

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **NO**

Date: **26 May 2025** Signature: _____

CASE NO: 2023-022277

In the matter between:

DIANE IRENE GORDON

PLAINTIFF

And

ROBERT WESTON DICKSON

1ST DEFENDANT

JANNIC FINANCIAL SERVICE (PTY) LTD

2ND DEFENDANT

BDO ADVISORY SERVICES (PTY) LTD

3RD DEFENDANT

LEISURE OPTIONS (PTY) LTD

4TH DEFENDANT

Coram: Dlamini J
Request for Reasons: 18 March 2025

Delivered: 26 May 2025 – This judgment was handed down electronically by circulation to the parties' representatives *via* email, uploaded to *CaseLines*, and released to SAFLII. The date and time for the hand-down are deemed to be 10:30 on 26 May 2025.

JUDGMENT

DLAMINI J

INTRODUCTION

[1] There are two interlocutory applications that the parties agreed should be heard simultaneously, namely:

1.1. The first is an application to compel discovery, wherein the plaintiff is the applicant and the first, second, and fourth defendants are the first, second, and fourth respondents.

1.2 The second is an application for separation, wherein the first, second, and fourth defendants are the applicants seeking an order against the plaintiff, who is the respondent, in accordance with Rule 33 (4) of the Uniform Rules of Court for the separation and prior determination of the issues pleaded in paragraphs 6.2 to 6.4 of their plea.

BACKGROUND FACTS

[2] It is apposite to consider the background facts that are relevant in the determination of this matter.

[3] In the main action, the plaintiff was a 20% shareholder and a director of the fourth defendant.

[4] A dispute appears to have arisen between the plaintiff and the first and second defendants. To resolve this dispute, on 28 September 2021, the parties entered into a written settlement agreement (the Settlement Agreement). The Settlement Agreement was amended through addenda on 11 October 2021 and 18 November 2021.

[5] The material terms of the Settlement Agreement relevant to this dispute are as follows ;

5.1. The first and second defendants purchased the plaintiff's 20% shareholding in the fourth respondent for an amount equal to 24% of the Valuation, which was to be determined by the third respondent (BDO) the net asset value of the Company as at 2 October 2017, less an amount of R5 395 000.00.

5.2 The Valuation amount was calculated to be R26,913,320.00.

[6] It appears that the first and second defendants duly complied with the terms of the agreement and made full payment in the amount R26 913 320.00 to the plaintiff. Whereupon the plaintiff duly accepted the payment and transferred the Sale Shares to the first and second defendants as per the Settlement Agreement.

[7] In September 2022, the plaintiff addressed correspondence to the defendants, notifying them that a dispute exists between the parties regarding the NAV valuation.

[8] The parties agreed that in terms of the Settlement Agreement, the plaintiff's dispute concerning the NAV Valuation ought to be referred to arbitration.

[9] In January 2023, the plaintiff initiated arbitration proceedings.

[10] However, in the midst of the proceedings, the arbitration was withdrawn by the plaintiff because the third and fourth defendants stated that they were not parties to the arbitration agreement, as they were also not parties to the Settlement Agreement. The plaintiff then launched this action.

[11] In this application, the plaintiff seeks the following orders: First, a review and setting aside of the Valuation conducted by BDO. Second, to direct BDO to re-evaluate the Sale Shares, with particular reference to the allegations in paragraphs 19.1 -19.9 of the plaintiff's particulars of claim.

[12] After filing their notice to defend, the defendants filed their plea. In paragraphs 6.2 - 6.4 of their plea, the defendants argue that the plaintiff accepted the Valuation, represented an acceptance thereof, and voluntarily participated in the implementation of the transaction based upon such settlement.

[13] The defendants then filed the application for separation in terms of Rule 33 (4) of the Uniform Rules of the Court.

[14] On 15 May 2024, the plaintiff delivered a notice in terms of Rule 35 (3) and (6) of the Uniform Rules of Court. When no response was forthcoming from the first, second, and fourth defendants, the plaintiff launched this application to compel.

[15] I now turn to deal with the respective applications,

The Separation Application

[16] It is worth restating that the main issue for determination in this matter is whether the applicants' application to have paragraphs 6.2 to 6.4 of their plea dealt with separately from, and prior to, the determination of the remaining issues in terms of the provisions of Rule 33 (4).

[17] The defendants argue that the separated issue would, if successful, constitute a complete defence to the plaintiff's claim and thus would be dispositive of the matter.

[18] Also, the applicants insist that if the separation is successful, it will be dispositive of the action, sparing the parties the inconvenience of having to prepare any evidence related to the more complex and time-consuming issues related to reviewability of the Valuation.

[19] Furthermore, the applicants argue that the plaintiff's complaints regarding the valuation will require detailed accounting evidence for the Court to determine whether the valuation was conducted properly.

[20] Lastly, the applicants submit that the plaintiff failed to take into account the many days it will take the parties' preparation and the costs the parties will incur leading up to a trial if the separated issues are not decided separately.

[21] The respondent argues that a finding that she accepted the NAV, alternatively represented an acceptance thereof, has no impact on the issues in dispute in the main action and the relief sought by the plaintiff, which is to review and set aside the NAV Valuation.

[22] The respondents argue that it was a term of the Settlement Agreement, requiring both parties to continue performing their respective obligations under the Settlement Agreement pending the resolution of the dispute concerning the NAV Valuation.

[23] The respondent contends that the applicants cannot dispute the fact that she had expressed her dissatisfaction with the NAV Valuation dating back to November 2021. Also, even if a court makes a determination that the plaintiff accepted the NAV valuation, the fact that the respondent disputed the NAV Valuation, so the argument goes, as she was entitled to do, negates any finding of acceptance and the accompanying conclusion that she is precluded from disputing the determination.

[24] Lastly, the respondent argues that since the pleadings closed in June 2023 and the application for separation was only launched in September 2024, this long delay renders the application for separation inconvenient, as it is no longer appropriate and fair to separate the issues. This situation no longer serves the purpose of avoiding delays and costs associated with conducting the trial. The respondent's submissions in this regard are valid, and I concur with them.

[25] It will be helpful to examine the provisions of Rule 33(4), which state as follows: -

"If, any pending action, it appears to the court mero motu that there is a question of law or fact which may conveniently be decided either before any evidence is led or or separately from any other question, the court may make an order directing the disposal of such question such manner as it may deem fit and may order that all further proceedings be stayed until such question has been disposed of, and the court shall on the application of any party make such order unless it appears that the question cannot conveniently be decided separately".

[26] The trite principle of our law is that courts generally favour and support the principle that timeous disposal of litigation is best achieved by allowing all the issues to be dealt with at once rather than permitting piecemeal litigation. A sensible interpretation of the rule is that it aims to facilitate the convenient and

expeditious disposal of litigation, thereby saving the parties the costs and delays of a full trial.

[27] In my view, the applicant's contention lacks merit and stands to be dismissed. This is because the issues raised by the applicants in paragraphs 6.2-6.4. are clearly not dispositive of the issues raised in the plaintiff's claim. At the heart of the plaintiff's claim is the request for the review and the setting aside of the Valuation, particularly the BDO's valuation of shares. Additionally, the plaintiff seeks an order directing BDO to perform a revaluation of the sale Shares with specific reference to the allegations contained in paragraphs 19.1- 19.9 of the plaintiff's particulars of claim.

[28] Therefore, to avoid piecemeal litigation and preserve the very limited court resources, it is my finding that it will not be in the interest of justice to order separation. Additionally, the applicant's complaint regarding the calling of experts are of no moment. Preparation for trial, including the calling of any witnesses, including expert witnesses, is routine and forms part of our civil practice.

[29] Having regard to all the circumstances mentioned above, the applicants have failed to discharge the onus that rested on their shoulders that they are entitled to the order that they seek. The application for separation is dismissed.

The application to compel discovery

[30] The application for a stay of proceedings largely hinges on the outcome of the separation application. I have already made a ruling and dismissed the separation application. It follows, therefore, as it must, that the defendants must comply and make the necessary discovery in terms of the plaintiff's Rule 234 notice.


[31] In all the circumstances, alluded to above, the defendant's application for separation is dismissed. Consequently, the plaintiff's discovery application is granted.

COST

[32] The trite principle of our law is that costs follow suit and are awarded to the successful party. I find no reason why costs should not follow the event.

ORDER

1. The order marked "X" that I signed on 3 March 2025 made an order of this court.



J DLAMINI
Judge of the High Court
Gauteng Division, Johannesburg

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