

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 57045/2020

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

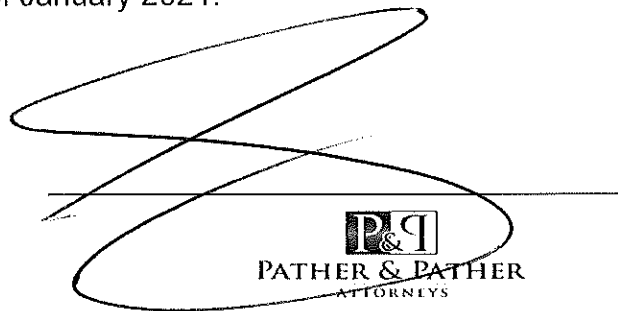
and

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

FILING NOTICE

BE PLEASED TO TAKE NOTICE THAT the Applicants file evenly herewith their
Replying Affidavit in the matter.

Dated at DURBAN on this the 12th day of January 2021.



PATHER AND PATHER ATTORNEYS INC.
PLAINTIFFS' ATTORNEYS
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PRETORIA
Tel: (012) 425 3451
Ref: AVN/sg

**TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
PRETORIA**

**AND TO: ENS AFRICA INCORPORATED
ATTORNEYS FOR FIRST TO THIRD RESPONDENTS
SANDTON
C/O JACOBSON AND LEVY INC.
215 ORIENT STREET
ARCADIA
PRETORIA**

AND TO: COUZYN HERTZOG AND HORAK ATTORNEYS
FOURTH RESPONDENT'S ATTORNEY
321 MIDDEL STREET
BROOKLYN
0181
PER EMAIL BY AGREEMENT: annaliem@couzyn.co.za

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 57045/2020

In the matter between:

KINGSGATE CLOTHING (PTY) LIMITED First Applicant
t/a MAJESTIC CLOTHING MANUFACTURERS,
PRINCETON SCHOOLWEAR MANUFACTURERS
AND STAR CLOTHING MANUFACTURERS

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) Sixth Applicant
LIMITED

APPAREL INDUSTRIES (PTY) LIMITED Seventh Applicant

CLEMATIS TRADING (PTY) LIMITED Eighth Applicant

and


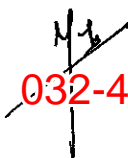
EDCON LIMITED (IN BUSINESS RESCUE) First Respondent

PIERS MARSDEN Second Respondent
(Joint business rescue practitioner)

LANCE SCHAPIRO Third Respondent
(Joint business rescue practitioner)

JUSTICE FDJ BRAND Fourth Respondent

REPLYING AFFIDAVIT

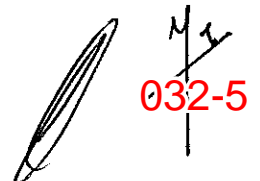
 
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I, the undersigned,

YUSUF AHMED SADEK VAHED

do hereby make oath and say:

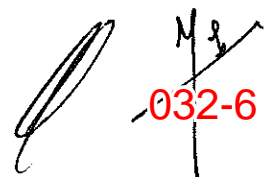
1. I am the Chief Executive Officer of the first applicant and confirm that I continue to be authorised to depose to this affidavit and to bring this application on behalf of the applicants.
2. The facts deposed to herein fall within my personal knowledge and are, to the best of knowledge, true and correct.
3. Where I make submissions, I rely on advice duly received.
4. I confirm reading the answering affidavit of Lance Schapiro, the third respondent, on behalf of the first and second respondents. As with the founding affidavit, I depose to and deliver this replying affidavit on behalf of all the applicants who bring this application together with the first applicant. It has been noted that this aspect of the matter has not been put into dispute by the second and third respondents and, for that reason, in order to not unnecessarily add paper to this application, confirmatory and supporting affidavits from the other applicants will not be obtained or delivered for purposes of this reply. However, should the second and third respondents



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make an issue of this at any stage, the applicants respectfully reserve their right to deliver such confirmatory and supporting affidavits in reply.

5. Where I refer to the first, second and third respondents collectively, I shall refer to them as "*the respondents*".
6. Prior to dealing *ad seriatim* with the contents contained therein, I wish to make some preliminary observations about the "*opposition*" put up by the respondents and the entire sustainability of the opposition put up by the respondents must be adjudged in light thereof.
7. These observations have been categorised under the following topics for the ease of reading and benefit of the above Honourable Court:-
 - 7.1 The role of the fourth respondent;
 - 7.2 Final and binding determination;
 - 7.3 The incorporation of the affidavits before the fourth respondent into the present application;
 - 7.4 Failure to deal substantively with the allegations contained in the founding affidavit;



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- 7.5 Remittal of the award;
- 7.6 The Security and Interdictory relief; and
- 7.7 Conclusion.

THE ROLE OF THE FOURTH RESPONDENT

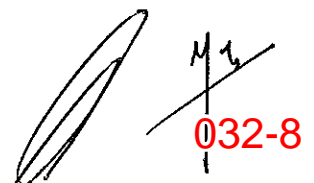
- 8. The respondents assert vociferously that the fourth respondent's role in the present application was that of an expert and not an arbitrator.
- 9. They advance such proposition for the simple reason that they are aware that it is more difficult to set aside an expert's determination than an arbitrator's. Their assertion is accordingly entirely opportunistic and self-serving.
- 10. The submission that the role that the fourth respondent played in the present matter was *akin* to that of an expert is simply not consonant with the common cause facts which are the following:-
 - 10.1 the fourth respondent's principal function was to determine the legal dispute between the applicants and the respondents



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concerning whether or not the applicants' retained ownership of their goods once delivery of them had taken place to the first respondent;

- 10.2 the usual function of an expert is, for example, providing a valuation for immovable property;
- 10.3 the manner in which the proceedings were conducted viz:-
- 10.3.1 the parties exchanged three sets of affidavits, *akin* to motion proceedings;
- 10.3.2 the parties submitted legal submissions with case law;
- 10.3.3 the fourth respondent determined that he would deal with disputes of fact as they are dealt with in motion court proceedings;
- 10.3.4 the fourth respondent arrogated for himself the right to hear oral evidence or oral argument should this be necessary;
- 10.4. The proceedings were clearly of a quasi-judicial nature;

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- 10.5. The fourth respondent was not entitled to rely exclusively on his own knowledge or expertise, independently or supplemented by material which need not conform to the rules of evidence, nor conduct his own investigation or reach his decision independently of the facts which were presented to him by both parties, but was obliged to make his determination on the facts and law presented to him.
11. However, and in the event that the applicants are incorrect in this regard, they still submit that, as recorded in the founding affidavit, the fourth respondent's judgment was exercised so unreasonably, irregularly and wrongly resulting in manifest errors being committed by him which have led to a patently inequitable result which is manifestly unjust.
12. In this regard the applicants submit that they have made out a case for setting aside the fourth respondent's determination in the event that the above Honourable Court holds that he was performing the function of an expert and not an arbitrator.




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FINAL AND BINDING

13. The respondents have advanced the proposition that the applicants' application is ill-founded because the fourth respondent's determination was alleged to be final and binding.
14. This submission fails to take into account the precise terms of clause 39.3.7 which provide 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."

15. Accordingly, a review or an appeal is available in the event that the fourth respondent committed a manifest error of law and/or fact.
16. A manifest error is an error that is plain and indisputable and that amounts to a complete disregard of the controlling law or the credible evidence on the record, which it is respectfully submitted the fourth respondent committed on all of the grounds set out in the founding affidavit.



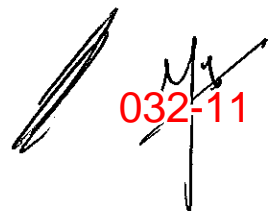
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THE INCORPORATION OF THE AFFIDAVITS BEFORE THE FOURTH RESPONDENT INTO THE PRESENT APPLICATION

17. The respondents complain about the applicants' incorporation of their evidence in the affidavits which served before the fourth respondent, into the present application.
18. The complaint is not understood. This more so when the respondents also confirm the contents of their answering affidavit before the fourth respondent and incorporated same into evidence in this application.
19. The applicants rely on all of the evidence set out in their affidavits in support of their submissions herein, as do the respondents.
20. Accordingly, no prejudice has been suffered by the respondents given that all of their contentions set out in their answering affidavit have been incorporated into the present affidavit.

FAILURE TO DEAL SUBSTANTIVELY WITH THE ALLEGATIONS CONTAINED IN THE FOUNDING AFFIDAVIT

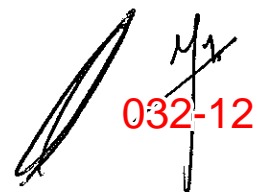
21. It is trite that a respondent is obliged to deal substantively with allegations set out in the founding affidavit. It is furthermore a trite principle that the



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answer must be in the same detail and particularity as the allegations being responded to. It is entirely insufficient to purport to rely on bald denials. More so in application proceedings which contain both allegations as well as evidence.

22. If one has regard to the answering affidavit put up by the respondents, as identified hereunder, the respondents have failed to deal substantively with the paragraphs which, on their own version, "***contain the crux of the case advanced by the applicants.***"
23. The respondents are content to rely on either bald denials as aforesaid alternatively to castigate the applicants for allegedly making scurrilous assertions against the conduct of the fourth respondent and the manner in which findings were made by him. Even retired justices of the Supreme Court of Appeal are, with sincere deference and respect, fallible.
24. The necessary inferences must be drawn arising from the failure of the respondents to advance any arguments as to why the assertions made by the applicants may be faulted.

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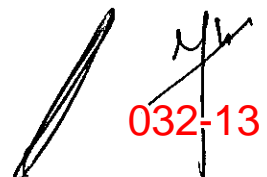
REMITTAL OF THE AWARD

25. The respondents misapply the law in this regard.

26. A setting aside application is not a process where facts which have already been established on arbitration are being reassessed as the respondents inappropriately contend is being sought by the applicants. Rather, an application to set aside an arbitral award is a procedure to ascertain the existence and validity of the arbitral award itself, and not as a recourse against the award.

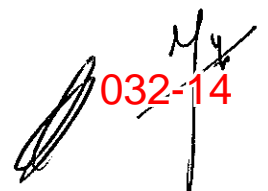
27. Given that a court lacks the discretion to substitute its own order for that of the arbitrator, the only appropriate order is to set aside the award and refer the matter to a new arbitration to be constituted in terms of clause 39.3.7 of the Plan-as contended for by the applicants in the founding affidavit.

28. Furthermore, the respondents would be invited to agree that the present pleadings could be utilised in the new reference, thus not prejudicing the respondents in any manner or form.


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THE SECURITY AND INTERDICTIONARY RELIEF

29. The respondents assert that the applicants have made out no case for the provision of security and the final interim interdict in regard thereto.
30. Firstly, this is disputed in the strongest terms. The record of the proceedings sets out all of the applicants' contentions.
31. Secondly, it was always the understanding of the parties that pending the final outcome of the proceedings, the security that had been tendered by the respondents would remain in place. The respondents have never contended to the contrary, save in the affidavit under reply, which only serves to demonstrate their *mala fides*.
32. Thirdly, insofar as the present undertaking is concerned this is fundamentally a matter of interpretation and it is patently clear that the respondents in no way qualified or limited their undertaking. In any event, in the face of the express wording of the Plan, which permits an appeal or a review based on a manifest error, it is submitted that the respondents' position, as set out in their affidavit, is both *mala fide* and unlawful. They betray a failure to understand their role and their obligations in the law.
33. Fourthly, it is plain from the relief sought, even in the alternative, in this regard, that there is no final interdict sought by the applicants. Any

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- interdictory relief sought by the applicants is quite evidently interim in form and in substance.
34. Fifthly, the applicants would assume that in the face of an application such as the present one, the respondents would not require an order directing them to do that which is obvious and obligatory under the Act. The corollary of what the respondents are saying is that if the applicants are ultimately successful and in the interim the respondents have distributed all the resources available to them, then the applicants must simply live with an empty judgment! It is not clear to the applicants as to whether the respondents are being *mala fide* or whether they are simply all at sea when it comes to what is obvious under the legislation.
35. Sixthly, the applicants would further assume that the respondents realise that in the event of them not ensuring that they make provision to satisfy any judgment which the applicants obtain against them and/or Edcon in business rescue, the applicants will be constrained to sue the respondents personally for satisfaction of such judgment!
36. I now turn to deal *ad seriatim* with the answering affidavit of the third respondent and any allegation not specifically dealt with, or at odds with what has been stated in the founding affidavit and herein, or is irrelevant, must be deemed to be denied.



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AD PARAGRAPHS 1 TO 5

37. Save to deny that the facts deposed to in the answering affidavit are true and correct, the remainder of the allegations contained herein are noted.

AD PARAGRAPHS 6 TO 9

38. Save to deny that it was impermissible for the applicants to incorporate their evidence set out in the affidavits which served before the fourth respondent into the founding affidavit and that the founding affidavit is impermissibly premised on legal argument, I repeat what has hereinbefore been stated under the rubric "*the incorporation of the affidavits before the fourth respondent into the present application*".
39. It bears mention that the respondents' affidavit is replete with legal argument.

AD PARAGRAPH 10

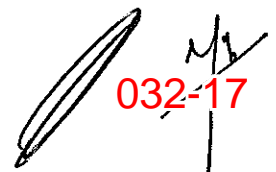
40. The notice of motion sets out the applicants' relief.




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AD PARAGRAPH 11

41. It is to be regretted that the respondents have deemed it appropriate to resort to invective and inflammatory language.
42. It is correct that, in the founding affidavit, whilst the applicants refer to gross irregularity, the applicants did not make reference to the term misconduct albeit in their assertions it is evident that they indeed rely upon misconduct.
43. This is patently clear from assertions such as a refusal by the fourth respondent to follow binding authority that was drawn to his attention, that the fourth respondent did not display a mind open to persuasion and that the fourth respondent slavishly followed what were clearly erroneous submissions made by the respondents, in regard to the proper interpretation of the Supply Agreement, to the effect that the court should disregard submissions on that interpretation because the applicants had not set out that interpretation in their papers!
44. In keeping with their entire approach to this application, the applicants have sought to deal with a matter, in respect of which they are fundamentally aggrieved, in a dignified and respectful manner. They would do so whether or not the fourth respondent was a retired justice of the Supreme Court of Appeal because they believe that that is the correct approach to litigation that should be adopted by responsible litigants.

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45. However, they have, at the same time, sought to be more even more circumspect in their approach considering that the fourth respondent is indeed a retired justice of the Supreme Court of Appeal.
46. They have adopted this approach not only in regard to refraining from use of the nomenclature "misconduct", but also in not requiring the fourth respondent to put up a copy of the record, as would occur with a functionary. In addition, they did not procure that the Sheriff should serve the application papers on the fourth respondent but agreed with the fourth respondent that the papers would simply be mailed to him.
47. In doing all of this, the applicants have demonstrated grave deference to the fourth respondent.
48. It is the respondents that have sought to create atmosphere by their resort to invective and inflammatory language as aforesaid.
49. Ironically, by doing so, it is the respondents who have demonstrated that they feel no need to extend the necessary respect and deference to the fourth respondent.
50. If the respondents are of the view that such respect and deference should mean that the applicants should not pursue a claim that they legitimately and




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bona fide believe is just, then the respondents betray a total failure to understand what it means to litigate under a constitutional dispensation.

51. So long as the applicants come to court with due respect and circumspection, they are entitled to pursue any claim that they *bona fide* believe in. Were that not so, there would be no substance to any contention that we operate under the rule of law.
52. The fourth respondent, qua arbitrator, was under a duty to apply the rules of substantive law, more so given the legal arguments which were attendant in this matter.

AD PARAGRAPH 12

53. It bears mention that the applicants brought an urgent application to interdict the implementation of the Plan in the first instance, which application was found not to be urgent.
54. Thereafter all the applicants voted against the implementation of the Plan.



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AD PARAGRAPH 13

55. The respondents disingenuously omit the words "***save for any manifest error***" in their contention that the determination is final and binding. I repeat what has hereinbefore been stated in this regard.

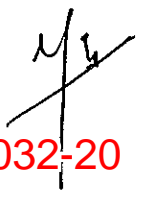

AD PARAGRAPHS 14 TO 15

56. This is disputed for the reasons set out in the founding affidavit and herein.

57. The applicants quite plainly rely both on gross irregularity as well as misconduct since the respondents insist that a label should be ascribed to those contentions that relate to misconduct.

AD PARAGRAPH 16

58. The respondents cannot wish away the reference to "manifest error" in clause 39.3.7.



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59. Accordingly, the allegations contained herein are disputed in the strongest terms for the simple reason that that is the basis upon which the fourth respondent's award may be set aside.

AD PARAGRAPHS 17 TO 18

60. It is disputed that the applicants have failed to make out a case for the setting aside of the award, for all of the reasons set out in the founding affidavit and herein.

AD PARAGRAPHS 19 TO 22

61. The applicants dispute that manifest errors of law and fact are not catered for in the Arbitration Act. In interpreting the grounds for review set out under the Act, our courts have concluded that they do indeed cover manifest errors.
62. In any event, the applicants also come under the common law as stated in the founding papers.



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63. Furthermore, on a proper interpretation of clause 39.3.7 of the Plan, it is submitted that once a manifest error is demonstrated then, *inter alia*, a review is available to an aggrieved party without the grounds of review being in any manner truncated.

AD PARAGRAPH 23


64. As already indicated, the applicants rely on gross irregularity as well as misconduct.

AD PARAGRAPHS 24 TO 25

65. Save to admit accurate assertions of the legal position, the remainder contained herein is denied.

AD PARAGRAPH 26

66. The allegations contained herein are disputed for all of the reasons set out hereinabove and more so where the fourth respondent was obliged to apply the substantive law.



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AD PARAGRAPH 27

67. The applicants maintain that they are entitled to the relief they seek both on the grounds of gross irregularity (manifest errors of law or fact) as well as on misconduct.

AD PARAGRAPH 28

68. This is a bald and an unsubstantiated assertion.
69. In any event, it is an assertion that is disputed by the applicants.

AD PARAGRAPH 29

70. As an ex-retired Judicial Officer of the Supreme Court of Appeal, the fourth respondent was performing a quasi-judicial function in the present matter and was obliged to apply the substantive law and follow the prescripts of the Supreme Court of Appeal authorities as to the manner in which a written agreement is interpreted.



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032-23

AD PARAGRAPH 30

71. This is disputed.

AD PARAGRAPHS 31 TO 32

72. The contents contained herein are noted.



AD PARAGRAPHS 33 TO 34

73. This is disputed for the reasons set out under the rubric "final and binding".

AD PARAGRAPHS 35 TO 36

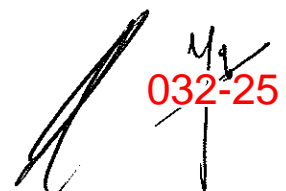
74. I repeat what has hereinbefore been stated under the rubric "the role of the fourth respondent".

75. Additionally, the fourth respondent *qua* arbitrator was afforded the same discretion as would be afforded to an arbitrator in terms of the Arbitration Act. The fourth respondent was free to determine the process provided always that the parties were afforded a fair hearing. For this reason, the

 
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fourth respondent *qua* arbitrator was entitled to determine that he would receive the evidence by way of affidavit, and if necessary, call for oral evidence or oral argument. This fact does not convert the fourth respondent's role into that of an expert.

76. One of the complaints levelled against the fourth respondent in this regard is that he failed to follow a procedurally fair process.
77. As a result thereof, the applicants were not afforded a fair hearing because it is readily apparent from the award that the fourth respondent disregarded legal submissions made by the applicants, in their (legal) submissions document, on the basis advanced by the respondents that the applicants had not set out their legal contentions in their affidavits.
78. Accordingly, substantial submissions made by the applicants in their legal submissions were blatantly and deliberately disregarded by the fourth respondent.
79. It was, furthermore, open to the fourth respondent to call for oral argument, where the issue of whether the fourth respondent was obliged to have regard to the submissions of the applicants could have been debated.
80. The blatant failure to have regard to applicants' submissions, constitutes a manifest error on the part of the fourth respondent, which constitutes a gross



032-25

procedural irregularity, which should, on its own, be enough to set aside the award.

AD PARAGRAPH 37



81. The fourth respondent qua arbitrator was afforded such discretion in the quasi-judicial position he found himself in.

AD PARAGRAPH 38

82. I repeat what is hereinbefore been stated regarding the fourth respondent's role as an arbitrator in the present dispute.

AD PARAGRAPH 39

83. This is disputed and it is reiterated that the respondents have failed to set out any primary facts why this is so.



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AD PARAGRAPH 40



84. At the expense of repeating myself, since the respondents insist on labels, the applicants do indeed rely on misconduct. There is nothing scurrilous about them doing so. Every proceeding brought on the basis of misconduct necessarily carries with it a measure of remissness or culpability on the part of the party whose award is being challenged. If it is scurrilous to base a proceeding on that basis, then it might as well be removed from the law.
85. The applicants have also contended for material errors of fact, when regard be had to the contents of the founding affidavit.

AD PARAGRAPH 41

86. This is disputed.

AD PARAGRAPH 42

87. The concession contained herein is noted.


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AD PARAGRAPHS 43 TO 45

88. The contents contained herein are noted.

AD PARAGRAPH 46



89. The above Honourable Court is referred to the bald denial.

AD PARAGRAPH 47

90. The applicants deny this repeated assertion of the respondents.

AD PARAGRAPH 48

91. The above Honourable Court is not at large to determine *in limine* points in the terms suggested by the respondents.

 
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AD PARAGRAPHS 49, 51 TO 53

92. I repeat what has hereinbefore been stated under the rubric "*final and binding*".

AD PARAGRAPH 50

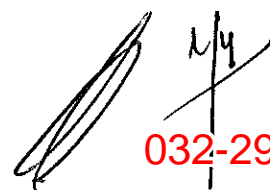
93. This is noted.

AD PARAGRAPH 52

94. On the contrary, it is the respondents who wish away the context within which the determination of the fourth respondent may be set aside.

AD PARAGRAPH 54

95. This denial is a mere assertion and does not constitute evidence in law. It is accordingly meaningless.


032-29

AD PARAGRAPH 55

96. This is disputed.

AD PARAGRAPH 56

97. This will be dealt with in legal argument.

AD PARAGRAPH 57

98. I reiterate that the applicants opposed the adoption of the Plan.

AD PARAGRAPH 58

99. I repeat what has hereinbefore been stated under the rubric "remittal of the award".

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AD PARAGRAPH 60

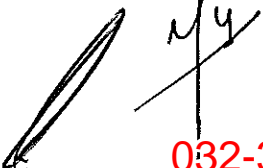
100. As aforesaid, the applicants rely on all of the averments contained in the affidavits filed on record as well as in the legal submissions. The respondents have likewise incorporated all of their evidence in the present application.

AD PARAGRAPH 61

101. It is disputed that the applicants have not made out a case for an interdict.

AD PARAGRAPH 63

102. As aforesaid, the respondents specifically identified the paragraphs which they understood formed the crux of the applicants' case, and despite such identification, the respondents have failed and/or refused to deal with the allegations contained therein.



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AD PARAGRAPH 64

103. The applicants rely on manifest errors of law and fact as set out in their founding affidavit.

AD PARAGRAPH 65

104. The respondents contend, positively, that the fourth respondent did have regard to the Supreme Court of Appeal authority and that the applicants' assertion to the contrary is "*scurrilous*".
105. Thereafter the respondents maintain, in the alternative, that even if the fourth respondent failed to have regard thereto, this does not amount to a manifest error of law. This is disputed in the strongest terms.
106. Apart from it amounting to a manifest error of law, it would also amount to misconduct to give it a label.


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AD PARAGRAPH 66

107. The above Honourable Court is referred to the abject failure by the respondents to substantively deal with the allegations set out in the founding affidavit, contenting themselves with bald denials.


AD PARAGRAPH 67

108. The above Honourable Court is referred to the failure by the respondents to substantively deal with the allegations set out in the founding affidavit, contenting themselves with bald denials.

AD PARAGRAPH 68

109. The respondents are well aware of the applicants' assertion that the fourth respondent failed to deal meaningfully in his award with the competing contentions of the parties, as it was his duty and obligation to do.

110. The fourth respondent preferred to adopt "*slavishly*" the views of the respondents without dealing meaningfully, as one would have expected, with the arguments put up by the applicants.



032-33

111. Such slavish adoption of the views of the respondents, amounts to misconduct plain and simple.

AD PARAGRAPH 69

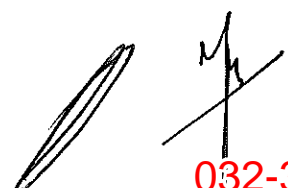
112. This is disputed.

113. Applicants contend that there was indeed a failure of the fourth respondent to understand the task at hand.

114. In any event, the manner in which the fourth respondent dealt with his mandate reveals misconduct.

AD PARAGRAPH 70

115. It is reiterated that the manifest errors of fact and law committed by the fourth respondent are plain and indisputable and amounts to a complete disregard of the controlling law or the credible evidence on the record.

A handwritten signature in black ink, consisting of a stylized, cursive script. The signature is written over a red stamp.

116. In the absence of the respondents putting up any primary facts in support of their denial, preferring to rely upon general denials, the applicants are unable to deal with the contentions contained herein.

AD PARAGRAPH 72

117. This is disputed.

AD PARAGRAPH 73

118. This is disputed on the grounds set out under the rubric "*full and final*" and "*remittal of the award*".

AD PARAGRAPH 74

119. The contentions made here pertain to the identity of the new arbitrator should the above Honourable Court determine that there ought to be a remittal of the dispute.



032-35

AD PARAGRAPHS 75 TO 76

120. The contents contained herein are disputed for all of the reasons set out in the founding affidavit and herein and I repeat what has hereinbefore been stated under the rubric "remittal of the award".

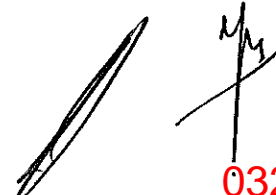
AD PARAGRAPH 78

121. As aforesaid, it was always the understanding of the applicants that the security would remain in place pending the final outcome of these proceedings.

AD PARAGRAPH 79

122. The relief sought is interim.

123. It is plain that the interdict is a quasi-vindicatory one in nature and the applicants are not required to demonstrate irreparable loss nor that they have no other remedy.



032-36

124. The balance of convenience is, with respect, self-evident. If the applicants are correct, then, it is clear, as night follows day, that the respondents are obliged to make good to the applicants in respect of the reservation of ownership which the applicants enjoy over the goods retained and sold by the respondents. If those monies are dispersed before the matter is determined, the applicants cannot be paid by the respondents qua business rescue practitioners. On the other hand, if the monies are retained, and it is finally determined that the applicants are wrong, then there will simply be a delay in paying out those monies to all concurrent creditors of Edcon in business rescue including the applicants.

AD PARAGRAPH 81

125. Every allegation contained herein is denied.

AD PARAGRAPH 82

126. It is disputed in the strongest terms that serious and unwarranted allegations have been levelled against the fourth respondent in regard to why it is contended that his determination ought to be set aside.



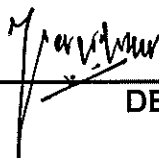
032-37

127. This is atmospheric and transparently advanced to cast aspersions on the applicants which is not warranted.

AD PARAGRAPHS 83 TO 84

128. Every allegation contained herein is denied as if specifically traversed, more specifically the request for punitive costs to be awarded against the applicants.

WHEREFORE the applicants persist with the relief sought in the notice of motion.



DEPONENT

The deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at DURBAN on this the 11th day of JANUARY 2021, the regulations contained in the Government Gazette Notice No R1258 of 21 July 1972, as amended, and Government Gazette Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

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