lease to 31 May 2020, leaving no gap for any tacit continuation. The Lease was a single continuous contractual relationship from 1 June 2015 to 31 May 2024. FA4 was its second renewal, not a new agreement. The second respondent's sworn contention to the contrary is inconsistent with the contemporaneous contractual documents and cannot be accepted.¹⁴

[36] A deed of suretyship is accessory to the principal obligation, but it remains a separate contract that falls to be interpreted according to its own terms. Having concluded that the Lease continued through successive written renewals and addenda, the remaining question is whether the indebtedness now claimed falls within the obligations secured by the Suretyship. On its plain wording, it does. The Suretyship extends to indebtedness arising *"from time to time"* under the Lease and to claims thereafter acquired by the applicant. Nothing in FA4 or any subsequent agreement records an intention to terminate or exclude the continued operation of the Suretyship.

[37] Even if FA4 was a new and independent agreement, the Suretyship would in any event cover the first respondent's obligations under it. Its language extends

¹⁴ *Buffalo Freight Systems (Pty) Ltd v Crestleigh Trading (Pty) Ltd* 2011 (1) SA 8 (SCA) at para 20, citing *Da Matta v Otto* NO 1972 (3) SA 858 (A) at 869D–E.

to indebtedness "*of whatsoever nature and howsoever arising*" and clause 2.5 expressly covers claims the applicant "*may in future acquire*" against the first respondent.

[38] The respondents rely on *R v Cumming*¹⁵ and Voet 19.2.9 for the proposition that sureties are discharged on renewal of a lease. Properly understood, *R v Cumming* concerned tacit relocation following the expiry of a fixed-term lease, on facts that are clearly distinguishable from the present matter. The present matter concerns successive written renewals executed by agreement between the parties before or upon expiry of the preceding term. The issue is therefore one of contractual interpretation rather than tacit relocation. Read as a whole, the contractual documents demonstrate an intention to continue the existing lease relationship rather than to extinguish it. Nothing in FA4, RA6 or FA5 records any intention to discharge the second respondent from his obligations as surety.

[39] Finally, *Mokone v Tassos Properties CC*¹⁶, which is relied upon by the respondents, in fact assists the applicant: when parties use the language of renewal or extension, they are taken to intend extending all terms of the lease relationship including collateral and security arrangements, unless a particular term is plainly excluded. Nothing in FA4 excludes the Suretyship.

[40] I am therefore satisfied that the Suretyship is extant and that the second respondent is bound by its terms.

Conclusion

[41] The applicant has established its claim for arrear rental in the amount of R1 158 232.15. The respondents have failed to raise a genuine, bona fide and material dispute of fact regarding either the calculation of the arrear rental or Magaya's authority to acknowledge the indebtedness and furnish the repayment undertaking on behalf of the first respondent.

¹⁵ 1956 (4) SA 143 (E).

¹⁶ 2017 (5) SA 456 (CC) at paras 36 and 41.

- [42] The applicant has likewise established its claim in the amount of R70 972.42 for the electrical repairs. That claim is supported by uncontested expert evidence, falls within the first respondent's contractual obligations under the Lease and constitutes a liquidated contractual claim capable of final determination on motion.
- [43] A different conclusion follows in relation to the claim for R475 630.60 in respect of the general restoration of the Premises. That claim raises genuine and material disputes of fact which cannot fairly be resolved on the papers and should accordingly be referred to oral evidence in terms of Rule 6(5)(g).
- [44] The second respondent's defence under the Suretyship cannot be sustained. Properly construed, the Lease remained a single continuing contractual relationship throughout the successive renewals and addenda and, in any event, the Suretyship is sufficiently wide to encompass the indebtedness now claimed.
- [45] It follows that the applicant is entitled to final relief in respect of the arrear rental and electrical repair claims, together with an order referring only the general restoration damages claim to oral evidence. The second respondent is jointly and severally liable with the first respondent under the Suretyship for the amounts in respect of which final relief is granted in this judgment. The remaining issue is the appropriate costs order.

Costs

- [46] The Lease and the Suretyship both provide for costs on the attorney and client scale. There is no reason in law or fairness why effect should not be given to those contractual provisions. I award costs on that scale. The costs relating to the general restoration damages claim shall stand over to be determined at the oral evidence stage.

Order

- [47] In the result the following order is made:

1. The first and second respondents are ordered to pay to the applicant, jointly and severally, the one paying the other to be absolved:
 - a. the amount of R1 229 204.57;
 - b. interest on the amount of R1 229 204.57 at the rate of 1.5% per month, calculated from 2 October 2024 to the date of final payment, both days inclusive; and
 - c. the costs of this application on the attorney and client scale, including the costs of counsel, save that the costs relating to the restoration damages claim are as provided in subparagraph 3(d) below.
2. The applicant's claim for general restoration damages in the amount of R475 630.60 is referred to oral evidence under Rule 6(5)(g) of the Uniform Rules of Court. Oral evidence shall be heard to determine the following questions:
 - a. the condition of the immovable property described as portion 4, Erf 5[...] R[...] Ext 11, Midrand, known as A[...] House and situated at 2[...] B[...] Avenue, R[...] Ext 11, Midrand ("the Premises") as at the commencement of the Lease on 1 June 2015;
 - b. whether the restoration works identified in the affidavit of Bradley Connor of BMSA Affiliated Services (Pty) Ltd, dated 10 December 2024, constitute damage attributable to the first respondent beyond fair wear and tear, having regard to the commencement condition and whether the reasonable cost of such works is R475 630.60; and
 - c. whether, having regard to the sale of the Premises by the applicant in January 2025 before the restoration works were carried out, the appropriate measure of restoration damages is the reasonable cost of remediation or a proven diminution in the sale price of the Premises.
3. Unless this Court otherwise orders:
 - a. Bradley Connor must be available for cross-examination on his affidavit, which shall stand as his evidence in chief;

- b. the witnesses who may be called are Bradley Connor, and any other witness or witnesses as the parties deem fit, with personal knowledge of the condition of the Premises at the commencement of the Lease on 1 June 2015;
- c. no witness other than those contemplated in subparagraph 3(b) above may be called without the agreement of the opposing party or, failing agreement, the leave of this Court, which is to be sought only after the opposing party has been given reasonable notice; and
- d. the costs of these proceedings relating to the restoration damages claim and the costs of the oral evidence hearing shall be determined by the presiding judge in the oral evidence hearing.

CARELSE AJ
ACTING JUDGE OF THE HIGH COURT,
JOHANNESBURG

Date of hearing: 26 May 2026
Judgment delivered: 1 September 2026

Appearances:

For the Applicant: MH Nieuwoudt (Ms) instructed by Moodie & Robertson Attorneys
For the Respondents: T Mirtle (Ms) instructed by Mendelsons Attorneys