

IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 3190/18P

In the matter between

**IHLOBO FOOTWEAR CC**

Applicant

and

**BATA SOUTH AFRICA (PTY) LTD**

First Respondent

**FUTURA FOOTWEAR LIMITED**

Second Respondent

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**CERTIFICATE OF URGENCY : CONTEMPT APPLICATION**

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I, the undersigned **SARAH PUDIFIN-JONES**, an advocate of the above honourable Court practicing at Group 502, 12<sup>th</sup> Floor, 6 Durban Club Place confirm that I have read the papers in the above application and in my view the matter is of sufficient urgency that it justifies curtailment of the time periods as provided and being set down on Friday 11 May 2018.



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SF PUDIFIN-JONES

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**NOTICE OF MOTION : CONTEMPT APPLICATION**

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**KINDLY TAKE NOTICE** that the above-named Applicant intends to make application to the above Honourable Court on **11 MAY 2018** at 09h30 or so soon thereafter as the matter may be heard for an order in the following terms:

1. That this matter be heard as one of urgency in terms of Rule 6(12) and that the usual forms and services be and are hereby dispensed with.

2. That a rule *nisi* be and is hereby issued calling upon First Respondent ("*Bata*") to appear before this court on the            day of            2018 at 09h30 or so soon thereafter as the matter may be heard, to show cause why an order should not be granted in the following terms:

2.1 It is declared that Bata is in contempt of Prayer 2.1, 2.2 and 2.3 of the Order of this court under the above case number issued per Gorven J on 20 April 2018;

2.2 Bata is ordered to purge its said contempt by:

2.2.1 complying fully and precisely with the terms of paragraph 2 of the Order of Gorven J, including the obligation to place orders with the Applicant ("*Ihlobo*") as it would have been done if the purported cancellation of the Agreement had not taken place;

2.2.2 furnishing the following information to *Ihlobo* on a weekly basis together with the orders referred to in paragraph 2.3.1 above:

2.2.2.1 a list of all the orders that Bata has placed with its remaining ABUs; and

2.2.2.2 a list of that week's production target inclusive of any new contracts that Bata has received or receives from the date of the court's order (or if no new

contracts or no future production targets are provided in any given week, then a statement to that effect);


- 2.3 Directing Bata to pay the costs of this application on the Attorney and Own Client scale, jointly and severally, together with its legal representatives *de bonis propriis*, the one paying the others to be absolved, such costs to include the costs of two counsel;
3. Pending the return day of the aforesaid rule *nisi*, the provisions of paragraph 2.2 *supra* will operate forthwith as an interdict having immediate effect.
4. Further and/or alternative relief.

**TAKE NOTICE FURTHER** that the affidavit of Paul Simon Hay together with the annexures thereto, filed evenly herewith, will be used in support hereof.

**TAKE NOTICE FURTHER** that if you intend opposing the interim relief sought in this application, you are to file your notice of intention to oppose together with your answering affidavit by 16h00 on Wednesday 9 May 2018.

**TAKE NOTICE FURTHER** that Ihlobo will file its replying affidavit in respect of the interim relief, if any, on or before 13h00 on Thursday 10 May 2018.

DATED AT PIETERMARITZBURG THIS 7<sup>TH</sup> DAY OF MAY 2018.

.....

HAY & SCOTT ATTORNEYS

Applicant's Attorneys

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3 Highgate Drive

Redlands Estate

1 George MacFarlane Lane

Pietermaritzburg

Tel: (033) 342-4800

(Ref: R. Brent/08H077001)

TO: THE REGISTRAR  
Of the above Honourable Court  
Pietermaritzburg

AND TO: MACGREGOR ERASMUS ATTORNEYS  
RESPONDENTS' ATTORNEYS  
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**FOUNDING AFFIDAVIT : CONTEMPT APPLICATION**

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I, the undersigned

**PAUL SIMON HAY**

do hereby make oath and say:

1.

I am an adult male attorney of this Honourable Court practising as such as a partner of Hay & Scott Attorneys at Top Floor Alexander Forbes Wing, 3 Highgate Drive, Redlands Estate, 1 George MacFarlane Lane, Pietermaritzburg, KwaZulu-Natal. Hay & Scott Attorneys are, and have since inception been the Applicant's attorneys of record in the

*31/10/18*

litigation under the above case number.

2.

I am duly authorised by the Applicant to launch these proceedings and make this affidavit on its behalf. The matters to which I depose herein fall within my personal knowledge unless otherwise indicated, and are to the best of my knowledge and belief, true.

**SUMMARY OF THE RELIEF SOUGHT**

3.

The Applicant seeks to hold the First Respondent ("*Bata*"):

3.1. in contempt of prayers 2.1, 2.2 and 2.3 of the Court Order of Gorven J handed down on 20 April 2018, a copy of which is annexed marked "**PSH1**"; and

3.2. in constructive contempt of any Order which may be granted on 22 June 2018, the date to which the "main application" is adjourned.

4.

The Order of Gorven J ordered that, pending the hearing of the application on 22 June 2018:

*"2.1 The purported cancellation of the agreement between the Applicant and the First Respondent is suspended and should be of no force and effect;*

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2.2 The First Respondent is ordered to place orders with the applicant as would have been done if the purported cancellation of the agreement had not taken place.

2.3 Paragraph 2.2 shall not derogate from any right (not contained in clause 29 of the agreement on page 59 of the papers) to cancel the agreement".

5.

In defiance of that Order, Bata has:

5.1. failed to give any orders to Ihlobo as required by paragraph 2.2 of the Order and, despite being reminded of its obligations to comply with the Order, has unequivocally indicated that it does not intend to give any orders to Bata under the Agreement;

5.2. purported to terminate the Agreement under clause 29 of the Agreement notwithstanding that paragraph 2.3 of Gorven's order specifically provides that the Agreement may not be cancelled in terms of that clause; and

5.3. acted in a manner that confirms that it has wilfully disobeyed the Order, including through making spurious allegations against Ihlobo and attempting to engineer a factual basis for terminating the Agreement where it is clear that such basis is utterly groundless.

6.

Bata's conduct as aforesaid not only violates the existing Court Order (which is an interim order), but also amounts to constructive contempt of any future Court Order that this Court may grant on 22 June 2018 when the application is back in Court.

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7.

Despite being reminded of its obligations as aforesaid, Bata has persisted in its contemptuous conduct, which demonstrates *mala fides*. Its actions, in purporting to cancel the agreement in defiance of that Order (and on utterly spurious grounds), have the ulterior object of avoiding compliance with the Order, and amount to contempt of the existing Order and constructive contempt of any future order.

### PARTIES

8.

The Applicant is IHLOBO FOOTWEAR CC ("*Ihlobo*"), the applicant in the main application and a manufacturer of shoes and shoe components. As set out in the main application, Ihlobo is one of six Associate Business Units (essentially, independent contractors) to which Bata outsources the manufacturing of Bata shoes.

9.

The First Respondent is BATA SOUTH AFRICA (PTY) LTD ("*Bata*"), the face of Bata Shoes in South Africa. Bata is an international footwear brand and the world's leading shoemaker by volume.

10.

No relief is sought against the Second Respondent.

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11.

Bata has been represented in these proceedings at all times by Alexander Gordon, the Head of the Non-Retail Sales Division at Bata South Africa. It is my understanding that Mr Gordon has been the author and director of the contemptuous conduct which forms the subject of these proceedings, and which has been committed on behalf of Bata.

### **BACKGROUND**

12.

The relationship between Bata and Ihlobo is set out in some detail in the papers in the main application and I do not repeat those allegations here, save to record that:

12.1. the contractual relationship between Bata and Ihlobo is governed by the Agreement annexed as annexure NC4 to the Founding Affidavit in the main application. For ease of reference, and because of the central role that this document plays in the application, I annex the Agreement to this affidavit marked "PSH2";

12.2. In 2017 and at the instance of Bata's "ABU Manager" (alternatively "Production Manager"), known in these proceedings as "Kazi", Ihlobo was directed to tool-up its factory in order to produce "stuck-on" shoes for Bata. Ihlobo did so at considerable expense by purchasing new equipment, employing new staff and taking out a loan from the IDC, which was granted following written confirmation by Kazi that Bata had directed Ihlobo to commence stuck-on production;

12.3. Ihlobo employs approximately 280 permanent staff in its factory and up to 50 casual employees depending on operational requirements. Approximately 80% of these employees are African females.

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13.

In February 2018, and without any notice or grounds therefore, Bata purported to terminate the Agreement "*forthwith*" in terms of clause 29 of the Agreement which provides for termination on 30 days' notice. I understand that the effect of the termination will be that Ihlobo's factory will close down, its staff members will be retrenched and the economy of Hammarsdale in which it operates, and to which the Ihlobo factory contributes significantly, will be even further depressed.

14.

Ihlobo launched the main application and seeks (*inter alia*) relief declaring that the enforcement of clause 29 is unconstitutional and contrary to public policy on the second leg of the *Barkhuizen* test. Ihlobo alleges that the enforcement of the Agreement as it stands and in the particular circumstances of this case (given Bata's conduct) will result in the violation of a number of constitutional rights, including the right to fair labour practices, to property, to dignity and will further violate the principles of social justice and fairness which the Constitutional Court has held infuse the Constitution.

15.

On 20 April 2018, Gorven J granted Ihlobo interim relief as aforesaid and directed that the Rule 16A Notice be served on various parties. This portion of the Order has been complied with by Ihlobo.

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### SERVICE AND KNOWLEDGE OF THE TERMS OF THE ORDER

16.

Bata was in Court and represented when the Order was granted.

17.

In addition, in compliance with the Order, it was served on Bata on 2 May 2018.

### FIRST RESPONDENT'S BREACH AND CONTEMPT

18.

After Gorven J's Order was delivered on 20 April 2018 and commencing on the very next business day on 23 April 2018, there occurred a series of steps taken by Bata and which are detailed in the correspondence between the Respondents' attorney and my firm. This correspondence tells the story of the contemptuous behaviour of the First Respondent.

19.

The Order of Gorven J was handed down on 20 April 2018, a Friday.

20.

On Monday 23 April 2018, and despite the Court Order having been granted suspending the cancellation of the Agreement, Bata ignored that Order and continued to act as if the Agreement was cancelled. In defiance of the Order, Ihlobo received email correspondence from Bata on Monday 23 April 2018 at 08:16 asking "*when [the applicant] will be ready*" for "*Bata to uplift the machines*". A copy of this correspondence is annexed marked "PSH3".

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21.

As was set out in the Founding Papers, Bata places orders with its ABUs on a weekly basis and these orders are traditionally placed on a Tuesday.

22.

However, instead of receiving an order from Bata as envisaged by the Court Order on Tuesday 24 April 2018, Bata sent the email mentioned above on 23 April 2018, and thereafter Ihlobo's attorneys received correspondence from Bata's attorneys dated 24 April 2018 in which Bata, on spurious and unsubstantiated grounds (which had never previously been put to Ihlobo to permit it an opportunity to disprove), purported for a second time to terminate the agreement. A copy of this correspondence is annexed marked "PSH4".

23.

The purported grounds of termination were that Ihlobo had addressed correspondence to Kazi from Bata as far back as January and June 2017 (15 and 10 months prior to the purported termination) asking Kazi to "collude" in "misrepresenting" that Bata had directed Ihlobo to produce 4500 pairs of "stuck-ons" per day and, on Bata's version, "Ihlobo and Kazi [had] colluded to commit a fraud".

24.

On 25 April 2018, Bata delivered its supplementary affidavit in accordance with the order of 20 April 2018, essentially setting out the same facts as set out in Bata's

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attorneys letter dated 24 April 2018 and asserting Bata's (utterly unwarranted) conclusions flowing therefrom. I am advised that this affidavit should appear in the Court file and for the sake of not overburdening this Court with paper I will not annex it to this affidavit. I will otherwise ensure that it is available at the hearing of the application.

## 25.

In light of Bata's letter of 24 April 2018, Ihlobo and its legal representatives were then forced to urgently consider the allegations made by Bata, not least of all because of Bata's alleged fraud against Ihlobo. On 26 April 2018, Ihlobo's attorneys responded to Bata's letter of 24 April 2018. A copy of this correspondence is annexed marked "PSH5". This letter records:

25.1. that the facts set out in Bata's letter of 24 April 2018 are plainly wrong and self-serving and the inferences which Bata seeks to draw therefrom are unjustified.

25.2. the true position is that the correspondence with Kazi is entirely consistent with what Ihlobo had stated in its affidavits: namely that, following a request from the IDC that Bata confirms its 'tooling-up' order, Ihlobo had asked Kazi to place the instruction in writing. This is also consistent with the fact that the Agreement required any variations to the order to be in writing.

## 26.

Ihlobo's attorneys recorded further that Bata's purported termination is "*maliciously aimed at opportunistically providing false grounds for the unlawful cancellation of the agreement between the parties*". Bata was reminded of the duties set out by the

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Constitutional Court in Eke v Parsons 2016 (3) SA 37 (CC) to respect and uphold court orders and warned that its conduct in purporting to terminate the Agreement a mere two court days after the Order of Gorven J was granted, and on utterly spurious grounds, is abusive of the existing Court Order and amounts to constructive contempt of any order which might be granted on 22 June 2018.

## 27.

On the aforesaid bases, Ihlobo indicated that it refused to accept Bata's purported termination and put Bata to an election that:

27.1. either these issues (i.e. the subsequent purported termination) must be ventilated in the existing court process on 22 June 2018 and under the discipline of the existing timetable; or

27.2. Ihlobo would refer the issue to arbitration for determination under the contract.

## 28.

Bata was requested to reply by 30 April 2018 and to indicate its election.

## 29.

Bata failed to reply by 30 April 2018 or to make an election as indicated. To date it has failed to do so, further confirming its contemptuous conduct in respect of the Court Order.

## 30.

Moreover, Bata failed to place any orders with Ihlobo during the week following the

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handing down of the Court Order.

31.

Accordingly, on 2 May 2018 (the following working day after the 1 May 2018 public holiday), Ihlobo's attorneys addressed further correspondence to Bata's attorneys, a copy of which is annexed marked "PSH6". In this correspondence, Ihlobo:

31.1. referred to the specific terms of the Order which remains extant and binding on all parties;

31.2. demanded that Bata place orders with Ihlobo in terms of the Order on or before 16h00 on Wednesday 2 May 2018 (given that Tuesday 1 May was a public holiday); and

31.3. reserved Ihlobo's rights to approach the Court should no or insufficient orders be placed.

32.

Ihlobo once again emphasised the requirement that Court Orders must be performed in good faith and must not be frustrated, and, in an effort to ensure that the 20 April 2018 Order is meaningful and practical, demanded that Bata provide Ihlobo on a weekly basis (subject to a confidentiality regime if necessary), together with its orders to Ihlobo:

32.1. a list of the orders that have been placed with Bata's remaining ABUs; and

32.2. a list of that week's production target inclusive of any new contracts that Bata has received or receives from the date of the Court's order, or if no new contracts or no new future production targets are provided in any given week, then a statement to that effect.

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33.

The letter concluded by indicating that should Bata fail to respond or should such response prove inadequate, Ihlobo reserves its rights to approach Gorven J on an urgent basis on 11 May 2018 in order to protect its rights and the rights of those whom it represents, to draw the court's attention to Bata's contemptuous conduct, and to seek appropriate relief.

34.

On 2 May 2018, in compliance with the Gorven J Order, Ihlobo filed its Reply to the First Respondent's Further Supplementary Affidavit. Again, in order not to overburden these papers I will not annex this affidavit here, but will make sure it is available for the Court. This affidavit dealt in detail with the spurious allegations of "*repudiation*" which Bata had levelled against Ihlobo and the fact that all parties remain bound by the Order. I pray that its contents be incorporated herein as if specifically traversed, together with the annexures that are attached thereto.

35.

Bata failed to respond to Ihlobo's letter. Instead, at 15h55 on 2 May 2018, Bata sent an email to Ihlobo's attorneys (annexed marked "PSH7") stating that one of its managers "*is overseas presently*" and that Bata is taking instructions. The email further indicated that Bata had received "*further concerning information*" regarding Ihlobo and would address further correspondence in this regard.

36.

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Ihlobo's attorneys replied by email at 08h49 on 3 May 2018 (a copy of which is annexed marked "PSH8") and stated that:

36.1. they failed to see how the absence of one of Bata's local managers could be used as a justification for Bata's failure to address the critical and urgent issues raised in the letter of 2 May 2018;

36.2. given Bata's further failure to respond to the demands, Ihlobo has no option but to proceed to approach the Court for relief;

36.3. Bata has embarked on a transparent strategy to commercially bully Ihlobo and to avoid compliance with the Court Order of 20 April 2018, premised on veiled and unsubstantiated threats.

37.

Bata's attorneys responded later that day (3 May 2018) in a letter annexed marked "PSH9". In that letter, Bata contended that the "*concerning information*" which it had revealed was the fact that it had "*been communicated*" to Bata that Ihlobo "*only has 37 employees registered with the National Bargaining Council for the Leather Industry as at December 2017*" and has failed to pay the employees in accordance with the prescribed minimum wage. Bata alleged that this conduct constitutes "*a further repudiation*" which Bata "*accepted*" and therefore amounts to a further termination of the agreement.

38.

Again, Ihlobo and its legal advisers were forced to respond to these baseless allegations, not previously having been given an opportunity by Bata to do so, since Bata was again obviously attempting precipitously to engineer a ground for repudiation.

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Bata's further unjustified "information" was dispelled in a letter from Ihlobo's attorneys dated Friday 4 May 2018, annexed marked "PSH10".

38.1. In respect of the allegation that not all of Ihlobo's workforce are members of the National Bargaining Council, Ihlobo's attorneys recorded that they could find "*no term or condition contained in the Agreement requiring [Ihlobo] to register its employees with NBCLP*", nor did Bata point to any such clause. Accordingly, this is not a valid ground for repudiation.

38.2. In respect of the minimum wage, Ihlobo confirmed that it does pay the minimum wage, and that this allegation is false. In any event, there is similarly no term or condition in the Agreement in terms of which failure to pay the minimum wage (even if it were true – which it is not) could constitute a repudiation.

39.

In any event, both these grounds of termination are based on clause 29 of the Agreement, which the order of Gorven J has made clear is of no avail to Bata pending final determination of the application 22 June 2018.

40.

The letter further indicated that Bata's conduct reveals that it is intent on frustrating the Court Order of 20 April 2018 and will use any spurious means to achieve this end by *inter alia* contriving bases to avoid compliance with the Court Order. Moreover, having read the supplementary replying affidavit, Bata must have clearly recognised the fatal flaws inherent in its purported cancellation dated 24 April 2018 "*and is now scrambling to find alternative bases on which to assert further repudiations by [Ihlobo] in a*

*concerted and deliberate effort to cancel the Agreement and thereby avoid complying with the Court Order.*" Bata was informed that Ihlobo was intending to launch contempt proceedings and that such would be enrolled for hearing on 11 May 2018.

## 41.

On the same day, and in light of Bata's failure to make its election in response to the 26 April 2018 letter from Ihlobo (previously attached as annexure "PSH5"), Ihlobo referred Bata's allegations, that Ihlobo had committed three separate acts of repudiation (set out in its correspondence of 24 April 2018 and 3 May 2018), for arbitration in terms of the Agreement. A copy of the referral is annexed marked "PSH11". The referral was done without any prejudice to Ihlobo's rights including its rights to:

- 41.1. seek final relief from the High Court on 22 June 2018;
- 41.2. to be given orders by Bata in accordance with paragraph 2 of the Order; and
- 41.3. to seek an order of contempt on account of Bata's failures to comply with the Order and its further efforts to frustrate any order that may be given by a court hearing this matter on 22 June 2018.

## 42.

In summary then, notwithstanding that Bata is obviously aware of the Order of Gorven J, the Order has been deliberately flouted, and in bad faith moreover.

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**URGENCY AND MANIFEST HARM:**

43.

This application has been brought as one of urgency and I respectfully submit that this is warranted by the circumstances.

44.

I respectfully submit, as the Constitutional Court has confirmed, that ongoing contempt of this court's orders should always merit urgent remedy and sanction, in the interests of the administration of justice and the dignity of this court.

45.

I further respectfully submit that it is trite that an order of court stands until set aside by a court of competent jurisdiction. Until that is done, the court order must be obeyed; especially where the order, as here, is designed to regulate the relationship between the parties pending the outcome of the hearing on 22 June 2018.

46.

That is a fundamental proposition of the rule of law, a foundational value of the Constitution. Hence it is the rule of law itself that is violated by the recalcitrant and contemptuous conduct of the Respondents.

47.

On the terms of the court order itself, and on the facts, Bata is not permitted to side-step

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the order by self-helping itself around it through a contrived acceptance of a “repudiation”. Bata’s conduct is thus wilful – by its conduct it has shown that immediately after the Order was granted it was already intent on not complying therewith; it was willing (despite clear authority that a party and its legal advisors may not recklessly and speculatively allege fraud) to make acontextual and self-serving allegations against Ihlobo in order to cancel the contract by any means; and it has persisted in this conduct despite being legally represented and being warned that its conduct is to be deprecated.

48.

The Supreme Court of Appeal in Fakie v CCII Systems (Pty) Ltd 2006 (4) SA 326 (SCA) said of the unlawful and intentional disobedience of a Court Order that its essence “*lies in violating the dignity, repute or authority of the Court*”, and went on to state at para [6]: “*The offence has in general terms received a constitutional stamp of approval, since the rule of law – a founding value of the Constitution – requires that the dignity and authority of the courts as well as their capacity to carry out their functions should always be maintained.*”

49.

Three points emerging from this dictum justify emphases, so I am advised. The first is that the constitutional stamp of approval given to the offence of contempt of court flows directly from section 165(4) of the Constitution as is made clear in S v Mamabolo (e.tv and others intervening) 2001 (3) SA 409 (CC) at paras 38-39. The second is the interrelationship between obedience to court orders and the rule of law as a

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foundational value of the Constitution. The third is the deliberately emphatic way in which the SCA expressed itself. It said that the dignity and authority of the courts as well as their capacity to carry out their functions should always be maintained – not sometimes, but always.

50.

In the present case, the delinquent is Bata, a company that has already admitted in the pleadings that it has acted in the contractual setting from a position of bargaining strength; and which, vigorously through its counsel at the hearing before Gorven J, stressed that it was entitled to cancel its contract with Ihlobo on short notice despite the impact that such cancellation would have on Ihlobo, the approximately 300 employees that would lose their jobs as a result, and the impact on the community more broadly. I submit that this is significant. Bata is a leading shoe company with significant market power, as this case attests. Even if it believes strenuously in its contractual rights, it is not permitted to act unlawfully or bully its way through the litigation. Its rights are subservient to the Constitution and orders of court.

51.

Furthermore, whilst adopting an attitude that it does not have to comply with the contract as mandated by Gorven J, Bata's conduct has the consequence that the irreparable harm which Gorven J sought to prevent by granting the Order will occur.

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**CONCLUSION AND RELIEF**

52.

In the circumstances, I respectfully submit that the urgency with which this application is brought before court is warranted. Furthermore, although I submit that these proceedings are not *per se* interdictory, since they seek the vindication of the court's dignity and the compulsion of compliance with its orders, I respectfully submit that there is self-evidently no other remedy available to Ihlobo and that the balance of convenience favours the granting of the orders sought to enforce what this court has already decreed.

***Declaratory relief***

53.

I submit that Ihlobo is entitled to the declaratory relief sought in the Notice of Motion, together with the directory relief. It is also entitled to punitive costs order against Bata. I am advised that while contempt of court may be pursued as an offence by the State (in the form of what is known as "criminal contempt"), it is unlikely here to be prosecuted *mero motu* by the State for the simple reason that in this matter there is no time available to seek the State's intervention to ensure compliance with the Court order.

54.

Indeed, as I pointed out earlier, notwithstanding that the contemptuous and obstructive conduct of Bata has been drawn to their attention and that of their legal advisers, Bata (the corporation) has done nothing to stop the conduct of Gordon, whom I understand to have represented it at all times in these proceedings, or its attorneys. On the contrary,

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they have persisted therein. Bata has either authorised such conduct or acquiesced therein.

55.

Another form of proceedings open to Ihlobo is what is commonly called “civil contempt” – whereby a private litigant who has obtained a court order requiring an opponent to do or not do something, may approach the court in the event of non-compliance, for a further order declaring the non-compliant party in contempt of court, and imposing a sanction usually in the form of committal to prison, which is invariably suspended on condition that the defaulting party complies with the order.

56.

There are reasons why Ihlobo has chosen not to pursue this form of civil contempt against Bata (which if necessary counsel will expand on at the hearing of this matter), including that it is difficult to imprison a company. Instead, Ihlobo has chosen to approach this Court for a declarator in the exercise of its constitutional, statutory and common law powers. It does so on the basis of the Supreme Court of Appeal’s decision in *Fakie supra* in which the Court, while delineating the two forms of contempt applications described above (criminal and civil contempt proceedings), made it plain that in respect of contempt a third form of proceeding is open to Ihlobo, namely that “[a] declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities” (para [42](e)).

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I thus submit that the jurisdictional requirements in law for the grant of declaratory relief are met and that the relief is not purely hypothetical, abstract or academic.

58.

In the first instance it is obvious, with respect, that Ihlobo has a right worthy of protection, which includes its right (and one shared with all other members of the public and its employees) that Bata fully comply with orders of court. That right is furthermore aligned with other rights underpinning Ihlobo's application, including the rights to equality, to dignity and respect, as well as Ihlobo's right of access to court to have justiciable disputes resolved. By corollary, Bata, has an obligation – inherent in the rule of law, and constitutionally entrenched in section 165(4) – to obey court orders that have been granted against it.

59.

I furthermore submit that there is a live dispute between the parties which requires the intervention and settlement of this Court. I submit that it is clear from the recalcitrant behaviour of Bata, combined with the insistence by Bata that it will continue with its conduct despite the requests and cautions by Ihlobo, that without this Court's definitive statement holding that Bata acted in contempt of the court order, Bata will persist in its view that the order is capable of being ignored. The rule of law and the constitutional principles of accountability and responsiveness demand that Bata be held accountable for its behaviour through an appropriate declaratory order coupled with the directory relief Ihlobo seeks. It would have been easy for the persons involved herein to indicate in writing the error of their past ways if these actions were relegated and confined to the

past. Instead, the hard-headed insistence on continuing with the bullying and the ignoring of the Court Order speaks of no contrition or lawful future resolve.

60.

Also, this Court's decision to grant the declaratory relief sought in the applicant's Notice of Motion will vindicate not only Ihlobo's rights, but also one of the fundamental tenets of our constitutional order, being respect for court orders. I am advised that it is clear that contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court, or to grant declarators confirming the unlawful nature of contemptuous behaviour, when they fail or refuse to obey court orders, has at its heart the very effectiveness and legitimacy of the judicial system. That, in turn, means that when this Court is called upon to exercise its discretion in relation to the declarator, it is not only dealing with the individual interest of the frustrated successful litigant but also, as importantly, acting as guardian of the public interest.

61.

Lastly, the declaratory relief will be acted upon by the parties. It will provide guidance to Bata as to how they ought to comply with its duties pending the outcome of the 22 June 2018 hearing. That guidance is, with respect, imperative because of the prejudice that Ihlobo and its employees stand to suffer – which prejudice Gorven J has already heard argument on and after which he granted the interim relief contained in his Order. The ongoing value of the Court's declaratory relief is accordingly confirmed by the related directory relief which Ihlobo seeks: requiring Bata to comply fully with the Court order

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and with the request by Ihlobo in its letter dated 2 May 2018, annexure "PSH6" that Bata issue it with orders and information related thereto.

62.

I accordingly submit for the reasons above that the appropriate declaratory order to be made by this Honourable Court is one which confirms that Bata has failed to comply fully with the Order of Gorven J.

63.

Thus the issues raised are not academic or hypothetical; they are real and important, continue to be current, affect the future course of the parties, and also raise significant wider public interest considerations regarding the rule of law in South Africa.

64.

I am also advised that the courts have accepted that there are occasions where they should rule on such matters because, quite apart from the particular interest of the applicant in the case, there are important issues of legality and policy involved and this requires the courts to say plainly what their conclusions are as to those issues. I respectfully submit that this is such a matter, particularly in relation to a case where the Court is asked to intervene to remedy the enforcement of an unfair contractual term.

65.

I further submit that the grant of such declaratory relief falls within the scope of this Court's powers in terms of the common-law or constitutional powers under section

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172(1)(b) of the Constitution. In any event, as I submitted earlier, the failure by Bata or its representatives to comply with a court order directly implicates the Constitution. It is, so I am advised, incumbent on this Court when faced with such unconstitutional conduct to declare the conduct unconstitutional in terms of the obligatory requirements of section 172(1)(a) of the Constitution.

***Directory relief***

66.

As a further component of this Court's remedial power under the common law and/or section 172(1)(b) of the Constitution, I respectfully submit that Ihlobo is additionally entitled to directory relief.

67.

Ihlobo accordingly in its notice of motion requests an order directing Bata to comply fully with the order of Gorven J. Of particular importance here is that the hand of the Court is sought to ensure the effectiveness of Gorven J's order by including a direction that Bata comply with the request contained in Ihlobo's letter of 2 May 2018 where it requested that orders be placed with it and provide the information related thereto.

***Punitive and personal costs***

68.

In addition I am advised that our courts have in such circumstances – particularly as a signal of their displeasure with contemptuous conduct – also ordered that the officials

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concerned be mulcted in costs in their personal capacities.

69.

That is so especially where – as demonstrated in this case – Bata has been guilty of acting in bad faith. In such cases I am advised that the courts have been prepared to award costs against the recalcitrant officials *de bonis propriis*.

70.

I submit that this is a case in which it is entirely appropriate for Bata to be ordered to pay Ihlobo's costs on the attorney and own client scale. What is more, on the basis of authority that Ihlobo's counsel will draw to the Court's attention at the hearing, I am advised that it would be appropriate to declare the legal representatives of Bata to be personally jointly and severally liable with Bata for the costs of the litigation on the attorney and own client scale.

***Timetable for filing***

71.

This application will be launched on Monday 7 May 2018. In order to ensure the maximum notice to Bata, I will ensure that it is served electronically on Bata's attorneys (who have already indicated in correspondence that they are authorised to receive service of this application).

72.

In the Notice of Motion, I have provided 2 full court days for Bata to file its answering

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affidavit should it choose to oppose the interim relief and to file by close of business on Wednesday 9 May 2018, and thereafter Ihlobo will draft its replying affidavit overnight for filing by 13h00 on Thursday 10 May 2018. I submit that this timetable is reasonable and that the urgency is justified as set out above.

## PRAYER

73.

I submit that in the circumstances of this case it would be appropriate for this Court to exercise its discretion in favour of granting the declaratory relief because both justice and convenience to the parties demand that a declaration be made. It is furthermore appropriate, with respect, for the Court to grant the directory relief prayed for.

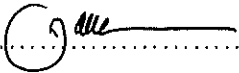
74.

I submit that as a sign of the Courts displeasure of Bata's conduct and that of its representatives, and as a means to vindicate the rule of law, the costs of this Application should be awarded in favour of the Applicant on the scale as between attorney and own client against the First Respondent and its legal representatives *de bonis propriis*, jointly and severally, the one paying the others to be absolved, such costs to include the costs of two counsel.

75.

For these reasons as expanded above, I pray for the relief set out in the Notice of Motion to which this affidavit is annexed.


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PAUL SIMON HAY

The terms of Regulation R. 1258 published in Government Gazette No. 3619 of 21 July, 1972 (as amended) having been complied with, I hereby certify that the deponent has acknowledged that he knows and understands the contents of this Affidavit which was signed and sworn to before me at Pietermaritzburg on this 7 day of May 2018.

<p><b>COMMISSIONER OF OATHS</b> <b>GARETH DALE NEAL</b> Professional Accountant (SA) Commissioner of Oaths (RSA) 2nd Floor, Alexander Forbes Wing 3 Highgate Drive, Redland Estate PIETERMARITZBURG</p>
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COMMISSIONER OF OATHS





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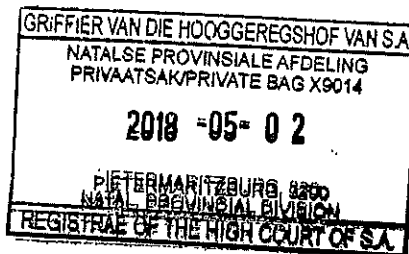
IN THE HIGH COURT OF SOUTH AFRICA,  
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 3190/18P

In the matter between

IHLOBO FOOTWEAR CC

and



APPLICANT

BATA SOUTH AFRICA (PTY) LTD

FIRST RESPONDENT

FUTURA FOOTWEAR LIMITED

SECOND RESPONDENT

---

FILING NOTICE

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TO : THE REGISTRAR OF THE HIGH COURT  
PIETERMARITZBURG

AND TO : MACGREGOR ERASMUS ATTORNEYS  
RESPONDENTS' ATTORNEYS  
12 GOUGH ROAD  
PIETERMARITZBURG  
3201  
EMAIL: [sarah@meattorneys.co.za](mailto:sarah@meattorneys.co.za)  
TEL: 084 808 4863

RECEIVED WITHOUT PREJUDICE  
A COPY HEREOF  
THIS 2 DAY OF MAY 2018  
AT 15:12  
MACGREGOR ERASMUS  
PLAINTIFF/DEFENDANTS ATTORNEY

SIRS,

KINDLY TAKE NOTICE that the Court Order dated 20 April 2018 is delivered herewith.

BTW av

SIGNED AND DATED AT PIETERMARITZBURG ON 2<sup>nd</sup> MAY 2018.

  
\_\_\_\_\_  
APPLICANT'S ATTORNEY

HAY & SCOTT ATTORNEYS  
APPLICANT'S ATTORNEYS  
TOP FLOOR  
3 HIGHGATE DRIVE, REDLANDS ESTATE  
1 GEORGE MACFARLANE LANE  
PIETERMARITZBURG  
TEL: 033 342 4800 / FAX: 033 342 4900  
E-MAIL: [roderick@hayandscott.co.za](mailto:roderick@hayandscott.co.za)  
[REF: R.F Brent/cc/091045002]

*Bh an*



IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case no. 3190/18

ON THE 20<sup>TH</sup> DAY OF APRIL 2018

Before The Honourable Mr Justice GORVEN

In the matter between:

IHLOBO FOOTWEAR CC

PLAINTIFF

and

BATA SOUTH AFRICA (PTY) LTD

FIRST DEFENDANT

FUTURA FOOTWEAR LIMITED

SECOND DEFENDANT

---

HAVING read the SUMMONS; and the other documents filed of record; and

HAVING heard Counsel for the Plaintiff;

**IT IS ORDERED THAT:**

1. The application be and is hereby adjourned to 22 June 2018.
2. Pending that date :
  - 2.1 the purported cancellation of the agreement between the Applicant and the First Respondent is suspended and should be of no force and effect;
  - 2.2 the First Respondent is ordered to place orders with the applicant as would have been done if the purported cancelation of the agreement had not taken place.
  - 2.3 Paragraph 2.2 shall not derogate from any right (not contained in clause 29 of the agreement on page 59 of the papers) to cancel the agreement.
3. The Applicant is ordered to deliver the Rule 16A Notice directly to:
  - 3.1 the South African Clothing and Textile Workers Union;
  - 3.2 the National Union of Leather and Allied Workers;
  - 3.3 The eThekweni Business Forum;
  - 3.4 NEDLAC; and


*Handwritten signature and initials:*  
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- 3.5 The National Bargaining Council of the Leather Industry of South Africa;  
all within 5 court days of the date of this order.
- 3.6 The Applicant is directed to publish the Rule 16A Notice in two newspapers  
(one local and one national) on or before 30 April 2018.
4. Condonation is granted for the late filing of the Applicant's Replying Affidavit and  
Rule 16A Notice.
5. The Respondents are given leave to deliver a further affidavit, dealing with matters  
raised in the replying affidavit, no later than 25 April 2018.
6. The Applicant is granted leave to deliver an affidavit in reply to that referred to in  
paragraph 5 hereof by no later than 2 May 2018.
7. The Applicant is directed to deliver a Draft Order containing the relief to be sought on  
the adjourned date by no later than 2 May 2018.
8. All questions of costs are reserved.

BY ORDER OF THE COURT

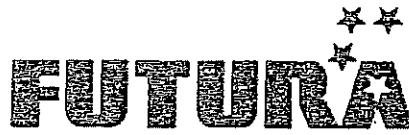
~~PP NEWS~~  
R J JOOSTE  
REGISTRAR

/ssibiya

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL DIVISION, PIETERMARITZBURG	
Hay & Scott Private Bag X9014, Pietermaritzburg 3200	
	2018 -05- 02
KZND-PMB-007	
GRIFFIER VAN DIE HOOGGEREGSHOF SUID-AFRIKA, KWAZULU-NATAL AFDELING, PIETERMARITZBURG	

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## ASSOCIATE BUSINESS UNIT AGREEMENT

Entered into by and between

**FUTURA FOOTWEAR LIMITED**

A company duly registered in terms of the Company Laws of the Republic of South Africa being registered under Registration no. 1931/003340/06

(Hereinafter referred to as "Futura")

(Herein represented by Mr Luis Ernesto Rojas in his capacity as the Managing Director being duly authorised thereto.)

and

**IHLOBO FOOTWEAR CC**

A company duly registered in terms of the Company Laws of the Republic of South Africa being registered under Registration no. 2005/134574/23

(Hereinafter referred to as the "ABU")

(Herein represented by Mr Shaun Chetty in his capacity as the Member being duly authorised thereto.)

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1. PREAMBLE

WHEREAS Futura wishes to procure services of a reputable and qualified service provider that will supply certain of its Footwear or components for Footwear to be manufactured by a third party.

AND WHEREAS Futura requires specific expertise and wishes to appoint the ABU to provide the Services on the terms and conditions of this Agreement. Futura and the ABU may from time to time add services or remove services to be provided by the ABU.

AND WHEREAS the ABU has a reputation and proof of experience, skills, capacity and competencies in providing the said services and is prepared and willing to provide these services subject to the conditions as set out hereunder.

NOW THEREFORE, the parties agree as follows:-

2. PARTIES

The parties to this Agreement are as follows:-

- 2.1 FUTURA FOOTWEAR LIMITED ("Futura"); and
- 2.2 IHLOBO FOOTWEAR CC ("ABU").

3. DEFINITIONS

- 3.1 "Agreement" means this Agreement together with all the annexures attached hereto, including annexure "A" the asset register, annexure "B" the Suretyship and annexure "C" the Bata Supplier Code of Conduct;
- 3.2 "Components" means the heels, soles, top pieces, insole boards, buckles, eyelets, rivets and other components of the Footwear which the ABU requires to provide the Services;
- 3.3 "Designs" means all Footwear patterns and Designs reasonably required for the purpose of performing the Services;
- 3.4 "Effective date" means the 1<sup>st</sup> of August 2015;
- 3.5 "Footwear" means outer coverings for the feet, such as shoes, boots, and sandals and associated items including producing and selling footwear;
- 3.6 "Futura" means Futura Footwear Limited, a Company duly registered in terms of the Company Laws of the Republic of South Africa being registered under registration number 1931/003340/06;

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- 3.7 "Intellectual Property" means both registered or unregistered intellectual property i.e. drawings, designs, models, specifications and other documents prepared by the ABU or its Personnel for the purpose of the Services and drawings, Specifications, Designs, patterns, technical information, data, samples, tools or equipment provided by Futura
- 3.8 "Materials" means all needles, thread and other materials reasonably required to perform the Services;
- 3.9 "Party / Parties" means Futura and the ABU or both;
- 3.10 "Personnel" means members, officers, directors, employees and approved sub-contractors of the ABU;
- 3.11 "Services" means the services that the ABU will be rendering to Futura as stipulated in this Agreement;
- 3.12 "Specification" means the form required by Futura for the performance of the Services;
- 3.13 "ABU" means Ihlobo Footwear CC, a Company duly registered in terms of the Company Laws of the Republic of South Africa being registered under registration number 2005/134574/23;

**4. APPOINTMENT AND DURATION**

4.1 Futura appoints the ABU as an independent contractor to provide it with the Services of producing the pre-moulded uppers for Hank and the ABU accepts such appointment. The ABU shall be appointed:

- 4.1.1 to workshop number 821,
- 4.1.2 at premises .....Hammersdale.

4.2 Futura hereby appoints the ABU, with effect from the effective date being 1 August 2015 irrespective of the date of signing of this Agreement, subject to Futura's right to termination in accordance with the provisions of this Agreement. Futura is under no obligation to renew or amend this Agreement in any way nor does Futura provide any guarantees relating to the level of business activity or profitability other than as expressly stated in this Agreement.



- 4.3 The ABU must not, hold out that it is in any way related to Futura other than as an independent contractor, and must ensure that its members, officers, directors, employees and approved sub-contractors, also do not hold out that the ABU or they individually are in any way related to Futura other than through their association with the ABU as an independent contractor.
- 4.4 This Agreement is non-exclusive. Futura may utilise other persons to carry out the Services at any time. The ABU will not thereby be relieved of any of its obligations under this Agreement.

## 5. SERVICES

- 5.1 For the duration of this Agreement, the ABU must provide the Services to Futura in accordance with the specification and the terms and conditions of this Agreement.
- 5.2 The ABU must:
- 5.2.1 provide the Services to Futura at Futura's request;
  - 5.2.2 procure sufficient Personnel who are suitably trained, competent, skilled and experienced to provide the Services and ensure that the Personnel carry out their duties and responsibilities competently, efficiently and timeously;
  - 5.2.3 cut and prepare the Materials and Components and assemble and stitch the Footwear in accordance with the Specifications and the designs supplied by Futura;
  - 5.2.4 package the completed Footwear in packaging suitable for road transport;
  - 5.2.5 transport the completed Footwear to Futura's premises;
  - 5.2.6 provide the Services to Futura's satisfaction, using the highest degree of skill, care and diligence;
  - 5.2.7 not make any alterations, additions or variation to the Services without Futura's prior written approval in each instance.

6. THE EQUIPMENT

- 6.1 Futura will supply the equipment listed in annexure "A" to the ABU. If at any time, the ABU reasonably requires additional equipment for the purpose of performing the Services, any such additional equipment procured by Futura will be subject to the terms and conditions of this Agreement and must be added to the annexure by means of an addendum to this Agreement, signed by both parties.
- 6.2 For the purposes of this Agreement, any reference to equipment is deemed to include any additional equipment referred to in clause 6.1, procured by Futura and supplied to the ABU from time to time.
- 6.3 On receipt of the equipment, the ABU must inspect the equipment and must notify Futura in writing of any defects therein, within 3 days after the date on which the ABU receives the equipment. If the ABU notifies Futura of any defects in accordance with the foregoing, Futura will at its discretion, if it accepts that there are such defects, either replace the defective equipment or procure that it is repaired so as to restore it to complete functionality. If there is a dispute between the parties as to whether or not the equipment or any part thereof is defective, such dispute must be resolved in terms of clause 27.
- 6.4 Subject to the defects, if any, of which Futura is notified, the equipment will be deemed to have been received by the ABU in good working order and condition.
- 6.5 Subject to clause 6.6, for the duration of this Agreement, the ABU must maintain the equipment in good working order and condition and in accordance with the manufacturer's recommendations. Unless Futura agrees otherwise in writing, the ABU may only use genuine new replacement parts to repair the Equipment.
- 6.6 Despite clause 6.5, Futura will accept responsibility for any abnormal or major repairs to the equipment. For the purpose of this Agreement, the parties agree that an abnormal or major repair is one which will cost R10 000 or more, inclusive of Value Added Tax, to rectify.

6.7 The ABU will bear all risk of loss of and/or damage to, or caused by, any equipment supplied by Futura from the time it is received by the ABU until it is returned to Futura.

6.8 Futura owns the equipment and the ABU must not remove or alter the sticker / plate and ensure that it is always visible. Upon termination of this Agreement for any reason, the ABU must return the equipment to Futura in the same condition in which it was received, fair wear and tear accepted.

**7. PATTERNS AND DESIGNS**

Futura will where necessary, supply the ABU with all of the Footwear patterns and Designs reasonably required for the purpose of performing the Services.

**8. COMPONENTS AND MATERIALS**

8.1 The ABU must, at its own cost, procure from Futura:

8.1.1 the heels, soles, top pieces, insole boards, buckles, eyelets, rivets and other components of the Footwear which the ABU requires to provide the Services;

8.1.2 all needles, thread and other materials which it reasonably requires to perform the Services.

8.2 Futura will deduct the cost of the Components and Materials from the amount which Futura owes to the ABU in respect of the Services.

8.3 Futura will remain the owner of the Components and Materials purchased from, and supplied by, Futura to the ABU.

8.4 Futura will invoice the ABU for the components and materials referred to in this clause 8 and the amount owing by the ABU to Futura shall be set off against any amounts owing by Futura to the ABU in terms of this Agreement.

8.5 The ABU must inspect Components and Materials supplied by Futura within three (3) days of delivery and if it contends that any components or materials are defective, it must immediately report such defects to Futura

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within the three (3) day period. Futura will thereafter investigate and if any component or material is defective it will replace such defective component or material. If there is any dispute between the parties, it will be dealt with in terms of clause 27.

## 9. THE ABU'S WARRANTIES

The ABU warrants and undertakes that:

- 9.1 the Personnel will be suitably trained, competent and skilled and have the necessary experience to operate the equipment and timeously and efficiently perform the Services;
- 9.2 the Services will be performed in accordance with the Specifications and Designs;
- 9.3 the Services will be of a high standard and will be performed in a professional manner with the required degree of skill and care.

## 10. SERVICE FEES AND PAYMENT

10.1 In return for the Services, Futura will pay the ABU the service fees, less the cost of the Materials and Components purchased by the ABU in accordance with clause 8.

10.2 The service fees:

- 10.2.1 exclude Value Added Tax (VAT) which Futura will pay to the ABU at the applicable rate;
- 10.2.2 are fixed and will not vary except in accordance with clauses 10.1 and 11; and
- 10.2.3 are the whole amount payable by Futura to the ABU in respect of the Services and the ABU's compliance with all of its obligations in terms of this Agreement.

10.3 Futura will pay the service fees to the ABU weekly in arrear in South African Rands by way of electronic funds transfer, into the ABU's banking account, the details of which are set out herein. The cut-off date for receiving

the details of which are set out herein. The cut-off date for receiving payment at the end of any particular week, shall be close of business on Tuesday in that week. Any invoice received by Futura after close of business on Tuesday will be included in payments at the end of the following week.

10.4 Futura agrees and undertakes to make payment of the service fees due and payable to the ABU by electronic transfer to the bank account of the ABU bearing the following details:-

- (a) Account holder :
- (b) Bank :
- (c) Branch name :
- (d) Account number :
- (e) Branch code :
- (f) Type of account :

10.5 Futura may set off against any monies due by it to the ABU, any amount which the ABU owes Futura, including damages. If the amount which the ABU owes Futura is not liquidated, set-off will operate to the extent of the amount which, in the written opinion of Futura's auditors, is the value of Futura's claim against the ABU, without prejudice to the rights of either party subsequently to have the amount determined in terms of clause ~~Error! Reference source not found.~~ or otherwise.

10.6 If, after set-off in terms of clause 10.5, the amount which the ABU owes Futura is determined in an amount different from that assessed by Futura's auditors, the party to whom money is owed may immediately recover it from the other party, together with interest at the published prime bank overdraft lending rate from time to time of Nedbank.

10.7 If the services are not rendered timeously so as to enable the products to be delivered to Futura within the time required by it, Futura, may give written notice to the ABU calling upon it to render future services timeously. If after having received notice the ABU fails to render services timeously, Futura may declare all amounts owing by the ABU to Futura to be immediately due and payable and may recover such amounts or Agreement may be terminated.

**11 CHANGE IN SERVICE FEES**

11.1 The service fees will be fixed and will not change for any reason.

11.2 Subject to clause 11.1, if either party wishes to adjust the service fees, it must notify the other party accordingly, providing details of the adjustment requested, thirty (30) days prior to the year in which the party wishes that adjustment to apply. Any adjustment agreed between the parties must be recorded in an addendum to this Agreement which must be signed by both parties and will apply with effect from the application date set out herein. If the parties do not agree an adjustment to the service fees, the service fees will remain the same as that which as applied immediately before the requested adjustment.

**12 VARIATION OF SPECIFICATIONS**

Futura may vary the Specifications from time to time. If it does so, and that variation changes the ABU's cost of providing the Services, the time within which the ABU is able to provide the Services or any other provision of this Agreement, the ABU must immediately notify Futura thereof, providing details of the cost, timing or other change. After receiving the ABU's notice, Futura may agree to the change or not. If it does not, the Specifications will remain unchanged.

**13 MEETINGS AND REPORTS**

The ABU must:

13.1 ensure that the relevant members of the Personnel attend and report on the Services and other matters at all meetings convened by Futura relating to this Agreement:

13.2 if required by Futura, submit written reports relating to this Agreement or the Personnel or any other information reasonably required by Futura, in a manner and form acceptable to Futura.

**14 OWNERSHIP, LIENS AND LANDLORD'S HYPOTHEC**

14.1 Despite anything to the contrary contained in this Agreement, Futura is the owner of all of the Materials, Components and equipment and any other items which Futura supplies to the ABU for the purpose of performing the Services.

14.2 The ABU hereby waives any lien or right of retention it may have, or which it may acquire, over the Materials, Components or Equipment or other items belonging to Futura and supplied to the ABU, or any part thereof.

14.3 If the ABU's premises are leased and/or mortgaged, the ABU must:

14.3.1 as soon as this Agreement has been signed, inform the landlord and/or mortgagee of the ABU's premises by written notice, that Futura is the sole owner of all of the Materials, Components and equipment on the ABU's premises, and that they are not subject to any lien or hypothec in favour of the landlord and/or mortgagee;

14.3.2 within 5 days of delivery of the notice referred to in clause 14.3.1 to the landlord and/or mortgagee, obtain written proof of receipt by the landlord of that notice and provide Futura with a copy of that proof within 5 days of receiving it;

14.3.3 immediately advise Futura of any change of the landlord and/or mortgagee and proceed in terms of clauses 14.3.1 and 14.3.2 in respect of the new landlord and/or mortgagee.

14.4 If the ABU's premises are not leased, the ABU must provide Futura with the full name and contact details of the owner of the ABU's premises.

**15 INDEMNITY**

15.1 The ABU indemnifies Futura against any loss, liability, damages, costs (including legal costs on an attorney and own client scale), claims or other liabilities suffered or incurred by Futura and arising out of, or in connection with, the provision of the Services, the Equipment or any act or omission by the ABU or the Personnel which breaches this Agreement in any way or is willful, negligent or unlawful.

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15.2 The ABU waives its right to recover from Futura any loss, damages, costs (including legal costs on the attorney and own client scale), claims or other liabilities which the ABU suffers or incurs because of the injury, illness or death of any of the Personnel, except if that injury, illness or death is caused by any grossly negligent act or omission by Futura.

**16 INSURANCE**

16.1 For the duration of this Agreement, Futura will insure the equipment, components and materials with an insurance company approved by Futura, against fire and such other risks as Futura deems fit, for such sum as Futura may determine, but not exceeding the full replacement value thereof from time to time.

16.2 On request by Futura, the ABU undertakes to procure and provide all security or other conditions required by Futura's insurers to enable Futura to procure the insurance cover referred to in clause 16.1.

16.3 The ABU must not do anything, or permit anything to be done which may cause any increase in the amount of the insurance premiums payable by Futura in respect of any insurance policies in respect of the equipment, components and materials or which may result in any insurance policies in respect of the equipment being rendered void or voidable. The ABU must pay to Futura on production of the relevant account, any additional premiums payable by Futura by reason of anything done by the ABU in respect of the equipment, components and materials.

16.4 The ABU must take out and, at all times during this Agreement, maintain:

16.4.1 legal liability insurance cover in an amount acceptable to Futura; and

16.4.2 suitable employer's liability insurance in an amount acceptable to Futura.

*Handwritten signatures and initials: "CH", "3/11", and a circled mark.*



16.5 The insurance cover procured by the ABU in terms of this clause 16 does not in any way limit any claim which Futura may have against the ABU. On demand, the ABU must provide Futura with proof of the insurance cover referred to in clause 16.4 and premium receipts in respect thereof.

**17 COMPLIANCE**

At all times while providing the Services, the ABU must ensure that it complies with the Bata Supplier Code of Conduct, a copy of which is attached hereto marked Annexure "C", all applicable laws, including but not limited to all labour, environmental, taxation and other applicable legislation, which is binding on the ABU and/or its Personnel.

**18 OCCUPATIONAL HEALTH AND SAFETY**

18.1 The ABU undertakes to ensure that its Personnel do not commit any act or omission in contravention of the Occupational Health and Safety Act, No. 85 of 1993, as amended and the regulations thereunder and to take all reasonable steps to prevent any such act or omission.

18.2 The ABU undertakes to draw the attention of all its Personnel to, and to ensure that such personnel familiarise themselves with, all the provisions of the OHS Act and the OHS Regulations, prior to performing any Services for Futura.

18.3 The ABU warrants that it is familiar with all the relevant sections of the OHS Act and the OHS Regulations and that it has taken, and will continue to take, all such steps necessary to ensure compliance with the OHS Act and the OHS Regulations.

18.4 The ABU must allow Futura to inspect the ABU's premises at all reasonable times.

**19 OCCUPATIONAL INJURIES AND DISEASES**

19.1 The ABU warrants that it is duly registered with the Compensation Fund in terms of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.

Handwritten initials and a large circular mark, possibly "JVA" and a signature.

19.2 The ABU must:

- 19.2.1 comply with COIDA including but not limited to the timeous payment of all assessments payable in terms of COIDA;
- 19.2.2 on request, provide Futura with written proof that it is registered in accordance with COIDA, a certificate of good standing issued by the Compensation Commissioner and with any information with Futura may require to verify the warranty given in clause 19.1 and/or enable Futura to respond to any claim, demand or query arising out of or in connection with COIDA.

19.3 The ABU indemnifies Futura against all claims which may be made against Futura, and against all losses, damages and costs (including legal costs on an attorney and own client scale) which Futura may incur or suffer arising out of or in connection with any occupational injury or disease sustained or contracted by any of the Personnel irrespective of any fault or negligence on the part of Futura or any person in respect of which Futura is vicariously liable.

**20 NATIONAL BARGAINING COUNCIL OF THE LEATHER INDUSTRY OF SOUTH AFRICA**

20.1 The ABU warrants that it is duly registered with the National Bargaining Council of the Leather Industry of South Africa (NBCLI).

20.2 The ABU must:

- 20.2.1 comply with the Collective Agreement(s) including but not limited to the timeous payment of all fund fees payable in terms of the NBCLI;
- 20.2.2 provide Futura with a Certificate of Registration and a Compliance Certificate in accordance with the NBCLI. The Compliance Certificate must be provided every three (3) months.

20.3 The ABU indemnifies Futura against all claims which may be made against Futura, and against all losses, damages and costs (including legal costs on an attorney and own client scale) which Futura may incur or suffer arising out of or in connection with any issue of non-compliance where it is held jointly and severally liable.

**21 CESSION, ASSIGNMENT AND SUB-CONTRACTING**

21.1 The ABU must not cede, assign or sub-contract any of its obligations in terms of this Agreement to any other person without Futura's prior written consent. in each instance.

21.2 Even if Futura gives such consent, such sub-contract does not relieve the ABU of any of its obligations and it is responsible to Futura for the acts and omissions of its sub-ABU as if they were acts and omissions of the ABU.

21.3 The ABU may not cede or assign any of its rights or obligations in terms of this Agreement to any other person without Futura's prior written consent.

**22 ITEMS OR SUBSTANCES SUPPLIED BY FUTURA**

22.1 Unless otherwise provided for in this Agreement, the ABU must not use any items or substances belonging to Futura without Futura's prior written consent.

22.2 Where Futura supplies or makes any item or substance available to the ABU, the ABU must, before it is used:

22.2.1 take all reasonably practicable steps necessary to ensure that the item or substance complies with all the requirements of the OHS Act and OHS Regulations and will be safe and without risk to health when properly used:

22.2.2 not use any item or substance which does not meet the requirements set out in clause 22.2.1 and immediately notify Futura thereof in writing;

22.2.3 tag or stamp the item or substance so that Futura's ownership thereof is clearly apparent and ensure that it remains so tagged or stamped until it is returned to Futura.

22.3 The ABU will bear all risk of loss of and/or damage to or caused by any item or substance supplied by Futura from the time it is delivered to the ABU until it is returned to Futura.

*Handwritten signatures and initials: "JA" and "Bt an" with a circled "A".*

22.4 The ABU indemnifies Futura against and for any loss, damages, costs (including costs on an attorney and own client scale) claims or other liabilities which Futura suffers or incurs, arising out of, or in connection with, the ABU's use of any item or substance supplied by Futura, unless such loss, damages, costs, claims or other liabilities is attributable to a material defect in the item or substance supplied by Futura.

**23 PROTECTION OF RIGHTS**

23.1 If the ABU fails to comply with any obligation imposed upon it by this Agreement, Futura may effect such compliance at the ABU's expense and recover the costs and expenses of doing so from the ABU, without prejudice to any other rights it may have.

23.2 The ABU hereby waives any claim it may have against Futura and any defence it may have to any claim by Futura arising out of any act or omission by Futura which arises from or in connection with Futura effecting or attempting to effect compliance with the ABU's obligations in terms of clause 23.1 or, even if Futura has undertaken to effect such compliance, failing to do so properly or at all.

**24 INTELLECTUAL PROPERTY**

24.1 Unless the parties agree otherwise in writing, the ABU hereby assigns all rights to all drawings, designs, models, specifications and other documents prepared by the ABU or its Personnel for the purpose of the Services, to Futura.

24.2 The Specifications, drawings, Designs, patterns, technical information, data, samples, tools or equipment supplied by Futura to the ABU are the property of Futura and the ABU must, immediately on request by Futura, return any of these to Futura.

24.3 All assigned Intellectual Property must be delivered to Futura on completion of the Services, or on termination, abandonment, or

*Handwritten signatures and initials: "OUT" and "BK ON" with a large flourish.*

postponement of the Services for any reason. Futura may use the assigned Intellectual Property for any purpose without compensating the ABU for such use.

**25 CONFIDENTIALITY**

25.1 The ABU must keep confidential and must not use for any purpose other than performance of its obligations in terms of this Agreement, the conclusion and terms and conditions of this Agreement, Futura's know-how, Futura's Intellectual Property, the assigned Intellectual Property and any other information which the ABU obtains from Futura or about Futura and its operations which is not public knowledge. The ABU indemnifies Futura against any claim arising from, or in connection with, a breach of this undertaking. The ABU must not copy any confidential information without Futura's prior written consent.

25.2 All confidential information is, and at all times remains, the property of Futura and the ABU must, on demand by Futura, but in any event on termination or completion of this Agreement, return it and all copies thereof to Futura.

25.3 The provisions of this clause 25 will survive the cancellation or termination of this Agreement for any reason and remain binding on the ABU in perpetuity.

**26. FORCE MAJEURE**

26.1 Should either party be prevented by reason of strikes, walkouts, other industrial disputes, acts of God, floods, war (whether declared or not), terrorism, sabotage, changes in law, statutory permission, the acts of any competent authority, vis major, *casus fortuitus* or any other cause whatsoever outside its control from performing its obligations in terms hereof, then such failure shall not be regarded as a breach of its obligations in terms hereof provided that:

26.1.1 the party subject to vis major shall give prompt notice to the other party of the nature and estimated duration of the vis major concerned;

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26.1.2 the parties shall co-operate and collaborate together and use all reasonable efforts to overcome the vis major concerned and/or nullify its effect;

26.1.3 any suspension of performance within the provisions of the above shall be limited to the period during which such inability shall exist and the period of this agreement shall be interrupted by the period of such suspension.

26.2 Notwithstanding the provisions of 26.1 to the contrary, any strike, walkout or other industrial dispute caused by the failure of the ABU to respond reasonably to the requirements of its employees shall not be subject to 26.1 hereof and any default in the performance of the services resulting from such acts of the employees shall constitute a breach of this Agreement by the ABU.

26.3 If the inability referred to in 26.1 substantially or permanently prevents the continued performance by either party of its obligations in terms of this agreement for a period exceeding five (5) business days, then either party shall be entitled, by giving notice in writing, to terminate this Agreement in respect of any of its obligations still to be performed hereunder and the Agreement shall terminate seven (7) days after giving of such notice.

## 27 BREACH

27.1 If the ABU breaches any provision of this Agreement, Futura may suspend all the payment of service fees due to the ABU for as long as the ABU remains in breach, without prejudice to any other rights that Futura has in law or under this Agreement.

27.2 Futura may cancel this Agreement, in addition and without prejudice to all its other remedies under this Agreement or in law, including the right to claim damages, if the ABU:

27.2.1 materially breaches any provision of this Agreement that is incapable of being remedied;

- 27.2.2 breaches any other provision of this Agreement and fails to remedy such breach within 10 days of receipt of a notice from Futura calling on it to do so;
- 27.2.3 breaches this Agreement on 3 or more occasions irrespective whether any such breaches have been remedied or not;
- 27.2.4 takes steps to sequestrate, liquidate itself or place itself under business rescue, or is placed in sequestration, liquidation or business rescue, whether voluntary or compulsory and whether provisionally or finally;
- 27.2.5 commits an act of insolvency as defined in the Insolvency Act, 24 of 1936, as amended or replaced from time to time, or an act which would be an act of insolvency if committed by a natural person;
- 27.2.6 has a final judgment or arbitration award granted against it, fails to notify Futura in writing of such judgment or award and fails to satisfy such judgment or award within 21 days of such judgment or award becoming final, where a "final judgment or award" is a judgment or award which is not or is no longer subject to appeal; or
- 27.2.7 has committed an act of default or is otherwise in breach of any other Agreement between the parties, entitling Futura under such Agreement to cancel that Agreement.

## 28 ARBITRATION

- 28.1 A dispute between the parties relating to any matter arising out of this Agreement or the interpretation thereof shall be referred to arbitration, by either of the parties, by way of a notice to the other party, in which notice particulars of the dispute are set out.
- 28.2 Such arbitration proceedings shall be held in 1 Manchester Park, Manchester Road, Pinetown and shall be held in a summary manner, which shall mean that it shall not be necessary to observe or carry out:
- 28.2.1 the usual formalities of procedure (e.g. there shall not be any pleadings or discovery);

- 28.2.2 the strict rules of evidence;
- 28.2.3 immediately and with a view to its being completed within twenty one (21) calendar days after it is demanded.

28.3 The arbitrator for such arbitration proceedings shall be a practising advocate or attorney, admitted as such in accordance with the legislation of the law governing this Agreement, with at least ten (10) years' experience, agreed upon by the parties or failing agreement, nominated by the President for the time being of the relevant Provincial Law Society.

28.4 The decision of the arbitrator shall be final and binding on the parties, who shall summarily carry out that decision and either of the parties shall be entitled to have the decision made an order of any court with competent jurisdiction.

28.5 The "arbitration" clause in this Agreement shall be severable from the rest of this Agreement and therefore shall remain effective between the parties after this Agreement has been terminated.

28.6 No clause in this Agreement which refers to arbitration shall mean or be deemed to mean or interpreted to mean that either of the parties shall be precluded from obtaining urgent interim relief from a court of competent jurisdiction.

## 29. TERMINATION

29.1 This Agreement may be terminated forthwith by either party by giving thirty (30) days written notice to the other party. The parties agree that in the event of the Agreement being terminated for any other reason and a notice of less than thirty (30) days written notice be necessary, Futura shall have in its sole discretion the election of finding an alternative ABU.

## 30. NOTICES AND ADDRESSES FOR SERVICE

30.1 Unless otherwise specified any notice or communication in terms of this Agreement:

30.1.1 must be in writing to be effective;



30.1.2 must be sent by hand, fax, registered post or e-mail to the addresses/fax numbers set out herein, which physical addresses the parties select as their respective *domicilium citandi et executandi*.

30.1.3 Sent to the following for Futura:

Futura Footwear Limited  
 1 Manchester Park  
 Manchester Road  
 Pinetown, 3610  
 Tel: 031 701 4951  
 Fax:  
 Email: [rashid.kazi@bata.com](mailto:rashid.kazi@bata.com)

30.1.4 Sent to the following for the ABU:

Ihlobo Footwear CC  
 6 / 8 Silver Street  
 Colenso, 3360  
 Tel: 036 422 2660  
 Fax: 036 422 2660  
 Email: [jsrchetty@mweb.co.za](mailto:jsrchetty@mweb.co.za)

30.2 A party may change its address/fax number to any other address/fax number within South Africa. Such change will only take effect upon receipt or deemed receipt of such notice by the other party.

30.3 Any notice or communication shall:

30.3.1 if delivered by hand during business hours to the person apparently in charge of the premises selected by the addressee for the delivery of notices, be deemed to have been received on the date of delivery;

30.3.2 if sent by registered post to the selected address, be deemed to have been received seven (7) days after posting;

30.3.3 if faxed to the selected fax number, be deemed to have been received on the first business day following the date of transmission; and;

30.3.4 if sent by e-mail to the selected e-mail address of the addressee, be deemed to have been received on the first business day following the date on which it has been transmitted from the information system under the control of the sender.

30.4 Any written notice or communication which has actually been received by a party shall be regarded as sufficient notice even if it has not been sent in the manner or to the address/fax number provided for above.

**31. MISCELLANEOUS LEGAL PROVISIONS**

31.1 This is the whole Agreement between the parties containing all of the express provisions agreed on by the parties with regard to the subject matter hereof.

31.2 No party may rely on any representation which allegedly induced that party to enter into this Agreement, unless the representation is recorded herein.

31.3 No Agreement varying, adding to, deleting from or cancelling this Agreement (including this clause) and no waiver of any right under this Agreement shall be effective unless in writing and signed by or on behalf of the parties.

31.4 No relaxation by a party of any of its rights in terms of this Agreement at any time shall prejudice or be a waiver of its rights (unless it is a signed written waiver) and it shall be entitled to exercise its rights thereafter as if such relaxation had not taken place.

31.5 No party may cede, delegate, assign or sub-contract any of its rights or obligations in terms of this Agreement without the prior written consent of the other party.

31.6 This Agreement shall be governed by and construed according to the laws of the Republic of South Africa.

Handwritten initials and signature: "34", "CON", "AA", and a circled signature.

31.7 This Agreement may be signed by the parties in any number of counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same Agreement.

31.8 Since the provisions of this Agreement have been settled by negotiation and each party has been free to secure independent legal advice, the rule of construction that clauses must be interpreted against the party principally responsible for drafting does not apply.

31.9 Where an expression has been defined and such definition contains a provision conferring a right or imposing an obligation on any party, then notwithstanding that it is contained only in a definition, effect must be given to that provision as if it were a substantive provision contained in the body of this Agreement.

31.10 Words or expressions defined in any particular clause in the body of this Agreement must bear the meaning so assigned to it throughout this Agreement unless the context indicates otherwise.

31.11 A reference to any legislation (including statutes, ordinances, regulations and by-laws) must be construed as a reference to that legislation as at the date of signature of this Agreement and as may be amended or re-enacted or substituted from time to time.

31.12 The expiration or termination of this Agreement does not affect such of its provisions which of necessity must continue to apply after such expiration or termination.

31.13 Headings of clauses are inserted for the purpose of convenience only and must be ignored in the interpretation of this Agreement.

31.14 Unless inconsistent with the context, words signifying any one gender will include the others, words signifying the singular will include the plural and vice versa and words signifying natural persons will include artificial persons and vice versa.

31.15 For the purposes of this Agreement:

31.15.1 "day" means a calendar day;

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- 31.15.2 "business day" means any day other than a Saturday, Sunday or South African Public Holiday;
  - 31.15.3 "month" means a month calculated from a particular day in one month to the day before the day numerically corresponding to it in the following month;
  - 31.15.4 "calendar month" means one of the 12 months of the year from the 1st to the last day of such month;
  - 31.15.5 "year" means a year calculated from a particular day in one year to the day before the day numerically corresponding to it in the following year;
  - 31.15.6 whenever any number of days is prescribed, it excludes the first and includes the last day unless the last day falls on a Saturday, Sunday or South African public holiday in which case the last day will be the next succeeding business day.
- 31.16 The various documents forming part of this Agreement are to be taken as mutually explanatory. In the event of any conflict or inconsistency the provisions contained in the main body of the Agreement will prevail.
- 31.17 Each party must bear its own legal costs incidental to the negotiation, preparation and implementation of this Agreement.

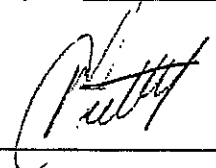
SIGNED at PINETOWN this \_\_\_\_\_ day of \_\_\_\_\_ 2015

For FUTURA FOOTWEAR LIMITED

Full names: Luis Ernesto Rojas

Designation: Managing Director

SIGNED at HAMMERSALE this 7<sup>th</sup> day of AUGUST 2015



For THE ASSOCIATED BUSINESS UNIT

Full names: SHAWN LUENY

Designation: MEMBER

"PSH3"

**Roderick Brent**

---

**From:** Neville Chetty <nevillechetty@ymail.com>  
**Sent:** Thursday, May 3, 2018 5:21 PM  
**To:** Roderick Brent  
**Subject:** Fw: Uplifting of Assets

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Sent from Yahoo Mail for iPhone

Begin forwarded message:

On Monday, April 23, 2018, 8:16 AM, Himesh Bindha <[Himesh.Bindha@bata.com](mailto:Himesh.Bindha@bata.com)> wrote:

Hi Neville,

I spoke to Shaun and he informed me that Ihlobo is not ready for Bata to uplift the machines today. Please inform me when you will be ready ?

Regards

BA ON

"PSH 4"

Paul Hay

---

**From:** Bhauna Hansjee <bhauna@meattorneys.co.za>  
**Sent:** 24 April 2018 02:24 PM  
**To:** shaun@ihlobofootwear.co.za; nevillechetty@gmail.com  
**Cc:** Paul Hay; Princess Zuma  
**Subject:** Bata South Africa - Ihlobo Footwear CC  
**Attachments:** Letter 24.04.18 Ihlobo Footwear.pdf; Letter - Bata & Ihlobo - Annexures.pdf  
**Importance:** High

Dear Sirs,

Please see attached for your urgent attention.

Kind Regards

Bhauna Hansjee | Partner



Macgregor  
erasmus  
ATTORNEYS

Durban Office Bond Square 1st Floor 12 Browns Road The Point Durban , 4001

Postnet 278 Private Bag X04 Dalbridge 4014

Tel: 031 201 8955 Fax: 031 201 8966

Email: bhauna@meattorneys.co.za www.macgregorerasmus.co.za

Also in Cape Town Tel: 021 492 2891 / 021 422 0830 Also in Johannesburg Tel: 011 268 0720

---

Kindly note our DOCEX addresses below:

DOCEX 17 DURBAN // DOCEX 80 PIETERMARITZBURG

DOCEX 293 JHB // DOCEX 113 CAPE TOWN

BH AN



macgregor.erasmus

ATTORNEYS

24 April 2018

Our reference: B Hansjee/pz

**IHLOBO FOOTWEAR CC**

Per email: [shaun@ihlobofootwear.co.za](mailto:shaun@ihlobofootwear.co.za)  
[nevillechetty@ymail.com](mailto:nevillechetty@ymail.com)

AND TO: HAY & SCOTT ATTORNEYS

Per email: [paul@hayandscott.co.za](mailto:paul@hayandscott.co.za)

**URGENT**

Dear Sirs

**IN RE: BATA SOUTH AFRICA (PTY) LTD / FUTURA FOOTWEAR LIMITED & IHLOBO FOOTWEAR CC: NOTICE OF CANCELLATION**

We act on behalf of Bata South Africa (Pty) Ltd and Futura Footwear Limited.

It was a material express term of the agreement ("NC4" attached to the founding affidavit in the urgent application instituted by Ihlobo Footwear CC ("Ihlobo") against our clients under case number 3190/18P), that Ihlobo would not be entitled to make any alterations, additions or variations to the services agreed, without our client/s' prior written approval in each instance.

It was also a material express term that our client/s were under no obligation to renew or amend the agreement in any way nor did they provide any guarantees relating to the level of business activity or profitability other than as expressly stated in the agreement, and further that any variation to the agreement would not be binding unless reduced to writing and signed by both parties.

At, *inter alia*, paragraph 37 of the founding affidavit, Neville Chetty alleged under oath that the letter ("NC10" to the founding affidavit) dated 30 January 2017 was written on behalf of our client, Bata South Africa (Pty) Ltd, and it allegedly confirmed that Ihlobo had been requested to increase production to 4500 pairs of stuck-ons per day and to tool up its factory accordingly.

Further allegations were made that Bata South Africa represented to Ihlobo that, notwithstanding the express terms of the agreement, it would continue to supply Ihlobo with sufficient work to be able to meet its alleged increased obligations for a reasonable period and that that period was five (5) years.

**JOHANNESBURG**

Office No. N102A | Thrupps Illovo Centre  
204 Oxford Road | Illovo | 2196  
Postnet 124 | Private Bag X11 | Bismarck Park | 2015  
Tel: 011 268 0720 Fax: 011 268 2403

**DURBAN (HEAD OFFICE)**

Bond Square | 1st Floor  
12 Browns Road | The Point | Durban | 4001  
Postnet 278 | Private Bag X04 | Dalbridge | 4014  
Tel: 031 201 8955 Fax: 031 201 8966

**CAPETOWN**

Unit S1 | Urban Hub  
142 Buitengracht Street | Cape Town | 8001  
P.O. Box 455 | Cape Town | 8000  
Tel: 021 422 0830 Tel: 021 492 2891 Fax: 021 422 1224

**PIETERMARITZBURG**

12 Gough Road | Pietermaritzburg | 3201  
Tel: 084 808 4863 | 033 343 1162

[www.macgregorerasmus.co.za](http://www.macgregorerasmus.co.za) | [info@macattorneys.co.za](mailto:info@macattorneys.co.za)

B-BBEE Status: Level 4 Contributor | B-BBEE RECOGNITION LEVEL: 100% | BEE RATED Certificate No. BR8820-061017

Partners: Bruce Macgregor | Richard Erasmus | Bhauna Hansjee | Jacques Schabert | Mpho Titus | Stefan Hill | Elco Goldenhuys | Glen Kirby-Hirst  
In-House Counsel: Charmaine Nel | Associates: Hendri Pretorius | Preshni Govender | Zuziwe Mlitiwa | Qudsiyyah Majam | Sheri-Leigh Baillache-Bowes  
Linden Bowes | Lauren Anderson | Sarah Smythe | Justin Klingbiel | Consultant: Callum Smythe  
Practice No. 5441

34/08/18



Ihlobo further states, *inter alia*, that our clients are under an obligation to ensure that it provides work in terms of annexure "NC4" to Ihlobo as it did the previous year and in this regard claims relief against our clients that it place orders with Ihlobo for work equal in value or of greater value than that placed during the corresponding period during 2017.

In the course of preparation of our clients' supplementary answering affidavit to be delivered on 25 April 2018, *inter alia*, the following has been discovered:

1. On 23 January 2017 at 16h16, Neville Chetty of Ihlobo sent an email to Rashid Kazi, (copying in Shaun Chetty) requesting Kazi to send Ihlobo the letter attached to the email, which letter was prepared by Shaun Chetty. A copy of the covering email and attached draft letter, with screenshot of the properties of the document evidencing that the document was prepared by Shaun Chetty, is annexed hereto. That letter substantially accords with annexure "NC10" to the founding affidavit sent on 30 January 2017.
2. On 8 June 2017, at 12h35 Neville Chetty requested Kazi (again copying in Shaun Chetty) to send a letter to Ihlobo recording that Ihlobo was to supply Bata with 4500 pairs per day on the Toughees brand which would be reviewed every six months. A copy thereof is attached hereto.
3. On 9 June 2017, at 09h15 and 09h39, copies of which are attached hereto, email correspondence was exchanged between Kazi and Neville Chetty in terms of which Neville Chetty requested Kazi to represent to Ihlobo that at a management meeting of our client/s, it had been determined that a "further 4500 pairs of production" would be planned for Ihlobo starting week 26-50 which would be reviewed for season 1 of 2018.

Given that Ihlobo has never had the capacity of producing 4500 pairs of stuck-ons per day, and subsequently did not do so (see the production plan annexed to the answering affidavit), it is clear that Ihlobo knew that there had been no approval by our client/s for the said increase, or at all, and that Ihlobo and Kazi were colluding to produce the aforesaid misrepresentations, on our client/s' letterhead for an ulterior purpose.

On the basis of the correspondence prepared by Ihlobo and dispatched to Kazi for purported re-submission to Ihlobo, it is also clear that the alleged terms contended for by Ihlobo concerning the variation of the agreement by our client/s, including the obligation to supply guaranteed work of 4500 pairs per day until cancellation, which was to be no sooner than five (5) years, alternatively one (1) year from January 2017, is clearly a fabrication given that on these very documents, there was going to be a review in any event in season 1 of 2018 and the increased work was for limited periods (the entirety of these representations were in any event a clear fabrication on the part of Ihlobo acting in concert with Kazi who was unauthorised at any stage (to the knowledge of Ihlobo) to act as he did at any stage).

It is clear from the foregoing, that Ihlobo and Kazi have colluded to commit a fraud.

Moreover, in contending as they have in the founding affidavit regarding the terms of the alleged agreement and in taking steps to enforce such alleged terms, which are the product of their fraudulent and collusive dealings with Kazi, Ihlobo has repudiated the agreement concluded with our client/s. Our client/s hereby accept such repudiation and forthwith terminate any and all agreements concluded with Ihlobo for the provision of services. This is

3/11/18

without prejudice to our clients' rights to rely on the termination already effected on notice and which is the subject of the application (and which application is now in any event academic).

In the premises Ihlobo Footwear CC is invited to withdraw the application under case number 3190/18P and to tender our clients' costs to date, including the costs of 20 April 2018, failing which, our clients will deliver their supplementary answering affidavit as they are entitled to do, setting out the above, and will seek a punitive order as to costs against Ihlobo as well as Neville and Shaun Chetty, jointly and severally, and in this regard will ask the court to issue a rule calling upon them to show cause why costs should not be awarded against them personally.

Yours faithfully

**BHAUNA HANSJEE**  
**MACGREGOR ERASMUS ATTORNEYS**  
[bhauna@meattorneys.co.za](mailto:bhauna@meattorneys.co.za) / [ca.nel@law.co.za](mailto:ca.nel@law.co.za)  
cc: [princess@meattorneys.co.za](mailto:princess@meattorneys.co.za)

BA AN

①

**Bhauna Hansjee**

---

**From:** Elaine Govender <Elaine.Govender@bata.com>  
**Sent:** 23 April 2018 02:33 PM  
**To:** John Harman; Bhauna Hansjee  
**Subject:** FW: Letter  
**Attachments:** letter.docx

Regards  
Elaine Govender  
HR Liaison

Bata South Africa (PTY) LTD | P. O. Box 128 | Pinetown 3600 | South Africa | Unit 1 | Manchester Park |  
Manchester Road | Pinetown 3610 | KwaZulu Natal | South Africa | Phone +27 31 701 49 51 |  
[elaine.govender@bata.com](mailto:elaine.govender@bata.com) | [www.bata.co.za](http://www.bata.co.za) |

 Please consider the environment before printing this e-mail

**From:** Neville Chetty <nevillechetty@ymail.com>  
**Sent:** 23 January 2017 16:16  
**To:** Rashid Kazi <rashid.kazi@bata.com>; Shaun Chetty <shaun@ihlobofootwear.co.za>  
**Subject:** Fw: Letter

Hi Kazi,

As discussed with Shaun can you pls do letter as attached. Can you pls send back urgently.

Many thanks  
Regards, Neville

JH 2018

23 January 2017,

Attention: To whom it may concern

Re: IHLOBO FOOTWEAR – Increase production

This letter serves to confirm that we have requested IHLOBO FOOTWEAR to increase production to 4500 pairs per day and tool up their factory accordingly.

I trust that the above meets your requirements.

Yours faithfully

BA an

# Info

letter (002)

E-mail attachment: C:\Users\bhauna\AppData\Local\Microsoft\Windows\NetCache\Content.Outlook\OMS551G\letter (002).docx



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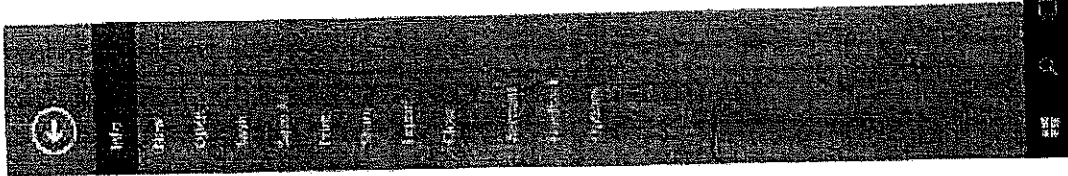
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Created	2017-01-23 04:04 PM
Last Printed	Today, 01:43 PM



Handwritten signature or initials.

2

**Bhauna Hansjee**

---

**From:** Elaine Govender <Elaine.Govender@bata.com>  
**Sent:** 23 April 2018 02:26 PM  
**To:** Bhauna Hansjee  
**Cc:** John Harman  
**Subject:** FW: IHLOBO

Regards  
Elaine Govender  
HR Liaison

Bata South Africa (PTY) LTD | P. O. Box 128 | Pinetown 3600 | South Africa | Unit 1 | Manchester Park |  
Manchester Road | Pinetown 3610 | KwaZulu Natal | South Africa | Phone +27 31 701 49 51 |  
[elaine.govender@bata.com](mailto:elaine.govender@bata.com) | [www.bata.co.za](http://www.bata.co.za) |

 Please consider the environment before printing this e-mail

**From:** Neville Chetty <nevillechetty@ymail.com>  
**Sent:** 08 June 2017 12:35  
**To:** Rashid Kazi <rashid.kazi@bata.com>  
**Cc:** Shaun Chetty <shaun@ihlobofootwear.co.za>  
**Subject:** IHLOBO

Hi Kazi,

As discussed with Shuan can you pls send letter with below

IHLOBO to supply BATA 4500 prs per day on the TOUGHEES brand which will be reviewed every 6 months.

Thanks  
Regards, Neville

Sh  
CN

8


## Bhauna Hansjee

---

**From:** Elaine Govender <Elaine.Govender@bata.com>  
**Sent:** 23 April 2018 02:25 PM  
**To:** Bhauna Hansjee  
**Cc:** John Harman  
**Subject:** FW: Letter of acknowledgement

Regards  
Elaine Govender  
HR Liaison

Bata South Africa (PTY) LTD | P. O. Box 128 | Pinetown 3600 | South Africa | Unit 1 | Manchester Park |  
Manchester Road | Pinetown 3610 | KwaZulu Natal | South Africa | Phone +27 31 701 49 51 |  
[elaine.govender@bata.com](mailto:elaine.govender@bata.com) | [www.bata.co.za](http://www.bata.co.za)

 Please consider the environment before printing this e-mail

**From:** Neville Chetty <nevillechetty@ymail.com>  
**Sent:** 09 June 2017 09:39  
**To:** rashid.kazi@bata.com; 'Shaun Chetty' <shaun@ihlobofootwear.co.za>  
**Subject:** Re: Letter of acknowledgement

Hi Kazi,

Can you pls amend as below.

Thanks

Neville

ATT:- Shaun  
Ihlobo

DATE:- 09<sup>th</sup> June 2017

Please be advised that as per our Management Meeting a further 4 500 prs of production will be planned for you, starting week 26 to week 50. This production will be review for season 1 – 2018. Also be advised that buying of DVP leather will be solely responsible by you and all 'A' pairs as per sample must be delivered to Loskop. Any defects will returned and charged to your account.  
Many Thanks

Regards  
Rashid Kazi

Regards, Neville

On Friday, June 9, 2017 9:15 AM, Rashid Kazi <rashid.kazi@bata.com> wrote:

RM con

ATT:- Shaun  
Ihlobo

DATE:- 09<sup>th</sup> June 2017

Please be advised that as per our Management Meeting a further 4 500 pairs of the DVP premould production per week will be planned for your unit starting week 26 to week 42. This production will be review for season 1 – 2018.

Also be advised that buying of DVP leather will be solely responsible by you and all 'A' pairs as per sample must be delivered to Loskop. Any defects will returned and charged to your account.

Many Thanks

Regards

Rashid Kazi

ABU Manager

Bata South Africa (PTY) LTD | P. O. Box X17 | Loskop Road | Loskop 3330 | KwaZulu Natal | South Africa | Phone  
+27 36 431 7071 | [|@bata.com](mailto:|@bata.com) |

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SA con



"BHS"

**Cindy Connor**

---

**Subject:** FW: IHLOBO FOOTWEAR CC // BATA SOUTH AFRICA (PTY) LTD & FUTURA FOOTWEAR LIMITED  
**Attachments:** LETTER TO MACGREGOR ERASMUS 26-04-2018.pdf

**From:** Cindy Connor [<mailto:cconnor@hayandscott.co.za>]  
**Sent:** Thursday, April 26, 2018 9:35 AM  
**To:** 'bhauna@meattorneys.co.za'  
**Cc:** 'princess@meattorneys.co.za'; 'roderick@hayandscott.co.za'; 'Paul Hay ([paul@hayandscott.co.za](mailto:paul@hayandscott.co.za))'; Victor de Beer  
**Subject:** IHLOBO FOOTWEAR CC // BATA SOUTH AFRICA (PTY) LTD & FUTURA FOOTWEAR LIMITED

Dear Sir/Madam,

Attached please find correspondence from our offices.

Yours faithfully,

**Cindy-Ray Connor** • Personal Assistant to Roderick Brent  
HAY & SCOTT ATTORNEYS

- ☎ 033-3424800
- ☎ 033-3424900
- ✉ [cconnor@hayandscott.co.za](mailto:cconnor@hayandscott.co.za)
- 🌐 [www.hayandscott.com](http://www.hayandscott.com)
- 🇿🇦 VAT No: 4320203344



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---

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Branch Office: Office No. 11, 76 Hope Street, Kokstad

Partners: Paul Simon Hay • Andrew Bruce Léman Scott • Roderick Farmer Brent  
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Senior Associates: Jeremy Frank Capon • Diana Oliwia Pęczak • Grant Douglas Williams  
Associates: Faadela Essop • Anthony Luke Kaufmann

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BHA CON

MACGREGOR ERASMUS

Our Ref: R.F Brent/cc/091045002

PER EMAIL: [bhauna@meattorneys.co.za](mailto:bhauna@meattorneys.co.za)

Your Ref: Bhauna Hansjee

"With Prejudice"

Date: 26 April 2018

Dear Sir/Madam,

**RE: IHLOBO FOOTWEAR CC / BATA SOUTH AFRICA (PTY) LTD & FUTURA FOOTWEAR LIMITED CASE NO. 3190/18P**

---

We refer to your urgent letter dated 24 April 2018.

We reply to your letter under reply as follows:

1. At the outset we record that we are instructed not to litigate this matter through correspondence. We do not intend to deal with all of the allegations in the letter, and reserve our rights to do so in due course.
2. The facts set out in your letter pertaining to the correspondence between our client and your client's representative Khazi are plainly wrong and self-serving. The inferences and conclusions you wish to draw therefrom are unjustified. The true position is that the correspondence with Khazi is entirely consistent with what our client had stated in its affidavits: namely that, following a request from the IDC that we confirm the "tooling-up" order, Ihlobo asked Khazi to place his instruction in writing. This is also consistent with our argument that the contract required any variations of the order to be in writing. We will deal further with this issue in our supplementary answering affidavit and make the true facts plain to the Court.
3. In light of those facts, and the fact that you have failed to allow our client an opportunity to explain the innocent correspondence which you now self-servingly term a "repudiation" (and the fact that this correspondence is many months old), we are adamant that we remain within the

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F +27 033 342 4900

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Kokstad, 4700

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Office No. 11, 76 Hope Street,  
Kokstad, 4700

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Senior Associates:  
Jeremy Frank Capon, Dłana Oliwia Pęczak,  
Grant Douglas Williams

Associates:  
Faadela Essop, Anthony Luke Kaufmann,

*Handwritten initials/signatures*

discipline of the court process. You have, as you are entitled to do, raised these facts in your supplementary answering affidavit, which we received last night. Our response thereto will appear in our replying affidavit and *audi alteram partem* will be protected in that time table, as will the court's ability to determine this case on the true facts and on affidavit rather than through correspondence.

4. It is clear that your clients' intentions, in having presented the e-mails as attached to your letter under reply in isolation and without reference to our client's *audi alteram partem* rights, is maliciously aimed at opportunistically providing false grounds for the unlawful cancelation of the agreement between the parties.
5. We remind you of the duties set out by the Constitutional Court in *Eke v Parsons* 2016 (3) SA 37 (CC) to respect and uphold court orders. Your client's conduct in purporting to terminate the agreement a mere court two days after the court order of Gorven J was granted, and on utterly spurious grounds, is abusive of the existing court order and amounts to constructive contempt. Indeed, the true facts are entirely consistent with our client's case in the founding affidavit. In the premises, your client has acted in bad faith.
6. Your client has also, regrettably, under oath, accused our client of fraud without a proper basis, something that our courts have deprecated in the strongest terms, again which will be drawn to the court's attention.
7. We therefore refuse to accept your purported termination of 24 April 2018 and put your client to an election:
  - a. Either these issues must be ventilated in the existing court process and under the discipline of the existing timetable (and will be determined on 22 June 2018);
  - b. Or our client will refer this issue to arbitration for determination under the contract.
8. We remind you that you and your clients are subject to the terms of the existing court order and the duty of good faith in the observation thereof. We reserve all our client's rights, including to place this correspondence before the Judge.
9. Kindly reply by **30 April 2018** and indicate your election.

Our clients rights are hereby reserved *in toto*.

3H am

Yours faithfully,

*"R.F Brent"*

**R.F Brent**

**HAY & SCOTT ATTORNEYS**

**Email: [roderick@hayandscott.co.za](mailto:roderick@hayandscott.co.za)**

THIS DOCUMENT HAS BEEN SENT ELECTRONICALLY AND IS THEREFORE UNSIGNED

"PSH6"

**Cindy Connor**

---

**From:** Cindy Connor <cconnor@hayandscott.co.za>  
**Sent:** Wednesday, May 2, 2018 10:53 AM  
**To:** 'bhauna@meattorneys.co.za'  
**Cc:** 'princess@meattorneys.co.za'; 'roderick@hayandscott.co.za'; 'Paul Hay (paul@hayandscott.co.za)'; Victor de Beer  
**Subject:** IHLOBO FOOTWEAR CC // BATA SOUTH AFRICA (PTY) LTD. & FUTURA FOOTWEAR LIMITED  
**Attachments:** LETTER TO MACGREGOR ERASMUS 02-05-2018.pdf

Dear Sir/Madam,

Attached please find correspondence from our offices.

Yours faithfully,

**Cindy-Ray Connor** • Personal Assistant to Roderick Brent  
HAY & SCOTT ATTORNEYS

☎ 033-3424800

☎ 033-3424900

✉ [cconnor@hayandscott.co.za](mailto:cconnor@hayandscott.co.za)

🌐 [www.hayandscott.com](http://www.hayandscott.com)

☎ VAT No: 4320203344



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Associates: Faadela Essop • Anthony Luke Kaufmann

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BA CON

MACGREGOR ERASMUS

Our Ref: R.F Brent/cc/09I045002

PER EMAIL: [bhauna@meattorneys.co.za](mailto:bhauna@meattorneys.co.za)

Your Ref: Bhauna Hansjee

Date: 02 May 2018

“With Prejudice”

Dear Sir/Madam,

**RE: IHLOBO FOOTWEAR CC / BATA SOUTH AFRICA (PTY) LTD & FUTURA FOOTWEAR LIMITED CASE NO. 3190/18P**

1. As you are aware, on 20 April 2018, Gorven J handed down an order in which he granted our client interdictory relief pending the return date, being 22 June 2018, against Bata in the following terms:

- “2.1 the purported cancellation of the agreement between the Applicant and the First Respondent is suspended and should be of no force and effect;
- 2.2 the First Respondent is ordered to place orders with the applicant as would have been done if the purported cancelation of the agreement had not taken place.
- 2.3 Paragraph 2.2 shall not derogate from any right (not contained in clause 29 of the agreement on page 59 of the papers) to cancel the agreement.”

2. Pursuant to this court order, our client expected to receive an order from Bata on Tuesday 24 April 2018, which was the usual date on which weekly orders were placed. No order was received from Bata on 24 April 2018. Instead, our client received a letter recording Bata's spurious and bad faith purported termination of the contract on that day. We have dealt with this letter in our correspondence of 26 April 2018 and our Supplementary Replying Affidavit, which will be filed on your offices later today. We do not repeat those submissions here. We simply note that, depending on your client's response to our letter of 26 April 2018, our client reserves its rights to refer your client's purported termination of the Agreement to arbitration.

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Kokstad, 4700

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Senior Associates:  
Jeremy Frank Capon, Diana Oliwia Pęczak,  
Grant Douglas Williams

Associates:  
Faadela Essop, Anthony Luke Kaufmann,

34 AW

3. In the meantime, and while the court order of Gorven J remains extant and binding on all parties, we demand that Bata place orders with our client on or before 16h00 on Wednesday 2 May 2018 (given that Tuesday 1 May was a public holiday), and reserve our client's rights to claim damages should no orders (or insufficient orders) be placed. Of course no amount of damages could be considered an adequate alternative remedy for the irreparable harm suffered by our client, its employees or the community of Hammarsdale as a result of your client's unconscionable conduct.
4. We remind you and your client that both parties must act consistently with the principle that all court orders must be performed in good faith and may not be frustrated (See in this regard the Constitutional Court decision of Eke v Parsons).
5. In that vein, and in order to ensure that the court's order of 20 April 2018 is meaningful and practical, we also demand that Bata provide our client from the date of the court's order (and thereafter every Tuesday) on a weekly basis and together with its orders to Ihlobo:
  - 5.1 a list of the orders that have been placed with Bata's remaining ABUs; and
  - 5.2 a list of that week's production target inclusive of any new contracts that Bata has received or receives from the date of the court's order (or if no new contracts or no new future production targets are provided in any given week, then a statement to that effect).
6. To the extent that Bata claims that the information sought is confidential, then we undertake to sign confidentiality agreements as a legal team.
7. Should your client fail to respond to this letter by 16h00 on 2 May 2018, or should such response prove inadequate, our client reserves its rights to approach Gorven J on an urgent basis on 11 May 2018 in order to protect its rights and the rights of those whom it represents, to draw the court's attention to your client's contemptuous conduct, and to seek appropriate relief. In such instance, this correspondence and your reply will be placed before the Court.

We await your urgent response by 16h00 today, being 2 May 2018.

*SM CN*

Yours faithfully,

*"R.F Brent"*

**R.F Brent**  
**HAY & SCOTT ATTORNEYS**  
**Email: [roderick@hayandscott.co.za](mailto:roderick@hayandscott.co.za)**

THIS DOCUMENT HAS BEEN SENT ELECTRONICALLY AND IS THEREFORE UNSIGNED

3/4 00W



"PSH7"

**Cindy Connor**

**From:** Bhauna Hansjee <bhauna@meattorneys.co.za>  
**Sent:** Wednesday, May 2, 2018 3:55 PM  
**To:** Cindy Connor  
**Cc:** Princess Zuma; roderick@hayandscott.co.za; 'Paul Hay'; Victor de Beer  
**Subject:** RE: IHLOBO FOOTWEAR CC // BATA SOUTH AFRICA (PTY) LTD & FUTURA FOOTWEAR LIMITED

**Importance:** High

Dear Sirs,

We refer to your letter of this morning.

Where we do not deal with any particular allegation this is not to be construed as an admission and is in fact denied. We reserve our client's rights to respond in due course.

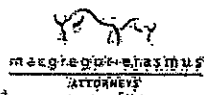
Our client's country manager is overseas presently and we are taking instructions. We have also received further concerning information regarding your client and will be addressing correspondence to your offices tomorrow in this regard.

Please confirm as a matter of urgency when the documents requested in terms of our Rule 35(12) notice will be made available.

Our client's rights remain reserved.

Kind Regards

Bhauna Hansjee | Partner



Durban Office | Bond Square | 1st Floor | 12 Browns Road | The Point | Durban | 4001  
P.O. Box 278 | Private Bag X04 | Dalbridge | 4014  
Tel: 031 281 4955 | Fax: 031 201 8906  
Email: bhauna@meattorneys.co.za | www.macgregorhayman.co.za

Also in Cape Town | Tel: 021 492 2891 / 021 422 0830 | Also in Johannesburg | Tel: 011 258 0720

Kindly note our DOCEX addresses below:  
DOCEX 17 DURBAN // DOCEX 80 PIETERMARITZBURG  
DOCEX 293 JHB // DOCEX 113 CAPE TOWN

**From:** Cindy Connor <cconnor@hayandscott.co.za>  
**Sent:** 02 May 2018 10:53 AM  
**To:** Bhauna Hansjee <Bhauna@meattorneys.co.za>  
**Cc:** Princess Zuma <princess@meattorneys.co.za>; roderick@hayandscott.co.za; 'Paul Hay' <paul@hayandscott.co.za>; Victor de Beer <victor@hayandscott.co.za>  
**Subject:** IHLOBO FOOTWEAR CC // BATA SOUTH AFRICA (PTY) LTD & FUTURA FOOTWEAR LIMITED

Dear Sir/Madam,

Attached please find correspondence from our offices.

Yours faithfully,

Cindy-Ray Connor • Personal Assistant to Roderick Brent  
HAY & SCOTT ATTORNEYS  
☎ 033-3424800



3/11 con

"PSH8"

Paul Hay

From: Paul Hay <paul@hayandscott.co.za>  
Sent: 03 May 2018 08:49 AM  
To: 'Bhauna Hansjee'; 'Cindy Connor'  
Cc: 'Princess Zuma'; 'roderick@hayandscott.co.za'; 'Victor de Beer'  
Subject: RE: IHLOBO FOOTWEAR CC // BATA SOUTH AFRICA (PTY) LTD & FUTURA FOOTWEAR LIMITED

Importance: High

**"URGENT"**

Dear Madam

We acknowledge receipt of your letter dated 2 May 2018, received at 15h55. We respond thereto as follows:

1. We fail to see how the absence of one of your client's local managers can be used as a justification your client's failure to address the critical and urgent issues raised in our letter dated 2 May 2018. Accordingly we have noted your client's failure, once again, to comply with the demands contained in the aforesaid correspondence and confirm that we are now proceeding with the course of action as stated in paragraph 7 thereof.
2. We note your client's election to persist with its transparent strategy to commercially bully our client and to avoid compliance with the Court Order dated 20 April 2018. This strategy is once again premised on veiled threats based on certain undisclosed alleged "further concerning information" regarding our client. In regard to this strategy we refer you to our client's Reply to the Supplementary Affidavit, which was filed on your local correspondent yesterday, which evidences *inter alia* the contrived and misleading conclusions previously reached by your client based selective decontextualized information. It is based on these "conclusions" that your client has premised its unlawful excuse for failing to comply with the terms of the Court Order.
3. We will be filing our client's reply to your client's Rule 35(12) notice in the very near future. The documents requested are numerous and voluminous and our client is doing its best to comply with your request.

Yours faithfully

Paul Hay

**HAY & SCOTT ATTORNEYS**

033-3424800  
033-3424900  
paul@hayandscott.co.za  
www.hayandscott.com  
VAT No: 4320203344



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BA AW

"BHQ"



erasmus  
ATTORNEYS

3<sup>rd</sup> May 2018  
Our reference: B Hansjee/pz

HAY & SCOTT ATTORNEYS  
Per email: [paul@hayandscott.co.za](mailto:paul@hayandscott.co.za)

**URGENT**

Dear Sirs

**IN RE: BATA SOUTH AFRICA (PTY) LTD / FUTURA FOOTWEAR LIMITED & IHLÖBO FOOTWEAR CC: NOTICE OF CANCELLATION**

Our failure herein to deal with any allegation contained in your letter/s (or in the further replying affidavit delivered yesterday) is not an admission thereof but a denial of such allegations.

You have failed to comply with our client's Rule 35 notice and our client will take steps to enforce compliance therewith. Should your client still persist, our client will seek the consequent relief striking out the papers in which reference to the documents sought is contained.

Your client's false and defamatory allegations of our client and ourselves is noted and our client's rights, as well as those of the writer, are reserved.

Our client's Country Manager, is not just some "manager", but is the executive head of the South African enterprise within Bata. He is responsible for the overall conduct of this litigation.

Without limiting the bases on which our client has already terminated the agreement arising from the repudiation referenced in our letter dated 24 April 2018, it has been communicated to us, contrary to your client's allegations repeatedly made under oath and in the correspondence exchanged, that your client (again in repudiation of the agreement in issue), only has 37 employees registered with the National Bargaining Council for the Leather Industry as at December 2017.

Moreover, it is apparent from the affidavits delivered that your client has failed to comply with the agreement as it has failed to pay the employees in accordance with the minimum wages prescribed. Attached hereto is the communication received from the bargaining council reflecting the employees registered with it.

JOHANNESBURG  
Office No. 8, 10 & 11A Throop Avenue Centre  
27 Oxford Road (Opp. 2196)  
Private Bag 111, Braamfontein 2013  
Tel: 011 238 9730 Fax: 011 269 2003

DURBAN (HEAD OFFICE)  
Bund Square 1st Floor  
12 Botway Road The Point Durban 4001  
Postal 278 Private Bag 204 Dalbridge 4014  
Tel: 031 201 8955 Fax: 031 201 8966

CAPE TOWN  
Unit 51 Urban Hub  
132 Buitengracht Street Cape Town 8001  
P.O. Box 455 Cape Town 8008  
Tel: 021 422 0830 Tel: 021 492 2891 Fax: 021 422 1220

PIETERMARITZBURG  
12 Gough Road Pietermaritzburg 3201  
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Partners: Bruce Macgregor ; Richard Erasmus ; Bhanna Hansjee ; Jacques Schabert ; Mpho Titus ; Stefan Hill ; Elco Geldenhuys ; Glen Kirby-Hirst  
In-House Counsel: Charmaine Nel | Associates: Uendei Pretorius ; Preshni Govender ; Zuziwe Mlawa ; Qudsiyyah Majam ; Sheri-Leigh Bailache Rowes  
Linden Bowes ; Lauren Anderson ; Sarah Smythe ; Justin Khingbid | Consultants: Callum Smythe  
Practice No. 5441

BH AN

Your client now claims to employ 306 employees and that it increased its staff compliment in excess of 280 permanent employees as a consequence of the alleged instruction to produce stuck-ons at 4500 pairs per day (which instruction has been shown to be false).

This conduct aforesaid constitutes a further repudiation of the agreement which our client hereby accepts and again, without prejudice to the cancellation already effected, notifies your client hereby that this too constitutes a ground for cancellation. Our client hereby again notifies your client of the cancellation of the agreement.

We are authorised to accept service of any contempt proceedings your client may seek to institute. Our client will oppose that relief and draw these various misrepresentations to the attention of the Court.

We remind you that the notion of the Court's order ostensibly precluding our client from lawfully cancelling the agreement thereafter, was specifically canvassed in argument. Honourable Judge Gorven agreed that this could never be the import of the order, hence the recordal in the order that it was without prejudice to our client's right lawfully to terminate the agreement.

Our client was not aware of the fraud perpetrated by your client and thus the repudiation the emails came to light between your client and Mr Kazi and which was revealed on 24 April 2018. Moreover, the allegations in your client's papers belie the contents of the June 2017 email, penned once more by your client.

Now again your client changes its version of the agreement and again seeks to introduce incompetent relief in reply only, seeking to direct our client to divvy up work between the ABUs in a manner directed by your client, where no such right exists.

The order permitting our client to deliver a further answer, clearly constituted admission of the answering affidavit already delivered. Your stance is nonsensical, given that our client could simply have re-served the initial supplementary answering affidavit with the affidavit delivered on 25 April 2018. It seems it is your client who wishes to protract matters by requiring our client to launch wasteful applications for condonation where no such condonation is necessary. This includes for the confirmatories delivered the following day. We note further that your client has still not, to date, referred any dispute to arbitration.

In the premises, your client's repeated recourse to the greater community of Hammarsdale, which is allegedly impacted is not only false and baseless, but it is your client who is apparently exploiting these employees (if in fact employed which remains to be seen) by failing to register them with the bargaining council and, on your papers, failing to pay the minimum wage and contributions.

Our client's rights remain reserved.

BH con

Yours faithfully .



**BHAUNA HANSJEE**

**MACGREGOR ERASMUS ATTORNEYS**

[bhauna@meattorneys.co.za](mailto:bhauna@meattorneys.co.za) / [ca.nel@law.co.za](mailto:ca.nel@law.co.za)

cc: [princess@meattorneys.co.za](mailto:princess@meattorneys.co.za)

3/4 con



"PSH10"

**Cindy Connor**

---

**From:** Cindy Connor <cconnor@hayandscott.co.za>  
**Sent:** Friday, May 4, 2018 11:22 AM  
**To:** 'bhauna@meattorneys.co.za'  
**Cc:** 'princess@meattorneys.co.za'; 'roderick@hayandscott.co.za'; 'Paul Hay (paul@hayandscott.co.za)'; Victor de Beer  
**Subject:** IHLOBO FOOTWEAR CC // BATA SOUTH AFRICA (PTY) LTD & FUTURA FOOTWEAR LIMITED  
**Attachments:** LETTER TO MACGREGOR ERASMUS 04-05-2018.pdf; 20180504111653380.pdf

Dear Sir/Madam,

Attached please find correspondence from our offices.

Kindly acknowledge receipt.

Yours faithfully,

**Cindy-Ray Connor** • Personal Assistant to Roderick Brent  
**HAY & SCOTT ATTORNEYS**

- ☎ 033-3424800
- ☎ 033-3424900
- 📧 [cconnor@hayandscott.co.za](mailto:cconnor@hayandscott.co.za)
- 🌐 [www.hayandscott.com](http://www.hayandscott.com)
- 🇿🇦 VAT No: 4320203344



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---

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Branch Office: Office No. 11, 76 Hope Street, Kokstad

Partners: Paul Simon Hay • Andrew Bruce Léman Scott • Roderick Farmer Brent  
Senior Consultant: Sarah-Jane McGuigan  
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SA CW

MACGREGOR ERASMUS

Our Ref: R.F Brent/cc/091045002

PER EMAIL: [bhauna@meattorneys.co.za](mailto:bhauna@meattorneys.co.za)

Your Ref: Bhauna Hansjee

Date: 04 May 2018

“With Prejudice”

Dear Sir/Madam,

**RE: PURPORTED CANCELLATION OF THE ASSOCIATE BUSINESS UNIT AGREEMENT  
DATED 7 AUGUST 2015 (“the Agreement”) DATED 3 MAY 2018**

---

We refer to your letter dated 3 May 2018.

Where we do not deal with each and every aspect under reply, we reserve the right to do so at a later stage, if necessary.

**1. Country Manager**

Your client is an international business with several directors based in South Africa, this coupled with the advanced modes of communication available in this day and age, means that it is unfortunately not a valid justification for your clients to neglect to meaningfully respond to the urgent matters raised by us, timeously or at all.

**2. Further Purported Repudiations**

**a. National Bargaining Council for the Leather Industry**

Your client’s assertion that our client has committed a further act of repudiation in this regard is disputed. This is so for the following reasons:

**1. The basis upon which you allege our client to have repudiated the Agreement is**

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VatNo: 4320203344

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P.O.Box:  
Office No. 11, 76 Hope Street,  
Kokstad, 4700

*Handwritten signature/initials*



due to the fact that our client "*only has 37 employees registered with the National Bargaining Council for the Leather Industry as at December 2017.*"

2. We could find no term or condition contained in the Agreement requiring our client to register its employees with NBCLI. It is noteworthy that your letter under reply is silent in referring to the precise provision of the Agreement on which your client relies for the basis of your allegation that our client has repudiated the Agreement.
3. Clause 20 of the Agreement reads as follows:

*"20.1 The ABU warrants that it is duly registered with the National Bargaining Council of the Leather Industry of South Africa (NBCLI)".*

4. We confirm that our client is a member and duly registered with NBCLI as required. In support of this please find attached a letter marked Annexure "A" which confirms that our client is duly registered with the NBCLI, as required.

We confirm that our client is referring this attempted cancellation, which is disputed, for arbitration in terms of clause 28 of the Agreement.

#### Minimum Wage

Our client denies that "*it has failed to pay [its] employees in accordance with the minimum wage*", as alleged or at all.

In any event it is once again noteworthy that your client fails to identify the term or condition contained in the Agreement on which it relies for asserting a repudiation by our client based on its alleged conduct, which conduct is denied.

We confirm that our client is also referring this disputed cancellation for arbitration in terms of clause 28 of the Agreement.

*BN AN*

What is now clearly apparent from your client's conduct, as recorded above, is that your client intends frustrating and avoiding the Court Order of 20 April 2018 and will use any means to achieve this end.

Evidence of this intention is reflected by your client once again attempting to contrive bases to avoid compliance with the Court Order. It would seem that your client, having read and considered our client's Reply to the Respondents Supplementary Affidavit, has recognized the fatal flaws inherent in its purported cancellation dated 24 April 2018 and is now scrambling to find alternative bases on which to assert further repudiations by our client in a concerted and deliberate effort to cancel the Agreement and thereby avoid complying with the Court Order.

**3. Further evidence of your client's premeditated efforts to subvert and avoid compliance with the Court Order**

We have been advised that during the course of the morning of 23 April 2018, being the Monday following the Friday on which Gorven J granted the Order dated 20 April 2018, your client notified our client that it would be uplifting its machinery from our client's premises.

This conduct affirms and supports the conclusion reached by our client that your client has never had any intention of complying with the provisions of paragraph 2 of the Order.

We will address this aspect more fully in the affidavit that will be put up in support of the contempt of court application, which will be launched shortly.

**4. Contempt of Court**

As advised above our client is proceeding with an urgent Contempt Application and will serve same care of your offices as soon as it is issued.

We will be enrolling this matter for hearing on 11 May 2018.

This correspondence, together with your letters dated 24 April 2018 and 3 May 2018, will be put up in support of our client's argument that it be awarded a punitive cost order in its favour.

SM  
CW

Yours faithfully,

*"R.F Brent"*

**R.F Brent**  
HAY & SCOTT ATTORNEYS  
Email: [roderick@hayandscott.co.za](mailto:roderick@hayandscott.co.za)

THIS DOCUMENT HAS BEEN SENT ELECTRONICALLY AND IS THEREFORE UNSIGNED

27/01/01

"A"

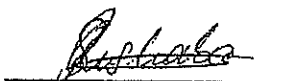
# NATIONAL BARGAINING COUNCIL OF THE LEATHER INDUSTRY OF S.A

## CERTIFICATE OF COMPLIANCE

Awarded to:

IHLOBO FOOTWEAR

In recognition of the organisation's registration as an employer engaged in the Footwear Section of the leather Industry and the organisation's compliance with all relevant collective agreements of the National Bargaining Council of the Leather Industry of S.A

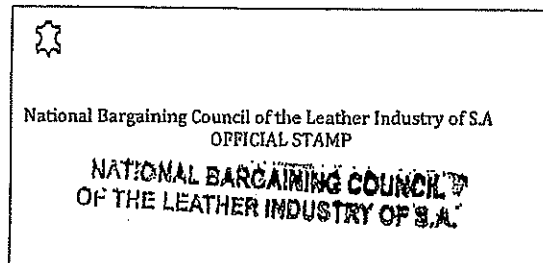


SP. LUSHABA

Designated Council Agent

24 NOVEMBER 2017

Date of Issue



CERTIFICATE No: KZN/46/2017

24 NOV

"PSHII"

**Cindy Connor**

---

**From:** Cindy Connor <cconnor@hayandscott.co.za>  
**Sent:** Friday, May 4, 2018 11:26 AM  
**To:** 'bhauna@meattorneys.co.za'  
**Cc:** 'princess@meattorneys.co.za'; 'roderick@hayandscott.co.za'; 'Paul Hay (paul@hayandscott.co.za)'; Victor de Beer  
**Subject:** IHLOBO FOOTWEAR CC // BATA SOUTH AFRICA (PTY) LTD & FUTURA FOOTWEAR LIMITED  
**Attachments:** LETTER TO MACGREGOR ERASMUS 04-05-2018 (2).pdf

Dear Sir/Madam,

Attached please find further correspondence from our offices.

I kindly acknowledge receipt.

Yours faithfully,

**Cindy-Ray Connor** • Personal Assistant to Roderick Brent

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---

SA CON

MACGREGOR ERASMUS

Our Ref: R.F Brent/cc/091045002

PER EMAIL: [bhauna@meattorneys.co.za](mailto:bhauna@meattorneys.co.za)

Your Ref: Bhauna Hansjee

Date: 04 May 2018

"With Prejudice"

Dear Sir/Madam,

**RE: PURPORTED CANCELLATION OF THE ASSOCIATE BUSINESS UNIT AGREEMENT  
DATED 7 AUGUST 2015 ("the Agreement")**

We refer to your letters dated 24 April 2018 and 3 May 2018.

We record as follows:

- a. We note that in the aforementioned letters you allege that certain conduct, purportedly committed by our client, which conduct you assert to constitute three separate acts of repudiation under the Agreement.
- b. You failed to afford our client any opportunity of commenting on or providing context to the alleged acts of repudiation.
- c. You purport to accept these alleged acts of repudiation and thereafter purport to cancel the Agreement.

We are instructed to give you notice in terms of clause 28 of the Agreement, as we hereby do, that our client wishes to declare a dispute as envisaged in this clause. The particulars of our client's dispute are as follows:

1. Our client disputes having committed any act of repudiation, as recorded in your letters dated 24 April 2018 and 3 May 2018, as alleged or at all;

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Associates:

Faadhela Essop, Anthony Luke Kaufmann,

2. Our client disputes your client's entitlement to accept such alleged acts of repudiation; and
3. Our client therefore disputes that your client is entitled to cancel the Agreement based on the aforementioned alleged acts of repudiation.

We reserve our client's right to amplify these grounds of referral at a later stage, if needs be.

We propose that either Mr. G. O. van Niekerk SC or Mr. M Pillemer SC be appointed as the arbitrator. Kindly advise whether either of these proposals are acceptable to your client. In the event of neither of these proposals being acceptable please provide us with two alternative suggestions.

Please will you advise whether we are required to give notice of this dispute to the selected *domicillium citandi et executandi*, as set out in clause 30 of the Agreement, or whether this notice care of your offices will suffice for this purpose as provided for in clause 30.4.

Finally, please note that the referral of these matters to arbitration is without prejudice to our client's rights under the Order of Gorven J of 20 April 2018 ("the Order"), including without limitation our client's right to:

- i. seek final relief from the High Court on 22 June 2018;
- ii. to be given orders by your client in accordance with paragraph 2 of the Order;
- iii. to seek an order of contempt on account of your client's failures to comply with the Order and it further efforts to frustrate any order that may be given by a court hearing the matter on 22 June.

Yours faithfully,

*"R.F Brent"*

**R.F Brent**  
HAY & SCOTT ATTORNEYS  
Email: [roderick@hayandscott.co.za](mailto:roderick@hayandscott.co.za)

THIS DOCUMENT HAS BEEN SENT ELECTRONICALLY AND IS THEREFORE UNSIGNED

3/11 001