

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA



CASE NO.: 57045 /20

In the matter between:-

**KINGSGATE CLOTHING (PTY) LTD T/A
MAJESTIC CLOTHING MANUFACTURERS,
PRINCETON SCHOOLWEAR MANUFACTURERS AND
STAR CLOTHING MANUFACTURERS**

First Applicant

MAYTEX LINEN CC

Second Applicant

SUPER OCEAN TRADING CC

Third Applicant

MAYTEX CARDING CC

Fourth Applicant

CRUISE COLLECTIONS CC

Fifth Applicant

TWIN CLOTHING MANUFACTURERS (PTY) LTD

Sixth Applicant

APPAREL INDUSTRIES (PTY) LTD

Seventh Applicant

CLEMATIS TRADING (PTY) LTD

Eighth Applicant

and

EDCON LIMITED (IN BUSINESS RESCUE)

First Respondent

**PIERS MARSDEN
(JOINT BUSINESS RESCUE PRACTITIONER)**

Second Respondent

**LANCE SCHAPIRO
(JOINT BUSINESS RESCUE PRACTITIONER)**

Third Respondent

JUSTICE FDJ BRAND

Fourth Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT the applicants will make application to the above-mentioned Honourable Court for an Order in the following terms:

1. The award made by the Fourth Respondent on 22 September 2020 be and is hereby set aside.
2. The matter is referred, premised on the record that served before the fourth respondent, for fresh determination by Justice Nugent alternatively Justice Classen.
3. Alternatively to prayer 2 above, such relief as this Honourable Court deems meet.
4. It is declared that the effect of the security furnished by the second and third respondents, on 14 August 2020, to the applicants, in regard to Reservation of Ownership, is that it will remain extant until the final determination of this application including the final determination of any fresh determination of the applicants' claims under Reservation of Ownership that the court might direct.
5. Alternatively to prayer 4, the second and third respondents are directed to retain sufficient funds to satisfy the total value of the applicants' claims based on Reservation of Ownership until final determination of this application including the final determination of any fresh determination of the applicants' claims under Reservation of Ownership that the court might direct.

6. Alternatively to prayers 4 and 5, the second and third respondents are directed to furnish security to the applicants in regard to their claim in respect of Reservation of Ownership and to do so in an amount not less than the combined claim value of the applicants' claims under Reservation of Ownership, with such security to remain valid and in force until the final determination of this application including the final determination of any fresh determination of the applicants' claims under Reservation of Ownership that the court might direct.

7. In the event of any one or more of the First to Third Respondents opposing this application, such Respondent or Respondents be directed to pay the costs thereof.

AND TAKE NOTE THAT that the Applicants have appointed Pather & Pather as their representative in this matter.

AND TAKE NOTE THAT THE Applicants will accept service of all the proceedings in the above matter at the address of the Applicants' representative which is set out below.

TAKE NOTICE FURTHER that if you intend opposing this application you are required:-

- (a) to notify Applicants' attorney in writing on or before _____;

- (b) and within fifteen [15] days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any;

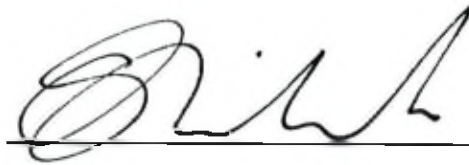
(c) and further that you are required to appoint in such notification an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER THAT that the accompanying affidavits of **YUSUF AHMED SADEK VAHED**, together with the annexures thereto as well as the affidavits of the Second to Eighth Applicants, will be used in support thereof.

BE PLEASED TO TAKE NOTICE FURTHER THAT if no notice of intention to oppose be filed, then application will be made on _____ for an order in the terms sought on an unopposed basis.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

Dated at PRETORIA on this the _____ day of October 2020.



PATHER & PATHER
ATTORNEYS

PATHER AND PATHER ATTORNEYS INC.
PLAINTIFFS' ATTORNEYS
3 NOLLSWORTH CRESCENT
NOLLSWORTH PARK
LA LUCIA

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c/o MacRoberts Inc.

MacRobert Building

cnr. Justice Mahomed & Jan Shoba Streets

Brooklyn

PRETORIA

Tel: (012) 425 3451

Ref: AVN/sg

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
PRETORIA

AND TO: PIERS MICHAEL MARSDEN and
LANCE SHAPIRO
BUSINESS RESCUE PRACTITIONERS FOR EDCON LIMITED
EDCON LIMITED IN BUSINESS RESCUE
SERVICE PER SHERIFF

AND TO: THE HONOURABLE JUSTICE FDJ BRAND
PER EMAIL BY AGREEMENT: fritzdj.brand@mweb.co.za

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

In the matter between:-

KINGSGATE CLOTHING (PTY) LTD T/A MAJESTIC CLOTHING MANUFACTURERS, PRINCETON SCHOOLWEAR MANUFACTURERS AND STAR CLOTHING MANUFACTURERS	First Applicant
MAYTEX LINEN CC	Second Applicant
SUPER OCEAN TRADING CC	Third Applicant
MAYTEX CARDING CC	Fourth Applicant
CRUISE COLLECTIONS CC	Fifth Applicant
TWIN CLOTHING MANUFACTURERS (PTY) LTD	Sixth Applicant
APPAREL INDUSTRIES (PTY) LTD	Seventh Applicant
CLEMATIS TRADING (PTY) LTD	Eighth Applicant

and

EDCON LIMITED (IN BUSINESS RESCUE)	First Respondent
PIERS MARSDEN (JOINT BUSINESS RESCUE PRACTITIONER)	Second Respondent
LANCE SCHAPIRO (JOINT BUSINESS RESCUE PRACTITIONER)	Third Respondent
JUSTICE FDJ BRAND	Fourth Respondent

APPLICANTS' FOUNDING AFFIDAVIT

I, the undersigned,

YUSUF AHMED SADEK VAHED

do hereby make oath and state:-



1. I am a director and the chief executive officer of Kingsgate, the first applicant.
2. The facts deposed to herein are within my personal knowledge and are true and correct.
3. Where I make submissions I rely on legal advice duly received.
4. I depose to this affidavit in support of the relief sought by Kingsgate herein.
5. Kingsgate, as constituted from time to time, is a family business that started in 1955 and is now into its fourth generation.
6. It is one of the largest clothing manufacturers in the country.
7. It is simply because of its long and deep history that the other applicants herein sought that Kingsgate should play a co-ordinating role insofar as this application is concerned.


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8. Kingsgate, as constituted from time to time, has dealt with Edcon, as constituted from time to time, for over 50 [fifty] years now.



THE PARTIES

9. The applicants are all suppliers of merchandise to Edcon and are all concurrent creditors in Edcon in Business Rescue.
10. The first to eighth applicants are all juristic entities duly incorporated and registered in terms of South African law and which for the sake of brevity rely on the address of the their attorney of record.
11. The first respondent is Edcon in Business Rescue. Edcon (Pty) Ltd is a juristic entity which is duly incorporated and registered in terms of South African law and which was placed into Business Rescue on 30 April 2020. Its address is that of the attorneys of record for the second and third respondents.
12. The second and third respondents are the Business Rescue Practitioners that were duly appointed to the first respondent in early May 2020. Their address is that of their attorneys of record.
13. The fourth respondent is the Honourable Justice Brand, a retired Justice of the Supreme Court of Appeal, who the applicants and second and third respondents

 
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agreed upon as the person to determine the dispute between them under the Approved Business Plan for the first respondent. By agreement with the fourth respondent, these papers will be served on him via email as the applicants are loathe to have the Sheriff effect service on him. His email address is cited in the notice of motion.

14. The applicants regret having to join the fourth respondent herein but were constrained to do so given the lack of cooperation of the second and third respondents.
15. Annexed hereto marked "A" is a copy of a letter, dated 23 September 2020, sent by the applicant's attorney of record to the attorneys acting for the second and third respondents in terms of which applicants, *inter alia*, sought an accord with the second and third respondents that would obviate the need for the joinder of the fourth respondent.
16. On 28 September 2020, the attorneys acting for the second and third respondents addressed a mail to applicants' attorney a copy of which is annexed hereto marked "B".
17. It is plain from annexure "B" that the said attorneys did not respond to the request made in this regard by applicants' attorney.



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18. Whilst substantive relief is in effect sought against the fourth respondent, it would be noted that no costs are claimed from Justice Brand as the Honourable Justice was simply fulfilling his obligations under the Approved Business Plan.
19. The impact, however, of the substantive relief sought by the applicants will be directly felt by the first to third respondents and they may well elect to oppose this application. In that event, applicants will seek costs against them.

NATURE OF THE AWARD MADE

20. Whilst the approved Business Plan talks of the appointment of an expert to determine disputes between creditors and the second and third respondents, it is so in law that the nomenclature used is not determinative of the role being played by the person so appointed. The function performed by the person in question is what defines his or her role.
21. In the present matter, it was not in dispute that the fourth respondent was not acting as an expert based on his own knowledge in a particular area but rather was functioning as an arbitrator. This is because the parties led evidence and tendered argument by way of submissions.
22. Furthermore, the fourth respondent, at the request and instance of the second and third respondents, directed that the usual procedure employed for the



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determination of opposed motions in the High Court would apply to the present dispute.

PROCEDURAL BASIS FOR THIS APPLICATION

23. Once it is accepted, as it is submitted it must, that the fourth respondent acted as arbitrator, it is open to the applicants to seek relief from this court under the provisions of Section 33 of the Arbitration Act 42 of 1965.
24. That Act refers to an arbitration agreement which is required to be in writing.
25. The applicants submit that the Approved Business Plan, which is in writing, and which binds the applicants as well as the second and third respondents, fulfils the requirements for an arbitration agreement under that Act.
26. Whilst Section 33 of the Act does not make reference to a "review", but rather to the setting aside of an award, the applicants submit that the grounds provided therefor are those that are normally applicable with regard to reviews and that, in the circumstances, Section 33 of the Act in reality contemplates a review.
27. Alternatively, and in any event, the applicants rely upon a common law review to found this application. They do so whether the fourth respondent functioned as an arbitrator or as an expert albeit that the applicants maintain that it is plain that the fourth respondent arbitrated the matter. Furthermore, applicants contend



that given the grounds upon which they rely for the relief that they seek in this matter, such grounds would be apposite whether the court were dealing with an arbitration or an expert.

28. Under the Arbitration Act, the applicants have a period of six weeks within which to bring their application for the setting aside of an award. The award delivered by the fourth respondent was made available on 22 September 2020. In the circumstances, the applicants are bringing this application timeously in terms of the prescripts of the Act.
29. It is trite that insofar as the common law goes, there is no prescribed period and that an applicant for review must come within a reasonable time.
30. The applicants respectfully submit that if they have complied with the prescripts of the Act, it can be safely assumed that they have come to court within a reasonable time under the common law, whether the fourth respondent functioned as an arbitrator or as an expert.
31. In the kind of review normally encountered, an applicant would utilise the provisions of Rule 53 of the Uniform Rules of the High Court.
32. It has, however, been held that the provisions of those rules are procedural in nature and furthermore not peremptory. They are designed to assist the applicant in obtaining information that he is not in possession of.



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33. This does not apply to the present matter as the applicants are indeed in possession of all the relevant material that the fourth respondent had before him when he came to the decision that he did.
34. The applicants will accordingly put up that "record" as it were and do not expect the fourth respondent to do so.
35. The applicants, with the sincerest of deference to the fourth respondent, would like to believe that the fourth respondent will simply abide the decision of this court albeit that it is open to the fourth respondent to adopt whatever position he chooses to do.
36. All that the applicants want to record is that they sought to avoid the joinder of the fourth respondent, as already canvassed, and they furthermore wish to relieve the fourth respondent of any obligation to put up a record so to speak.

RELEVANT PROVISION OF THE APPROVED BUSINESS PLAN

37. Clause 39.3.7 of the Approved Business Plan, provides as follows:-

"The Creditor/s agree/s that, save for any manifest error the determination of the expert will be final and binding on the Creditor/s, the Company and the BRPs and will not be subject to any subsequent review or appeal application/procedure/process."

 
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38. The applicants submit that for purposes of jurisdiction, it is by now well settled that an assertion by a litigant is sufficient to require a court to determine a matter. This concept applies within various branches and fields of our procedural law, including labour and administrative law.
39. The applicants, after due and proper consideration, most seriously assert the presence of a manifest error or manifest errors in the determination of the award made by the fourth respondent.
40. It might well be that at the end of the day this court will hold that what the applicants contend is a manifest error or are manifest errors are not so and that, quite apart from the merits of the matter, the applicants have not established the authority (in the sense of not satisfying the jurisdictional requirement) for this court to deal with this matter.
41. However, as has been long established, that is not an issue that can be decided upfront and in a vacuum. Rather it can only be decided once the merits of the matter have been considered. There is simply no other way of dealing with this.
42. In point of fact, Clause 39.3.7 does not necessitate an application to this court.
43. On a plain reading of that Clause, the second and third respondents were obliged to consider the appropriateness of an appeal based on the applicants' assertion.




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44. It is submitted that an extra curial appeal would probably have been more appropriate regard being had to the fact that a Business Rescue process is, juridically speaking, contemplated to be an expeditious one.
45. If regard is had to annexure "A", the court will see that the applicants raised this very issue with the second and third respondents.
46. However, consistent with the manner in which the second and third respondents have conducted themselves throughout this business rescue process, they simply refused to apply their minds and were haughtily dismissive of applicants' rights under the Approved Business Plan. This is plain from annexure "B".
47. The upshot of that is that the applicants have been constrained to bring this application as there cannot be a domestic appeal without the cooperation of the second and third respondents and which cooperation has not been forthcoming.
48. Furthermore, applicants also rely on the provisions of Section 34 of the Constitution to found their right to approach this court for relief in this matter.
49. All of the applicants voted against the Business Plan.
50. That notwithstanding, the second and third respondents maintain that they achieved the threshold percentage of creditor voting sufficient to approve the plan which then, by statutory enactment, becomes binding upon all creditors including the applicants.



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51. If regard is had to Section 154 of the Companies Act of 2008, it will be seen that the legislature attempted to provide some protection to creditors who vote against an approval of a plan in the event that the plan provides that upon its approval the claims of all creditors are extinguished or unenforceable.
52. After all, notionally at least, the entire ethos behind Business Rescue is to salvage a distressed company and to allow it to trade out of its difficulties. Notionally at least, such a salvaged company could be thriving several years down the road making the prospect of recovery of a debt by a creditor who voted against the Business Plan a serious reality.
53. In similar vein, whilst in principle it might be so that an Approved Business Plan is binding on all creditors, whether they voted in favour of it or not, it cannot serve to trump the fundamental Constitutional Rights of the creditors. The Companies Act, like all legislation, is subject to the Constitution and nothing in legislation can validly take away rights that the Constitution vests in persons.
54. It is for this reason also, given the highly circumscribed and stifling procedure provided for in the present Approved Business Plan, with regard to a resolution of disputes, that the applicants would contend that this Honourable Court should consider itself enjoined to deal with this application.
55. It is not as if the applicants seek to assert that the court should deal with it *de novo*. On the contrary, the applicants are content to come under the provisions

of Section 33 of the Arbitration Act or a common law review. In other words, they are not seeking to emasculate the effect of the legislation and its impact at the coal face. They accept that there has been a determination of sorts. However, to suggest that they are bound by that determination forever and a day, in circumstances where they assert manifest error, simply cannot stand the test of legitimacy.

THE "RECORD"

56. The complete record of the proceedings which served before the fourth respondent before he made his determination will be served simultaneously with this application.

57. It consists, by and large of the following:-
 - 57.1 The Approved Business Plan.

 - 57.2 The evidence that was tendered by the applicants by way of affidavit, the answering evidence of the second and third respondents by way of affidavit and the replying evidence of the applicants by way of affidavit.

 - 57.3 The minutes of the pre-hearing meetings.


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57.4 The submissions tendered by both parties including the applicants' practice note.


57.5 The award published on 22 September 2020.

58. Applicants specifically and expressly incorporate their evidence aforesaid in these proceedings and submit that a consideration of all of that evidence will be necessary for a determination of this application.

GROUND FOR RELIEF SOUGHT

59. Following on the grounds provided therefor in the Arbitration Act, that is for the setting aside of an arbitration award, the applicants rely on the ground that the fourth respondent committed gross irregularities in coming to the conclusion that he did. They also rely on this ground to the extent that this application may be considered a common law review. Whilst the applicants set out some detail in regard to the manifest errors committed by the fourth respondent, it is their fundamental assertion that the conclusion arrived at by the fourth respondent is so wrong as to lead to a patently inequitable result.

60. With the sincerest of respect and deference to the fourth respondent, applicants contend as follows:-


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60.1 The fourth respondent failed and/or refused to have regard to binding Supreme Court of Appeal authority in respect to the interpretation of written documents. This authority was specifically pointed out to the fourth respondent by the applicants. I am advised that a failure by an adjudicator to have regard to binding authority constitutes a gross irregularity. It is plain from the reading of the award that the fourth respondent had no regard to the authority. This is palpably demonstrated by, *inter alia*, the following:-

60.1.1 There was simply no attempt made on the part of the fourth respondent to follow the precepts of interpretation of written documents on the basis of text (that is considering whether ascribing the meaning "*ownership*" to the word "*title*" rendered Clause 9.4 of the Edcon Merchandise Supply Agreement intelligible or not), context (that is considering Clause 9.4 and the reference therein to the word "*title*" within the purview of the entire Edcon Merchandise Supply Agreement and more particularly without having regard to Clauses 10.1, 10.2, 10.3, 10.4, 16.1, 16.2 and 18.1), material known to the parties and the purpose for the document, something which the applicants set out in comprehensive detail in their submissions.

60.1.2 The fourth respondent palpably failed to explain how it could conceivably be that the word "*title*" in Clause 9.4 of the Edcon Merchandise Supply Agreement was ascribed the meaning



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ownership when it is trite that ownership can never pass when goods are supplied on consignment, given that this issue was expressly raised by the applicants.

60.1.3 The fourth respondent manifestly ignored the fact that the Edcon Merchandise Supply Agreement was drafted by legally trained people and failed to recognise the *ex contrariis* principle in that when the authors wanted to refer to ownership they did so by using the word "*ownership*".

60.1.4 The fourth respondent's conclusion that the explanation tendered by the applicants in regard to the meaning to be ascribed to Clause 9.4 of the Edcon Merchandise Supply Agreement should be rejected because it would amount to stating the obvious applies equally to the conclusion reached by the fourth respondent that the meaning "*ownership*" should be ascribed to the word "*title*" in Clause 9.4 of the Edcon Merchandise Supply Agreement considering that it was not in dispute that the applicants sold goods to Edcon on credit.


60.1.5 Furthermore, the fourth respondent disregarded the fact that the applicants tendered that explanation in order to give meaning to Clause 9.4 of the Edcon Merchandise Supply Agreement following on what should be an obvious conclusion, which is that "*title*" in Clause 9.4 of the Edcon Merchandise Supply Agreement

can simply not possibly mean "*ownership*" regard being had to the inclusion therein of goods on consignment.

60.1.6 The fourth respondent committed a manifest error in concluding that the meaning "*ownership*" should be ascribed to the word "*title*" in Clause 9.4 of the Edcon Merchandise Supply Agreement considering that such an interpretation leads to an unintelligible meaning being ascribed to that Clause.

60.1.7 A further manifest error committed by the fourth respondent in respect of the exercise of interpretation was the finding that a proper interpretation of Clause 9.4 of the Edcon Merchandise Supply Agreement did not lead to the conclusion that that could establish a Reservation of Ownership on the part of the applicants. In making this finding, the fourth respondent was unduly and impermissibly influenced by the wording that had been struck out in the letter of the first applicant to Edcon. This in circumstances where, on a proper interpretation of Clause 9.4 of the Edcon Merchandise Supply Agreement, that Clause makes it plain that ownership does not transfer on delivery.

60.1.8 The fourth respondent simply ignored the evidence of the expert Baard, which evidence was not contradicted in any manner, in regard to the South African experience with the use of the word "*title*" to represent "*ownership*" in the clothing industry. This, in

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circumstances where the Edcon Merchandise Supply Agreement expressly provides that regard must be given to the way in which words are understood in the usual South African context.

- 60.1.9 A further irregularity or manifest error on the part of the fourth respondent, when regard is had to the foregoing, is the fourth respondent's disregard for his obligation to interpret the Edcon Merchandise Supply Agreement in a judicious manner as required by law, notwithstanding the submissions of the parties. It is difficult to accept as a mere coincidence that the fourth respondent so failed considering that the second and third respondents, in an unauthorised supplementary submission to the fourth respondent, contended, albeit plainly incorrectly, that the fourth respondent should not have regard to a contextual interpretation of the Edcon Merchandise Supply Agreement since the applicants had not raised this in their affidavits!

Even if it were so that the applicants were required to raise all their contentions regarding interpretation, which is a matter of law and not of fact, in their affidavits, which the applicants do not accept, in terms of the accord reached between the parties and the fourth respondent, the fourth respondent was enjoined to call for further evidence and/or submissions, and not to dismiss the applicants' claims.





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60.2 The fourth respondent also made manifest errors in seeking to rely upon the meaning "*ownership*" being ascribed to the word "*title*" in Section 134(3) of the Companies Act to determine the meaning to be ascribed to the word "*title*" in the Edcon Merchandise Supply Agreement. The manifest errors in this regard appear as follows:-

60.2.1 It is not that the meaning "*ownership*" has been ascribed to the word "*title*" in Section 134(3) of the Companies Act, but rather the meaning "*ownership*" has been ascribed to the words "*title interest*" in Section 134(3) of the Companies Act.

60.2.2 It is a non-sequitur that simply because the meaning "*ownership*" has been ascribed to the words "*title interest*" in Section 134(3) of the Companies Act, it therefore follows that the meaning "*ownership*" must be ascribed to the word "*title*" in the Edcon Merchandise Supply Agreement. That notwithstanding, that is in effect what the fourth respondent found. This in circumstances where the applicants accepted that one of the meanings of "*title*" is indeed "*ownership*" but contended, based on authority, that this was not necessarily always so. Just as the court analysed the words "*title interest*" in the Companies Act to determine whether it referred to "*ownership*", so to was the fourth respondent enjoined to analyse the Edcon Merchandise Supply Agreement to determine the very same issue. Instead of doing



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so, in clearly what amounts to a manifest error, the fourth respondent, in effect, simply transposed the meaning ascribed to "*title interest*" in the Companies Act to the Edcon Merchandise Supply Agreement without warrant or justification more so considering that there is no nexus, direct or indirect, between the provisions of the statute and the wording of the Edcon Merchandise Supply Agreement.

60.3 The fourth respondent slavishly adopted the argument of the second and third respondents that a distinction could be drawn in the present matter between its facts and those that apply with regard to the striking out of material in a written agreement in regard to which the then Appellate Division held no inference may be drawn. The fourth respondent violated that precept by in fact drawing an inference when the law is plain that no such inference may be drawn. Even in drawing that inference, which is not permissible, the fourth respondent only had superficial regard to the material deleted and failed to recognise that the first applicant in fact drew a clear distinction between the words "*ownership*" and "*title*".

60.4 A further manifest irregularity is the failure of the fourth respondent to apply his mind to the issue at hand in a legitimate manner. This is demonstrated by the fact that once again the fourth respondent slavishly adopted the argument of the second and third respondents with regard to the effect of the deletion of wording in first applicant's letter to Edcon and treated that issue as if it applied equally to all the other applicants. This





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particular approach is evident from the submissions tendered by the second and third respondents. It is plain as day that the fourth respondent simply adopted that approach without bringing his mind to bear on the subject.

60.5 The fourth respondent quite evidently failed, generally, to have regard to the contentions advanced by the applicants. The present is not a matter where it can be asserted that simply because a Tribunal has not referred to something, it does not mean that the Tribunal did not consider it. This is so because the present matter called for the Tribunal to explain why compelling and unanswered, if not unanswerable, assertions made by the applicants stood to be rejected.

60.6 Furthermore, this is not a case where it can be suggested that a Tribunal has simply come to a wrong conclusion and that the only relief against that would be an appeal. That contention is appropriate where, for example, a Tribunal interprets one binding judgment incorrectly. Here, however, with the greatest of deference and respect, the court is dealing with a situation of a total disregard for binding authority and an abject failure to approach a determination of the dispute in a legitimate manner alternatively a failure to appreciate what the fourth respondent was being called upon to do. The finding is so replete with unsustainable conclusions as to render it an instance of where it can be said that the Tribunal failed to appreciate what it is that it was tasked to do.



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60.7 Fundamentally, the fourth respondent committed a manifest error in demonstrating a mind that was not open to persuasion.

RELIEF SOUGHT

61. The applicants quite evidently seek the setting aside of the award made by the fourth respondent and published on 22 September 2020.
62. The Arbitration Act provides that in the event of this court setting aside an award it may refer the matter back to a Tribunal as directed by it for a fresh determination of the matter.
63. At the inception of the referral of this dispute by the applicants with the second and third respondents, it had been agreed, between the parties, that each side would put forward the names of three possible candidates to determine the dispute.
64. The applicants put forward the names of the Honourable fourth respondent, the Honourable Justice Nugent, also a retired Justice of the Supreme Court of Appeal, as well as the Honourable Judge Classen, a retired Judge of this Division.



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65. As it transpired, the second and third respondents did not put forward any nominees. Rather they accepted the fourth respondent as the agreed adjudicator.
66. It is for this reason that the applicants now ask, in the notice of motion prefixed hereto, that this court direct that the matter be referred for determination afresh by either one or the other of those two nominees, both of whom have impeccable credentials and distinguished careers as Justices as indeed has the fourth respondent.
67. In the alternative, the applicants would seek relief that to this court seems meet.
68. Insofar as costs are concerned, the applicants can hardly seek costs against the fourth respondent considering his function in this matter.
69. On the other hand, they are clearly entitled to seek costs against the second and third respondents but only in the event of them opposing this application. This has been provided for in the relief sought as well.

REQUIREMENT FOR SECURITY

70. The applicants' requirement for security for their claims is self-evident. If such security is not furnished by the second and third respondents and the applicants are eventually successful in this application and/or in any fresh determination of

 
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their claims based on Reservation of Ownership that the court might direct, the applicants will be saddled with a hollow judgment.



71. It is quite plain from Section 134 of the Companies Act that the legislature contemplates security.
72. In the first instance, the applicants contend that the security furnished to the applicants by the second and third respondents on 14 August 2020 is open-ended and that for the avoidance of any unnecessary collateral disputes this Honourable Court should so declare that to be the case. Annexed hereto marked "C" is a copy of the communication in which the security was furnished.
73. In the first alternative thereto, applicants ask that the second and third respondents be restrained and interdicted from making payments to any creditors under the Business Rescue of Edcon until the final determination of this application including the final determination of any fresh determination of applicants' claims based on Reservation of Ownership that the court may direct.
74. In the second alternative thereto, applicants ask that this Honourable Court direct the second and third respondents to furnish security to the applicants in an amount not less than the combined claims of the applicants based on their Reservation of Ownership with such security to endure until the final determination of this application including the final determination of any fresh determination of applicants' claims based on Reservation of Ownership that the court may direct.

75. It does not lie in the mouths of the second and third respondents to contend that the finalisation of the Business Rescue of Edcon will be thereby delayed. Applicants say this because they invited the second and third respondents to agree to a more expeditious procedure for a determination of applicants' claims as set out herein but this invitation was spurned by the second and third respondents. They only have themselves to blame for any alleged delay.

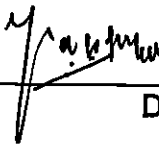
CONFIRMATORY AND SUPPORTING AFFIDAVITS

76. Annexed hereto marked "D" are confirmatory and supporting affidavits of the other applicants.

WHEREFORE the applicants pray for relief as set out in the notice of motion prefixed hereto.



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DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this Affidavit which was signed and sworn before me at Durban on this the 27 day of **OCTOBER 2020**, the regulations contained in government notice no. 1258 of 21 July 1972, as amended, and government notice no. R1648 of 19 August 1977, as amended, having been complied with.


COMMISSIONER OF OATHS

Sareth Marc Leigh Peters
10 Derby Place, Derby Downs
Westville, Durban, RSA
PRACTISING ATTORNEY
CONVEYANCER & NOTARY PUBLIC
COMMISSIONER OF OATHS



PATHER & PATHER

ATTORNEYS, NOTARIES & CONVEYANCERS

DATE: 23 September 2020

OUR REF: KUBEN MOODLEY/LG/K793

YOUR REF: L Field

ENS Africa Incorporated
Attention: Ms Letitia Field

Per E-mail: lfield@ENSafrica.com

Dear Letitia

DISPUTE RESOLUTION – VARIOUS SUPPLIERS / EDCON LIMITED (IN BUSINESS RESCUE)

The award from Learned Justice Brand, delivered yesterday, refers.

Our clients are of the respectful view that the Learned Justice committed one or more manifest errors in coming to the conclusion that he did and are resolved to take the matter further.

The matter can be taken further either by a process of arbitration appeal alternatively via a review application to the High Court. Our clients are content to adopt either expedient. However, it occurs to them that a review application would take some years to be finally determined and this would, in the interim, hold up the finalisation of the Business Rescue process.

Pather & Pather Attorneys Incorporated (Registration No: 2015/051010/21) Attorneys, Notaries and Conveyancers

DURBAN: 3 Nollsworth Crescent, Nollsworth Park (off Armstrong Avenue), La Lucia Ridge ■ P.O Box 55, Umhlanga, 4319 Docex 373, Durban

JHB: First Floor, Block A, 66 Rivonia Road, Sandton, Johannesburg, 2146

National Contact Details: Telephone: (+27-31) 3044212 ■ Fax: (+27) (0) 86 649 6222

Email: mail@patherandpather.co.za Website: www.patherandpather.co.za

Directors: Sivi Pather ■ Edward Christopher Abraham ■ Kassim Suliman ■ Kuben Moodley

Senior Associates: Raeesa Cassim (Notary Public) ■ David Grey ■ Tina Kalideen ■ Wynand Nortjé (Conveyancer)

Associates: Sisanda Khayelihle Linda ■ Xolile Desree Nhlapho ■ Krishnaveni Pillay (Conveyancer)

Consultants: Irfaan Abdulla (Notary Public) ■ Josan Bhavani Chetty (Conveyancer & Notary Public) ■ Bhauna Hansjee Nirvana Mootilal Oodith

In the circumstances, we are instructed to ask that you please establish from your clients as to whether they are prepared to agree that the matter can be taken to appeal under arbitration. If your clients are so agreeable, our clients would be content to take the matter on appeal before a single arbitrator and would propose the name of Justice Nugent for this purpose.

Should your clients not be so agreeable for the matter to proceed to arbitration appeal, then please be advised that our clients will deliver a review application on your clients shortly. Please let us know whether, in that eventuality, you will receive service of this application on behalf of your clients. Furthermore, kindly advise whether, in that eventuality, your clients would have any objection to our clients not citing Justice Brand, as a respondent in the review application, by agreement with the Justice, coupled with a notice from Justice Brand waiving his right to be joined and indicating that he will abide the decision of the Court.

Needless to say, whether the matter proceeds to appeal or review, it will be open to your clients to contend, as they no doubt will, that Learned Justice Brand did not commit any manifest error or errors in determining the matter.

Yours Faithfully

PATHER AND PATHER ATTORNEYS INC.

"Kuben Moodley"

PLEASE DIRECT ALL RESPONSES TO:
kuben@patherandpather.co.za

RE: KINGSGATE CLOTHING (PTY) LTD & 7 OTHERS // EDCON LIMITED (IN BUSINESS RESCUE) ("Edcon") & 2 OTHERS - RESERVATION OF OWNERSHIP DISPUTE 004-28 "B"

Letitia Field <lfield@ensafrica.com>
28/09/2020 at 11:17:12

From: Letitia Field <lfield@ensafrica.com>
Sent: 28/09/2020 at 11:17:12
To: Kuben Moodley <Kuben@patherandpather.co.za>
Cc: Sache Cassan <sache@patherandpather.co.za>, Lynell Ganesan <lynell@patherandpather.co.za>, Gary Oertel <goertel@ensafrica.com>

Dear Sirs

We refer to your letter of 23 September 2020.

We do not propose dealing herein with the allegations contained in your letter, save to record that we do not agree with same.

In terms of paragraph 39.3.7 of the adopted business rescue plan, the expert's determination is final and binding on your clients, Edcon and the business rescue practitioners, and will not be subject to any subsequent review or appeal application / procedure / process.

Our respective clients are statutorily bound by the provisions of the adopted business rescue plan.

Our clients are also statutorily obliged to implement the provisions of the adopted business rescue plan, which they will continue doing.

All of our clients' rights are reserved.

Regards

Letitia Field

Director
Insolvency, Restructuring and Business Rescue

+27 11 269 7600

+27 82 787 9504

lfield@ENSafrica.com

ENSafrica locations

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From: Kuben Moodley <Kuben@patherandpather.co.za>
Sent: 23 September 2020 12:28 PM
To: Letitia Field <lfield@ensafrica.com>; Gary Oertel <goertel@ensafrica.com>
Cc: Sache Cassan <sache@patherandpather.co.za>; Lynell Ganesan <lynell@patherandpather.co.za>
Subject: KINGSGATE CLOTHING (PTY) LTD & 7 OTHERS // EDCON LIMITED (IN BUSINESS RESCUE) & 2 OTHERS - RESERVATION OF OWNERSHIP DISPUTE
Importance: High

004-28

Dear Letitia



ENSAfrica
 The MARC | Tower 1
 129 Rivonia Road Sandton
 Johannesburg South Africa 2196
 P O Box 783347 Sandton South Africa 2146
 Docex 152 Randburg
 tel +2711 269 7600
 info@ENSAfrica.com

Pather & Pather Attorneys
 By email

L Field our ref
 your ref
 date

14 August 2020

Dear Sirs

RE: DISPUTE RESOLUTION – VARIOUS SUPPLIERS / EDCON LIMITED (IN BUSINESS RESCUE)

1. We refer to your letters of 12 and 13 August 2020. We do not propose dealing with all of the allegations contained in your letters and all of our clients' rights to do so at a later stage, should same become necessary, are reserved.
2. In regard to the minute:
 - 2.1. Your existing paragraph 7 does not reflect what was discussed and agreed to during the pre-dispute resolution meeting. Our amendments to paragraph 7 do. Moreover, your counsel did not object to what was stated but indicated her agreement with same.
 - 2.2. For ease of reference, the following was stated:

Adv Azhar Bham	... if we sorted out on the dates, it would be saying to Justice Brand that once he has received the affidavits and our written submissions it is in his discretion on whether he wants to and can deal with it purely on paper or whether he wants oral submissions and if there is disputes on fact he will deal with it as in normal motion court proceedings. So in other words Justice Brand will have a wide discretion on how to deal with the papers having regard to what is applicable on motion proceedings save that if Justice Brand thinks we do not need an oral hearing, which is the parties' preference, then he will make a decision, he will make the award, on paper but if he thinks he wants us to address him on certain aspects then he will advise us on that.
Adv Macmanus	Uh-hm

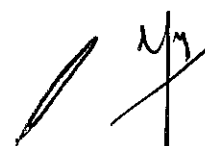
Africa's largest law firm

Edward Nathan Sonnenbergs Incorporated | registration number 2006/018200/21
 M.M. Katz (chairman) M. Mgudlwa (chief executive) M.W. Mallou (chief operating officer) Y.A. Mendelsohn (chief operating officer)
 a list of directors is available on our website ENSAfrica.com/letterheadSA
 level 1 BBBEE rating

ENSAfrica.com
 004-29

- 2.3. There is no purpose in debating this further. Should you insist on wanting to have an incorrect recordal in paragraph 7 of the minute, we will leave the respective parties' proposals in regard to same to the discretion of Judge Brand.
3. In regard to the additional claimants:
- 3.1. On 24 July 2020, you advised our offices that Global Source (Pty) Ltd and Sunningdale Trading (Pty) Ltd "*will be pursuing their respective reservation of ownership claims on their own*".
- 3.2. During the meeting held on 28 July 2020, your counsel specifically recorded and confirmed the aforesaid correspondence and the fact that your firm was not representing the aforesaid parties in the dispute resolution.
- 3.3. No mention was made of the additional parties until after your clients' affidavits were filed.
- 3.4. Our clients are not in agreement with the additional parties being added to the existing dispute resolution before Judge Brand.
- 3.5. The aforesaid parties will be required to follow the dispute resolution process provided for in paragraph 39 of the business rescue plan.
4. In regard to the issue of security:
- 4.1. We note the change in your clients' stance in regard to the request for security.
- 4.2. Although our clients do not agree with your clients' position, they do not wish to become embroiled in an unnecessary debate on this issue any further.
- 4.3. We confirm that, to the extent that your clients are successful in establishing a reservation of ownership in and to the unpaid stock on hand as at the date of business rescue, our clients undertake that Edcon will pay the amounts relating to the unpaid stock on hand as at the date of business rescue.
5. All of our clients' rights are reserved.

Yours faithfully
Edward Nathan Sonnenbergs Inc.
Per:
Letitia Field
[Sent electronically without signature]



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

In the matter between:-

**KINGSGATE CLOTHING (PTY) LTD T/A
MAJESTIC CLOTHING MANUFACTURERS,
PRINCETON SCHOOLWEAR MANUFACTURERS AND
STAR CLOTHING MANUFACTURERS**

First Applicant

MAYTEX LINEN CC

Second Applicant

SUPER OCEAN TRADING CC

Third Applicant

MAYTEX CARDING CC

Fourth Applicant

CRUISE COLLECTIONS CC

Fifth Applicant

TWIN CLOTHING MANUFACTURERS (PTY) LTD

Sixth Applicant

APPAREL INDUSTRIES (PTY) LTD

Seventh Applicant

CLEMATIS TRADING (PTY) LTD

Eighth Applicant

and

EDCON LIMITED (IN BUSINESS RESCUE)

First Respondent

**PIERS MARSDEN
(JOINT BUSINESS RESCUE PRACTITIONER)**

Second Respondent

**LANCE SCHAPIRO
(JOINT BUSINESS RESCUE PRACTITIONER)**

Third Respondent

JUSTICE FDJ BRAND

Fourth Respondent



**CONFIRMATORY AND SUPPORTING AFFIDAVIT OF SECOND, THIRD AND
FOURTH APPLICANTS**

I, the undersigned,

MOHAMMED ADAMJEE

do hereby make oath and state:-

1. I am an adult male and the Chief Financial Officer of the second, third and fourth applicants. I am duly authorised to depose to this affidavit and to represent the aforesaid applicants in this matter.
2. The facts deposed to herein are within my personal knowledge and are true and correct.
3. I have read and had regard to the founding affidavit of Yusuf Ahmed Sadek Vahed, on behalf of the first applicant, in this matter and confirm as being correct therein all averments which relate to the second, third and fourth applicants.
4. I make common cause with all the applicants herein in joining them to seek the relief herein which we do, more particularly on the grounds set out in Vahed's affidavit aforesaid.



004-32




DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this Affidavit which was signed and sworn before me at Durban on this the *27* day of **OCTOBER 2020**, the regulations contained in government notice no. 1258 of 21 July 1972, as amended, and government notice no. R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

Gareth Marc Leigh Peters
10 Derby Place, Derby Downs
Westville, Durban, RSA
PRACTISING ATTORNEY
CONVEYANCER & NOTARY PUBLIC
COMMISSIONER OF OATHS


004-33

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

In the matter between:-

**KINGSGATE CLOTHING (PTY) LTD T/A
MAJESTIC CLOTHING MANUFACTURERS,
PRINCETON SCHOOLWEAR MANUFACTURERS AND
STAR CLOTHING MANUFACTURERS**

First Applicant

MAYTEX LINEN CC

Second Applicant

SUPER OCEAN TRADING CC

Third Applicant

MAYTEX CARDING CC

Fourth Applicant

CRUISE COLLECTIONS CC

Fifth Applicant

TWIN CLOTHING MANUFACTURERS (PTY) LTD

Sixth Applicant

APPAREL INDUSTRIES (PTY) LTD

Seventh Applicant

CLEMATIS TRADING (PTY) LTD

Eighth Applicant

and

EDCON LIMITED (IN BUSINESS RESCUE)

First Respondent

**PIERS MARSDEN
(JOINT BUSINESS RESCUE PRACTITIONER)**

Second Respondent

**LANCE SCHAPIRO
(JOINT BUSINESS RESCUE PRACTITIONER)**

Third Respondent

JUSTICE FDJ BRAND

Fourth Respondent

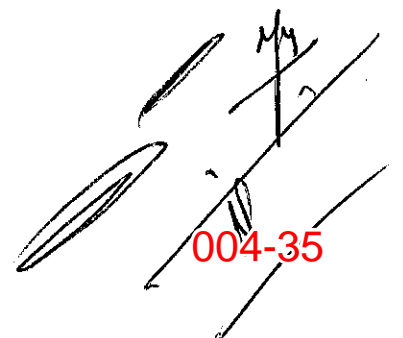
CONFIRMATORY AND SUPPORTING AFFIDAVIT OF THE FIFTH APPLICANT

I, the undersigned,

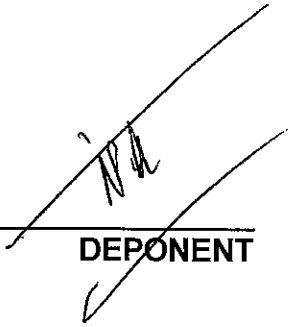
NASEEM PARUK

do hereby make oath and state:-

1. I am an adult male and the Managing Member of the fifth applicant.
2. The facts contained herein are within my personal knowledge and are true and correct.
3. I have read and had regard to the founding affidavit of Yusuf Ahmed Sadek Vahed, on behalf of the first applicant, in this matter and confirm as being correct therein all averments which relate to the fifth applicant.
4. I make common cause with all the applicants herein in joining them to seek the relief herein which we do, more particularly on the grounds set out in Vahed's affidavit aforesaid.



004-35





DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this Affidavit which was signed and sworn before me at Durban on this the *27* day of **OCTOBER 2020**, the regulations contained in government notice no. 1258 of 21 July 1972, as amended, and government notice no. R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

Gareth Marc Leigh Peters
10 Derby Place, Derby Downs
Westville, Durban, RSA
PRACTISING ATTORNEY
CONVEYANCER & NOTARY PUBLIC
COMMISSIONER OF OATHS

 
004-36

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

In the matter between:-

**KINGSGATE CLOTHING (PTY) LTD T/A
MAJESTIC CLOTHING MANUFACTURERS,
PRINCETON SCHOOLWEAR MANUFACTURERS AND
STAR CLOTHING MANUFACTURERS**

First Applicant

MAYTEX LINEN CC

Second Applicant

SUPER OCEAN TRADING CC

Third Applicant

MAYTEX CARDING CC

Fourth Applicant

CRUISE COLLECTIONS CC

Fifth Applicant

TWIN CLOTHING MANUFACTURERS (PTY) LTD

Sixth Applicant

APPAREL INDUSTRIES (PTY) LTD

Seventh Applicant

CLEMATIS TRADING (PTY) LTD

Eighth Applicant

and

EDCON LIMITED (IN BUSINESS RESCUE)

First Respondent

**PIERS MARSDEN
(JOINT BUSINESS RESCUE PRACTITIONER)**

Second Respondent

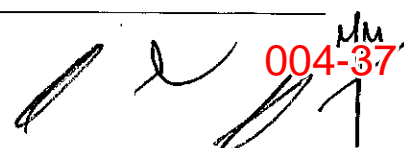
**LANCE SCHAPIRO
(JOINT BUSINESS RESCUE PRACTITIONER)**

Third Respondent

JUSTICE FDJ BRAND

Fourth Respondent

CONFIRMATORY AND SUPPORTING AFFIDAVIT OF THE SIXTH APPLICANT

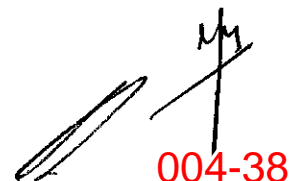
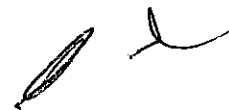
 004-37

I, the undersigned,

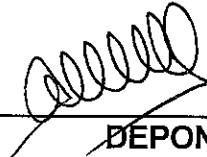
ASLAM YACOOB PARUK

do hereby make oath and state:-

1. I am an adult male and the Chief Executive Officer of the sixth applicant.
2. The facts contained herein are within my personal knowledge and are true and correct.
3. I have read and had regard to the founding affidavit of Yusuf Ahmed Sadek Vahed, on behalf of the first applicant, in this matter and confirm as being correct therein all averments which relate to the sixth applicant.
4. I make common cause with all the applicants herein in joining them to seek the relief herein which we do, more particularly on the grounds set out in Vahed's affidavit aforesaid.



004-38



DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this Affidavit which was signed and sworn before me at Durban on this the 27 day of **OCTOBER 2020**, the regulations contained in government notice no. 1258 of 21 July 1972, as amended, and government notice no. R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

Gareth Marc Leigh Peters
10 Derby Place, Derby Downs
Westville, Durban, RSA
PRACTISING ATTORNEY
CONVEYANCER & NOTARY PUBLIC
COMMISSIONER OF OATHS



004-39

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

In the matter between:-

**KINGSGATE CLOTHING (PTY) LTD T/A
MAJESTIC CLOTHING MANUFACTURERS,
PRINCETON SCHOOLWEAR MANUFACTURERS AND
STAR CLOTHING MANUFACTURERS**

First Applicant

MAYTEX LINEN CC

Second Applicant

SUPER OCEAN TRADING CC

Third Applicant

MAYTEX CARDING CC

Fourth Applicant

CRUISE COLLECTIONS CC

Fifth Applicant

TWIN CLOTHING MANUFACTURERS (PTY) LTD

Sixth Applicant

APPAREL INDUSTRIES (PTY) LTD

Seventh Applicant

CLEMATIS TRADING (PTY) LTD

Eighth Applicant

and

EDCON LIMITED (IN BUSINESS RESCUE)

First Respondent

**PIERS MARSDEN
(JOINT BUSINESS RESCUE PRACTITIONER)**

Second Respondent

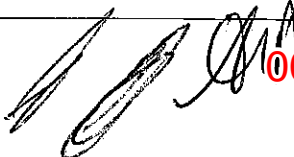
**LANCE SCHAPIRO
(JOINT BUSINESS RESCUE PRACTITIONER)**

Third Respondent

JUSTICE FDJ BRAND

Fourth Respondent

AFFIDAVIT OF THE SEVENTH APPLICANT

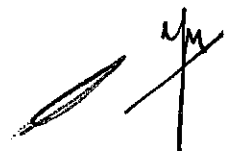

004-40
1

I, the undersigned,

ABDUL KADER PARUK

do hereby make oath and state:-

1. I am an adult male and a Director of the seventh applicant. I am duly authorised to depose to this affidavit and to represent the seventh applicant in this matter.
2. The facts contained herein are within my personal knowledge and are true and correct.
3. I have read and had regard to the founding affidavit of Yusuf Ahmed Sadek Vahed, on behalf of the first applicant, in this matter and confirm as being correct therein all averments which relate to the seventh applicant.
4. I make common cause with all the applicants herein in joining them to seek the relief herein which we do, more particularly on the grounds set out in Vahed's affidavit aforesaid.




DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this Affidavit which was signed and sworn before me at Durban on this the 27 day of **OCTOBER 2020**, the regulations contained in government notice no. 1258 of 21 July 1972, as amended, and government notice no. R1648 of 19 August 1977, as amended, having been complied with.


COMMISSIONER OF OATHS

Gareth Marc Leigh Peters
10 Derby Place, Derby Downs
Westville, Durban, RSA
PRACTISING ATTORNEY
CONVEYANCER & NOTARY PUBLIC
COMMISSIONER OF OATHS

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

In the matter between:-

**KINGSGATE CLOTHING (PTY) LTD T/A
MAJESTIC CLOTHING MANUFACTURERS,
PRINCETON SCHOOLWEAR MANUFACTURERS AND
STAR CLOTHING MANUFACTURERS**

First Applicant

MAYTEX LINEN CC

Second Applicant

SUPER OCEAN TRADING CC

Third Applicant

MAYTEX CARDING CC

Fourth Applicant

CRUISE COLLECTIONS CC

Fifth Applicant

TWIN CLOTHING MANUFACTURERS (PTY) LTD

Sixth Applicant

APPAREL INDUSTRIES (PTY) LTD

Seventh Applicant

CLEMATIS TRADING (PTY) LTD

Eighth Applicant

and

EDCON LIMITED (IN BUSINESS RESCUE)

First Respondent

**PIERS MARSDEN
(JOINT BUSINESS RESCUE PRACTITIONER)**

Second Respondent

**LANCE SCHAPIRO
(JOINT BUSINESS RESCUE PRACTITIONER)**

Third Respondent

JUSTICE FDJ BRAND

Fourth Respondent

AFFIDAVIT OF THE EIGHTH APPLICANT

I, the undersigned,

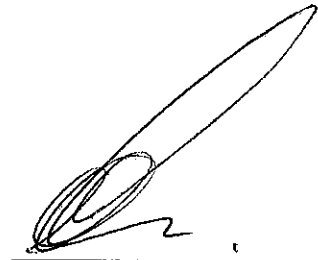
ARTHUR LIMBOURIS

do hereby make oath and state:-

1. I am an adult male and the Chief Executive Officer of the eighth applicant.
2. The facts contained herein are within my personal knowledge and are true and correct.
3. I have read and had regard to the founding affidavit of Yusuf Ahmed Sadek Vahed, on behalf of the first applicant, in this matter and confirm as being correct therein all averments which relate to the eighth applicant.
4. I make common cause with all the applicants herein in joining them to seek the relief herein which we do, more particularly on the grounds set out in Vahed's affidavit aforesaid.



004-44



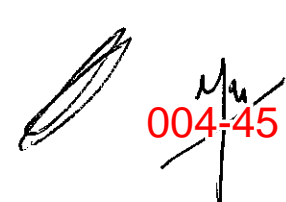
DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this Affidavit which was signed and sworn before me at Durban on this the *27* day of **OCTOBER 2020**, the regulations contained in government notice no. 1258 of 21 July 1972, as amended, and government notice no. R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

Gareth Marc Leigh Peters
10 Derby Place, Derby Downs
Westville, Durban, RSA
PRACTISING ATTORNEY
CONVEYANCER & NOTARY PUBLIC
COMMISSIONER OF OATHS



004-45