

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)

CASE NO: 1354/2020

In the *ex parte* in camera application of:

HANTLE INFRA PLANNING (PTY) LTD

Applicant

In re:

HANTLE INFRA PLANNING (PTY) LTD

Applicant

and

RETRO REFLECTIVE (PTY) LTD (IN LIQUIDATION &

First Respondent

ANDRE SWANEPOEL (SENIOR) NO

Second Respondent

HENDRIK JACOBUS JOHANNES LAMBRECHT NO

I'ANDRE SWANEPOEL (JUNIOR) NO

In their capacities as the Trustees for the time being

of the I'ANDRE SWANEPOEL FAMILY TRUST

LAMPRECHT & MEYER ACCOUNTANTS

Third Respondent

CAREL FREDERICK BENJAMIN DU PREEZ (JUNIOR)

Fourth Respondent

I'ANDRE SWANEPOEL (JUNIOR)

Fifth Respondent

PLAN B WIRELESS (PTY) LTD

Sixth Respondent

TOOL X WHOLESALERS CC

Seventh Respondent

DIVINO RESTAURANT AND CATERING (PTY) LTD

Eighth Respondent

RADIO OOS-KAAP (PTY) LTD

Ninth Respondent

BURMEISTER DE LANGE SONI ATTORNEYS INC	Tenth Respondent
CAREL FREDERICK BENJAMIN DU PREEZ (SENIOR)	Eleventh Respondent
BRADLEY & VAN DER MERWE t/a BVDM CHARTERED AND PROFESSIONAL ACCOUNTANTS	Twelfth Respondent
ANDRE SWANEPOEL (SENIOR) NO	Thirteenth Respondent
HENDRIK JACOBUS JOHANNES LAMBRECHT NO	
INGRID GERTRUIDA CHRISTINA SWANEPOEL NO	
In their capacities as the Trustees for the time being of the l'ANDRE TRUST	
ANDRE CHARL VAN HEERDEN	Fourteenth Respondent
SUNE SMIT	Fifteenth Respondent
ANDRE SWANEPOEL (SENIOR)	Sixteenth Respondent
HENDRIK JACOBUS JOHANNES LAMBRECHT	Seventeenth Respondent
INGRID GERTRUIDA CHRISTINA SWANEPOEL	Eighteenth Respondent
PHUMLA CYNTHIA MKHONTWANA	Nineteenth Respondent
SWANS HARDWARE CC	Twentieth Respondent

JUDGMENT

D VAN ZYL DJP:

Introduction

[1] The applicant sought and obtained what is commonly known as an Anton Piller order (the order). As is ordinarily the case, the application for the order was without

notice and was heard in camera. The order authorised the deputy sheriff for a number of districts to search the premises, vehicles, computers and other electronic devices of the respondents for certain documents and items as reflected in the schedule to the notice of motion.

[2] The second, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, thirteenth, sixteenth, eighteenth, nineteenth and twentieth respondents (the respondents) filed opposing affidavits, and upon notice to the applicant enrolled the matter for hearing in terms of Uniform Court Rule 6(12)(c). It provides that a person against whom an order was granted in his absence, may by notice set the matter down for a reconsideration of the order. The respondents ask that the order be set aside, the documentation seized pursuant to the order be returned to them, and that a punitive costs order be made against the applicant.

[3] The Applicant founded its application for the order on the allegation that it intends to institute several actions based on various causes of action arising from the alleged unlawful conduct of the fourth, fifth and nineteenth respondents in their capacities as directors of the first respondent; that the respondents have in their possession specified documents which provides vital evidence to its claims; that there exists a real and well founded apprehension that the evidence may be hidden or destroyed in some or other manner; and that the applicant has no other effective remedy available to it.

[4] In a civil case, the authority of the court to deal with evidentiary material ordinarily only arises after proceedings have been instituted. It is limited to the regulation of a process of discovery governed by the Rules of Court. In the case of documentary evidence, Uniform Court Rule 36 *inter alia* provides for what is essentially a cooperative process of disclosing documents relevant to the proceedings by the filing of a discovery affidavit. It is complimented by a procedure to compel the discovery of specified documents in the possession of the opposing party.

[5] A civil court does not have the jurisdiction, inherent or otherwise, to facilitate an investigation aimed at formulating a civil action by authorising the search of a premises and anything found thereon. That is a public power exercised in terms of empowering legislation which is reserved for the prosecution of criminal proceedings based on, at the lower end, the existence of a reasonable suspicion that evidence of an incriminating nature may be found in or on a property occupied by someone.

[6] The jurisdiction of a civil court to deal with documentary evidence before proceedings is confined to a situation where there is a significant concern that if the opposing party has knowledge of the impending claim, crucial documents may be altered, concealed or destroyed. In such circumstances, the court may preserve the evidence by granting an order that allows the plaintiff, through court appointed officers, to enter a premises to search for and remove documents or other items related to the plaintiffs' claim. The order is known as an Anton Piller order. Its name is derived from the 1976 decision of the English court of appeal in *Anton Piller KG v Manufacturing Ltd*,¹ a case that dealt with copyright infringement and the breach of secret information. The foundation of the order is the inherent jurisdiction of the court to regulate its own process in the interests of justice, and to prevent a defendant from frustrating the administration of justice by destroying or disposing of evidence relating to the subject matter of the litigation.²

“The proposed order is at the extremity of this court’s powers. Such orders therefore, will rarely be made and only when there is no alternative way of ensuring that justice is done to the applicant...”³

and

¹ [1976] 1 ALL ER 779 (CA).

² *Universal City Studios Inc and Others v Network Video* 1986 (2) SA 734 (A) at 754 G. Section 173 of the Constitution allows for the inherent power of the court to be used by taking into account the “interests of justice”. See *Pohlman and Others v Van Schalkwyk and Others* 2001 (2) SA 690 (E) at 697 D- F.

³ Umrod LJ in *Anton Piller* *supra* at 61.

“The overriding consideration in the exercise of this salutary jurisdiction is that it is to be resorted to only in circumstances where the normal processes of the law would be rendered nugatory if some immediate and effective measure is not available”.⁴

[7] The procedure has since become part of our law and is now well established.⁵ There are two types of preservation orders. *“The one has to do with an attachment where the applicant seeks the preservation of documentary evidence in which it has no proprietary interest (Universal City Studios (supra at 755 A-D)). The other has to do with an attachment where the applicant seeks to assert a real or personal right in what is being attached (Cerebos Food Corporation Ltd v Diverse Foods SA (Pty) Ltd and Another 1984 (4) SA 149 (T) at 150 G-H.)*⁶ The present matter falls in the first category”.

[8] The Anton Piller order (preservation order) is considered to be an extraordinary order. It is extraordinary because (a) it is an *ex parte* order made in camera that sanctions the search of a premises and the seizure of evidentiary material relevant to civil proceedings before those proceedings have commenced; and (b) by its very nature the order provides for a court sanctioned inroad into the right of privacy of another, a right that is guaranteed by the Bill of Rights.⁷

“The making of an order which affects the intended defendant’s rights, in secret, in haste, and without the intended defendant having had any opportunity of being heard is grossly undesirable and contrary to fundamental principles of justice. It can lead to serious abuses and

⁴ Shaw LJ in Anton Piller at 62.

⁵ Universal City Studios Inc and Others v Network Video *supra* at 747 E-F; and Non- Detonating Solutions v Durie 2016 (3) SA 445 (SCA) at para [44].

⁶ Kebble and Others v Wellesley – Wood and Others (2004) 5 SA 274 (WLD) at para 9.1. See also Friedshelf v Kallianji 2015 (4) SA 163 (GJ) at para [77].

⁷ Section 14 of the Bill of Rights.

oppressive orders which may prejudice an intended defendant in various ways, including ways that may not be foreseeable.”⁸

The negative effect which the order has on the reputation of a respondent in an application for a preservation order must not be underestimated. The reason is that a finding that there exists a reasonable apprehension that the respondent may destroy evidence, carries with it an inference of dishonesty.

[9] As a result of its extraordinary nature, the order has a number of features which are essentially aimed at restricting the breadth of its application and ensuring proportionality in relation to the interest being protected.⁹ Some of those features, relevant in the context of this matter are as follows: (a) As the order is granted without prior notice to the respondent, it places an obligation on the applicant for the order to make a full and frank disclosure of all the relevant and material facts.¹⁰ It requires the utmost good faith and the failure to make a full and fair disclosure may be penalised by the setting aside of the order on that ground alone, with an adverse costs order to follow.¹¹

‘The utmost good faith must be observed by litigants making ex parte applications in placing material facts before the court; so much so that if an order has been made upon an ex parte application and it appears that material facts have been kept back, whether wilfully and mala fide or negligently, which might have influenced the decision of the court whether to make an order or not, the court has a discretion to set the order aside with costs on the ground of non-disclosure. It should, however, be noticed that

⁸ Knox D’Arcy Ltd and Others v Jamieson and Others 1974 (3) SA 700 (WLD) at 707 J – 708 A.

⁹ Non-Detonating Solutions *supra* at para [20].

¹⁰ Cilliers et al Herbstein and Van Winsen The Civil Practice of the Supreme Court of South Africa 5th ed at page 442. See also Audio Vehicle Systems v Whitfield and Another 2007 (1) SA 434 (C) at para [21].

¹¹ Thint (Pty)Ltd v National Director of Public Prosecutions and Others; Zuma and Another v National Director of Public Prosecutions and Others 2008 (12) BCLR 1197 (CC) at para [296]; Frangos v CorpCapital Ltd and Others 2004 (2) SA 643 (T) at 649 C-F; and Audio Vehicle Systems *supra* at para [21].

*the court has a discretion and is not compelled, even if the non-disclosure was material, to dismiss the application or to set aside the proceedings”.*¹²

Whether the undisclosed facts are of sufficient materiality as to justify a discharge of the order without considering the merits of the application, depends on the importance of the facts to the issues which are to be decided.

[10] The applicant is therefore required to disclose every fact which is material to the granting of the order, favourable or unfavourable. What is material to the application is ultimately for the court to decide and is not determined by the assessment and categorisation of the facts as such by the applicant or his legal advisers. The duty of disclosure may consequently require the applicant to err on the side of caution by saying more rather than less in the papers filed in support of the application. Information that might influence the decision of the court to grant the order must not be hidden away in annexures. It must be disclosed in a manner that the attention of the court is directed thereat. The judge who hears an *ex parte* application, particularly if urgent and voluminous, is rarely able to study the papers at length, and cannot be expected to trawl through annexures in order to find material favouring the absent party. The seriousness of the responsibilities of legal practitioners in obtaining a preservation order must not be taken lightly,¹³ and it will require the exercise of diligence in the preparation of the application for a preservation order.

[11] (b) Another feature of the order that similarly arises from the manner in which it is granted, is that, irrespective of its mandatory nature and the finality of the form it may take, it is, not unlike any other order that is granted *ex parte*, considered to be an interlocutory order. It is consequently subject to reconsideration and variation once the respondent has had an opportunity to respond to the application.¹⁴ (c)

¹² National Director of Prosecutions v Basson 2002 (1) SA 419 (SCA) at para [21]; and Audio Vehicle Systems v Whitfield and Another *supra* at para [21].

¹³ Mathias International v Bailache 2015 (2) SA 357 (WCC) at para [35].

¹⁴ Shoba v Officer Commanding, Temporary Police Camp Wagendrift Dam and Another; Maphanga

Further, the *ex parte* attachment of, and the removal of the documents and the like must be the only practicable means of protecting the applicant's rights. If the applicant can preserve and obtain the evidence in some other less intrusive way, the order must not be granted.¹⁵

[12] (d) Of paramount importance is that the order must be formulated with sufficient particularity so as to avoid it from being overly wide in its reach, and it must incorporate safeguards against abuse in the execution of the order.¹⁶ (e) The invasive nature of the order and the circumstances in which it is made further requires strict compliance with the requirements for the granting of the order. A preservation order which is granted outside of, or which goes beyond what is permitted in law, is considered to have been granted without authority and is invalid and must be set aside.¹⁷ It is the duty of the applicant to ensure that the order applied for does not go beyond what is permitted.

[13] There are three essential substantive requirements that must be satisfied for the granting of a preservation order. They were summarised as follows by Corbett JA in *Universal City Studios Inc. and Others v Network Video (Pty) Ltd*:¹⁸

'In a case where the applicant can establish prima facie that he has a cause of action against the respondent which he intends to pursue, that the respondent has in his possession specific documents or things which constitute vital evidence in substantiation of the applicant's cause of action (but in respect of which the applicant can claim no real or personal right),

v Officer Commanding, South African Police Murder and Robbery Unit, Pietermaritzburg and Others

1995 (4) SA 1 (A) at 19H; Ghomeshi-Bozorg v Yousefi 1998 (1) SA 692 (W) at 676 D-E; and Pretoria Portland Cement Co Ltd v Competition Commission 2003 (2) SA 385 (SCA) at para [45].

¹⁵ Roamer Watch Co SA and Another v African Textile Distributors t/a MK Patel Wholesale Merchants

and Direct Importers 1980 (2) SA 254 (W) at 272 G-H.

¹⁶ Mathias International *supra* at paras [20] and [25].

¹⁷ Mathias International *supra* at paras [20] and [37]; Memory Institute SA CC t/a SA Memory Institute

v Hansen 2004 (2) SA 630 (SCA) at para [3]; and Non-Detonating Solutions *supra* at para [30].

¹⁸ *Supra* at 747 E-F. See also Non-Detonating Solutions *supra* at para [18] and Viziya Corporation v Collaborit Holdings (Pty) Ltd and Others 2019 (3) SA 173 (SCA) at para [22].

that there is a real and well-founded apprehension that this evidence may be hidden or destroyed or in some manner spirited away by the time the case comes to trial, or at any rate to the stage of discovery, and the applicant asks the court to make an order designed to preserve the evidence in some way .

. .¹⁹

[14] The respondents' opposition to the application can be summarised as follows:

- (a) The order is invalid by reason of the applicant having failed to comply with the fundamental requirements applicable to the applications for a preservation order.
- (b) The applicant failed to make a full disclosure of all the material facts in particular that the fourth and fifth respondents in earlier proceedings raised valid defences to the applicant's action founded on the same cause of action in which it relies upon in the present proceedings.
- (c) The applicant failed to ensure that the order applied for did not exceed what is permitted, by knowingly appointing its own forensic auditors, consultants and attorneys as members of search parties to conduct searches at various premises.
- (d) The order was executed in a manner that exceeded the bounds of what is permitted in the execution of a preservation order.

The matter can be decided solely with reference to the issues raised in (a) and (b). The respondents' opposition is primarily based on the submission that the order should not have been granted in the first place. It is as a result not necessary to resolve any of the factual disputes raised in the affidavits in relation to the manner in which the *ex parte* order was executed.

¹⁹ At 755 A-C.

The existence of a *prima facie* cause of action

[15] The requirement for establishing a *prima facie* cause of action is satisfied if the applicant can show that there is evidence which, if accepted at the trial, will establish a cause of action.²⁰ It is consistent with the usual test for the existence of a *prima facie* case in civil proceedings. It is satisfied when a party adduces evidence of a fact which, if unchallenged by his opponent, becomes conclusive proof of that fact.²¹ The evidence must therefore at the very least be capable of becoming conclusive proof of a fact if accepted to be true, “... *the court must pay regard to inter alia the cogency of the prima facie case established...*”²² Further, as the first requirement requires the applicant to plead a substantive cause of action, the evidence must be sufficient to establish each of the different elements that comprises the cause of action on which the applicant relies. This is consistent with the fact that the applicant must have an accrued cause of action. A cause of action means the combination of facts that are material for a plaintiff in order to succeed with his action. Those facts must enable a court to arrive at certain legal conclusions regarding the constituent elements of the action which the plaintiff has elected to pursue.²³ A cause of action has accrued when the entire set of facts which the plaintiff must prove in order to succeed with his action are in place²⁴.

[16] The evidential criterion in respect of the cause of action remains that of *prima facie* proof when the court is asked to reconsider the granting of the order.

²⁰ *Marine and Trade Insurance Co Ltd v Van Der Schyff* 1972 (1) SA 26(A) at 37-38 and *Friedshelf supra* at para [51].

¹⁹ *Kalil v Decotex Pty Ltd and Another* 1988 (1) SA 943 (A) at 976 E-H; *Cargo Laden and Latel Laden on Board the MV Thalassini Avgi v MV Dimitris* 1989 (3) SA 820 (A) at 831 H-J; *Friedshelf v Kalianji supra* at para [51]; and *Non-Detonating Solutions v Durie* 2016(3) SA 445 (SCA) at para [21].

²² *Shoba supra* at 15F-16C and *Non Detonating Solutions supra* at para [20].

²³ *Truter and Another v Deyssel* 2006 (4) SA 168 (SCA) at par [17].

²⁴ *Truter supra* at par [16]; *Standard Bank v Miracle Mile Investments* 67 2017(1) SA 185 (SCA) at para [24]; and *Frieslaar No and Others v Ackerman and Another* (1242/2016) [2017] ZASCA 03 (2 February 2018). In civil law fraudulent conduct does not in itself constitute a cause of action. The unlawful conduct relied upon may however be an element of a recognised cause of action such as

a delictual claim for damages for fraudulent misrepresentation. (*International Shipping Co (Pty) Ltd v Bentley* 1990 (1) SA 680 (A) at 684 G-J.)

“The requirement of a prima facie cause of action, in the sense of an applicant showing “no more than that there is evidence, which, if accepted, will establish a cause action” (per Botha JA in Cargo Laden and Lately Laden on Board the MV Thalassini Avgi v MV Dimitris 1989 (3) SA 820 (A) at 831 H-I) needs no adaptation at the reconsideration stage. This requirement relates to an issue which would have to be adjudicated upon in the forum hearing the main action to which these proceedings are merely a precursor (compare the Thalassini case, above, at 832C, and similar reasoning in the Bocimar NV case, above, at 581 A-B). There is no need to prejudice that finding further at this stage.”²⁵

This was confirmed by the Supreme Court of Appeal in Non-Detonating Solutions v Durie²⁶ where it was said that:

“All the issues in dispute by the parties will properly be adjudicated in the action that is still pending. Although I am constrained not to enter into the merits of the case at this stage and to attempt to adjudicate on credibility, probabilities or the prospects of success, I can nonetheless state unequivocally that, on the facts and the evidence as adduced on the papers, I am satisfied that the court a quo was correct in finding that the appellant had established a prima facie cause of action against the respondents.”²⁷(emphasis added)

[17] These statements are correct. The reason lies in the nature of the order itself. It is granted *pendente lite*. It is procedural relief with the purpose of preserving evidence for use at a subsequent trial, and ultimately securing substantive relief. It remains an interlocutory order throughout regardless of whether it is being considered at the *ex parte* stage, or at the reconsideration stage.²⁸ The test for the

²⁵ The Reclamation Group (Pty) Ltd v Smit and Others 2004 (1) SA 215 (SE) at 221 H – 222 A; and Friedshel *supra* at para [55].

²⁶ *Supra*.

²⁷ At para [26].

²⁸ Friedshel *supra* at para [17].

order must consequently remain the same. Further, in the present matter the respondents seek a reconsideration of the order as envisaged in Rule 6(12)(c). When subrule (12)(c) is utilised, the original order is reconsidered on what was placed before the court at the *ex parte* stage, but with the added benefit of the respondents' competing submissions and allegations on the affidavits. The purpose of the subrule is to afford an aggrieved respondent a mechanism designed to redress the imbalances in, and the injustices and oppression flowing from, an order granted as a matter of urgency in his or her absence, and without an opportunity to make submissions with regard to the granting thereof.²⁹ In the present context, the court will determine whether, after considering the respondents' competing allegations and submissions, the applicant has established a *prima facie* cause of action. The applicant may not in reply seek to supplement its founding affidavit with additional matter in an attempt to justify the grant of the *ex parte* order.³⁰ What this means for the applicant is that he is in no better position than what he was when the order was first sought.³¹

[18] There is authority based on the decision in *Anton Piller KG Manufacturing Processes and Others (supra)* that the applicant for a preservation order must make out a "strong" *prima facie* case.³² Another view is that the evidentiary burden is set no higher than establishing a "clear case".³³ As stated earlier, the test for the existence of a *prima facie* cause of action is satisfied if there is evidence, which if accepted, will establish a cause of action that is good in law. In order to achieve this, it will require the applicant to produce evidence in substantiation of the facts on which he relies for seeking the substantive relief claimed. The factual allegations and the evidence must cover each of the elements or components of the identified cause of action. Whether or not those averments, and the evidence in support thereof are sufficient to establish a *prima facie* cause of action, requires an

²⁹ ISDN Solutions (Pty) Ltd v CSDN Solutions CC and Others 1996 (4) SA 484 (W) at 486 H – 487 C.

³⁰ Industrial Development Corporation of SA v Sooliman 2013 (5) SA 603 (GSJ) at paras [7] to [9].

³¹ Ghomeshi – Bozorg *supra* at 696 D-E; Pretoria Portland Cement *supra* at para [45] and [47]; and Mathias International *supra* at para [19].

³² Friedshelf *supra* at para [48].

³³ Roamer Watch *supra* at 272D.

assessment not only of the nature of the cause of action relied upon and of the evidence adduced, but also of whether the evidence is such as would require a response from the respondent.³⁴

[19] The applicant's cause of action must be finite, that is, he must come to court with an accrued, identifiable and defined cause of action, and be able to demonstrate that the documents which he seeks could or would serve as vital evidence to that cause of action. The applicant cannot come to court and say that, once he has the attached documents in question and studied it, he will be able to institute proceedings. The scope of the order is very limited. It is to preserve evidence *pendent lite*. The evidence sought to be preserved is fixed by the scope of the intended action. The applicant must therefore state his cause of action. He cannot use the preservation order as a means to find one and see what case he can make out. A preservation order is in other words not a means of fishing for evidence. As stated earlier, a civil court does not have the jurisdiction to authorise an investigation aimed at formulating a civil action. A feature on an adversarial system at the pre-trial stage is that it is the primary responsibility of the parties to define the issues in dispute, and to investigate and gather the necessary evidence.

[20] In this matter, the applicant has identified a number of causes of action in its founding papers filed in support of the application. It has further, subsequent to the granting of the preservation order, issued summonses against the fourth, fifth and nineteenth respondents which have been annexed to its replying affidavits. The identified causes of action all have as their source a contract of sale that was entered into between the applicant and the first respondent in 2016. In terms of that agreement, the applicant and a company known as Penny-Farthing Engineering (SA)(PTY) Ltd (Penny Farthing) sold to the first respondent, represented by the fourth respondent, a business known as Philock Sign Industries for the purchase price of R4 796 497.00, payable in 60 equal monthly instalments. The agreement was subject to three suspensive conditions. The fourth and fifth respondents bound

³⁴ Shoba *supra* at 16 B-C; and Non-Detonating *supra* at para [20].

themselves as sureties and co- principle debtors with the first respondent for the due and punctual payment by the first respondent of all its obligations under the agreement.

[21] According to the applicant, all the suspensive conditions were fulfilled timeously and it complied with its obligations arising from the agreement. The first respondent however failed to comply with its obligations under the agreement and only made three payments. In January 2019, the applicant issued summons against the two sureties, claiming the outstanding balance of the purchase price. When the fourth and fifth respondents failed to enter an appearance to defend, the applicant obtained a judgment by default. In response to the issuing of warrants of execution, the fourth and fifth respondents applied for rescission of the judgment and for leave to defend the action. The applicant subsequently agreed to the relief claimed and the judgment was rescinded. In March 2020 the applicant proceeded to withdraw the action against the two respondents. It also withdrew an application for the sequestration of the estate of the fourth respondent. It thereafter issued letters of demand to the two sureties demanding payment of the outstanding balance of the purchase price, and gave notice of its intention to again institute legal proceedings against them based on the deed of suretyship, should they fail to comply.

[22] The fourth and fifth respondents were directors of the first respondent at the time that the sale agreement was concluded. In 2018 they both resigned from their positions, and the nineteenth respondent, an employee of a firm of attorneys, was appointed as a director. Following this, the first respondent's board of directors resolved by way of a special resolution, to place the first respondent into voluntary liquidation. According to the applicant, it has uncovered conduct by the fourth and fifth respondents to divert monies, due to the first respondent, to other legal entities in which they have an interest. One such entity is the sixth respondent, a close corporation in which the fourth and fifth respondents held an interest until the fifth respondent became its sole member in 2018.

[23] The conduct complained of consists of the issuing of credit notes in respect of monies owed to the first respondent by its debtors, and the issuing thereafter of invoices in the name of the sixth respondent for the payment of monies actually due to the first respondent. Other irregularities in respect of credit notes and invoices *inter alia* included the issuing of more than one credit note in respect of the same amount; the same credit note numbers were used resulting in the reissuing of the same invoice in the name of the sixth respondent; credit notes were not issued in sequence; one credit note number was used to effect a credit for different amounts, and the bank account details on the invoices were those of an entity other than the first respondent.

[24] The unlawful conduct of the fourth and fifth respondents is further alleged to *inter alia* consist of the fourth respondent holding himself out to be a director of the first respondent, post resignation, and by asking debtors of the first respondent to pay monies due to it into a bank account of the sixth respondent. The fourth respondent is further alleged to have changed the bank account of the first respondent shortly before it was placed in liquidation. Further, the fourth respondent, holding himself out to be a director of the first respondent, is alleged to have separated the businesses operated by the first respondent before it was placed in liquidation. The fourth and fifth respondents are accused of having diverted assets of the first respondent to entities associated with them, or that they had relinquished their interest in those entities, such as in the second and seventh respondents. They are further alleged to have continued to run the business of the first respondent after they had resigned as directors, and that their resignation as directors was motivated by the anticipated liquidation process of the first respondent in order to escape liability. It is further alleged that the appointment of the nineteenth respondent was simply a ruse to disguise the unlawful conduct of the fourth and fifth respondents.

[25] The conclusion which the applicant seeks to draw from the alleged conduct of the fourth and fifth respondents, is that they dissipated the assets and resources of the first respondent; they diverted those assets to other entities in which they

personally have an interest in, either directly or indirectly; and that they intend to escape liability by hiding the true value of their respective estates in order to frustrate the applicant in the recovery of its judgment debt in the prospective proceedings based on the suretyship agreement.

[26] Based on this conduct, and in addition to its claim against the fourth and fifth respondents for the balance of the purchase price of the sale of the business based on their liability arising from the suretyship agreement, the applicant in its founding papers expressed the intention to institute proceedings against the fourth, fifth and nineteenth respondents to "... recover assets illegally and/or unlawfully disposed of and to be returned to the estate of Retro Reflective, as well as in terms of the suretyship they have signed; also, action will be instituted against any person or entity where it is established that such person or entity illegally and/or unlawfully received such assets. Papers have been prepared in terms of s 381 of the Companies Act, 2008 5th Schedule Item 9 in terms of which an enquiry is sought into the conduct of the Liquidators (fourteenth and fifteenth respondents) and their failures as more fully set out herein. A complaint of so called 'Fronting Activities' in respect of Phumla, [the nineteenth respondent] is also being formulated. The applicant furthermore intends instituting proceedings aimed at having Phumla, Carel Junior [the fourth respondent] and Swanepoel Junior [the fifth respondent] declared delinquent directors and having them declared personally liable for the debts of Retro Reflective. In the event of the applicant being successful in its actions under the suretyship obligations of Carel Junior and Swanepoel Junior and in the actions to have them declared personally liable for the debt to the applicant, and said parties and associated entity not having the means to satisfy such obligation, the applicant intends instituting liquidation and sequestration applications as the case may be to recover what it can (Cause of action 6)".

[27] In summary the applicant's claims are the following:

- (a) an action based on the terms of the suretyship agreement;

- (b) proceedings to compel the liquidator to institute legal actions for the recovery and return of assets belonging to the first respondent that have been wrongfully disposed of;
- (c) to instigate an enquiry into the conduct of the liquidators appointed to the insolvent estate of the first respondent;
- (d) to institute action(s) against any person or entity that has/have wrongfully received such assets;
- (e) proceedings to hold the respondents personally liable “*under s 77 (3)(b) read with section 22 of the Companies Act*”
- (f) to institute proceedings to declare the fourth, fifth and nineteenth respondents delinquent directors;
- (g) to institute liquidation and sequestration proceedings; and
- (h) to formulate a complaint of fronting against the fourth, fifth and nineteenth respondents.

[28] Save for its claim based on the suretyship agreement, I am of the view that the applicant has failed to formulate any of its other claims with the particularity required for establishing a *prima facie* cause of action. I intend to briefly deal with each of the identified claims. The respondents are correct in their submission that on the papers filed, an application to compel the liquidators to institute proceedings for the recovery of assets belonging to the first respondent, is without any factual foundation and will be premature. There is no evidence that the applicant has had any meaningful engagement with the liquidators in the liquidation process. The applicant simply relies on the allegation that the liquidators have not uncovered the extent of the unlawful conduct of the relevant respondents, and that they have not engaged with the applicant as one of the creditors in the insolvent estate.

[29] There is no evidence that the liquidators have been made aware of the unlawful conduct of the fourth, fifth and nineteenth respondents relied upon, and that they have failed to investigate it. On the contrary, the liquidators have invited the creditors in their report to furnish them with any information, and to assist in the investigation of the affairs of the first respondent. There is no evidence that the applicant responded to the invitation and that the liquidators have failed or refused to act. There is similarly no factual statement, supported by evidence, to invoke section 381 of the Companies Act³⁵ (the 1973 Act). This section provides for the Master to enquire into the conduct of the liquidator. An enquiry as envisaged in that section is premised on the existence of “*a reason to believe that a liquidator is not faithfully performing his duties and duly observing all the requirements imposed on him by any law or otherwise with respect to his duties*”. On a reading of the section, the required belief must, on an objective approach, be based on reasonable grounds. No such grounds have been advanced.

[30] The applicant's reliance on the provisions of section 77(3)(b) read with section 22 of the Companies Act³⁶ (the 2008 Act) is clearly incorrect. Section 22 prohibits reckless trading of a company. This includes the carrying on of business recklessly or with gross negligence, with the intent to defraud any person, or for a fraudulent purpose.³⁷ Section 77(3)(b) in turn provides that a director of a company who acquiesced in the carrying on of the company's business in that way will be liable for any loss, damages or costs sustained by the company as a result. These sections do not provide for a director to be held liable for the debts of the company or to restore any property to it, which is what the applicant intends to claim. The relevant section that provides for that relief is section 424 of the 1973 Act. It is a provision in the old Act which continues to apply in relation to the winding up and liquidation of Companies.³⁸

³⁵ Act 61 of 1973.

³⁶ Act 71 of 2008.

³⁷ *Rabinowitz v Van Graan and Others* 2013 (5) SA 315 (GSJ) at para [7].

³⁸ See Item 9(1) of Schedule 5 to the 2008 Act.

[31] It is apparent that the applicant has since realised that it incorrectly sought to invoke the provisions of sections 77(3)(b) and 22 of the 2008 Act in its founding papers. As stated earlier, subsequent to the granting of the preservation order, the applicant proceeded to issue two summonses. In the one action, which is against the fourth and fifth respondent's, its claim is founded on the deed of suretyship. In the other, against the fourth, fifth and nineteenth respondents, the applicant seeks to rely on the provisions of sections 423 and 424 of the 1973 Act. Section 423 provides that a court may on application of *inter alia* a creditor of a company in liquidation, enquire into the conduct of a past or present director of the company who has been guilty of any breach of faith or trust, and may order that director to pay or restore the money or property of the company or any part thereof.

[32] Section 424 in turn provides that when it appears in the winding up of a company that any business of the company was carried on recklessly or with the intent to defraud creditors of the company, the court may, on application of *inter alia* a creditor, declare that any person who has knowingly been a party to such conduct, personally responsible for any of the debts or other liabilities of the company as the court may direct.

[33] It can safely be accepted that the applicant has abandoned its reliance on sections 22 and 77(3)(b) of the 2008 Act for the claim identified in its founding papers. The difficulty facing the applicant is that it cannot supplement its case in reply. The nature of the present proceedings simply does not allow that. In the absence of the applicant in its founding papers having pleaded the facts and the evidence necessary to support a *prima facie* cause of action based on sections 423 and 424 of the 1973 Act, it has failed to comply with the first requirement for a preservation order.

[34] The applicant has similarly failed to establish a *prima facie* case for the sequestration of the fourth and the fifth respondents. It is alleged in the founding affidavit that the anticipated proceedings are conditional upon the applicant being successful in its action based on the suretyship agreement; the said respondents

being declared personally liable for the first respondent's debts; and ultimately not having the means to satisfy the debt. This claim is without any factual foundation. The applicant is doing nothing more than speculating that the three respondents will not be in a position to pay the judgment debt once it comes into existence.

[35] The applicant's claim for a declaration of delinquency in respect of the fourth, fifth and nineteenth respondents also does not disclose a *prima facie* cause of action. The reasons are twofold: First, as creditor in the insolvent estate, the applicant lacks the necessary *locus standi*. Section 162(2) of the 2008 Act provides that a "*company , a shareholder, director, company secretary or prescribed officer of a company, a registered trade union that represents employees of the company or another representative of the employees of a company may apply to court for an order declaring a person delinquent .*" Secondly, the applicant has failed to identify and to state the grounds of delinquency in Section 162(5) on which it intends to base the application, as well as identifying the evidence relied upon in support thereof.

[36] That leaves the complaint of "fronting". According to the applicant it is in the process of formulating a complaint of fronting. It is not stated to whom the complaint will be directed to. More importantly however, it is not being relied upon as cause of action separate from any of the other claims which the applicant has identified in its founding affidavit. It does not, and cannot in the manner that it is formulated, serve in any way to enhance the applicant's case for a preservation order.

[37] The applicant has accordingly, on the papers, only established a *prima facie* cause of action based on the deed of suretyship. That however, the respondents argued, cannot assist the applicant in any way towards the granting of the relief claimed in the preservation order. The reason is twofold: Firstly, the applicant does not require any of the documentation in the *ex parte order* to prove its claim arising from the sale agreement and the deed of suretyship. Secondly, the respondents contend that the applicant failed to comply with its duty to make a full and fair disclosure of all the material facts in relation to this cause of action when it

launched the *ex parte* application. This complaint is directed at the failure of the applicant to alert the court to the fact that, in the application to rescind the earlier default judgment granted against them, the fourth and fifth respondents raised a number of defences to the applicant's claim founded on the deed of suretyship. The defences were raised in the affidavits filed in support of the application for rescission. They are the following:

- (a) the applicant failed to show that the conditions precedent in the sale agreement were all fulfilled before the date agreed upon in the sale agreement;
- (b) the parties to the sale agreement subsequently in an addendum agreed to reduce the purchase price. In a further agreement the applicant agreed to set off certain amounts owing by the applicant to the first respondent against the outstanding balance of the purchase price. The result was that the total amount of the purchase price was paid;
- (c) the applicant failed to give the first respondent the required notice in terms of the agreement to remedy its alleged breach of the agreement before it proceeded to institute action on the deed of suretyship; and
- (d) following his resignation as a director of the first respondent the applicant and Penny Farthing agreed to release the fifth respondent from the suretyship. This agreement was confirmed by Penny Farthing's chief executive officer in an affidavit filed in the rescission application.

[38] In reply, the applicant acknowledged that it failed to mention the fact in its founding papers, that the fourth and fifth respondents raised these defences in the rescission application. Its explanation for this failure is that it did not want to overburden the papers filed in the application. The defences are *prima facie* valid

defences, and if upheld, will defeat the applicant's claim based on the deed of suretyship. The claim based on the deed of suretyship is pivotal to the rest of the applicant's claims on which the preservation order is founded.³⁹ It was clearly material to the proceedings and the decision of the court at the *ex parte* stage in relation to the requirement that the applicant has a *prima facie* cause of action which it intends to pursue. The weight to be given to the defences raised, by the sureties must be assessed against the fact that the applicant agreed to a rescission of the judgement. It is, in the absence of any explanation, *prima facie* indicative of an acknowledgement by the applicant, that the fourth and fifth respondents have *bona fide* defences to its claim.

[39] The fact that the two respondents raised the defences to the action, and its merits and demerits, should have been disclosed and dealt with by the applicant in its founding papers. As stated earlier, it is not for the applicant seeking a preservation order to decide what it should or should not disclose to the court at the *ex parte* stage. That is a decision for the court. There was no reason for the applicant not to incorporate a summary of the contents of the affidavits in its founding papers if its concern was that the affidavits itself would add to the volume of the documents filed in support of the application. I accordingly conclude that the applicant has failed in its duty to make a full and fair disclosure to the court at the *ex parte* stage of the proceedings.

The respondents' possession of documents that constitute vital evidence.

[40] As stated, the purpose of a preservation order is to search for and to preserve evidence for its use at the trial of the actions which an applicant to the proceedings intends to institute in due course. The documents must be able to provide evidence in the prosecution of an applicant's cause of action.⁴⁰ The applicant will be able to use a document at the trial if he is entitled to the discovery thereof. The materiality of the documents sought to be preserved must accordingly be assessed against the

³⁹ See paragraph [51] of this judgment.

⁴⁰ Shoba *supra* at 15 F-16C and Non-Detonating *supra* at para [19].

applicant's entitlement to seek, and be granted access to the document during the discovery process. A document must be discovered if it is relevant.⁴¹ It will be relevant if it will provide proof of a fact which the applicant will be required to prove at the trial, or if the document is able to provide an answer to a defence raised in the action. At the lower end of the scale and broadly speaking, the document sought must accordingly enable the applicant to either advance its own case, or to damage the case of his adversary. However, "*the incriminatory value of such evidence must not be mere makeweight when considered together with the applicant's other available evidence*".⁴² The evidence is required to be vital evidence. Evidence will meet this requirement if it is essential to the issues raised in the action. It will require the applicant to demonstrate that irreparable harm will accrue, or there is a high probability that the irreparable harm may accrue, unless the preservation order is granted.

[41] It is evident from this that an applicant must be in a position to identify the document he seeks to preserve with the required specificity and to establish *prima facie* that it is relevant, by making the necessary evidential link between the identified cause of action and the evidence provided by the document. The documents sought are in other words fixed by the scope of the applicant's cause of action. The latter aspect will require the applicant to explain the relevance of a specific document if it is not immediately obvious from the nature of the document itself.

[42] The obvious difficulty facing the applicant in this matter is that it is unable to show the relevance of the documents it seeks to preserve. The reason is simply that save for its cause of action founded on the deed of suretyship, it has not met the requirement of establishing a *prima facie* cause of action for the claims it says it intends to pursue. The requirements for a preservation order are interrelated, and its failure to clear the first hurdle means that the applicant is not in a position to make the link between a specific document and the facts it is required to prove at

⁴¹ Herbstein and Van Winsen op cit at page 796 and further.

⁴² Roamer Watch *supra* at 272 H.

the trial in order to be successful in its action. Put another way, the applicant is unable to point to facts which he is required to prove at trial, which in turn, evidences that he is entitled to the documents he seeks to preserve. It is not the applicant's case that any of the documents it seeks has any relevance to its claim against the two sureties. Instead, the documents sought clearly relate to what the applicant suspects may be other dishonest transactions perpetrated by the relevant respondents.

[43] The aforementioned suspicion is premised on what the applicant in essence alleges to be a pattern of dishonest conduct by the fourth, fifth and nineteenth respondents that raises the probability that there are other dishonest transactions of which the applicant is not aware of. By way of example, the deponent to the applicant's founding affidavit says that "*without the remedy of and Anton Piller ordered (sic) prayed for, the applicant will not be in a position to uncover these transactions*" and "*locate the evidence that will establish the extent to which monies owing to Retro Reflective were diverted*". In this lies the applicant's further difficulty. It is, as a result, not able to identify any document with any specificity that will provide evidence of a particular dishonest act. The applicant is consequently obliged to seek the preservation of a wide range of documents. The documents described in the annexures to the applicant's notice of motion, as a result, consists mainly of categories of documents such as, "*All management accounts*"; financial statements for a number of years; "*All financial information*" in respect of all transactions for a certain period; bank statements for a number of years; and "*All communications of whatever nature*" between the first respondent and a number of individuals. While the search and seizure for a class or classes of documents is permitted, it must be defined with sufficient particularity.⁴³ In this matter there is no attempt to define and limit the reach of the documents required, and of the communications between the relevant persons.

⁴³ Non – Detonating Solutions *supra* at para [36].

[44] The unavoidable conclusion flowing from this is that the applicant is not in a position to show that the respondents are in possession of any specific documents which are vital and must be preserved. An order that authorises a blanket search for unspecified documents which may or may not exist, is not permitted.⁴⁴ The premise on which the preservation order is granted is to preserve evidence, not to search for it.

*“The object of an Anton Piller order is not to sanction a search for evidence which may or may not exist and which may or may not go to found a cause of action, but to preserve specific evidence which is known to exist, which prima facie constitutes vital substantiation of a known cause of action, and whose concealment, loss or destruction is feared by the applicant for the order.”*⁴⁵

[45] By reason of the wide range of unspecified documents which the applicant must inevitably seek to have access to in order to establish the extent of any other dishonest transactions that may or may not exist, the *ex parte* order was framed unduly wide and expansive. It effectively required the applicant, in the execution of the order, to make an assessment whether or not a particular document will provide evidence. That is not permitted. It further meant that the applicant had to use a number of persons whose function it was to examine and identify the documents which may be relevant to what it sought to establish. This in turn meant that the search and the seizure of documents had to be particularly invasive, and had every potential of degenerating into a fishing for evidence, which is not permitted.

[46] It is the duty of an applicant seeking the extraordinary relief of a preservation order to limit the scope of the search and attachment down to specific documents, and *“It is not for the court to wade through a classification such as the one in the*

⁴⁴ Universal City Studios Inc *supra* at 755 H-J; Mathias International Ltd *supra* at para [20]; and Non-Detonating Solutions *supra* at para [30].

⁴⁵ The MV Urgup: Owners of the MV Urgup v Western Bulk Carriers (Australia) (Pty) Ltd and Others 1999 (3) SA 500 (C) at 508J - 509A.

notice of motion... for the purpose of finding whether any position of it may justify the grant..."of the order.⁴⁶ The specificity requirement must be strictly adhered to.⁴⁷

"It is trite that an applicant must establish that the respondent possesses specific documents or things that constitute vital evidence in substantiation of the applicant's cause of action. Strict compliance with this requirement is pivotal to the legality of the use of the procedure. The reason for this requirement is obvious. The procedure has, potentially, draconian and extremely invasive consequences for respondents or defendants who are subject to it. The implementation in particular of the search leg of the order, can amount to the most manifest intrusion of the respondents' right to privacy guaranteed in s 14 of the Constitution as mentioned in para 20 above. Thus as was stated in Shoba, and as part of the balancing act to be performed by courts based on the principle of proportionality only vital evidence in the sense of evidence of importance to the applicant's case, must be the subject of the search. The specified documents must constitute vital evidence and a blanket search for unspecified documents or evidence which may exist is not allowed".⁴⁸

[47] I accordingly conclude that the applicant has also failed to satisfy the second requirement for a preservation order.

A reasonable apprehension that the respondents will destroy or hide evidence

[48] In the absence of having met the other two pre-conditions for the grant of a preservation order, it is not necessary to deal with the third and last requirement for a preservation order in any detail. I will simply point to the fact that in respect of a large number of the categories of documents which the applicant seeks to preserve

⁴⁶ African Bank v Van der Merwe Booysen and Others [2003] 4 All SA 247 (D) at 258 H.

⁴⁷ Mathias International *supra* at para [20]; Memory Institute *supra* at para [3]; and Non-Detonating Solutions *supra* at para [30].

⁴⁸ Non – Detonating Solutions *supra* at par [30; and Viziya *supra* at para [32].

in the order, the documents cannot *prima facie* easily be destroyed, or can be obtained by other means from secondary sources. Such documents include bank statements, share registers, share certificates, attorneys financial statements of account, Value Added Tax returns, Pay as You Earn returns, Unemployment Insurance Fund returns, Skills Development Levy returns, Workmen's Compensation returns, Statutory submissions, Income Tax returns, Emp501 submissions, IRP5 certificates, UI19 submissions, annual financial statements, minutes of meetings, sale agreements and bond statements.

[49] There must be a reasonable apprehension that these documents will be destroyed. "*The test of a reasonable apprehension is an objective one and is based on the view of a reasonable person when confronted with the facts*".⁴⁹ Most of the aforementioned documents are statutory documents which were *prima facie* produced by, or submitted to third parties, and can ordinarily be obtained through discovery, or by the issue of a subpoena *duces tecum*. The applicant has not produced any factual evidence to support a finding that there exists a well-founded apprehension that the documents may be destroyed before the trial, or that there exists no other means available to ensure that the documents are available at the trial instead of an intrusive search and seizure. The nature of the documents are such that a single reliance on the drawing of an inference from past dishonest conduct cannot support a finding of a reasonable apprehension that the respondents will destroy or hide the documents.

Other considerations relevant to the court's decision.

[50] As stated earlier, the relief granted in a preservation order is interdictory in nature. There exists, in my view, no reason in principle or policy to approach the procedure for a preservation order any differently from that of the granting of an interim interdict. Both remedies are interlocutory and discretionary in nature, and

⁴⁹ Viziya supra at para [45].

are considered to be extraordinary remedies.⁵⁰ Whether or not it is described as a general or overriding discretion, the court is entitled, despite the applicant having established the requisites for a preservation order, to give consideration to what the court in *Knox D'Arcy Ltd and Others v Jamieson and Others*⁵¹ referred to as “a number of disparate and incommensurable features” in coming to a decision whether or not to grant the order sought. Considerations such as the balance of convenience, that is, prejudice to the applicant if the remedy is withheld against the prejudice to the respondent if it is granted; whether the right of the applicant can effectively be protected by another ordinary remedy; and the cogency of the *prima facie* case established, are to be placed in the balance.⁵² These considerations are not individually decisive and are interrelated.⁵³ The balancing of other considerations in arriving at a decision is consistent, in the context of section 36(1) of the Constitution, with the aim of achieving proportionality between the interest which the procedure for a preservation order seeks to protect, and the intrusive and invasive nature of the order on the entrenched right to privacy of the respondents.

[51] Applied to the facts of the present matter, I am of the considered view that the balance of convenience does not favour the granting of the preservation order. The proposed claims of the applicant on which the preservation order is premised, are subject to a number of imponderables, while the existence of the evidence it seeks to preserve presents its own uncertainties. I explain. The evidence sought solely relates to the applicant's subsidiary claims arising from its status as a creditor in the insolvent estate. As stated earlier, the applicant does not require any documentary or other evidence to prove its main claim based on the suretyship agreement. The sale agreement and the deed of suretyship are in writing and in the possession of the applicant. The applicant's *locus standi* for claiming relief aimed at the recovery of the assets belonging to the first respondent, and holding any of the respondents liable for any of the company's debts, is subject to its status as a creditor in the

⁵⁰ *Erikson Motors (Welkom) Ltd v Protea Motors, Warrenton and Another* 1973 (3) SA 685 (A) at 691 C; and *Shoba supra* at 16B-C.

⁵¹ 1996 (4) SA 348 (A) at 361 H-J

⁵² *Shoba supra* at 16B-C.

⁵³ *Erikson Motors supra* at 691 F-G.

insolvent estate of the first respondent. However, in the event of it being successful with its claim against the sureties on the deed of suretyship, the principal obligation arising from the sale agreement will be extinguished. It will result in the applicant having no further claim against the first respondent arising from the sale agreement, which in turn means that it will no longer be a creditor in the insolvent estate, and that its proposed claims against the fourth, fifth and nineteenth respondents will fall away. The existence of its claims against these respondents are in effect dependent on its failure to succeed against the sureties.

[52] Another aspect is that the conduct of the fourth, fifth and nineteenth respondents on which the applicant relies for the granting of the preservation order, is based on documentary evidence that is already in the possession of the applicant. In other words, what the applicant is in effect asking for is the search for, and the preservation of other documents which may or may not exist to prove other dishonest transactions, a proposition that is in turn premised on the probability that the said respondents have also made themselves guilty of other similar incidents of unlawful conduct.

Conclusion

[53] In the circumstances, I find that the applicant has failed to make out a case for the grant of a preservation order, and that the *ex parte* order granted by this court must be set aside. In so far as the costs of the proceedings are concerned, I am in agreement that a punitive costs order is appropriate in the circumstances. The application is substantially flawed and the order which the applicant asked for and which was granted exceeded the bounds of what is permitted in law. The applicant has clearly failed to comply with its duties in a matter of this nature, and it did not make a full and fair disclosure of all the material facts which may have had an influence on the court's decision to grant the *ex parte* order. I have no reason to believe that the failure was wilful. In the circumstances, an order for costs on an attorney and clients scale will meet the exigencies of the case.

[54] In the result it is ordered that:

- (a) The order is set aside;
- (b) Within 10 days of the date of this order, the sheriff, applicant or any other person who is in possession of the documentation or copies of such documentation seized at any of the respondents' premises pursuant to the order, return that documentation to those respondents from which the documentation was seized;
- (c) The Applicant pays the respondents costs on an attorney and client scale, including the costs of two counsel.

D VAN ZYL

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

APPEARANCES

FOR APPLICANT: ADV B VAN ZYL

Instructed by JGS ATTORNEYS

FOR RESPONDENT: ADV R BUCHANAN SC AND ADV MP MORGAN

Instructed by GREGORY CLARK & ASSOCIATES

Date Heard: 10 September 2020

Date Delivered: 10 December 2020