

**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  
(Registration Number: 2007/003525/06)**

**FIRST RESPONDENT**

**PIERS MARSDEN**

**SECOND RESPONDENT**

**LANCE SCHAPIRO**

**THIRD RESPONDENT**

**THE COMPANIES AND INTELLECTUAL  
PROPERTY COMMISSION**

**FOURTH RESPONDENT**

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**NOTICE OF MOTION**

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**BE PLEASED TO TAKE NOTICE** that the abovenamed Applicant intends making application to the above Honourable Court at **10h00 on Wednesday, 17 June 2020** (Tuesday, 16 June 2020 being a public holiday) for an order in the following terms:

1. That this application be heard as a matter of urgency in terms of Rule 6(12).
2. Declaring that:

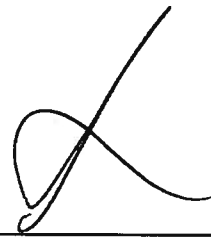
- 2.1 the resolution adopted by First Respondent on 28 April 2020 to voluntarily commence Business Rescue Proceedings is invalid; and
- 2.2 consequently that such resolution and the proceedings which followed it including the appointment of Second and Third Respondents as Business Rescue Practitioners be set aside.
3. Discharging the First Respondent from Business Rescue.
4. That the costs of this application be paid by First Respondent together with any other Respondent opposing this application jointly and severally, the one paying the other to be absolved.
5. Further and/or alternative relief.

**TAKE NOTICE THAT** the affidavit of Michael Blumenthal attached hereto will be used in support of this application.

**TAKE NOTICE THAT** should any of the Respondents wish to oppose this application, they are required to deliver their notice of intention to oppose this application by midday on **Tuesday, 19 May 2020** and to deliver their answering affidavit if any by midday on **Monday, 8 June 2020**.

**KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.**

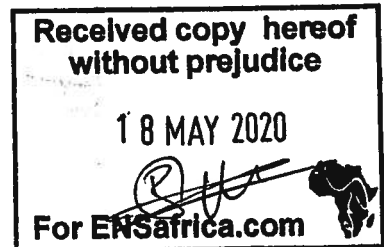
**SIGNED AT JOHANNESBURG ON THIS 17<sup>TH</sup> DAY OF MAY 2020.**



**IAN LEVITT ATTORNEYS**  
 ATTORNEYS FOR APPLICANT  
 19<sup>TH</sup> FLOOR, SANDTON CITY OFFICE  
 TOWERS  
 SANDTON CITY  
 CNR RIVONIA AND 5<sup>TH</sup> STREET, SANDTON  
 TEL: (011) – 784 3310  
 FAX: (011) – 784 3309  
 REF: IAN LEVITT/ MAT3046  
 Email: [wikus@ianlevitt.co.za](mailto:wikus@ianlevitt.co.za)

**AND TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT  
 JOHANNESBURG**

**AND TO: ENS AFRICA INCORPORATED  
 ATTORNEYS FOR THE FIRST RESPONDENT  
 THE MARC, TOWER 1  
 129 RIVONIA ROAD  
 SANDTON**



**AND TO: PIERS MARSDEN  
 SECOND RESPONDENT  
 SUITE 23, BUILDING 2  
 OXFORD & GLENHOVE  
 114 OXFORD ROAD  
 HOUGHTON ESTATE  
 JOHANNESBURG**

**AND TO: LANCE SCHAPIRO  
 THIRD RESPONDENT  
 SUITE 23, BUILDING 2  
 OXFORD & GLENHOVE  
 114 OXFORD ROAD  
 HOUGHTON ESTATE  
 JOHANNESBURG**

**AND TO: THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION  
 FOURTH RESPONDENT  
 THE DTI CAMPUS  
 BLOCK F, 77 MEINTJIES STREET  
 SUNNYSIDE  
 PRETORIA**

**IN THE HIGH COURT OF SOUTH AFRICA  
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**FIRST RESPONDENT**

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**LANCE SCHAPIRO**

**THIRD RESPONDENT**

**THE COMPANIES AND INTELLECTUAL  
PROPERTY COMMISSION**

**FOURTH RESPONDENT**

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**APPLICANT'S FOUNDING AFFIDAVIT**

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I, the undersigned

**MICHAEL BLUMENTHAL**

do hereby make oath and state that:



1. I am a Director of Applicant Company in the above matter.
2. The facts herein contained are, save where otherwise indicated, within my own personal knowledge and are to the best of my belief true and correct.

### **THE PARTIES**

3.

3.1 Applicant is **PAN AFRICAN SHOPFITTERS (PTY) LIMITED**, (Registration Number 1999/017979/07), a Company registered and incorporated with limited liability in accordance with the Laws in force in the Republic of South Africa having its principal place of business at 10 Nasmith Avenue, Driehoek, Germiston.

3.2 I am duly authorised to depose hereto on behalf of Applicant.

4. First Respondent is **EDCON LIMITED** (Registration Number 2007/003525/06), a Company registered and incorporated with limited liability in accordance with the laws in force in the Republic of South Africa having its principal place of business at 1 Press Avenue, Crown Mines, Johannesburg.

5. Second Respondent is **PIERS MARSDEN**, an adult male Business Rescue Practitioner carrying on business at Suite 23, Building 2, Oxford & Glenhove, 114 Oxford Road, Houghton Estate, Johannesburg.

6. Third Respondent is **LANCE SCHAPIRO**, an adult male Business Rescue Practitioner carrying on business at Suite 23, Building 2, Oxford & Glenhove, 114 Oxford Road, Houghton Estate, Johannesburg.
- 7.
- 7.1 Fourth Respondent is **THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION** having its principal place of business at The DTI Campus, Block F, 77 Meintjies Street, Sunnyside, Pretoria.
- 7.2 Fourth Respondent is cited because of its interest in this matter and no relief is sought against it save in the event of it opposing the relief sought.

#### **THE PURPOSE OF THIS APPLICATION**

8. On 28 April 2020 First Respondent adopted a resolution, a copy of which is attached hereto marked "FA1" to the following effect:

*"It was resolved that:*

1. *As a 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 PATTINSON** (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.

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

9. On 11 May 2020 Applicant received a notice issued by First Respondent to affected persons of Edcon Limited (in Business Rescue), a copy of which is attached hereto marked "FA2" advising that:

9.1 The Board of Directors of First Respondent adopted a resolution on 28 April 2020 to voluntarily commence Business Rescue Proceedings.

9.2 First Respondent appointed Second and Third Respondents to be its joint Business Rescue Practitioners.

9.3 The effective date of the Business Rescue Proceedings is 29 April 2020 and the effective date of the appointment of Second and Third Respondents is 4 May 2020.

10. The purpose of this application is to obtain an order:



- 10.1 declaring that the resolution adopted by First Respondent on 28 April 2020 to voluntarily begin Business Rescue Proceedings is invalid and consequently that such resolution and the proceedings which followed it including the appointment of Second and Third Respondents as Business Rescue Practitioners should be set aside;
- 10.2 discharging the First Respondent from Business Rescue.

### **BACKGROUND**

11. Applicant conducts the business of bespoke retail shop fitting (including technical design, in house manufacturing and complete installation), servicing major national and international retail brands. It employs approximately 500 persons.
12. First Respondent is South Africa's largest non-food retailer and has been in business for nearly 90 years. It conducts its business under a number of principal brands including Edgars and Jet.
13. Applicant has for many years been rendering bespoke retail shopfitting services to First Respondent in respect of numerous retail stores operated by First Respondent.
14. It had previously come to my attention that First Respondent had been unable to timeously effect its latest rental payments to its landlords.
15. On Thursday, 26 March 2020 the Chief Executive Officer of First Respondent Grant Pattinson ("Pattinson") held a conference call with First

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Respondent's suppliers which was *inter alia* attended by me on behalf of Applicant. In this conference call Pattinson advised that:

- 15.1 First Respondent only has sufficient liquidity to pay salaries which First Respondent deems a priority.
- 15.2 First Respondent is unable to honour any other accounts payable (which obviously also included amounts then due, owing and payable to Applicant).
16. First Respondent thus admitted to its creditors that it is unable to pay its debts from current revenue or available resources.
17. That same day on 26 March 2020 I, as a matter of urgency, sought advice from Applicant's attorney of record, Ian Levitt ("Levitt").
18. The advice given to me by Levitt was that Applicant should launch an application for the winding up of First Respondent. I asked Levitt whether it was possible to do so as a matter of urgency. Levitt's response was that whilst the application should be launched as soon as possible, he did not believe that there were grounds which warranted the bringing of the application as a matter of urgency.
19. Levitt further advised that it was not possible to launch the application during the looming lockdown period but that the application should be prepared and be ready for launching the moment it became possible to do so. I instructed Levitt to proceed accordingly.



20. The Nationwide lockdown commenced on midnight on 26 March 2020. On 27 March 2020 and pursuant to the advice given to me by Levitt, Applicant adopted a resolution to make application as soon as possible for the winding up of First Respondent. A copy of the resolution taken by Applicant is attached hereto marked "FA3".
21. In accordance with my instructions an application was prepared by Levitt during the phase 5 lockdown period. In summary, the basis for the winding up of First Respondent was that:
- 21.1 First Respondent is indebted to Applicant as at 60 days from date of invoice in the sum of R1 739 199,69 and as at 90 days from date of invoice in the sum of R342 673,41. In addition First Respondent is indebted to Applicant in the approximate sum of R8,4 000 000,00 for work in progress not yet invoiced.
- 21.2 First Respondent was unable to pay its debts and was commercially insolvent.
22. The phase 5 lockdown persisted until end of April 2020 and from 1 May 2020 the phase 4 lockdown came into operation.
23. On the morning of Monday 4 May 2020, the first business day in the stage 4 lockdown period, Applicant launched its application for the winding up of First Respondent under case number 0010652/2020. The application was served on First Respondent that same day.



24. First Respondent is represented by Attorneys Manchadi Kekana ("Kekana"), Gary Oertel ("Oertel") and Ntlhane Makena ("Makena") of the firm Edward Nathan Sonnenbergs Incorporated.
25. On 5 May 2020 Wikus Steyl ("Steyl") an attorney in the employ of Levitt received a letter from Kekana, a copy of which is attached hereto marked "FA4" stating as follows:

"  
*The above matter and the winding up application issued on 4 May 2020 refers.*

*Please be advised that we act for and on behalf of Edcon Limited ("Edcon").*

*Please note that the board of directors of Edcon adopted a resolution in terms of section 129 (1) of the Companies Act No. 71 of 2008, as amended ("the Companies Act") on 28 April 2020 to commence business rescue proceedings of Edcon prior to the issuing of the winding up application and the resolution was duly filed with the Companies and Intellectual Proprieties Commission of South Africa ("CIPC") on Monday, 4 May 2020.*

*In light of the above, you and all affected persons will be notified of the commencement of the business rescue proceedings once CIPC has confirmed the appointment of the business rescue practitioners of Edcon.*

*We trust that above is in order."*

26. On 11 May 2020 (11:47am) Steyl addressed a letter to Kekana, a copy of which is attached hereto marked "FA5" stating as follows:

- "  
 1. *As you know we represent Pan African Shopfitters (Pty) Limited which on 4 May 2020 launched an application out of the Gauteng Local Division of the High Court to place Edgars Consolidated Stores Limited ("Edcon") under a final winding up order.*

2. *We have considered your email of 5 May 2020 wherein you advise that you are in receipt of the winding up application brought by our client and state as follows:*

*"Please note that the board of directors of Edcon adopted a resolution in terms of section 129 (1) of the Companies Act No. 71 of 2008, as amended ("the Companies Act") on 28 April 2020 to commence business rescue proceedings of Edcon prior to the issuing of the winding up application and the resolution was duly filed with the Companies and Intellectual Proprieties Commission of South Africa ("CIPC") on Monday, 4 May 2020.*

*In light of the above, you and all affected persons will be notified of the commencement of the business rescue proceedings once CIPC has confirmed the appointment of the business rescue practitioners of Edcon".*

3. *Please be advised that prior to the Board of Directors of Edcon adopting the resolution to commence Business Rescue Proceedings, our client on 26 March 2020 resolved to liquidate Edcon. A copy of the resolution taken by our client is attached hereto.*
4. *In the premises:*
- 4.1 *In terms of Section 129(2)(a) of the Companies Act 2008, our client initiated liquidation proceedings prior to Edcon's Board of Directors adopting the resolution to commence Business Rescue Proceedings;*
- 4.2 *the resolution to adopt Business Rescue Proceedings was adopted in breach of Section 129(2)(a) of the Companies Act, 2008.*
5. *Please be advised that our client intends to persist with the winding up application and demands that your client forthwith withdraws the aforesaid Business Rescue Resolution failing which, our client shall take such further steps as it may be advised (including the launching of proceedings to set aside the aforesaid Business Rescue Resolution).*
6. *We look forward to hearing further from you as soon as possible."*
27. On 11 May 2020 (12:01) Makena sent an email to Steyl, copied to Kekana and Oertel, a copy of which is attached hereto marked "FA6" stating with some surprise that Steyl thinks that a liquidation application is initiated on the Applicant resolving to do so rather than the application being issued and served.

28. On 11 May 2020 (12:03) Steyl sent an email to Makena, Kekana and Oertel, a copy of which is attached hereto marked "FA7" acknowledging receipt of Makena's email sent at 12:01.
29. On 11 May 2020 (12:04) Oertel sent an email to Steyl, a copy of which is attached hereto marked "FA8" advising that he hopes Makena's email assists Steyl on the law.
30. On 14 May 2020 Steyl sent an email to Oertel, Makena and Kekana, a copy of which is attached hereto marked "FA9" advising that Applicant's resolution to institute winding up proceedings constitutes the institution of liquidation proceedings in terms of section 129 (2) (a) of the Companies Act 2008. He further advised that he had been instructed to launch an application to set aside the Business Rescue Proceedings.
31. In support of Applicant's contention that its resolution to institute winding up proceedings constitutes the institution of liquidation proceedings in terms of section 129 (2) (a) of the Companies Act 2008, Applicant relies on the Reported Decision of **Mouton V Park 2000 Development 11 (Pty) Limited and Others 2019 (6) SA 105.**

**SEMI-URGENCY**

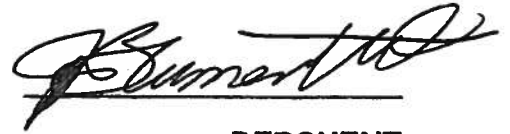


32. I have been advised that if this application were to be brought in the ordinary course, it could take up to six months if not longer for the matter to be heard.
33. In the period whilst the application is pending the First Respondent's Business Practitioners will no doubt proceed to liquidate First Respondent's extensive assets in order to obtain funding to run First Respondent's businesses (First Respondent conducts numerous retail stores and has assets such as clothing which can easily be disposed of at sale prices within a period of six months).
34. In the event that this application is not brought as a matter of semi-urgency, it will be impossible for a proper winding up to take place.
35. No advices have been given by First Respondent to its Creditors as to why Business Rescue is preferable to winding up. I would have expected at the very least that First Respondent would have done so. Applicant is of the view that First Respondent's creditors would be better served if First Respondent is placed under a winding up order. By way of example in this regard, if First Respondent is wound up, the proceeds of disposal of its assets will be available for creditors rather than be frittered away in the funding of ongoing costs in the running of First Respondent's extensive businesses, in circumstances where First Respondent is commercially and probably factually insolvent.
36. In addition, the determination of this matter involves important principles of law and Applicant intends to apply for this matter to be heard as a commercial matter.

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37. An affidavit of Levitt confirming the facts hereincontained insofar as they refer to him will be obtained and attached hereto marked "FA10".

WHEREFORE Applicant prays for an Order in terms of the Notice of Motion to which this Affidavit is attached.



DEPONENT

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at SANDTON on this the 16 day of 05 2020, the regulations of 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.

7188726  
  
\_\_\_\_\_

COMMISSIONER OF OATHS

FULL NAMES: REFALWE MOSIPI

DESIGNATION: CST

ADDRESS: 2 Summit Road  
Rooiingside  
Sandton



111945135

FAI

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 commence 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 6 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 within 6 business days after filing this notice; and
  - (b) Any affected person may apply to a court in terms of section 180 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: 088 100 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: 2007/003625/08

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 181, on \_\_\_\_\_

In terms of section 182 (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 PATTERSON - DIRECTOR

Authorised Signature

*[Handwritten signature]*

*[Handwritten initials]*



**RESOLUTION PASSED AT A MEETING OF THE BOARD  
OF DIRECTORS OF  
EDCON LIMITED  
(REGISTRATION NUMBER 2007/003525/06)  
("THE COMPANY")  
HELD ON THE 28<sup>TH</sup> 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

KOMMISSIE VIR MAATSKAPPE EN INTELLEKTUELE EIENDOMME	
ONDERWYKINGSDIENST	
2020-04-29	No: 01
BUSINESS RESCUE	
COMPANIES AND INTELLECTUAL PROPERTY	

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

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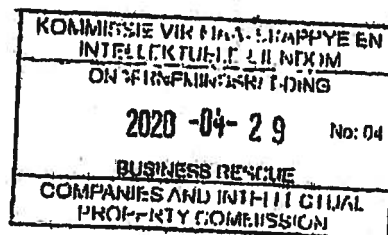
**N PALMER**  
Director

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**A BISOGNO**  
Director

---

**M MTHUNZI**  
Director



FA2



EDCON LIMITED

T: +27 (0) 11 495 8000  
P.O.Box 100, Crown Mines, 2025  
Edgardale, 1 Press Avenue, Crown Mines, Johannesburg, 2025  
www.edcon.co.za

11 May 2020

To: Affected Persons of Edcon Limited (In business rescue)

**NOTICE TO THE AFFECTED PERSONS OF THE COMMENCEMENT OF BUSINESS RESCUE PROCEEDINGS IN RESPECT OF EDCON LIMITED (IN BUSINESS RESCUE) ("THE COMPANY"), AND OF THE APPOINTMENT OF BUSINESS RESCUE PRACTITIONERS TO SUPERVISE THE COMPANY, IN TERMS OF SECTIONS 129(3)(a) AND 129(4)(b) OF THE COMPANIES ACT 71 OF 2008**

1. You are hereby notified, in accordance with Section 129 of the Companies Act 71 of 2008 (as amended) ("the Companies Act"), that the board of Directors of the Company adopted a resolution on 28 April 2020, in terms of which the Company voluntarily commenced business rescue proceedings.
2. Accordingly, a form CoR 123.1, being a Notice of Beginning of Business Rescue Proceedings, as contemplated in section 129 of the Companies Act was filed with the Companies and Intellectual Property Commission ("the Commission") on 29 April 2020.
3. The Company appointed Piers Marsden and Lance Schapiro to be its joint business rescue practitioners on 28 April 2020 and the form CoR 123.2, being a Notice of Appointment of the Business Rescue Practitioner, as contemplated in section 129 (b) of the Companies Act was filed with the Commission on 4 May 2020.
4. In accordance with the requirements of Sections 129 (3) (a) and 129 (4) (b) of the Companies Act, we attach copies of the following documents:
  - 4.1. the notice to commence business rescue proceedings, form CoR 123.1, filed with the Commission;
  - 4.2. the resolution passed by the board of Directors the Company;
  - 4.3. a sworn statement of the facts relevant to the grounds on which the board resolution was founded; and
  - 4.4. the notice of appointment, form CoR123.2, filed with the Commission.
5. The effective date of the Company's business rescue proceedings is accordingly 29 April 2020.

6. The effective date of the appointment of the joint business rescue practitioners is 4 May 2020.
7. Please note that the aforesaid documents, as well as all other notices relevant to the business rescue proceedings of the Company, are also available at [www.matusonassociates.co.za/edcon](http://www.matusonassociates.co.za/edcon)
8. In terms of section 147(1) and 148(1) of the Companies Act the business rescue practitioners must convene the first meeting of creditors and the first meeting of employees' representatives within 10 business days of their appointment. Further details about these meeting will be provided in due course.
9. If you have any queries relating to any operational issues, including ongoing trading and payment please continue to engage through the normal channels at Edcon. For any queries specifically related to business rescue, please do not hesitate to contact us at [creditors@edconbr.co.za](mailto:creditors@edconbr.co.za)

Regards .



Piers Marsden

Business Rescue Practitioner



Lance Schapiro

Business Rescue Practitioner



FA3


PAN AFRICAN SHOPFITTERS (PTY) LTD  
1999/017979/07

CERTIFIED EXTRACT FROM THE MINUTES OF A MEETING OF DIRECTORS OF  
THE ABOVEMENTIONED COMPANY HELD AT GERMISTON ON 26 MARCH  
2020.

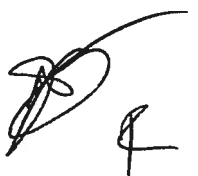
It was certified that:

1. The Company will as soon as practically possible, apply to liquidate Edcon Limited.
2. **MICHAEL BLUMENTHAL** be and is hereby authorised and empowered to sign all the necessary affidavits and documents on behalf of the Company.

THUS DONE AND SIGNED AT GERMISTON ON THIS 27<sup>TH</sup> DAY OF MARCH  
2020.

  
CERTIFIED A TRUE COPY

  
MICHAEL BLUMENTHAL



FAU



FAU

From: Manchadi Kekana <mkekana@ensafrica.com>  
Sent: Tuesday, 05 May 2020 08:32  
To: Wikus Steyl <wikus@ianlevitt.co.za>  
Cc: Gary Oertel <goertel@ensafrica.com>; Ntlhane Makena <nmakena@ensafrica.com>  
Subject: PAN AFRICAN SHOPFITTERS (PTY) LTD v EDCON LIMITED

Dear Sirs

The above matter and the winding up application issued on 4 May 2020 refers.

Please be advised that we act for and on behalf of Edcon Limited ("Edcon").

Please note that the board of directors of Edcon adopted a resolution in terms of section 129 (1) of the Companies Act No. 71 of 2008, as amended ("the Companies Act") on 28 April 2020 to commence business rescue proceedings of Edcon prior to the issuing of the winding up application and the resolution was duly filed with the Companies and Intellectual Proprieties Commission of South Africa ("CIPC") on Monday, 4 May 2020.

In light of the above, you and all affected persons will be notified of the commencement of the business rescue proceedings once CIPC has confirmed the appointment of the business rescue practitioners of Edcon.

We trust that above is in order.

Kind regards  
Manchadi

  **Manchadi Kekana**  
**Senior Associate**  
**Insolvency, Restructuring and Business Rescue**

 +27 11 269 7600  
 +27 82 310 4013  
 [mkekana@ENSAfrica.com](mailto:mkekana@ENSAfrica.com)  
 [ENSAfrica locations](#)



 Edward Nathan Sonnenbergs Incorporated | registration number 2006/018200/21  
level 1 BBBEE rating

Coronavirus (COVID-19) in these times of uncertainty it is good to know you are not alone  
be well | be safe

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FA5

# Ian Levitt

## ATTORNEYS & CONVEYANCERS

Writer's Email : [wikus@ianlevitt.co.za](mailto:wikus@ianlevitt.co.za)

Our Ref : W.STEYL/MAT3046  
Date : 11 May 2020

TO: ENS AFRICA

FOR THE ATTENTION OF: GARY OERTEL, MANCHADI KEKANA AND  
NTLHANE MAKENA

PER EMAIL: [goertel@ensafrika.com](mailto:goertel@ensafrika.com)  
[mkekana@ensafrika.com](mailto:mkekana@ensafrika.com)  
[nmakena@ensafrika.com](mailto:nmakena@ensafrika.com)

Dear Sirs,

RE: PAN AFRICAN SHOPFITTERS (PTY) LTD V EDCON LIMITED

- As you know we represent Pan African Shopfitters (Pty) Limited which on 4 May 2020 launched an application out of the Gauteng Local Division of the High Court to place Edgars Consolidated Stores Limited ("Edcon") under a final winding up order.
- We have considered your email of 5 May 2020 wherein you advise that you are in receipt of the winding up application brought by our client and state as follows:

*"Please note that the board of directors of Edcon adopted a resolution in terms of section 129 (1) of the Companies Act No. 71 of 2008, as amended ("the Companies Act") on 28 April 2020 to commence business rescue proceedings of Edcon prior to the issuing of the winding up application and the resolution was duly filed with the Companies and Intellectual Properties Commission of South Africa ("CIPC") on Monday, 4 May 2020.*



Ian Levitt B.Com., LLB (Wits), HDip Tax Law (Wits), Michael Strauss BA Law (Stellenbosch) LLB (RAU),  
**ASSISTED BY:** Jeanne B Strauss LLB.LLM, Cert in Medicine & Law (Cum Laude), Wikus Steyl LLB (UP), Angelike Charalambous  
B.Com., LLB (UJ), Nicole van Deventer B.Com., LLB (Cum Laude) (UP)

Tel : +27(11) 784-3310 | Fax: +27 (11) 784-3308 | 19th Floor, Office Towers, Sandton Shopping Centre, Cnr Rivonia & 5<sup>th</sup> Street, Sandton |  
PO Box 783244, Sandton, 2146 | Docex 54, Nelson Mandela Square

B-BBEE Status: Level 4

CONVEYANCER: IN ASSOCIATION WITH MICHELLE CHAVKIN ATTORNEYS

For service in terms of Rule 4A(1)(c) email copy to: [info@ianlevitt.co.za](mailto:info@ianlevitt.co.za)

*In light of the above, you and all affected persons will be notified of the commencement of the business rescue proceedings once CIPC has confirmed the appointment of the business rescue practitioners of Edcon.*

3. Please be advised that prior to the Board of Directors of Edcon adopting the resolution to commence Business Rescue Proceedings, our client on 26 March 2020 resolved to liquidate Edcon. A copy of the resolution taken by our client is attached hereto.
4. In the premises:
  - 4.1 in terms of Section 129(2)(a) of the Companies Act 2008, our client initiated liquidation proceedings prior to Edcon's Board of Directors adopting the resolution to commence Business Rescue Proceedings;
  - 4.2 the resolution to adopt Business Rescue Proceedings was adopted in breach of Section 129(2)(a) of the Companies Act, 2008.
5. Please be advised that our client intends to persist with the winding up application and demands that your client forthwith withdraws the aforesaid Business Rescue Resolution falling which, our client shall take such further steps as it may be advised (including the launching of proceedings to set aside the aforesaid Business Rescue Resolution).
6. We look forward to hearing further from you as soon as possible.

Yours Faithfully,

**IAN LEVITT ATTORNEYS**

**PER: WIKUS STEYL**

**SENT ELECTRONICALLY AND THEREFORE UNSIGNED**

Handwritten signature and initials in the bottom right corner of the page.



FIG.  
FAC

**From:** Ntlhane Makena <[nmakena@ensafrica.com](mailto:nmakena@ensafrica.com)>  
**Sent:** Monday, 11 May 2020 12:01  
**To:** Wikus Steyl <[wikus@lanlevitt.co.za](mailto:wikus@lanlevitt.co.za)>; Manchadi Kekana <[mkekana@ensafrica.com](mailto:mkekana@ensafrica.com)>  
**Cc:** Gary Oertel <[goertel@ensafrica.com](mailto:goertel@ensafrica.com)>  
**Subject:** RE: PAN AFRICAN SHOPFITTERS (PTY) LTD v EDCON LIMITED [ENS-ENS.FID4149141]

Wow this guy thinks that a liquidation application is initiated upon the applicant resolving to do so rather than the application being issued and served.



**Ntlhane Makena**  
Director  
Insolvency, Restructuring and Business Rescue

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 +27 82 708 0591  
 [nmakena@ENSafrica.com](mailto:nmakena@ENSafrica.com)  
 [ENSafrica locations](#)

[ENSafrica email disclaimer](#)

FA7

From: Wikus Steyl <[wikus@ianlevitt.co.za](mailto:wikus@ianlevitt.co.za)>  
Sent: 11 May 2020 12:03 PM  
To: Ntlhane Makena <[nmakena@ensafrica.com](mailto:nmakena@ensafrica.com)>; Manchadi Kekana <[mkekana@ensafrica.com](mailto:mkekana@ensafrica.com)>  
Cc: Gary Oertel <[goertel@ensafrica.com](mailto:goertel@ensafrica.com)>  
Subject: RE: PAN AFRICAN SHOPFITTERS (PTY) LTD v EDCON LIMITED [ENS-ENS.FID4149141]

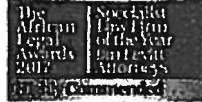
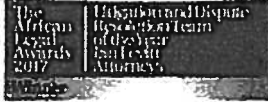
Wow, this guy received your internal e-mail.

WIKUS STEYL

ATTORNEY



IAN LEVITT ATTORNEYS  
19<sup>TH</sup> FLOOR SANDTON OFFICE TOWERS  
SANDTON CITY  
CNR RIVONIA & 5<sup>TH</sup> STREET  
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FAX : 011 784 3309  
Cell : 083 959 4610  
[www.ianlevitt.co.za](http://www.ianlevitt.co.za)



*[Handwritten signature]*

FA9

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

From: Gary Oertel <[goertel@ensafrica.com](mailto:goertel@ensafrica.com)>  
Date: 11 May 2020 12:04  
Subject: RE: PAN AFRICAN SHOPFITTERS (PTY) LTD v EDCON LIMITED  
To: Wikus Steyl <[wikus@ianlevitt.co.za](mailto:wikus@ianlevitt.co.za)>, Nthane Makena  
<[nmakena@ensafrica.com](mailto:nmakena@ensafrica.com)>, Manchadi Kekana <[mkekana@ensafrica.com](mailto:mkekana@ensafrica.com)>  
Cc:

We hope it assists you on the law.

We will revert with a formal response.



**Gary Oertel**  
**Director**  
**Insolvency, Restructuring and Business Rescue**

+27 11 269 7600  
+27 82 772 9548  
[goertel@ENSafrica.com](mailto:goertel@ENSafrica.com)  
ENSafrica locations

[ENSafrica email disclaimer](#)

FA9

**From:** Wikus Steyl  
**Sent:** Thursday, 14 May 2020 15:33  
**To:** 'Gary Oertel' <[goertel@ensafrica.com](mailto:goertel@ensafrica.com)>; Ntliane Makena <[nmakena@ensafrica.com](mailto:nmakena@ensafrica.com)>; Manchadi Kekana <[mkekana@ensafrica.com](mailto:mkekana@ensafrica.com)>  
**Subject:** RE: PAN AFRICAN SHOPFITTERS (PTY) LTD v EDCON LIMITED  
**Importance:** High

Dear Sir,

1. On 11 May 2020 (11:47 am) we sent you our letter advising that our client by virtue of its resolution dated 26 March 2020 initiated liquidation proceedings prior to Edcon's Board of Directors adopting the resolution to commence Business Rescue Proceedings.

2. At 12:01 on 11 May 2020 I received an email from your Mr Makena advising as follows:

"Wow this guy thinks that a liquidation application is initiated upon the applicant resolving to do so rather than the application being issued and served."

3. At 12:03 on 11 May 2020 I sent an email advising that I had received your aforesaid internal email.

4. At 12:04 on 11 May 2020 I received an email from your Mr Oertel advising that you hope the internal email assists us on the law and that you would be reverting with a formal response.

5. Please be advised that notwithstanding your emails in paragraphs 3 and 4 supra, we remain of the view that our client's resolution to institute winding up proceedings constitutes the initiation of liquidation proceedings in terms of section 129(2) (a) of the Companies Act 2008.

6. We have not yet received a formal response from you and we have been instructed to launch an application to set aside the Business Rescue Proceedings. Please advise whether you are authorised to accept service of such application.

**WIKUS STEYL**

**ATTORNEY**



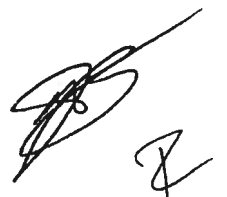
**IAN LEVITT ATTORNEYS**

**19<sup>TH</sup> FLOOR SANDTON OFFICE TOWERS**

**SANDTON CITY**

**CNR RIVONIA & 5<sup>TH</sup> STREET**

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FAX: 011 784 3309

Cell : 083 959 4610

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Handwritten signature and initials in the bottom right corner of the page.