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

Case Number: 081761-2025
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED:

In the matter between:

SABLE PLACE PROPERTIES 106 (PTY) LTD	1st Applicant
REDEFINE PROPERTIES LTD	2nd Applicant
TADVEST COMMERCIAL (PTY) LTD	3rd Applicant

and

VISA SECURITY GROUP (PTY) LTD	1st Respondent
MINISTER OF POLICE	2nd Respondent

REASONS FOR ORDER GRANTED ON 17 JUNE 2025

MINNAAR AJ:

Introduction:

[1] On 17 June 2025, after having heard counsel on behalf of the applicants and the first respondent, the following order was made in the urgent court:

1) That non-compliance with the Rules of court with reference to time frames and service is condoned and that the matter is heard as urgent in terms of Rule 6(12)(a).

2) That the first respondent, and any other persons, entities or bodies, and employees, as the case may be, acting through the first respondent, is hereby ordered to forthwith vacate the applicants' property at Hertford Office Park, 9[…] B[…] Road, V[…] V[…], Sandton, Gauteng.

3) That the second respondent, and any other persons, entities or bodies, as the case may be, acting through, or under the second respondent, are hereby restrained, and interdicted, from attending upon the applicants' property at Hertford Office Park, 9[…] B[…] Road, V[…] V[…], Sandton, Gauteng, with the aim and sole, or other purpose of:

a Demanding that the applicants employ them as security service providers, at the applicants' property at Hertford Office Park, 9[…] B[…] Road, V[…] V[…], Sandton, Gauteng; and

b Frustrating, and interfering with, the applicants' business thereat; and

c Harassing and intimidating tenants, employees and security service providers of the applicants; and

d Interfering with, harassing or intimidating the applicants' managers, and/or security service providers; and

e Without limiting the generality of the aforesaid, prohibited from doing anything whatsoever related to or in connection with the harassment, intimidation and assault of the applicant's employees, its security or other contractors, tenants and security service provider and preventing the applicants' security and other contractors from performing their daily duties and functions.

4) That the second respondent be and is hereby directed to assist the applicants by accepting complaints from the applicants, and pursuant thereto, and removing any of the first respondent or its employees from the applicants' aforesaid property.

5) That the second respondent be and is hereby further directed to assist the applicants to consider and investigate the complaints on the merits thereof, to consider whether or not an arrest can and must be made in terms of the court order regarding the conduct of the first respondent, or any other persons, entities or bodies at the applicants' premises who interfere with, harass, intimidate or assault the applicants' property managers, its employees, its contractors, tenants and security service providers.

6) That the first respondent be ordered to pay the costs of this application on scale C in terms of Rule 67, read with Rule 69.

[2] I pause to state that the second respondent delivered a notice to abide by the decision of the court.

[3] On a perusal of prayer 3 of the granted order, read with the contents of prayer 3 of the notice of motion and the contents of the founding affidavit, it is evident that the reference to the 'second respondent' in prayer 3 of the granted order, should be reference to the 'first respondent'. In terms of the provisions of Rule 42(1)(b) of the Uniform Rules of Court the court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission. In the premises, any reference to the 'second respondent' in prayer 3 of the granted order constitutes a patent error, and as such, prayer 3 of the order is varied to refer to the 'first respondent' and not to the 'second respondent'.

<u>The applicants' case:</u>

[4] The applicants are the joint owners of the Hertford Office Park ('HOP'). HOP is managed by the management agent, Strive Real Estate Specialists (Pty) Ltd ('Strive').

[5] As landlords, the applicants employ security companies from time to time to provide security services for the benefit of the tenants and the protection of their buildings at HOP.

[6] At no stage did the applicants conclude a contract with the first respondent for the rendering of security services.

[7] In November 2024, the contracted security service provider at HOP was Stallion Security Group ('Stallion'). According to the applicants, the first respondent appeared to be a subcontractor of Stallion, as the first respondent provided services at HOP. Absent a contract between the applicants and the first respondent, the presence of the first respondent became untenable and unlawful, and an election was made that the security contract would go out on tender. The first respondent tendered, but the tender was not successful. This was communicated to the first respondent on 14 March 2025.

[8] The successful bidder was Fidelity Services Group ('Fidelity'), and the security contract was awarded to Fidelity. Fidelity was appointed on 26 May 2025, with the commencement date on 1 June 2025.

[9] Various correspondences from Stallion, Strive, and the attorneys acting for Strive and the applicants were directed to the first respondent and the attorneys representing the first respondent to inform the first respondent that it has no entitlement to be on the premises of HOP and that the first respondent should vacate the premises of HOP. The first respondent flatly refused to vacate the premises.

[10] On 31 May 2025, Fidelity attended the premises and found the first respondent and its employees in occupation thereof. The first respondent and its employees refused to grant the Fidelity staff access to the property. It is alleged that Mr Kimera, the general manager of the first respondent, was surrounded by men with automatic guns in riot helmets. Mr Kimera informed the Fidelity manager that Fidelity will not be allowed access to the premises of HOP. Fidelity approached the South African Police Service in Midrand for assistance. Mr Kimera also attended. A docket was opened, but the members of the second respondent regarded it as a civil dispute and refused to become involved. I pause to remark that this refusal of the members of the second respondent to assist where there were allegations of firearms and hostility being involved is a cause of concern. This might explain the

rationale behind the second respondent's election to deliver a notice to abide by the outcome herein.

[11] It is the case of the applicants that there is no contract between the applicants and/or Strive and the first respondent, and as such, the first respondent has no entitlement to remain on the premises of HOP and to provide security services for which it will not be paid. Ample notice and opportunity were granted to vacate the premises by 30 May 2025, but the first respondent remains steadfast in its occupation of the premises.

The first respondent's case:

[12] The first respondent is placing reliance on a partly written partly oral, alternatively tacit agreement between the first respondent and Abreal Property Management ('Abreal') (which is now Strive) and/or Keypoint Intelligence (Pty) Ltd ('Keypoint').

[13] It is the first respondent's case that the purported agreement was concluded in February 2021. The first respondent was represented by Mr Kimera. Abreal was represented by Me Mandie Spies, the operations manager at Waterfall Precinct and Mr David Louw, its Head of Operations. Keypoint was represented by Mr David Conradie, Operations Manager and Mr Billy Steyn, director.

[14] It is alleged that, in terms of the agreement, the first respondent would provide security services to Strive and Keypoint in the newly established Waterfall Ridge Precinct. The security services were to be provided for 5 (five) years.

[15] In attempting to prove the existence of the contract, the first respondent attached various correspondence dating back to February 2021. According to the first respondent, Keypoint merged with Stallion in May 2022, and Stallion was forthwith only to provide the management of the CCTV system.

[16] In October 2023, the first respondent, on the request of Mr John Lax, the Operations Manager at Strive, provided Strive with a draft Service Legal Agreement.

Further attempts were made to have this Service Legal Agreement signed with the successors of Mr Lax.

[17] On the first respondent's version, Stallion terminated the first respondent's services on 1 November 2024. On 25 November 2024, the first respondent informed Stallion that it would continue to provide security services. On 27 November 2024, Stallion conveyed to the first respondent that Stallion is entitled to terminate the first respondent's services as there is no contract between Stallion and the first respondent. It was pertinently stated that no fixed-term agreement was ever concluded with the first respondent. Subsequent correspondence on the issue also forms part of the first respondent's answering affidavit.

[18] On the events that occurred on 31 May 2025, it is the case of the first respondent that it was Fidelity's personnel and presence that inflamed the situation and that the first respondent had no hand in the volatile situation.

[19] The first respondent's case is that the application is not urgent and that the applicants will be able to obtain substantial redress in due course through a claim for damages. According to the first respondent, the applicants have failed to make out a case for final relief. The first respondent further raised a point of misjoinder relating to Strive and Stallion.

Conclusion:

[20] The first respondent's entitlement to remain at HOP and to render security services is premised on the alleged partly written, partly oral, *alternatively* tacit agreement concluded in February 2021.

[21] Save for correspondence and the draft Service Level Agreement that first came to light in October 2023, the first respondent presents no written agreement.

[22] This leaves the first respondent to rely on the tacit agreement. The legal position on the establishment of a tacit contract is clear. To establish a tacit contract, it is necessary to allege and prove unequivocal conduct that establishes on a

balance of probabilities that the parties intended to, and did in fact, contract on the terms alleged. It must be proved that there was agreement. In deciding whether a tacit contract was concluded, the law objectively considers the conduct of both parties and the circumstances of the case generally.[1]

[23] On the evidence before me, the first respondent failed to prove that a tacit contract, spanning 5 (five) years, was concluded back in 2021. There is no objective evidence to support this contention by the first respondent.

[24] On 25 November 2024 (annexure SK14 to the answering affidavit), the first respondent's attorney addressed a letter to Stallion in response to the 1 November 2024 letter of cancellation. Reference is made to the agreement reached with Mr Rami Avivi (Mr Avivi does not feature in the answering affidavit as one of the persons who was involved in negotiating and concluding the purported agreement). What is, however, lacking from the reference to the alleged agreement is any specifics as to the terms and conditions of the alleged agreement. Strikingly, no mention is made of the duration of the alleged agreement.

[25] In response to this letter, Stallion pertinently stated that there is no agreement with the first respondent, and more pertinently that no fixed-term agreement was ever concluded with the first respondent (annexure SK15 to the answering affidavit).

[26] By inference, Stallion's response and insistence that no agreement as alleged was entered into clearly does not constitute the most plausible probable conclusion from all the relevant proven facts and circumstances that a contract has come into existence. The first respondent failed to prove unequivocal conduct giving rise to an inference of consensus on a balance of probabilities.

[27] There is no *nexus* between the first respondent and the applicants. The first respondent was not successful in the tender to provide security services to HOP,

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[1] *Standard Bank of SA Ltd v Ocean Commodities Inc* 1983 (1) SA 276 (A) at page 292; *Mühlmann v Mühlmann* 1984 (3) SA 102 (A) at pages 123-124; *Joel Melamed & Hurwitz v Cleveland Estates (Pty) Ltd* 1984 (3) SA 155 (A); *NBS Bank Ltd v Cape Produce Co (Pty) Ltd* 2002 (1) SA 396 (SCA); *Buffalo City Metropolitan Municipality v Nurcha Development Finance Pty) Ltd and others* 2019 (3) SA 379 (SCA) at paras 16-21

and as such, the first respondent has no entitlement to render such services and to remain in occupation of the premises.

[28] Stallion terminated the first respondent's service on due and reasonable notice in November 2024. Despite this termination, the first respondent was adamant that it was entitled to render the security services. The first respondent took no steps to lodge legal proceedings to enforce the alleged tacit contract on which reliance is placed.

[29] Urgency stems from what occurred on 31 May 2025 when the first respondent, despite being given reasonable notice, failed to vacate the premises and, in this steadfast refusal, prevented Fidelity from assuming their duties.

[30] On the final relief granted, this court was satisfied that the applicants made out a case that they have a clear right, that there was an injury actually committed or that an injury is reasonably apprehended and that there is no other satisfactory remedy available to the applicants.

Costs

[31] The discretion in granting costs is trite.[2]

[32] The determination as to what scale of costs would be applicable under the party and party scale regime is dictated by the provisions of Rule 67A of the Uniform Rules of Court. Rule 67A(3) provides that a court "shall", when making a party and party costs order, "indicate the scale in terms of rule 69, under which costs have been granted". Those scales have been inserted into rule 69(7) under the amendment that created rule 67A. They are scales "A", "B", and "C". Rule 67A(4) provides for the right to apply for an order determining which parts of the proceedings, if any, were urgent, and whether the costs of more than one counsel may be recovered. The effect of that subrule is, notionally, that a different scale

[2] *Ferreira v Levin NO & Others; Vryenhoek & Others v Powell NO and Others* 1996 (2) SA 621 (CC) at paragraph 3

could be assigned to the services of each counsel whose fees are allowed under the rule.[3]

[33] Scale A is the lowest scale and will apply by default where no scale is specified. Scale B falls in the middle of the spectrum and scale C is the highest scale when party and party costs are ordered. The effect of the different scales of costs is to determine the rate at which costs can be taxed.

[34] The complex nature of the matter and how the case was presented to the court are among the factors to consider when setting a scale under the rule.[4]

[35] The application involves complex matters such as the granting of an interdict and contractual rights. The complexity of these kinds of applications needs no elaboration. The costs on scale C are justified.

[36] These are the reasons for my judgment.

[37] Prayer 3 is varied to read:

> *3) That the first respondent, and any other persons, entities or bodies, as the case may be, acting through, or under the first respondent, are hereby restrained, and interdicted, from attending upon the applicants' property at Hertford Office Park, 9[…] B[…] Road, V[…] V[…], Sandton, Gauteng, with the aim and sole, or other purpose of:*
>
> *i. Demanding that the applicants employ them as security service providers, at the applicants' property at Hertford Office Park, 9[…] B[…] Road, V[…] V[…], Sandton, Gauteng; and*
>
> *ii. Frustrating, and interfering with, the applicants' business thereat; and*
>
> *iii. Harassing and intimidating tenants, employees and security service providers of the applicants; and*

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[3] *Mashava v Enaex Africa (Pty) Ltd* (2022/1840) [2024] ZAGPJHC 387 (22 April 2024) at par 7 to 9

[4] *Mashava* at par 14

iv. *Interfering with, harassing or intimidating the applicants' managers, and/or security service providers; and*

v. *Without limiting the generality of the aforesaid, prohibited from doing anything whatsoever related to or in connection with the harassment, intimidation and assault of the applicant's employees, its security or other contractors, tenants and security service provider and preventing the applicants' security and other contractors from performing their daily duties and functions.*

MINNAAR AJ
ACTING JUDGE OF THE HIGH COURT
PRETORIA

For the Applicants: Adv G T Avvakoumides SC instructed by Mark Efstratiou Inc.

For the First Respondent: Adv B L Manentsa with Adv T Ngakane instructed Adams and Adams

For the Second Respondent: No appearance: Notice to abide filed by the State Attorney

Date of Hearing: 17 June 2025
Date of reasons for judgment: 24 June 2025