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

Case Number: 2025-028662

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

28/08/2026

DATE

SIGNATURE

In the matter between:

REDBILL HOLDINGS (PTY) LTD

First Applicant

SYNCERUS HOLDINGS (PTY) LTD

Second Applicant

and

DONALD MANUEL HOWARD BARRELL

First

Respondent

CITY OF JOHANNESBURG METROPOLITAN

MUNICIPALITY

Second Respondent

JUDGMENT

Mahosi, J

[1] This is an application brought in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act¹ ("PIE") for the eviction of the first respondent, Mr Barrell, Donald Manuel Howard Barrell ("Mr Barrell"), and all those occupying through or under him, from the leased immovable property. Mr Barrell opposes the application, asserting lawful occupation of the property arising from an alleged oral lease agreement and non-compliance with PIE.

[2] Two condonation applications accompany the above application. The first is Mr Barrell's application for condonation of the one-day-late filing of his notice of intention to oppose and answering affidavit, and the second is the applicants' application for condonation of the late filing of their replying affidavit. The requirements for condonation are trite and bear no repetition.

[3] The applicants did not oppose Mr Barrell's application, and the interests of justice require full ventilation of all issues. Thus, his late filing of the notice of intention to oppose and the answering affidavit should be granted. As to the applicants' delay in filing their replying affidavit, they submitted that it was occasioned by the need to investigate and source historical documentation to respond to the oral agreement defense raised for the first time in the answering affidavit, a defense going to the heart of the application. Considering that the delay was not inordinate, a reasonable explanation has been proffered, and no prejudice to Mr Barrell has been shown or suggested, condonation ought to be granted.

[4] The factual background involves a series of property and business transactions between the parties, summarized as follows. On November 26, 2015, Mr. Barrell, through his company Venay Holdings (Pty) Ltd ("Venay"), entered into a shareholders' agreement with Imbali Props 22 (Pty) Ltd ("Imbali") and MFBK Properties (Pty) Ltd ("MFBK"). The shareholders established MFBK to manage the rezoning of the property for the development of high-density residential and related uses.

[5] In terms of the shareholders' agreement, the parties agreed that Venay and Imbali would subscribe for all of MFBK's shares and hold the entire issued share capital in equal shares. They further agreed that, except for certain surviving

¹ Act 19 of 1998.

provisions, the shareholders' agreement would take effect immediately upon signing, contingent upon the execution of the sale of property agreement within 10 business days. The parties also agreed to use reasonable efforts to fulfill these conditions.

[6] On 26 November 2015, Mr. Barrell sold a large residential estate known as Atholl House, situated at 9[...] W[...] Street, Sandton and also accessible from 9[...] P[...] P[...], A[...]l, Johannesburg, to MFBK in terms of a written sale of property agreement ("the property agreement") for R 18 600 000,00. The material terms of the agreement were that MFBK would immediately after the date of transfer make application to the COJ for rezoning the property to 'business 4 plus dwelling units', 'residential 4' or such other zoning as MFBK in its discretion would determine. If the rezoning is approved within 36 months of the date of transfer, the purchase price will automatically increase to R 48 million.

[7] The sale agreement provides for MFBK to take occupation of the property on payment of the balance of the R48 million, upon which date Mr Barrell would vacate the property. Pending MFBK taking occupation, Mr Barrell would remain in occupation of the property free of rental, subject to reciprocal obligations regarding rates, insurance, security, maintenance and utilities.

[8] Following the conclusion of the property agreement on 2 February 2016, MFBK concluded a loan agreement with Investec for R21 million to pay the purchase price to Mr Barrell, which was granted. MFBK then paid Mr Barrell the purchase price, and the property was transferred on 14 April 2016, necessitating that the rezoning be procured by 14 April 2019. However, the rezoning was not achieved within the stipulated 36-month period because City Power lodged an objection on 7 November 2018 on the grounds of insufficient electrical capacity.

[9] As a result, the increased purchase price never became payable, and the development did not proceed. MFBK, having incurred substantial debt to Investec Bank to fund the purchase, was ultimately wound up on 13 August 2021. This followed a period of business rescue proceedings instituted at Mr Barrell's instance, which were terminated only on 17 October 2024.

[10] On 24 October 2024, the liquidators of MFBK sold the property to the applicants (the second applicant then trading as Teez Away Trading (Pty) Ltd) for

R16 500 000.00 excluding VAT, later reflected in correspondence to creditors as R18 957 000. The transfer was registered into the applicants' names on 25 November 2024.

[11] The applicants' attorneys demanded that Mr Barrell vacate the property by 14 January 2025. However, he did not. Following an unsuccessful without-prejudice meeting on 21 January 2025, at which Mr Barrell undertook, through his attorney, to revert with a proposal by 31 January 2025 (which he never did), the applicants instituted the present proceedings.

[12] The applicants contend that they have an unassailable right of ownership and are accordingly entitled to recover possession of the property from Mr Barrell. They argue that Mr Barrell's occupation is unlawful and that, without their consent, he has no lease agreement or other right, title, or interest, whether contractual or otherwise, entitling him to occupy the property. They assert that Mr Barrell pays no rent for his occupation, has failed to maintain the property in proper condition, and, despite demand and ample opportunity to secure alternative accommodation, has refused and/or failed to vacate the property.

[13] The applicants assert that they are being unlawfully deprived of the full use, enjoyment, and commercial benefit of an asset to which they hold clear title. They argue that Mr Barrell's continued unlawful occupation is causing significant harm, as the property has a rental value ranging from R70,000.00 to R90,000.00 per month. They allege that, consequently, they are experiencing an ongoing and measurable loss of income for as long as Mr Barrell remains in possession of the property.

[14] The applicants further contend that Mr Barrell has significant financial means and is not in a state of poverty as he received R19 million from the sale of a property in 2015. Therefore, they believe it is unreasonable and factually unsustainable for him to claim that he cannot afford alternative accommodation. The applicants argue that, to the extent that Mr Barrell lives at the property with his wife and domestic employees, suitable alternative accommodation is readily available for him in the greater Johannesburg area, in line with his financial situation.

[15] In addition, the applicants argue that ordering the eviction of Mr Barrell, along with all individuals occupying the property by, through or under him, would not

unjustly infringe on his right to access adequate housing, as guaranteed by Section 26 of the Constitution. The applicants claim that Mr Barrell and those occupying the property with him are classified as unlawful occupiers and do not benefit from the legal protections provided to occupiers under the Extension of Security of Tenure Act. In light of the above, the applicant believes it would be just and equitable to grant an order against Mr Barrell and all individuals occupying the property with him.

[16] Mr Barrell's primary defence is that on or about 15 April 2019, and as a consequence of the rezoning of the property not having been procured by the determined date of 14 April 2019, he entered into an oral agreement, at Sandton alternatively Durban, with MFBK, represented by Mr Murray Collins ("the oral agreement"). He alleges that the material express, alternatively implied, terms of the oral agreement were, *inter alia*, that he would continue to occupy and reside in the property for a period of nine years commencing 1 May 2019 ("the initial period"), with the option to elect to extend his occupancy and residence for a further period of six years thereafter ("the further period"), provided that he gave MFBK written notice thereof at least 90 (ninety) days prior to the expiry of the initial period on 30 April 2028.

[17] Mr Barrell contends that his right of occupation is entrenched by the terms of the oral agreement concluded with Collins, that the oral agreement has never been validly cancelled, and that he has fully complied with all of his obligations thereunder. He argues that, in the premises, his continued occupation of the property is lawful and enforceable, and that it is accordingly neither lawful nor just and equitable that he be evicted in these circumstances.

[18] Additionally, Mr Barrell argues that the applicants have not inquired whatsoever into his health, age, or financial position, nor into the health, age, or financial position of the other residents who would be displaced by an eviction. Further, he avers that the applicants have failed to engage meaningfully, or at all, with the City of Johannesburg regarding his occupation of the property, and that they have made no attempt to explore alternative solutions or options for his relocation.

[19] The first issue is whether Mr Barrel's defence of an alleged oral agreement raises a genuine, *bona fide* dispute of fact. The test was restated in *National Director of Public Prosecutions v Zuma*² as follows:

“Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the *Plascon-Evans* rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's ... affidavits, which have been admitted by the respondent ..., together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.”

[20] It is undisputed that the written sale of property agreement between Mr Barrell and MFBK contains an entire agreement clause and a non-variation clause, which read:

“13.2 Entire contract

This agreement constitutes the entire contract between the parties with regard to the matters dealt with in this agreement and no representations, terms, conditions or warranties not contained in this agreement shall be binding to the parties.

13.3 Variation and canceling.

No agreement varying, adding to, deleting or cancelling this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.”

[21] It is well established that the above clauses are binding and enforceable³. In the current matter, no written variation signed by both parties has been produced. On this ground alone, the alleged oral agreement, even if concluded as alleged, would have no force or effect against MFBK.

² 2009 (2) SA 277 (SCA), at para 26.

³ See *Academy of Learning (Pty) Ltd v Hancock and Others* 2001 (1) SA 941 (N), at para 36.

[22] Additionally, Mr Barrell's own version is improbable on a reading of the contemporaneous record. An email reflecting a telephonic proposal made by Mr Barrell to MFBK on 20 May 2019, shortly after the rezoning failed and at the very time the alleged oral agreement is said to have been concluded, makes no mention whatsoever of any agreement permitting free, long-term occupation. To the contrary, the proposal recorded therein, relating to part-payment of the Investec debt, a request for further time, and a reconfiguration of the development model, is entirely inconsistent with the existence of a concluded arrangement of the kind now alleged.

[23] Furthermore, when MFBK's liquidators wrote to Mr Barrell in April and June 2022, while he was legally represented, enquiring on what basis he remained in occupation and demanding market rental, neither Mr Barrell nor his attorney mentioned the alleged oral agreement. This would have been the most natural and obvious occasion on which to assert such a right, if it existed. Its complete absence from that correspondence is a significant, indeed telling, indicator that the defence is an afterthought.

[24] Considering the circumstances, the alleged agreement is highly improbable from a business perspective. Mr. Collins, an experienced businessman, denies that such an arrangement was ever made. He notes that it would have provided Mr Barrell a significant, rent-free benefit of occupation of a luxury property in Sandton for up to fifteen years, shortly after he had already received R19 million for the property. This situation contradicts the commercial and developmental objectives for which MFBK was established.

[25] Although the MFBK's memorandum of incorporation required a special resolution of shareholders holding at least 75% of voting rights before any director could commit the company to a material undertaking or liability, no such resolution was sought or obtained. An agreement of the kind alleged, effectively surrendering the company's right to occupation and use of its primary asset for up to fifteen years, was self-evidently material, and Mr Collins, as a director, had no unilateral authority to conclude it.

[26] Further, on Mr Barrell's own version, the alleged oral lease was renewable at his election for a period exceeding ten years in aggregate. Section 1(2) of the

Formalities in Respect of Leases of Land Act⁴ provides that such a lease, unless registered against the title deed, is not valid against a successor in title unless that successor had actual knowledge of the lease at the time of acquiring the property. It reads:

“No lease of land which is entered into for a period of not less than ten years or for the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period of the lease amount in all to not less than ten years, shall, if such lease be entered into after the commencement of this Act, be valid against a creditor or successor under onerous title of the lessor for a period longer than ten years after having been entered into, unless (a) it has been registered against the title deeds of the leased land; or (b) the aforesaid creditor or successor at the time of the giving of credit or the entry into the transaction by which he obtained the leased land or a portion thereof or obtained a real right in respect thereof, as the case may be, knew of the lease.”

[27] In the current matter, the lease was never registered. The onus rests on Mr Barrell to establish the applicants’ actual knowledge.⁵ Given that the alleged agreement was, on the papers, not disclosed to the liquidators, Mr Barrell’s own attorneys, or the applicants prior to the answering affidavit, Mr Barrell has failed to discharge that onus.

[28] Finally, the applicants referred this Court to a judgment in *United Building Society Ltd and Another NO v Du Plessis*⁶ where the Court stated that:

“A lease, even as a real right, which ranks after a mortgage bond, may not prejudice the interests of the mortgagee. When the bond becomes payable, for instance on the maturity of the bond, or even prior thereto on the insolvency of the mortgagor or on a sale in execution at the instance of the mortgagee, then, should the property be put up for sale, either in execution or by the trustee in insolvency, the question is whether the highest bid or offer

⁴ Act 18 of 1969, as amended.

⁵ See *Grant and Another v Stonestreet and Others* 1968 (4) SA 1 (A) at 16H–17A; *Ismail v Ismail and Others* 2007 (4) SA 557 (N), at para 8.

⁶ 1990 (3) SA 75 (W) at 80E-F

would suffice to cover the amount of the mortgage bond or not. If the price does cover the amount of the mortgage debt, then the property will be sold subject to the lease, but if that price does not suffice to cover the mortgage debt, then the property will be sold free of the lease, the lease thereby coming to an end.”

[29] In *casu*, it is not disputed that the mortgage bond registered by MFBK in favour of Investec in the amount of R21 million exceeded the eventual sale proceeds realised for the property, being R18 957 000. It follows that, applying the principle that a property will be sold free of any prior lease where the sale proceeds are insufficient to cover the mortgage bond, even if a valid oral lease existed, it came to an end when the property was sold to the applicants.

[30] Taking these considerations cumulatively, this Court is satisfied that the alleged oral agreement is not merely improbable but is, on a proper assessment of the papers, so far-fetched and clearly untenable that it can and should be rejected without recourse to oral evidence. Mr Barrell has not “seriously and unambiguously” addressed the applicants’ version in a manner that raises a real, genuine dispute. defence accordingly fails.

[31] Mr Barrell further contends that eviction would not be just and equitable, relying on his advanced age, ill-health, and alleged financial hardship. Where eviction is sought under PIE, section 4(7) provides that an order may be granted only if it is and equitable to do so, having regard to all relevant circumstances, including the availability of alternative land and the rights and needs of older people, children, disabled persons and households headed by women. Where the jurisdictional requirements of section 4 are met, and no valid defence to eviction has been established, the court is nonetheless obliged, in terms of section 4(8), to grant an eviction order, fixing a just and equitable date for vacation of the premises under section 4(8)(a).⁷

[32] Mr Barrell’s age and state of health are, in principle, relevant considerations under section 4(7) of the PIE Act. However, the weight to be attached to those

⁷ See *City of Johannesburg v Changing Tides 74 (Pty) Ltd and 97 Others (SERI intervening as amicus curiae)* 2012 (6) SA 294 (SCA), at para 25.

circumstances must be assessed against the whole of the record. Mr Barrell was paid R19 million for the property in 2016; he is presently a director of six active companies; and he is a trustee of a trust which has represented, in a signed document, that it has agreed to make available to him a sum of R22 million. These facts sit uneasily with the picture of impecuniosity painted in the answering affidavit. In addition, no confirmatory affidavit from his wife, nor any particularity as to the value of the life policies she is said to have surrendered, has been furnished.

[33] On the material before it, this Court is not persuaded that Mr Barrell faces the prospect of homelessness or the loss of adequate alternative accommodation should an eviction order be granted. His personal and medical circumstances, while not to be dismissed lightly, do not on the facts of this case render eviction unjust or inequitable. They are, however, properly to be reflected in the date fixed for vacation of the property, to allow a reasonable period for him to make alternative arrangements.

Conclusion

[34] It follows from the above that the applicants have established their ownership of the property, Mr Barrell's occupation thereof, and the absence of any right in law entitling him to remain in occupation against the applicants' will. Further, no genuine defence to eviction has been established, whether based on the alleged oral agreement or based on Mr Barrell's personal circumstances. In these circumstances, section 4(8) of PIE obliges the court to grant an eviction order.

[35] Having regard to Mr Barrell's age and the practical realities of relocation, but balancing this against the applicants' right to the use and enjoyment of their property and the evident state of disrepair of the premises, a period of 60 days from the date of this order is a just and equitable period within which Mr Barrell, and all those occupying through and under him, should vacate the property.

Costs

[36] The applicants have substantially succeeded and, on ordinary principles, are entitled to their costs. This Court does not, however, consider this an appropriate case for a punitive costs order on the attorney-and-client scale. While the oral

agreement defense is untenable, it cannot be found, on the papers alone and without the benefit of oral evidence, that it was advanced in subjective bad faith to warrant censure by way of a punitive costs order. The costs will therefore follow the result on the ordinary scale, as between party and party, on Scale C.

[37] In relation to the two condonation applications, each party has achieved substantial success in its own application, and no order as to costs is warranted in respect of either.

Order

[38] Accordingly, the following order is made:

1. Mr Barrell's late filing of his notice of intention to oppose and answering affidavit is condoned.
2. The applicants' late filing of their replying affidavit is condoned.
3. Mr Barrell and all persons occupying through and under him are ordered to vacate the immovable property described as portion 12 of erf 1[...]43 A[...] with title deed number T[...] , and situated at 9[...] W[...] Street, S[...], Johannesburg and 91 Protea Place, Atholl, Johannesburg, within 60 days of the grant of this order.
4. In the event that Mr Barrell and any or all persons occupying by, through or under him, fail to comply with the order set out in paragraph 1 above, the Sheriff of this Court is authorised and directed immediately to evict the first respondent and any persons occupying through or under him, from the property and to hand vacant possession to the applicants.
5. Mr Barrell shall pay the applicants' costs of this application on the party and party scale, on Scale C.

D. Mahosi

**Judge of the High Court
Gauteng Division, Johannesburg**

Date of judgment: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on Caselines. The date and time for hand-down is deemed to be 28 August 2026.

Appearances

For the applicants:	Advocate K Gounden, instructed by Woodhead Bigby Incorporated Attorneys, c/o Arilia du Plessis Attorneys
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For the first respondent:	Mr C Mathews of Mendelsons Attorneys
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