

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

Case No.:0010652/2020

In the matter between:

**PAN AFRICAN SHOPFITTERS (PTY)
LIMITED**

Applicant

and

EDCON LIMITED

First Respondent

(Registration Number: 2007/003525/06)

PIERS MARSDEN

Second Respondent

LANCE SCHAPIRO

Third Respondent

**THE COMPANIES AND INTELLECTUAL
PROPRIETIES COMMISSION**

Fourth Respondent

FILING SHEET

BE PLEASED TO TAKE NOTICE THAT the First to Third Respondents hereby present their answering affidavit for the winding-up and setting aside applications for service and filing.

Dated at SANDTON on this the 5th day of June 2020.

**EDWARD NATHAN SONNENBERGS
INCORPORATED**Per: 

Attorneys for the First to Third Respondents

The MARC
Tower 1
129 Rivonia Road
Sandown
Sandton
2196
Tel: (011) 269 7600
(Ref: L Field / M Kekana /0475990)
Email: lfield@ensafrika.com
: mkekana@ensafrika.com

TO: THE REGISTRAR

High Court
Johannesburg

AND TO: IAN LEVITT ATTORNEYS

Attorneys for the Applicant
19th Floor, Sandton City Office Towers
Cnr Rivonia and 5th Street
Sandton
Tel: (011) 784 3310
Fax: (011) 784 3309
Ref: Ian Levitt / MAT3046
Email: wikus@ianlevitt.co.za

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

CASE NO: 0010652/2020

In the matter between:

PAN AFRICAN SHOPFITTERS (PTY) LIMITED

Applicant

and

**EDCON LIMITED (IN BUSINESS RESCUE)
(Registration Number: 2007/003525/06)**

First Respondent

PIERS MARDSEN N.O.

Second Respondent

LANCE SCHAPIRO N.O.

Third Respondent

**THE COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION**

Fourth Respondent


FIRST TO THIRD RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

LANCE SCHAPIRO,

do hereby make oath and state that:

1. I am an adult male practising as a business rescue practitioner at Matuson & Associates (Pty) Limited at Building 2, Oxford & Glenhove, 114 Oxford Road, Houghton Estate, Johannesburg. I am the third respondent herein.

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2. The second respondent and I are cited herein in our capacities as the joint business rescue practitioners ("**the practitioners**") of the first respondent ("**Edcon**").
3. The applicant ("**Pan African**") issued two applications under the above case number, namely:
 - 3.1. for the winding-up of Edcon, to be heard in the ordinary course, which application was issued on 4 May 2020 ("**liquidation application**"); and
 - 3.2. to declare that the resolution adopted by Edcon on 28 April 2020 to commence business rescue proceedings is invalid, which application was issued on 17 May 2020 ("**the setting aside application**").
4. I have discussed the applications with the second respondent, who supports our opposition thereto, and a confirmatory affidavit will be filed as soon as reasonably possible. In the interim, I attach hereto, marked "**AA1**", an email from the second respondent confirming the opposition to the applications and the contents of this affidavit insofar as it relates to the business rescue of Edcon.
5. The facts deposed to in this affidavit fall within my personal knowledge, save where otherwise stated or where the context indicates the contrary, and are true and correct.
6. Where I refer to information conveyed to me by others, I believe in the truth and correctness of what was conveyed to me. In particular, I have consulted with Gary Oertel, Letitia Field and Manchadi Kekana of Edward Nathan Sonnenbergs Inc. ("**ENS**"). Their confirmatory affidavits will also be filed herein.
7. I have read the founding affidavits deposed to by Michael Blumenthal on behalf of Pan African ("**the founding affidavits**"):
 - 7.1. on 1 May 2020, in the winding-up application; and

- 7.2. on 16 May 2020, in the setting aside application.
9. For ease of reference, I will make use herein of the same terms defined in the founding affidavits.
 10. This affidavit will deal with both the winding-up application and setting aside application as they are brought under the same case number and the facts largely overlap.
 11. I do not intend to deal with the contents of the founding affidavits *ad seriatim* and any particular allegation contained therein which is inconsistent with what is stated in this affidavit is denied.
 12. Both the liquidation and setting aside applications are premature, misconceived and seek to circumvent the provisions relating to business rescue proceedings in the Companies Act, 71 of 2008 (as amended) ("**Companies Act**").
 13. On 28 April 2020, Edcon resolved to commence business rescue. On 29 April 2020, the resolution and supporting documents were duly filed with the Companies and Intellectual Properties Commission as contemplated in section 129 (3) of the Companies Act. I attach hereto, marked "**AA2**", of copy of the resolution and supporting documents.
 14. On 4 May 2020, Pan African launched an application to liquidate Edcon in the ordinary course.
 15. On 17 May 2020, Pan African launched the setting aside application for hearing on an urgent basis on 17 June 2020.

16. Pan African is seeking to liquidate Edcon on the basis that it is unable to pay its debts as contemplated in section 345 (1) (c) of the Companies Act, 61 of 1973 (**"Old Companies Act"**).
17. There is no debate that Edcon is financially distressed, unable to pay its debts as and when they fall due and that this resulted in its board of directors resolving, on 28 April 2020, to commence business rescue proceedings.
18. On 5 May 2020, our attorneys, ENS, directed the e-mail to Pan African's attorneys which is attached to the settling aside application as annexure "FA4" and wherein it was advised that the resolution for business rescue had been adopted on 28 April 2020. This is a date prior to the issuing of the liquidation application on 4 May 2020.
19. On 11 May 2020 Pan African's attorneys, Ian Levitt Attorneys, directed the email which is attached as annexure "FA5" to the setting aside application. Therein, ENS was informed that the resolution of the board of directors of Pan African to apply for the liquidation of Edcon, was passed on 26 March 2020. It is contended that the Pan African resolution initiated the liquidation proceedings, prior to the business rescue resolution, which resulted therein that the latter resolution was purportedly incompetent.
20. Section 129(2)(a) of the Companies Act provides as follows:

"(2) A resolution contemplated in subsection (1) –

(a) may not be adopted if liquidation proceedings have been initiated by or against the company; and

(b) has no force or effect until it has been filed."

21. Simply put, Pan African contends that:
- 21.1. the liquidation proceedings of Edcon were initiated on the adoption of its (Pan African's) resolution on 26 March 2020 to institute the liquidation application;
and
- 21.2. the adoption of the resolution for business rescue by Edcon was impermissible, by virtue of section 129 (2) (a) of the Companies Act.
22. Pan African places reliance for its proposition on a judgment of the Western Cape Division of the High Court in Cape Town. The judgment is reported as *Mouton v Park 2000 Development 11 (Pty) Limited & Others 2019 (6) SA 105 (WCC)* ("**Mouton**"). Therein, Sher J held that the legislature deliberately used the word "*initiated*" rather than the word "*beginning*" or the word "*commencement*" and that the legislature had something else in mind than what is meant by the use of the latter terms in, for instance, section 348 of the Old Companies Act. The judgment is dated 23 July 2019.
23. However, on 21 June 2019, this Court held that section 129 (2) (a) of the Companies Act contemplates that the liquidation proceedings referred to therein be initiated by service thereof on the debtor company. The judgement is reported as *Tjeka Training Matters (Pty) Ltd v KPPM Construction (Pty) Ltd and Others 2019 (6) SA 185 (GJ)* ("**Tjeka**").
24. Pan African was advised on 5 May 2020 that Edcon had commenced business rescue, as appears from annexure "FA4" to the setting aside application.
25. Despite having been advised of the business rescue proceedings, Pan African contends that the liquidation application was duly instituted prior to the commencement of the business rescue proceedings.

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26. In response to "FA4", Pan African remained steadfast in its view that the resolution commencing business rescue was to be set aside as it was impermissibly resolved after the liquidation application had been initiated.
27. As will become evident from what is set out below, the applications are without merit and would defeat the purpose of business rescue proceedings.

CIRCUMVENTING THE BUSINESS RESCUE PROCESS AND MORATORIUM

28. Pan African is impermissibly seeking to circumvent the provisions of the Companies Act, in complete disregard of all other stakeholders, by way of the applications.
29. Moreover, Pan African has been advised of the business rescue process and was informed that no section 133 consent has been provided to it to continue with the application.
30. Despite being forewarned, Pan African advised Edcon that it will in fact be instituting an application to set aside the adoption of the resolution of 28 April 2020 as contained in "FA5" to the setting aside application.
31. In a letter dated 15 May 2020, a copy of which is annexed hereto marked "AA3", ENS informed Pan African *inter alia* that:


"4. *As previously advised, our Client resolved to commence business rescue proceedings on 28 April 2020 and duly filed the commencement documents with the Companies and Intellectual Properties Commission of South Africa ("the Commission") on 29 April 2020 as contemplated in section 129 (3) of the Companies Act, 71 of 2008, as amended ("the Act").*

5. *You should be aware that in terms of section 133 of the Act, all legal or enforcement action is prohibited unless the institution of proceedings or enforcement action has been consented to by the business rescue*

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practitioner. Piers Marsden and Lance Schapiro were duly appointed as the joint business rescue practitioners of our Client on 4 May 2020.


6. *It is common cause that no consent has been requested by your client to the joint business rescue practitioners as required in section 133 of the Act.*
 7. *In light of the above, your client is hereby instructed to withdraw the liquidation application as the section 133 moratorium is applicable and no consent will be provided by the joint business rescue practitioners.*
 8. *We further note that your client intends to institute an application to set aside the business rescue proceedings of our Client and we hereby confirm that we are authorised to accept service of the purported application on behalf of our Client. Please be advised that the acceptance of service is without prejudice to our Client's rights and such acceptance does not constitute consent to the institution of the application in terms of section 133 of the Act and we have been instructed to inform you that the business rescue practitioners do not consent to the institution of the application in terms of section 133 of the Act.*
 9. *It is trite to record that should your client indeed persist with the institution of an application to set aside the business rescue proceedings of our Client in circumstances where we have made it clear to you that your application has no prospects of success, the joint business rescue practitioners will seek a costs order de bonis propriis."*
32. In response to "AA3", Pan African served its setting aside application. It is evident that the true purpose of that application is to circumvent the moratorium and provisions of the Companies Act, because, on 11 May 2020, Pan African was again notified in terms of section 129 (4) (a) of the Companies Act of the commencement of business rescue proceedings and appointment of the practitioners (see annexure FA2 to the setting aside application).
33. It is not suggested that the moratorium should be uplifted and the practitioners have not consented to same.

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STATUTORY PREFERENCE

34. Pan African has brought the setting aside application with no cogent reasons being advanced for the relief sought therein.
35. The setting aside application was preceded by the winding-up application, the latter having been instituted due to non-payment by Edcon.
36. The applications are nothing more than an attempt by Pan African to obtain payment of a pre-business rescue claim. Pan African should be in no better position than Edcon's other creditors, which are all subject to the business rescue process.
37. Pan African has failed to establish a legal basis for, or entitlement to, the relief sought.
38. Pan African's interest is of a commercial nature. So too, many other stakeholders have a commercial interest in the business rescue of Edcon. Pan African cannot circumvent the business rescue process and is not entitled to preferential treatment in these circumstances.

REASONABLE PROSPECT OF RESCUING EDCON

39. The insistence to continue with the applications is an abuse of Court process and devoid of any substance.
 40. No information is provided to this Court as to why a liquidation is better than a business rescue, instead the Court is merely informed that the adoption of a resolution to launch a liquidation application is tantamount to the initiation of the liquidation proceedings, within the meaning of section 129(2)(a) of the Companies Act.
- HNS 

41. The purpose and appropriateness of the resolution placing Edcon in business rescue is completely ignored by Pan African.
42. As set out above, what Pan African attempts to achieve is to receive payment of the debts owed to it by Edcon, thereby circumventing the business rescue process.
43. The practitioners require the necessary breathing space to consider the information and financial records of Edcon and to develop a plan for affected persons to consider and vote upon.
44. On 18 May 2020, the first meeting of creditors, as contemplated in section 147 of the Companies Act, was held by the practitioners and all affected persons were duly advised at that meeting of the practitioners' belief that there is a reasonable prospect of rescuing Edcon.
45. On 28 May 2020, a creditors' committee meeting was held during which the practitioners provided the committee with an update on Edcon's business rescue proceedings and reiterated their view that Edcon was capable of being rescued in terms of the Companies Act.
46. On 4 June 2020, another creditors' committee meeting was held during which the practitioners provided the committee with a further update on Edcon's business rescue proceedings and details relating to the proposal which will be incorporated into the business rescue plan to rescue Edcon.
47. On 8 June 2020, the practitioners will publish the business rescue plan, which will set out the proposal to rescue Edcon and the anticipated return to creditors.

48. The practitioners confirm that:
- 48.1. there is a reasonable prospect of Edcon being rescued, as contemplated in Chapter 6 of the Companies Act;
 - 48.2. the business rescue will result in a better return for all affected persons and will balance the rights and interests of all stakeholders, as envisaged in section 7(k) of the Companies Act; and
 - 48.3. concurrent creditors would receive a dividend of zero cents in the Rand in a liquidation.
49. The business rescue of Edcon is of national importance and tens of thousands of individuals are affected by it. Edcon has over 23 000 employees alone. All of these employment contracts would be immediately suspended on liquidation. The business rescue process seeks to save as many jobs as possible and ensure the best possible return for all of its creditors.
50. Needless to say, affected persons of Edcon are relying on a positive outcome of the business rescue process and the relief sought in the applications will detrimentally prejudice affected persons and be disastrous.
51. The first to third respondents are advised that it is not necessary at this juncture to deal with and set out facts in support of the initial conclusion that there is a reasonable prospect for Edcon to be rescued. Those will be addressed in the business rescue plan which will be published and presented to affected persons on 8 June 2020.
52. In paragraph 33 of the founding affidavit in the setting aside application reference is made by Pan African to Edcon's extensive assets. This is correct and confirms that

there are extensive assets which can be considered in developing a business rescue plan to rescue Edcon.

53. In paragraph 35 of the founding affidavit in the setting aside application, Pan African contends that creditors would be better served if Edcon is placed in liquidation as, by way of example, the proceeds of the disposal of its assets would be available for creditors rather than “*be frittered away in the funding of ongoing costs in the running of [Edcon’s] extensive businesses*”.
54. No facts are placed before the Court that the assets will be “*frittered away*” and it is not suggested that the practitioners will act in any manner contrary to what is contemplated and required by the Companies Act.
55. Pan African’s contentions fail to take into account that any stock sold by Edcon during the business rescue will be to the advantage of affected persons and will assist with generating further proceeds. These proceeds are used *inter alia* to purchase further stock which, in turn, generates further proceeds in the business rescue for the benefit of affected persons. Moreover, Edcon’s business is not simply comprised of stock, but also a business consisting of divisions, brands and tens of thousands of employees, all being better dealt with in a business rescue.
56. Accordingly, Pan African has not set out any primary facts from which it can be determined that liquidation would be better suited than the statutorily preferred business rescue process.

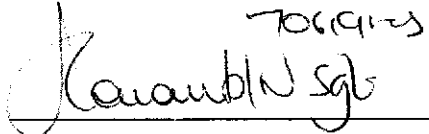
CONCLUSION

57. It is respectfully submitted that the applications should be dismissed with costs, including those consequent upon the employment of two counsel.


LANCE SCHAPIRO

I certify that:

- I. the Deponent acknowledged to me that :
 - a. He knows and understands the contents of this declaration;
 - b. He has no objection to taking the prescribed oath;
 - c. He considers the prescribed oath to be binding on his conscience.
- II. the Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God".
- III. the Deponent signed this declaration in my presence at the address set out hereunder on 5 June 2020.


COMMISSIONER OF OATHS

SOVEREIGN BARRISTERS ASSOCIATION
CLIENT SERVICE CENTRE
05 JUN 2020
BOOYBENS
8 WOODBURY ROAD, BOOYBENS

"AA1"

Manchadi Kekana

Subject: FW: Edcon / Pan African applications

----- Forwarded message -----

From: "Piers marsden" <pmarsden@matusonassociates.co.za>

Date: Fri, Jun 5, 2020 at 11:51 AM +0200

Subject: Re: Edcon / Pan African applications

To: "Lance Schapiro" <lschapiro@matusonassociates.co.za>

Hi Lance

I am very much in support of this.

Please proceed.

Regards

Piers

From: Lance Schapiro <lschapiro@matusonassociates.co.za>

Date: Friday, June 5, 2020 at 3:55 AM

To: Piers Marsden <pmarsden@matusonassociates.co.za>

Subject: Edcon / Pan African applications

Dear Piers

I refer to the applications instituted by Pan African Shopfitters (Pty) Limited and our discussions in regard to same.

Please see attached hereto the answering affidavit to both applications.

Please confirm that you support the our opposition to the applications and the and the contents of the answering affidavit insofar as it relates to the business rescue of Edcon.

I will thereafter depose to the affidavit and attach your confirmation.

Regards

Lance

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111945135

"AA2"

Companies and Intellectual Property Commission
Republic of South Africa

Form CoR 123.1

About this Form

- This form is issued in terms of section 129 and 131 of the Companies Act, 2008, and Regulation 123 of the Companies Regulations, 2011.
- A company resolution to committee business rescue proceedings has no force or effect until it has been filed with this notice.
- This notice must be published to every affected person within 5 business days after -
 - (a) it has been filed, in the case of a resolution; or
 - (b) the date of the court order, in such a case.
- If this Notice is issued following a board resolution-
 - (a) The company must appoint a business rescue practitioner with 5 business days after filing this notice ; and
 - (b) Any affected person may apply to a court in terms of section 130 for an order setting aside the resolution.
- The fee for filing this notice is R0.

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address
PO Box 429
Pretoria
0001
Republic of South Africa
Tel: 085 100 2472

www.cipc.co.za

Notice of Beginning of Business Rescue Proceedings

Date: 28 APRIL 2020

Customer Code: ENF001

Concerning

(Name and Registration Number of Company)

Name: EDCON LIMITED

Registration No: 2007/003525/06

The above named company advises that business rescue proceedings have commenced in terms of Chapter 6 of the Companies Act, as a result of:

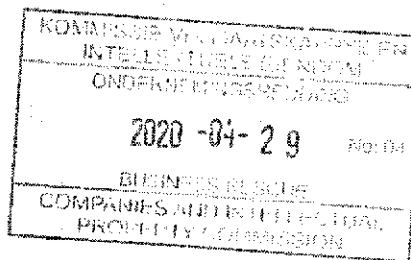
- The Board of the company having adopted the attached resolution in terms section 129, on 28 APRIL 2020
- A Court having made the attached order in terms of section 131, on _____

In terms of section 132 (1)(a), the company's business rescue proceedings commenced on 29 APRIL 2020 being the date on which:

- This notice was filed with the Commission.
- The court issued the attached order.

(Only in the case of a company resolution)

In support of this Notice, the company has attached a sworn statement of the relevant facts upon which the resolution was founded by a director representing the Board.



Name and Title of person signing on behalf of the Company:

GRANT PATISON - DIRECTOR

Authorised Signature:

LINS

**RESOLUTION PASSED AT A MEETING OF THE BOARD
OF DIRECTORS OF
EDCON LIMITED
(REGISTRATION NUMBER 2007/003525/06)
("THE COMPANY")
HELD ON THE 28TH APRIL 2020 BY ROUND ROBIN**

PRESENT:

Directors:

**Gareth Penny, Grant Pattison, Rhidwaan Gasant,
Daphne Motsepe, Nigel Palmer, Abigail Bisogno, M
Mthunzi**

IT WAS RESOLVED THAT:

KOMMISSIE VIR ERKANNING EN INTELLEKTUELE EIGENDOM	
ONDERAFDEELING: OORSPRONG	
2020-04-29	No: 04
BUSINESS RESCUE	
COMPANIES AND INTELLECTUAL PROPERTY	

1. As the company is unable to pay ~~certain of its debts and~~ as it appears to be reasonably unlikely that the Company will be able to pay all of its debts as they become due and payable within the immediately ensuing six months, the Company is therefore financially distressed within the meaning of Section 129 (1) (a) of the Companies Act 71 of 2008, as amended ("the Act").
2. As there appears to be a reasonable prospect of rescuing the Company in terms of Section 129 (1) (b) of the Act and/or if it not possible for the Company to so continue in existence, there exists a reasonable prospect that Business Rescue Proceedings will result in a better return for the Company's creditors or shareholders, than would result from the immediate liquidation of the Company, the Company should begin voluntary business rescue proceedings in terms of Section 129 of the Act.
3. **GRANT MICHAEL PATTISON** (identity number 710325 5765 088) in his capacity as a director and chief executive officer of the Company, be and is hereby authorised to appoint one or more Business Rescue Practitioners of the Company in terms of Section 129 (3) (b) of the Act and is further authorised to sign any such documents required and which are ancillary to the

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business rescue proceedings and to appoint attorneys to lodge the application for voluntary business rescue proceedings in terms of section 129 of the Act and to lodge any documents required to give effect thereto.

Certified a true copy of the extracts of the minutes of the meeting.

G PATTISON

Director

G PENNY

Director

R GASANT

Director

D MOTSEPE

Director

N PALMER

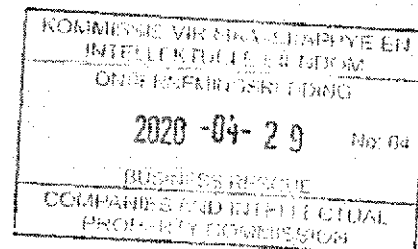
Director

A BISOGNO

Director

M MTHUNZI

Director



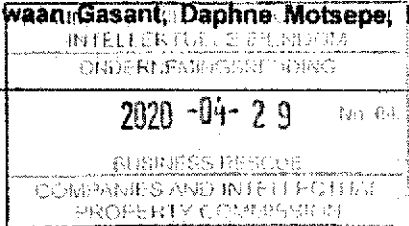
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**RESOLUTION PASSED AT A MEETING OF THE BOARD OF DIRECTORS OF
EDCON LIMITED
(REGISTRATION NUMBER 2007/003525/06)
("THE COMPANY")
HELD ON THE 28TH APRIL 2020 BY ROUND ROBIN**

PRESENT:

Directors:

Gareth Penny, Grant Pattison, Rhidwaan Gasant, Daphne Motsepe, Nigel Palmer, Abigail Bisogno, M Mthunzi



IT WAS RESOLVED THAT:

1. As the company is unable to pay certain of its debts and as it appears to be reasonably unlikely that the Company will be able to pay all of its debts as they become due and payable within the immediately ensuing six months, the Company is therefore financially distressed within the meaning of Section 129 (1) (a) of the Companies Act 71 of 2008, as amended ("the Act").
2. As there appears to be a reasonable prospect of rescuing the Company in terms of Section 129 (1) (b) of the Act and/or if it not possible for the Company to so continue in existence, there exists a reasonable prospect that Business Rescue Proceedings will result in a better return for the Company's creditors or shareholders, than would result from the immediate liquidation of the Company, the Company should begin voluntary business rescue proceedings in terms of Section 129 of the Act.
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Certified a true copy of the extracts of the minutes of the meeting.

G PATTISON

Director

Carell Penny

G PENNY

Director

R GASANT

Director

D MOTSEPE

Director

N PALMER

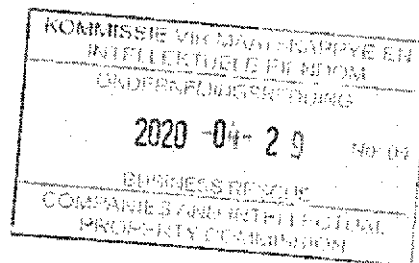
Director

A BISOGNO

Director

M MTHUNZI

Director



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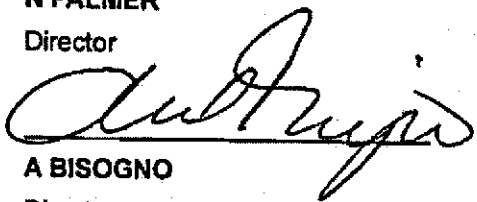
G PATTISON
Director

G PENNY
Director

R GASANT
Director

D MOTSEPE
Director

N PALMER
Director



A BISOGNO
Director

M MTHUNZI
Director

COMMISSIONER OF THE SOUTH AFRICAN
INTELLECTUAL PROPERTY
OFFICE
2020-04-29
BUSINESS REGISTRY
COMPANIES AND INTELLECTUAL
PROPERTY OFFICE

HN B

RESOLUTION PASSED AT A MEETING OF THE BOARD OF DIRECTORS OF
EDCON LIMITED

(REGISTRATION NUMBER 2007/003525/06)

("THE COMPANY")

HELD ON THE 28TH APRIL 2020 BY ROUND ROBIN

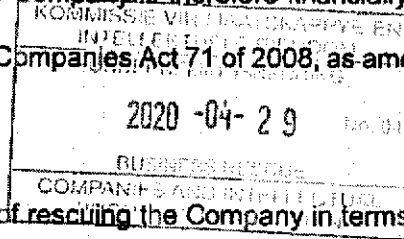
PRESENT:

Directors:

Gareth Penny, Grant Pattison, Rhidwaan Gasant, Daphne Motsepe, Nigel Palmer, Abigail Bisogno, M Mthunzi

IT WAS RESOLVED THAT:

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Handwritten initials and a signature.

Certified a true copy of the extracts of the minutes of the meeting.



G PATTISON

Director

G PENNY

Director

R GASANT

Director

D MOTSEPE

Director

N PALMER

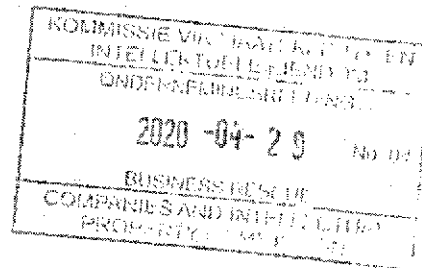
Director

A BISOGNO

Director

M MTHUNZI

Director



Handwritten initials and a signature

RESOLUTION PASSED AT A MEETING OF THE BOARD OF DIRECTORS OF
EDCON LIMITED

(REGISTRATION NUMBER 2007/003525/06)

("THE COMPANY")

HELD ON THE 28TH APRIL 2020 BY ROUND ROBIN

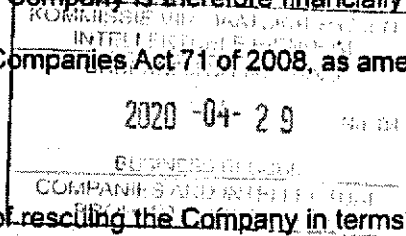
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2. As there appears to be a reasonable prospect of rescuing the Company in terms of Section 129 (1) (b) of the Act and/or if it not possible for the Company to so continue in existence, there exists a reasonable prospect that Business Rescue Proceedings will result in a better return for the Company's creditors or shareholders, than would result from the immediate liquidation of the Company, the Company should begin voluntary business rescue proceedings in terms of Section 129 of the Act.
3. **GRANT MICHAEL PATTISON** (identity number 710325 5765 088) in his capacity as a director and chief executive officer of the Company, be and is hereby authorised to appoint one or more Business Rescue Practitioners of the Company in terms of Section 129 (3) (b) of the Act and is further authorised to sign any such documents required and which are ancillary to the business rescue proceedings and to appoint attorneys to lodge the application for voluntary business rescue proceedings in terms of section 129 of the Act and to lodge any documents required to give effect thereto.



MN

Certified a true copy of the extracts of the minutes of the meeting.

G PATTISON

Director

G PENNY

Director

R GASANT

Director

D. R. Motsepe

D MOTSEPE

Director

N PALMER

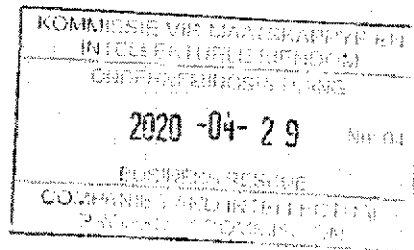
Director

A BISOGNO

Director

M MTHUNZI

Director



JN *[Signature]*

RESOLUTION PASSED AT A MEETING OF THE BOARD OF DIRECTORS OF
EDCON LIMITED

(REGISTRATION NUMBER 2007/003525/06)

("THE COMPANY")

HELD ON THE 28TH APRIL 2020 BY ROUND ROBIN

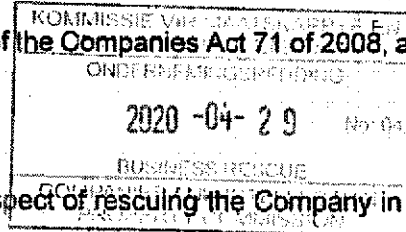
PRESENT:

Directors:

Gareth Penny, Grant Pattison, Rhidwaan Gasant, Daphne Motsepe, Nigel Palmer, Abigail Bisogno, M Mthunzi

IT WAS RESOLVED THAT:

1. As the company is unable to pay certain of its debts and as it appears to be reasonably unlikely that the Company will be able to pay all of its debts as they become due and payable within the immediately ensuing six months, the Company is therefore financially distressed within the meaning of Section 129 (1) (a) of the Companies Act 71 of 2008, as amended ("the Act").
2. As there appears to be a reasonable prospect of rescuing the Company in terms of Section 129 (1) (b) of the Act and/or if it not possible for the Company to so continue in existence, there exists a reasonable prospect that Business Rescue Proceedings will result in a better return for the Company's creditors or shareholders, than would result from the immediate liquidation of the Company, the Company should begin voluntary business rescue proceedings in terms of Section 129 of the Act.
3. **GRANT MICHAEL PATTISON** (identity number 710325 5765 088) in his capacity as a director and chief executive officer of the Company, be and is hereby authorised to appoint one or more Business Rescue Practitioners of the Company in terms of Section 129 (3) (b) of the Act and is further authorised to sign any such documents required and which are ancillary to the business rescue proceedings and to appoint attorneys to lodge the application for voluntary business rescue proceedings in terms of section 129 of the Act and to lodge any documents required to give effect thereto.



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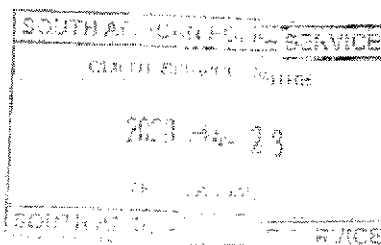
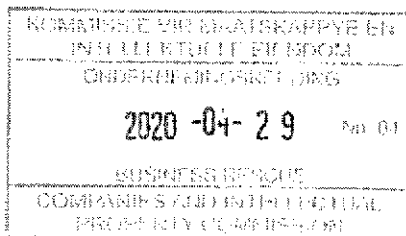
SWORN STATEMENT IN TERMS OF SECTION 129 (3) (a) OF THE COMPANIES ACT 71 OF 2008 ("THE COMPANIES ACT"), AS AMENDED, IN RELATION TO THE SUPERVISION AND BUSINESS RESCUE PROCEEDINGS OF EDCON LIMITED (REGISTRATION NO. 2007/003525/06)

I, the undersigned,

GRANT MICHAEL PATTISON (Identity number 710325 5765 088)

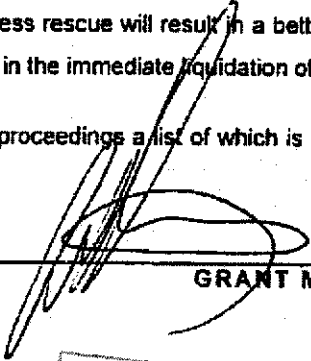
do hereby declare that –

1. I am a director of Edcon Limited (Registration Number: 2007/003525/06) ("the Company") with its registered address at Edgardale, 1 Press Avenue, Crown Mines, 2092.
2. The facts and allegations herein contained are, save where the context indicates a contrary intention or where I state it to the contrary, within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
3. On 28 April 2020, the board of directors of the Company ("the Board") passed a resolution for the Company to be placed under Business Rescue in terms of section 128 as read with section 129 of the Companies Act ("the Resolution").
4. As appears from the Resolution, I am authorised to represent the Company in this regard and to sign all required documents to give effect to the Resolution. I am thus authorised to represent the Company to make representations and to depose to this statement on its behalf. A copy of the Resolution is annexed hereto marked "A".
5. The Company currently operates as a trader in the retail industry through its two retail divisions being, Edgars, and Jet, with an aggregate total of approximately 650 stores located in South Africa and has approximately 17,292 employees (and about 5 000 seasonal casual workers).
6. The Board passed the Resolution on the basis that the Board has reasonable grounds to believe that:
 - 6.1. the Company is financially distressed as contemplated in 128 (1) (f) of the Companies Act; and
 - 6.2. there is a reasonable prospect of rescuing the Company through a business rescue process in terms of the Companies Act.
7. The Company is financially distressed in that it appears to be reasonably unlikely that the Company will be able to pay all of its debts as they become due and payable within the immediately ensuing six months.



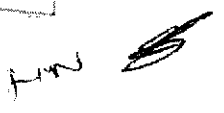
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H.W. B

8. The Company has consistently endeavoured to ensure that its stores remain open, and in May 2019, after a 13-month process, the Company successfully implemented a restructuring of its balance sheet, which saw an injection of R2.7bn of cash as equity. This debt refinancing entailed the exit of the Company's previous shareholders and the entrance of new shareholders, including the Public Investment Corporation of South Africa Limited ("PIC") (through its client the Unemployment Insurance Fund), participating landlords, lenders and the Company's staff.
9. The Company's financial position has recently become distressed due to:
 - 9.1. the advent of the Covid-19 pandemic which resulted in the Government taking precautionary measures including a 45-day social distancing and lockdown-period resulted in a further trading slump which resulted in sales R1 700 million below the Company's projected forecasts; and
 - 9.2. the recession in the South African economy, which coincided with load-shedding which disrupted purchasing patterns; and
 - 9.3. poor sales as a result of the only partially-completed repositioning of its credit and product offering.
10. The Company's failure to meet the March and April sales targets, and the drop in collections of its debtor's book, has resulted in the Company only having sufficient liquidity to pay salaries in both March and April 2020. This has further resulted in the Company being unable to honour all of its contractual obligations with suppliers.
11. The Company has been considering a restructuring of its business, entailing an accelerated closure of its loss-making stores, and a reduction of overhead expenses, in order to ensure the continued survival of the business of the Company.
12. The Board believes that by implementing the aforementioned restructure of the business there will be a reasonable prospect of rescuing the Company. In any event, because of the nature of assets of the Company and the nature of business of the Company, if the Company is not able to continue in existence, a sale of its assets or business under business rescue will result in a better return for the Company's creditors or shareholders than would result in the immediate liquidation of the Company.
13. The Company is currently involved in various litigious proceedings a list of which is annexed hereto marked "B".


 GRANT M PATTISON

2020-04-23
 2020-04-23

KOMMISSIE VIR MAATSTAFTELE EN
 INTELEKTUELE EIGENDOM
 ONDERSOEKINGS EENHEID
 2020-04-29 No 01
 BUSINESS RESCUE
 COMPANIES AND INTELLECTUAL
 PROPERTY COMMISSION



I certify that:

- I. The Deponent acknowledged to me that:
 - A. he knows and understands the contents of this declaration;
 - B. he has no objection to taking the prescribed oath;
 - C. he considers the prescribed oath to be binding on his conscience.
- II. The Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God".
- III. The Deponent signed this declaration in my presence at the address set out hereunder on 28 April 2020.


COMMISSIONER OF OATHS

Designation and area:

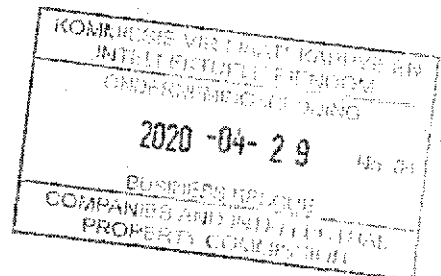
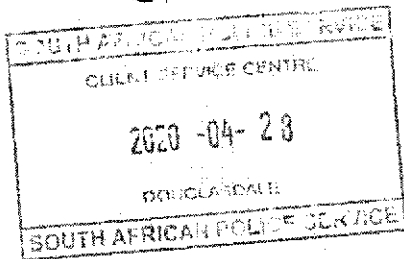
Lieutenant ~~Col. M. M. M. M.~~

Full names:

Duniscue HABANTU

Street address:

WR Saps Douglasdale
Top gas & Douglas drive
Douglasdale.



AW 8

Companies and Intellectual Property Commission
Republic of South Africa

Form CoR 123.2

About this Form

- This form is issued in terms of sections 129 and 131 of the Companies Act, 2008, and Regulation 123 of the Companies Regulations, 2011.
- This notice must be published to every affected person within:
 - (a) 2 business days after it has filed, if the company appointed the Practitioner; or
 - (b) 5 business days after the court order, in such a case.
- If this notice is issued following a company appointment, any affected person may apply to a court in terms of section 130 for an order setting aside the appointment, or requiring the practitioner to provide security.
- The fee for filing this Notice is R0.

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address
PO Box 429
Pretoria
0001
Republic of South Africa
Tel: 086 100 2472

www.cipc.co.za

Notice of Appointment of Business Rescue Practitioner

Date: 6 May 2020

Customer Code: ENF001

Concerning

(Name and Registration Number of Company)

Name: EDCON LIMITED

Registration No: 2007/003525/06

The above named company commenced business rescue proceedings on 4 May 2020

The following person has been appointed as the business rescue practitioner:
Piers Michael Marsden and Lance Schapiro

- By the company, in terms of section 129 (3)(b).
- By the court, in terms of section 131 (5).

KOMMISSIE VIR LEWESKONDE EN INTELLEKTUELE EIENDOM
ONDERNEEMINGSRESCUE
2020 -05- 0 4 No 03
BUSINESS RESCUE
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

Name and Title of person signing on behalf of the Company:

Grant Pattison (Chief Executive Officer)

Authorised Signature:

AMW

MATUSON
ASSOCIATES

28 April 2020

Dear Madam/Sir

RE: BUSINESS RESCUE PROCEEDINGS OF EDCON LIMITED

1. The above matter refers.
2. I hereby accept my appointment as the business rescue practitioner of **EDCON LIMITED** in terms of section 129 of the Companies Act 71 of 2008, as amended ("the Companies Act").
3. I have the capacity to carry out my functions and duties as a business rescue practitioner.
4. I am independent from the business and I am qualified to be appointed as a business rescue practitioner in terms of sections 138 (1) (a) and (b) of the Companies Act and I am not disqualified from being appointed as business rescue practitioner in terms of sections 138 (1) (c), (d), (e) and (f) of the Companies Act.
5. Please do not hesitate to contact me should you require any further information or require me to provide you with any further documentation to support my appointment.

Regards

Piers Marsden

Matuson and Associates (Pty) Ltd : 2009/008967/07

Directors: Les Matuson | Piers Marsden

Oxford & Glenhove 114 Oxford Road Houghton Estate Johannesburg 2198 | P O Box 92796, Norwood, 2117

t: +27(0)11 725 7166 | f: +27(0) 86 554 9998 | w: www.matusonassociates.co.za

AM

Companies and Intellectual Property Commission
Republic of South Africa

Form CoR 123.2

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Postal Address
PO Box 429
Pretoria
0001
Republic of South Africa
Tel: 065 100 2472

www.cipc.co.za

Notice of Appointment of Business Rescue Practitioner

Date: 6 May 2020

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Concerning

(Name and Registration Number of Company)

Name: EDCON LIMITED

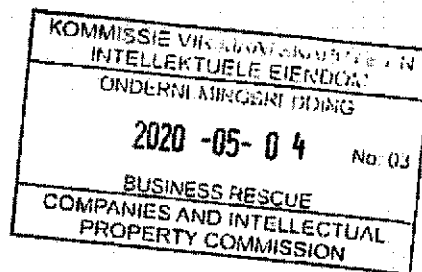
Registration No: 2007/003525/06

The above named company commenced business rescue proceedings on 4 May 2020

The following person has been appointed as the business rescue practitioner:
Piers Michael Marsden and Lance Schapiro

By the company, in terms of section 129 (3)(b).

By the court, in terms of section 131 (5).



Name and Title of person signing on behalf of the Company:

Grant Pattison (Chief Executive Officer)

Authorised Signature:

AMW

MATUSON
ASSOCIATES

28 April 2020

Dear Madam/Sir

RE: BUSINESS RESCUE PROCEEDINGS OF EDCON LIMITED

1. The above matter refers.
2. I hereby accept my appointment as the business rescue practitioner of **EDCON LIMITED** in terms of section 129 of the Companies Act 71 of 2008, as amended ("the Companies Act").
3. I have the capacity to carry out my functions and duties as a business rescue practitioner.
4. I am independent from the business and I am qualified to be appointed as a business rescue practitioner in terms of sections 138 (1) (a) and (b) of the Companies Act and I am not disqualified from being appointed as business rescue practitioner in terms of sections 138 (1) (c), (d), (e) and (f) of the Companies Act.
5. Please do not hesitate to contact me should you require any further information or require me to provide you with any further documentation to support my appointment.

Regards



Lance Schapiro

Matuson and Associates (Pty) Ltd : 2009/008967/07

Directors: Les Matuson | Piers Marsden

Oxford & Glenhove 114 Oxford Road Houghton Estate Johannesburg 2198 | P O Box 92796, Norwood, 2117

t: +27(0)11 728 7166 | f: +27(0) 86 554 9998 | w: www.matusonassociates.co.za

HN 



"AA3"
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

IAN LEVITT ATTORNEYS

G Oertel / N Makena / 0475990 our ref
W STEYL/MAT/3046 your ref
15 May 2020 date

Per email

Dear Sirs

RE: PAN AFRICAN SHOPFITTERS (PTY) LIMITED // EDCON LIMITED, Case No.: 00106052

1. The above matter and your letter of 11 May 2020 and email of 14 May 2020 refer.
2. As you are aware we act for and on behalf of Edcon Limited ("our Client").
3. We are in receipt of your letter and do not wish to substantially deal with the contents thereof, and any failure to deal with any of the allegations should not be construed as an admission, waiver nor novation of our Client's rights, which are strictly reserved.
4. As previously advised, our Client resolved to commence business rescue proceedings on 28 April 2020 and duly filed the commencement documents with the Companies and Intellectual Properties Commission of South Africa ("the Commission") on 29 April 2020 as contemplated in section 129 (3) of the Companies Act, 71 of 2008, as amended ("the Act").
5. You should be aware that in terms of section 133 of the Act, all legal or enforcement action is prohibited unless the institution of proceedings or enforcement action has been consented to by the business rescue practitioner. Piers Marsden and Lance Schapiro were duly appointed as the joint business rescue practitioners of our Client on 4 May 2020.
6. It is common cause that no consent has been requested by your client to the joint business rescue practitioners as required in section 133 of Act.
7. In light of the above, your client is hereby instructed to withdraw the liquidation application as the section 133 moratorium is applicable and no consent will be provided by the joint business rescue practitioners.
8. We further note that your client intends to institute an application to set aside the business rescue proceedings of our Client and we hereby confirm that we are authorised to accept service of the purported application on behalf of our Client. Please be advised that the acceptance of service is without prejudice to our Client's rights and such acceptance does not constitute consent to the institution of the application in terms of section 133 of the Act and we have been instructed to inform you that the business rescue practitioners do not consent to the institution of the application in terms of section 133 of the Act.

Africa's largest law firm

Edward Nathan Sonnenbergs Incorporated | registration number 2006/018200/21
M.M. Katz (chairman) M. Mgudiwa (chief executive) M.W. Matlou (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

fw

9. It is trite to record that should your client indeed persist with the institution of an application to set aside the business rescue proceedings of our Client in circumstances where we have made it clear to you that your application has no prospects of success, the joint business rescue practitioners will seek a costs order *de bonis propriis*.

10. All of our Client's rights are reserved.

Yours faithfully

ENS AFRICA INC.

NTLHANE MAKENA

(electronically transmitted, no signature required)

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