



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

CASE NUMBER: 121736/2023

DATE: 27 DECEMBER 2024

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

27/12/2024 
DATE SIGNATURE

In the matter between

OHM ELECTRICAL WHOLESALERS (PTY) LTD

APPLICANT

And

**RYNO ARNOLD VAN EEDEN
ELECTRICAL (PTY) LTD**

**FIRST RESPONDENT RVE
SECOND RESPONDENT**

JUDGMENT

MATSEMELA AJ

INTRODUCTION

[1] This is an opposed Anton Piller application wherein the applicant seeks that the rule nisi issued on the 24th of November 2023 be made final.

ANTON PILLER ORDERS IN GENERAL

[2] The conceptualization of Anton Piller proceedings found its definitive expression in an English legal precedent of 1975, wherein the term itself was coined. This landmark case, ***Anton Piller KG v Manufacturing Processes Ltd and Others***, [1975] EWCA Civ 12, [1976] 1 All ER 779 (8 December 1975) saw Lord Denning articulating the nature of such proceeding in the following manner: *'Let me say at once that no court in this land has any power to issue a search warrant to enter a man's house so as to see if there are papers or documents there which are of an incriminating nature, whether libels or infringement of copyright or anything else of the kind. No constable or bailiff can knock at the door and demand entry so as to inspect papers or document. The householder can shut the door in his face and say, 'Get out.'... None of us would wish to whittle down that principle in the slightest. But the order sought in this case is not a search warrant. It does not authorise the plaintiffs' solicitors or anyone else to enter the defendant's premises against his will. It does not authorise the breaking down of any doors, nor the slipping in by any back door, nor getting in by an open door or window. It only authorises entry and inspection by the permission of the defendant. The plaintiff must get the defendant's permission. But it does do this: it brings pressure on the defendant to give permission. it does more. it actually orders him to give permission—with, I suppose, the result that if he does not give permission, he is guilty of contempt of court.'*

[3] The legal precedent established in the case of ***Universal City Studios Inc v Network Video (Pty) Ltd [1986] (2) SA 734 (A)*** delineates the prima facie prerequisites inherent in an applicant's ex parte founding papers for an Anton Piller application. This specialized legal remedy, crafted to address contemporary challenges in the adjudication of commercial disputes, mandates that:

3.1 A valid cause of action must be substantiated against the respondent(s), coupled with a demonstrable intent to pursue such a cause of action;

3.2 The respondent(s) must be in possession of documents or articles crucial to the substantiation of the applicant's cause of action;

3.3 A genuine and well-founded concern must exist regarding the potential concealment, destruction, or surreptitious removal of evidence by the time discovery procedures are initiated or the case proceeds to trial. The Supreme Court of Appeal, in the decision of ***Viziya Corporation v Collaborit Holdings (Pty) Ltd and Others 2019 (3) SA 173 (SCA)*** at para 45 held that: "*the test of a reasonable apprehension is an objective one and is based on the view of a reasonable person confronted with the facts*"

[4] The profound nature of Anton Piller-type application is such that the, courts bear the responsibility to safeguard against undue encroachments upon the fundamental rights of respondents recognizing the far-reaching ramifications inherent in legal genus.

[5] The limited purpose of an Anton Piller order has most recently been confirmed by the Constitutional Court in ***Mkhatshwa v Mkhatshwa 2021 (5) SA 447 (CC)*** at para 1 as being to allow: "*for the search of premises for crucial documentation or material for purposes of preserving important evidence for litigation, so that the documentation or material may be removed and safely kept, pending the ordinary discovery process and trial.*"

[6] To uphold this principle, courts enforce stringent procedural prerequisites prior to the issuance of any ex parte interim order. These requirements include:

6.1 The Ex parte order: This instruction must be intricately detailed, providing explicit instructions to the Sheriff of the High Court for the execution of the attachment.

6.2 Explanatory Note: An accompanying document to any ex parte interim order, the explanatory note delineates the nature and scope of the application and interim order. It also underscores the respondent's specific rights, including the right to legal representation.

6.3 Appointment of a supervising attorney: An independent legal representative distinct from the applicant's attorney of record is designated to oversee the attachment process with the Sheriff of the High Court. His/her role is to ensure strict compliance with the order, and the details are recorded in an affidavit deposed to by the supervising attorney and filed in the matter.

6.4 Balance of probabilities: On the return date of the rule nisi, following the respondent's opportunity to submit its response to the founding papers, the court evaluates the matter based on the balance of probabilities. This assessment considers the facts presented during the ex parte hearing and scrutinizes whether the execution of the ex parte hearing has unduly infringed upon the respondent's rights.

[7] The duty of this Court is to consider that the aforementioned requirements have been diligently fulfilled by the applicant, consequently warranting the granting of the order sought.

[8] The Court's consideration of an order's appropriateness underlines the importance of exploring feasible alternatives, however, it is imperative to note that this is not an absolute prerequisite for the remedy.

[9] The subsequent confirmation of requirements in ***Shoba v Officer Commanding Temporary Police Camp Wagendrift Dam and Another; Maphanga v Officer Commanding, South African Police Murder and Robbery Unit, Pietermaritzburg, and Others***, 1995 (4) SA 1 (A) at 15 G-1 clarified that “vital evidence” in the ***Universal City Studios (Universal City Studios Inc v Network Video (Pty) Ltd 1986 (2) SA 734 (A))***, context denotes evidence crucial to the applicant’s case rather than being strictly essential or absolutely necessary, which would overly burden the applicant in proving its claim.

[10] In ***Non-Detonating Solutions (Pty) (Lt d) v Durie*** 2016 (3) SA 445 (SCA) at para 21 the SCA emphasised that a prima facie cause of action only necessitates evidence that, if accepted, would establish such a cause of action.

[11] The *Shoba* case further elucidated that the term “specific documents or things” in the second threshold requirement includes both specified items and specific classes of items, provided the terms are appropriately delimited.

[12] The SCA, and subsequent cases like *Viziya* (supra), emphasised the importance of practicality and precision in orders involving the imaging and searching of electronically stored information, ensuring that the searches are targeted and avoid accessing none specified information as much as possible.

[13] This includes prohibiting searches where specified items are not likely to be found and employing search methodologies that minimize exposure to non-specified information.

BACKGROUND

[14] The events leading up to these issues are largely undisputed, with only a few instances where the respondents seemingly attempt to dispute the facts, however, it may be appropriate to outline the factual background to provide the context to the issue.

[15] The first respondent has been employed with the applicant in various positions since 2016, until the resignation at the end of 2023. At the time of his resignation, he held the position of general manager at the applicant and has minority shareholding in the company.

[16] This dual role not only establishes contractual obligation but also statutory duties, thereby assigning fiduciary responsibilities to the first respondent. The question is whether the evidence will show if these obligations have been breached to his and the second respondent's advantage and to the detriment of the applicant.

ISSUES

[17] Issues to be determined in the application are the following:

17.1 Whether the applicant has complied with the condition contained in the Anton Piller order that action be instituted within one month from the date of grant of the Anton Piller order;

17.2 If not, whether this non-compliance resulted in the automatic discharge of the Anton Piller and the rule issued in terms thereof, in which case the respondents will seek an order confirming the discharge of the Anton Piller together with a punitive order as to costs, without the need to consider the merits of the application;

17.3 If not, whether the respondents' further opposing affidavit (delivered on the 3rd of September 2024) should be allowed. The applicant delivered a reply to the said affidavit on the 4th of September 2024, conditional on the Court accepting the further opposing affidavit of the respondents.

17.4 Whether the rule nisi supra should be made final. In other words, whether the applicant has made out a proper case for the Anton Piller application to be granted and has complied with the interim order granted on the 24th of November 2023.

WHETHER THE APPLICANT ESTABLISHED A PRIMA FACIE CASE

[18] The use of Anton Piller orders in our law is now well-established. The requirement that must be satisfied for the granting of such an order were summed up by **Corbertt JA in *Universal City Studios Inc v Network Video (Pty) Ltd 1986 (2) SA 734 (A)*** Page 42, as follows: *'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) that there is real and well-founded apprehension that this evidence may be hidden or destroy or in some manner spirited away by the time the case come to trial, or at any rate to the stage of discovery, and the applicant ask the court to make an order designed to preserve the evidence in some way...'*

[19] While it must be acknowledged that Anton Piller orders have the potential to impact negatively on the right to privacy guaranteed in S 14 of the *Constitution*, there are necessary and proportionate to the legitimate aim pursued. Whatever harm or inconvenience might be cause to the respondent can be attenuated by the inherent principle of proportionality which requires a balancing of competing interests and values. This resonates with what Chaskalson P stated in ***S v Makwanyana and Another (CCT 3/94) [1995] ZACC 3***, that the limitation of constitutional right for a purpose that is reasonable and necessary in a democratic society involves the weighing up of competing values and ultimately an assessment based on proportionality.

[20] Thus Corbett JA in *Universal City* supra recognized that in exercising its discretion whether or not to grant an Anton Piller order, the court must pay regard to inter alia, the cogency of the prima facie case established, the 'potential harm that will be suffered by the respondent if the remedy is granted as compared with, or balanced against the potential harm to the applicant if the remedy granted.' This balancing of interests is particularly crucial on reconsideration of the interim order on the return day when the court adjudicating the application has been furnished with all the relevant evidence including the respondent's opposing affidavit, as happened in this case. Thus, court must constantly be wary that the refusal to grant an Anton Piller order could, in a deserving case, result in a denial of justice.

[21] In *Detonating* case supra para 21 Under the heading 'Prima facie cause of action the SCA held as follows; *The requirement of a prima facie cause of action is simply that an applicant should show no more than that there is evidence which, if accepted, will establish a cause of action. In Bradbury Greforex & Co (Colonial) Ltd v Standard Trading Co (Pty) Ltd. Steyn J, said the following; the requirement of a prima facie cause of action is satisfied where there is evidence which, if accepted, will show a cause of action. The mere fact that such evidence is contradicted would not disentitle the applicant to the remedy. Even where the probabilities are against him, the requirement would still be satisfied. It is only where it is quite clear that he has no action, or cannot succeed, that an attachment should be refused or discharged on the ground here in question.*

[22] In support of his application the applicant attached four handwritten affidavits, of its employees, to the founding affidavit. The said affidavits were deposed to by:

22.1 Mr Elvis Vilakazi;

22.2 Mr Sipiwe Vilakazi;

22.3 Joseph Ledwaba;

22.4 Kabelo Malembi;

[23] In summary, Mr Elvis Vilakazi stated that:

23.1 The First Respondent takes "two invoices" to clients of OHM Electrical and one invoice is from OHM and the other one is from Second Respondent, which quotes a lessor price than the OHM price.

23.2 That the First Respondent offered him a R10 000, 00 monthly salary if he would "come to work for RVE";

23.3 That during OHM time, he takes us to the sites of RVE Electrical;

23.4 That First Respondent was utilising the Applicant's tools;

[24] In summary, Siphiwe Vilakazi stated that:

24.1 That the First Respondent was using the Applicant's "car" to do his quotes;

24.2 That when the First Respondent was sent to do OHM quotes, he would give clients two quotes to choose, between the Applicant and the Second Respondent;

24.3 Most of the time when they attended OHM quotes sites the First respondent was "bad mouthing" the OHM company;

24.4 The first Respondent was always using the Applicant's tools on the Second Respondent's sites;

24.5 Some of the jobs were done during "OHM time";

24.6 The First Respondent was trying to convince him to work for the Second Respondent and leave OHM, by promising him (Vilakazi) a better salary than what he received at OHM.

24.7 Most of the quotations were done by Van Eeden on OHM time;

[25] In summary, Mr Joseph Ledwaba stated that:

25.1 During weekends, Van Eeden would call him (Ledwaba) to come and work. He (Van Eeden) would tell him (Ledwaba) not to mention it to anyone at especially "our boss and the staff that sit at the shop";

25.2 The First Respondent used take left over spares to use for his private jobs;
25.3 The First Respondent took a lot of tools to his house and used it for his jobs;
25.3 The First Respondent "gives clients different quotes";
25.4 The First Respondent cuts the prices down so that his quote (RVA) seems cheaper;
25.5 The First Respondent used the company vehicle after work, to do private jobs;
25.6 When he (Ledwaba) worked for the First Respondent, they would use the applicant's tools for private jobs on weekends;
25.7 When Ledwaba worked for the First Respondent, he (the First Respondent) would talk bad about the boss (Thomas) inter alia saying that he (Thomas) robbed him money.
25.8 He (First Respondent) said that he want to leave OHM, and want to take all the clients.
25.9 When he (Ledwaba) refused to work for the First Respondent, he (the First Respondent) got angry and started to say that Ledwaba is stealing and he started to give Ledwaba an attitude at work, threatening that he (Ledwaba) could get fired.

[26] In summary, Kabelo Malembi stated that:

26.1 He (Malembi) has seen the First Respondent giving quotations to his clients (in the name of the Second Respondent) and to some clients of the Applicant.
26.2 The he (Malembi) was called to work on weekends and if you don't show, you are promised to be dismissed from the company.
26.3 That sometimes when they were supposed to go home from the Applicant, the First Respondent would take them to his jobs to work."

[27] In reply to the above, the Respondents inter alia pleaded that:

27.1 I have noted the content of this paragraph. Save to deny that I and/or RVE acted in unlawful competition with the applicant, the remainder of these allegations do not fall within my personal knowledge and I am therefore unable to admit or deny same.
27.2 I admit the content of this paragraph. There was no duty on me to disclose the

operations and/or business operation of RVE to the Applicant. I am not subject to any restraint of trade in my erstwhile employment agreement. The Second Respondent does not unlawfully compete with the Applicant.

27.3 Nothing prevents RVE from competing with the applicant. It is not unlawfully competing with the applicant.

27.4 I was not, in addition prohibited in any way from establishing RVE for that purpose.

27.5 The contents of these paragraphs are denied. During my working hours at the applicant I only worked for and attended to the Applicant's instructions.

27.6 On weekends. Mr Elvis Vilakazi, Kabelo Malembi, Sipiwe Vilakazi and Joseph Ledwaba (the deponents to the affidavits attached to Mr Acker's affidavit), they were not under contractual duty and /or obligation at the Applicant, assisted in their free time at RVE. According to them, they were not receiving sufficient remuneration at the Applicant and were in monetary need and distress. There was no coercion from my side, nor was any coercion necessary.

[28] In answer and reply to the 'affidavits' of the four employees mentioned above, the Respondents pleaded as follows:

28.1 Nothing prevents RVE from competing with the Applicant. It is not unlawfully competing with the Applicant.

28.2 I was not, in addition prohibited in any way from establishing RVE for that purpose.

28.3 The contents of these paragraphs are denied. During my working hours at applicant, I only worked for and attended to the applicant's instructions.

28.4 On weekends, Mr Elvis Vilikazi, Kabelo Malembi, Sipiwe Vilikazi and Joseph Ledwaba (the deponents to the affidavits attached to Mr Acker's affidavit), after they were not under contractual duty and/or obligation at the Applicant, assisted in their free time at RVE. According to them, they were not receiving sufficient remuneration at the Applicant

and were in monetary need and distress. There was no coercion from my side, nor was any coercion necessary.”

[29] In answer and reply to the ‘affidavits’ of the four employees mentioned above, the Respondents pleaded as follows:

29.1 The content of the “alleged affidavits” attached as annexure “R14” to “R17” to the Applicant’s founding affidavit is illegible and unreadable. I am therefore, unable to respond thereto.

29.2 Reserve my rights to respond to the content of these affidavits at a later stage once I have been provided with legible copies.

[30] Counsel for the applicant argued that ‘better’ copies of the said affidavits were already uploaded onto case lines on 24 November 2023. The respondents have to date, not pleaded to any measure of detail, to the various allegations recorded in the 4 affidavits. Consequently, the very serious allegations recorded in the said affidavits, remain largely uncontested. I agree.

[31] It is my view that the content of the said affidavits, read with the remainder of the allegations recorded in the founding papers, materially substantiates a prima facie case against the Respondents.

[32] Also, it is not disputed, that by 9 February 2024, the Applicant served a Particulars of Claim, which embodied the following allegations:

32.1 In addition to the expressed terms of the said agreement recorded in annexure “POC1” hereto, the agreement further comprised of the implied, alternatively, tacitly terms stating that:

32.2 The first respondent shall owe various common law fiduciary duties

towards the plaintiff as his (first defendant's) employer, including the duty not to use the plaintiff's confidential information against the plaintiff, to the benefit of the first defendant and to the detriment of the plaintiff.

[33] As a result of the first defendant's employment and shareholding in the plaintiff business, the first defendant has acquired a comprehensive understanding of various aspects of the plaintiff's business, including the complete scope of its operations, client details, the business requirements of its clients, the business model, marketing strategy, pricing structure and quoting model."

[34] Also, under the heading "Unlawful competition", the Applicant (cited as Plaintiff) inter alia pleaded as follows:

34.1 The first defendant did not, at any point, reveal the registration of the Second Defendant to the plaintiff or its directors. Furthermore, the first defendant did not disclose the operations and business model of the second defendant at any stage to the plaintiff.

34.2 The approach taken by the First Defendant involved presenting clients and suppliers with two quotes— one from the Plaintiff and another from the second defendant. The latter consistently featured significantly lower prices than the Plaintiff's quotation/s.

[35] The First Defendant knew or ought to have known that:

35.1 The scope of the Plaintiff's operations, clients details, the business requirements of its clients, the business model, marketing strategy, pricing structure and quoting model, the identities of its suppliers, the pricing structure/agreement between the Plaintiff and its suppliers, the identities of the Plaintiff's current and formal employees and shareholders, and the overall terms of employment for the Plaintiff's workforce is confidential and valuable;

35.2. That the information detailed above constitute confidential information which are useful to the plaintiff, not public knowledge or public property and of economic value to the Plaintiff.

35.3. That the confidential information detailed above, in the hands of a competitor, shall place the competitor at an unfair advantage, to make use of the said information to springboard a competing business, alternatively, to unfairly and/or unlawfully compete with the applicant;

35.4. by wrongfully using and sharing the confidential information of the Plaintiff, the Plaintiff, will result in the Plaintiff suffering ongoing damages.

[36] Additionally, employees of the Plaintiff reported that the First Defendant not only offered them employment, but also engaged in discussions with them about salaries. By engaging in the described actions, the First Defendant intentionally disseminates this information about the plaintiff aiming to attract and allure employees to join the second defendant at the expense of the plaintiff.

[37] The First Defendant wrongfully leveraged the resources tools and expertise of the Plaintiff to conduct the operations of the Second Defendant in competition of the Plaintiff, thereby providing the Second Defendant with unjust, unfair and unlawfully advantage.

[38] All the while, the First Defendant receive remuneration from the plaintiff.

[39] The actions of the First Defendant described above, not only offends his fiduciary duties towards the Plaintiff, but also offends the general public sense of fairness and honesty.

[40] The wrongful conduct committed by the first defendant was that he was in breach with the contractual and fiduciary duties and obligations owed to the Plaintiff.

[41] As a result, the First Defendant disclosed and exploited confidential information belonging to the Plaintiff, causing harm to the Plaintiff and conferring advantages upon the Defendant.

[42] In addition to the direct financial prejudice and of losing suppliers to the Defendants as a result of the First Defendant's misrepresentations, the overall reputation of the Plaintiff has suffered as a result of the wrongfully conduct of the defendants.

[43] Upon scrutinizing the respondents' opposing affidavit, it becomes clear that they have fundamentally misunderstood the purpose and essence of these legal proceedings. Contrary to their perception, the applicant's objective is not to hinder competition, but to address the alleged illegal activities conducted by the Respondents, during the First Respondent's tenure with the Applicant.

[44] The focus of the Applicant's concern lies in the historical actions of the Respondents those carried out while the First Respondent employed by the Applicant.

[45] The Applicant, confronted with compelling evidence discussed above, reasonably believed that the respondents were engaging in illicit competition against them. This belief led to the initiation of the ex parte application.

[46] Following the implementation of the Anton Piller order, the Applicant's initial concerns were substantiated, as substantial incriminating evidence was reportedly discovered in the possession of the First Respondent. This evidence indicated that the Respondents had violated contractual, statutory, and common law obligations owed to the Applicant.

[47] It is worth mentioning that while the respondents do not deny the existence of this evidence, they merely contest its volume, which does not alleviate their predicament. In fact, according to the respondents' own account they admit to several critical points:

- (a) the first respondent operated a competing business while employed by the applicant and holding a minority share;
- (b) the respondents utilized the applicant's resources for their unlawful business; and
- (c) they serviced clients of the applicant, both past and present.

[48] The effectiveness of the Anton Piller order remains undisputed, with the results set to be presented in the forthcoming trial proceedings. However, the crux of the Respondents' opposition seems to stem from their awareness that their actions were unlawful and that the collected evidence will substantiate this fact instead of confronting the consequences of their misconduct.

[49] Rewarding such behaviour by entertaining unsubstantiated claims aimed at creating factual disputes would be unjustified, Anton Piller orders are designed precisely to prevent such evasion tactics.

[50] In the absence of any evidence from the respondents demonstrating a violation of their rights through the order, the interim order should be finalized.

[51] Upon further examination of the respondent's response, it became apparent that their approach is carefully crafted to sidestep the core allegations and create distractions. This strategy falls short of genuine disputes of fact as outlined in legal precedent. Therefore, the Respondents' attempts to evade accountability lack sincerity and fail to meet the threshold of legitimate factual disputes.

[52] In **Wightman t/a J W Construction v Headfour (Pty) Ltd and another, 2008 (3) SA 371 (SCA)** the SCA had the following to say about factual disputes in para 13: *A real, genuine and bona fide dispute of fact can exist only where the Court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the fact averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I "generally" because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter. "*

[53] The Court further emphasised the following in para 12: "[12] Recognising that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must in the event of conflict, accept the version set up by his opponent unless the latter's allegations are, in the opinion of the court, not as

*such as to raise a real genuine or bona fide dispute of fact or are, so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers: **Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] ZASCA 51; 1984 (3) SA 623 (A) at 623 (A) at 634 E-635C**. See the analysis by Davis J in **Ripoli-Dausa v Middleton NO [2005] ZAWCHC 6; 2005 (3) SA 141 (C) at 151A-153C** with which I respectfully agree.”(I do not overlook that a reference to evidence in circumstances discussed in the authorities may be appropriate).*

[54] The Respondents’ opposing submissions are neither real, genuine nor bona fide. It is evident that the Respondents’ opposition to this application is grounded in three main legal arguments, summarized as follows:

54.1 Firstly the Respondents allege that the Applicant failed to present essential facts to the court.

54.2 Secondly, the Respondents argue that the interim order was overly broad and improperly executed.

54.3 Lastly, the respondents claim that the supplementary affidavit sought additional relief.

[55] The Respondents’ answer is rife with emotive and irrelevant content, clearly intended to unfairly tarnish the applicant’s reputation and create a misleading atmosphere. Another glaring aspect of the respondents’ affidavit is the excessive use of legal arguments, which the applicant staunchly disputes.

[56] I hold the view that these legal arguments put forth by the respondents cannot hold weight. They are selective, taken out of context, and fail to grasp the intricacies of employment obligation and shareholder responsibilities within a company.

[57] The Respondents' deliberate omission of key factual issues and their blanket denial strategy does not amount to a genuine dispute of facts.

[58] It is significant to highlight that despite the respondents' unfounded objection to the order issued, they failed to submit a Rule 6(12)(c) application seeking reconsideration of the ex parte order favouring the applicant. This failure is noteworthy, especially considering that the respondents are represented by two legal counsel, one of whom is a senior counsel.

[59] This leads to the argument that the respondents had the chance to an application or reconsideration if they genuinely believed that the ex parte order exceeded its scope. However, they chose not to do so. This deliberate omission raises questions about the sincerity of their grievances regarding the order's alleged shortcomings.

[60] Of particular significance for the current context are the passages within the matter of *Shoba*, supra at 18 J-19B wherein specific obiter dicta from the *Universal Studios* supra case, pertaining to the Court's inherent powers in the development of procedural remedies, were implicitly affirmed: "*With reference to the third component and the views expressed in the Cerebos Food case concerning it, the judgement in the Universal City Studios case makes the following observation (at 754E-F): 'Now, I am by no means convinced that in appropriate circumstances the court does not have the power to grant ex parte and without notice to the other party, i.e the respondent (and even, if necessary, in camera) an order designed pendente lite to preserve evidence in the possession of the respondent. It is probably correct, as so cogently reasoned by the Court in the Cerebos food case supra, that there is no authority for such a procedure in our common law. But, of course, the remedies devised in the Anton Piller case supra and other subsequent cases for the preservation of*

evidence are essentially modern legal remedies devised to cater for modern problems in the prosecution of commercial suits”.

[61] After reference to the Court’s inherent power to regulate its procedures in the interest of the proper administration of justice, the aforesaid judgment proceeds quoting *Universal City Studios* supra at page 42: *“In a case where the applicant can establish prima facie [the requisites for an Anton Piller order] and the applicant asks the Court to make an order designed to preserve the evidence in some way, is the Court obliged to adopt a non possumus attitude? Especially if there is no feasible alternative? I am inclined to think not. it would certainly expose a grave defect in our system of justice if it were to be found that in circumstances such as these the Court were powerless to act. Fortunately, I am not persuaded that it would be, An order whereby the evidence was in some way recorded, e.g. by copying documents or photographing things or even by placing them temporarily, i.e. pendente lite in the custody of a third party would not, in my view, be beyond the inherent powers of the court. Nor do I perceive any difficulty in permitting such an order to be applied for ex parte and without notice and in camera, provided that the applicant can show the real possibility that the evidence will be lost to him if respondent gets wind of the application”*

[62] In this instance, there has been no deviation from the established rules governing Anton Piller applications, as outlined in the *Shoba* case and subsequent decisions.

[63] The evidence suggests that the application was made to preserve evidence rather than to escalate suspicions. It is my view that the respondents attempt to evade accountability by raising vague and evasive allegation.

[64] In addition, the applicant detailed the damages claim (consequent to and Result of the Defendants’ wrongful conduct).

[65] What is evident from the above, is that premised on the information provided by the applicant's said employees, the applicant formulated the Anton Piller application herein and importantly, also proceeded to issue and serve particulars of claim.

[66] The allegation that the applicant failed to present essential elements is far from the truth. This insinuation is nothing but a diversion. The Applicant's successful acquisition of substantial incriminating evidence from the respondents' clearly indicates the validity of their initial concerns. The Respondents' attempt to create a fictitious factual dispute lacks sincerity and is clearly designed to mislead.

[67] I hold the view that a of the applicant's founding papers, reveals facts, that if accepted by the trial court, would reveal a substantive cause of action, let alone a prima facie case. In the Applicant's founding affidavit, the following averments were pleaded;

67.1. The gist of the cause(s) of action to be relied on by the applicant relates to the first respondent's unlawful conduct in usurping the applicant's client, suppliers, employees, etc in the clear, yet unlawful attempt to complete with the applicant.

67.2. In amplification, OHM Electrical intends to pursue action against the respondents for the unlawful and unfair use of OHM's fruits of labour, the falsehoods "spread" by the respondents about OHM's products, services and business, the unfortunate misrepresentations of the respondents by intentionally distorting facts about their (the Respondents') business, in an attempt: (a) to gain an unfair (and thus unlawful) advantage; (b) to manipulate OHM's customers and suppliers and to distort the markets' perceptions of OHM Electrical and the respondents' (c) to unfairly and unlawfully gain a competitive advantage over OHM Electrical by intentionally inducing established and existing clients of OHM Electrical to rather do business with the Respondent.

[68] On perusal of the papers it is clear that OHM intends to seek relief against Van Eeden premised by the fact that by acting in the manner recorded above, he is in breach of the various of the said fiduciary duties, including the duty not to act against the interest of your employer in an attempt to benefit yourself and also, not to utilise confidential information which came to your knowledge whilst employed, against interest of your employer and to your benefit.

[69] The First Respondent while occupying a position of trust within the Applicant's organisation and concurrently serving as the exclusive director of the second respondent, illicitly intercepted quotations provided by OHM Electrical to its clients and suppliers.

[70] Subsequently, this information was leveraged to undermine the pricing structure of the Applicant, to the (unlawful) benefit of the Respondents.

[71] It is my view that the First Respondent, acting through the intermediary of the Second Respondent engaging in unlawful competition with the Applicant. This assertion does play a pivotal aspect of the core dispute.

[72] From a prima facie view of the abovementioned annexures it is evident and clear that the first respondent is wrongfully (and unlawfully) interfering with the business of OHM Electrical. I agree with Counsel for the applicant that he used OHM Electrical as the "vehicle" of the Second Respondent.

[73] At no stage did Van Eeden disclose the registration of the Second Respondent, and also at no stage did he disclose the operations and/or business model of the Second Respondent.

[74] I am guided by the well-established principle that the utilisation of the competitor's confidential information, particular that of one's own employer, with the intend to secure a trade advantage is unequivocally unlawful.

[75] Counsel for the respondents argued that there are contradictions in statements made by Mr Vilakazi. The first statement is the one which first respondent took a photograph. The second one is the one which Mr Vilakazi made in Court.

[76] I have perused the answering affidavit by the Respondents. Nothing is mentioned about contradictory statements.

[77] Therefore the argument that there are contradictions between the two statements cannot stand.

[78] Under the heading "Cause of action" the Applicant pleaded as follows: "The Applicant intends instituting proceedings the First and Second Respondents for inter alia the following relief:

78.1 Injunctive relief;

78.2 Forfeiture of profits gained through their unlawful practices;

78.3 An order declaring the First Respondent as delinquent director as contemplated in S 62 of the Companies Act, 71 of 2008 (as amended);

78.4 The delivery of the Applicant's assets;

78.5 The delivery of the Applicant's confidential information, records, documents and as assets;

78.6 A possible claim for damages.

[79] As stated above, the Applicant is not required to show more than that there is evidence, which if accepted, will establish a cause of action. In this regard, the second respondent will as a matter of necessity also be joined as a party to the litigation, as it will be affected by the relief sought".

[80] I am of the view that the nature of the search and the plethora of evidence found in the possession of the respondents align with the sentiments described by the Court in *Universal City Studios* above. Moreover, the applicant has since instituted damages claim against the respondents and the evidence seized by the Sheriff directly correlates to that cause of action.

[81] Additionally, the evidence shows that the First Respondent possesses quotations and invoices designed to divert clients from the Applicant unlawfully.

[82] The Applicant does claim for the impropriety of the First Respondent's actions.

[83] The aforesaid was bolstered by the fact that upon execution of the Anton Piller order the sheriff confiscated a plethora of evidence. It is noteworthy to mention that the Respondents do not deny evidence collected and stored.

[84] Considering the First Respondent's apparent tendency for questionable actions and disregard for the fiduciary duties, it is undeniable that if he was made aware of this application, he would likely have attempted to eliminate any evidence that could prove his culpability.

[85] Therefore, resorting to discovery procedures, as permitted by the Court's rules, would likely be ineffective given his unscrupulous behaviour. Differently put, the ex parte nature of the application was clearly necessitated.

[86] It must be noted that neither the applicant nor its attorneys has had sight of evidence preserved by the Sherriff.

THE TWO MONTHS' ISSUE

[87] The Respondents allege that the interim order made herein, ought to be discharged on the basis that the Applicant did not institute legal proceedings within 2 (two) month of the date of the order, being 24 November 2023.

[88] To this end, the order reads as follows:

88.1 The costs of this application are reserved for determination in the further legal proceedings foreshadowed in this application save that

88.2 If the applicant does not institute those legal proceedings or proceed with the pending legal proceedings within 2 (two) months after date of this order, either party may, on not than 96 hours' notice to the other, apply to this Court for an order.

88.3 Determining liability for those costs and determining what must be done about the removed items and any copies thereof. 88.4 Any other party affected by the grant are execution of this order may on no less than 96 hours 'notice apply to this court for an order determining liability for the costs of such party and determining what must be done about any item removed from any such party or any copy thereof.'

[89] I hold the view that this argument should be dismissed. Firstly, the respondents did not, pertinently and specifically, plead as a "point", that the interim order ought to be discharged on the basis that the applicant failed to comply with paragraph 46.1 of the order.

[90] In fact, the allegation pleaded by the Respondents on this issue, is contained in paragraph 149 of its opposing affidavit which reads as follows: "149 No cause of action is currently pursued by the Applicant."

[91] The Respondents ought to be "held" to their pleadings and consequently, that the said point is not be permitted to be introduced into argument.

[92] It is common cause that the applicant served and delivered particulars of claim in the Johannesburg Division of the Court on 24 January 2024. This was within the 2- month period as from the 24th of November 2023.

[93] It is further common cause that consequent to communication from the Respondent's attorneys, who advised the applicant's attorneys of the fact that summons was issued out of the wrong court. The said summons was re-issued and delivered (in the Pretoria High Court) on 9 February 2024.

[94] I hold the view that view that the Gauteng Local Division is not the wrong since both Courts have co-current jurisdiction and therefore there is no merit on the argument by the Respondence on this issue. The Applicant did comply with the said two-month period in that the applicant did institute legal proceedings and certainly did proceed with legal proceedings within a two-month period.

[95] According to the oral representations made on behalf of the Respondents, 'no explanation' was provided for the above mentioned 'error'. This is not correct

[96] In this regard, paragraph 110 of the applicant's replying affidavit reads as follows:"As previously mention, the updated summons was delivered to the Respondents' attorneys as

early as 9 February 2024. A minor administrative error was identified, and the Respondents' attorneys graciously brought it to the attention of my legal representatives. Consequently, the initial summons was withdrawn and subsequently re-issued in this Court."

[97] Secondly the order, does not in peremptory terms directs the applicant to institute legal proceedings within a two month period but rather records the consequence in the event of a failure to do so.

[98] To this end, the order records the rights of the Respondents, to approach the Court, on notice, for relief (including costs), that amounts to no less than a "discharge" of the order.

[99] It is common cause that the respondents did not approach the Court for any of the relief and did not exercise any of their right, recorded in paragraphs 11.1.1.and 11.1.2 of the order.

[100] Even on this basis alone, and in the absence of an explanation for not exercising their said rights, the point ought to be dismissed.

[101] In support of their argument, the Respondents place reliance on the decision of ***Taskflow (Pty) Ltd v Aluxium (Pty) Ltd and Others (2021/41676) [2021] ZAGPPHC 604***. It is my view that reliance on the said case, takes the point no further. In ***Lasercraft Mergence (Pty) Ltd v Dreyer and Others (2023-044109) [2024] ZAGPJHC 1760*** the court in paras below inter alia held that: **8. Before the respondents' reconsideration application could be heard the 60-day period within which Lasercraft was bound to institute the proceedings envisaged in my order expire**¹⁰. ***Lasercraft failed to institute the proceedings it said it wanted to bring against the respondents within the 60-day period specified in my order. In fact, it had still not instituted those proceedings when its application to extend the***

60-day period was argued before me. The founding affidavit to Lasercraft's extension application was deposed to by its attorney, Mr. Rebello. In that affidavit, Mr. Rebello all but admitted that he had misunderstood the importance of the order. He had mistakenly thought that Lasercraft had 60 days from the date on which the Anton Piller relief and the rule nisi had been reconsidered and confirmed in the respondents' presence in which to institute the proceedings.¹² But, for months after Mr. Rebello should have realised his mistake, Lasercraft took no steps at all to plead or institute its claims. It still had not done so when its extension application was called for hearing before me. The obvious question is: why not? ¹³. That question, which I posed in argument on 20 February 2024, elicited a different explanation to the one Mr. Rebello gave in his affidavit of 25 October 2023, Mr. Ohannessian, who appeared together with Ms. Lombard for Lasercraft, explained that the proceedings had still not been instituted because Lasercraft needed to see the documents preserved under the Anton Piller order before it could its case.¹⁴ In my view, that is plainly impermissible. Anton Piller orders are meant to preserve evidence vital to sustain a cause of action a litigant knows or reasonably believes they have. They may not be used to procure documents necessary to found a cause of action that the litigant merely suspects might exist (see **Universal City Studios Inc v Network Video (Pty) Ltd [1986] ZASCA 3; 1986 (2) SA 734 (A) at 755H-J and Viziya Corporation v Collaborit Holdings (Pty) Ltd 2019 (3) SA 173 (SCA) paragraph 23**) ¹⁶. It follows from this that, when it approached me for Anton Piller relief, Lasercraft ought to have known what its cause of action was. It should also, in principle, have been ready to plead its cause of action without reference to the evidence it sought to preserve. Lasercraft cannot now expect to be able to look at the documents seized in terms of my order for the very purpose of formulating and pleading the cause of action, it says it has had all along.¹⁹ It is of course true that an applicant for an Anton Piller order need not have drafted their particulars of claim or their founding papers at the time the relief is sought. Nor must they exhibit those papers in draft form to the court from which they seek Anton Piller relief. But the reason for

*this is not that the applicant is entitled to see the documents seized and preserved under the Anton Piller order before they plead their case. It is because Anton Piller relief is likely to be very urgent. In those urgent circumstances, the need to preserve the evidence upon which the applicant intends to rely means foregoing a thorough interrogation of the strength of their cause of action. A court need only be satisfied that there is a cause of action prima facie and that the applicant honestly intends to pursue it. That can be ascertained without reference to draft pleadings. The cause of action must still exist, however, and the purpose of Anton Piller relief seems to me to be to allow the applicant to formulate its pleadings knowing that doing so is not an exercise in futility. The applicant can rest assured that the evidence it will later need has not been lost or destroyed.***22.** *Lasercraft's concession that it needs to see the documents preserved under the terms of my order before it can institute the main proceeding means that it was never entitled to Anton Piller relief in the first place. Lasercraft accepts that it cannot now plead, and probably never could have pleaded, the causes of action it assured me were available to it when I originally granted the Anton Piller order.***23.** *It follows from this that there was, in truth, no cause of action to which the preserved documents could have had any cognisable relevance, and no basis on which the Anton Piller relief could properly have been sought or granted. There is obviously, in these circumstances, no good cause to extend the period available to Lasercraft to institute proceeding against the respondents.*

[102] It is clear from the above cases that Anton Piller orders are meant to preserve evidence vital to sustain a cause of action a litigant knows or reasonably believes they have. They cannot not be used to procure documents necessary to found a cause of action that the litigant merely suspects might exist. This is different from the case herein. The Applicant knows his case and had already issued summons.

THE SUPPLEMENTARY AFFIDAVIT AND FURTHER AFFIDAVIT

[103] The Respondents have served and filled further affidavit. The Applicant has served and filled a response to the further affidavit. The respondents allege that purpose of the further affidavit is to deal with the transcript of the oral evidence which was led before my sister Collis J on the 24 November 2023. This would be in support of their opposition to the confirmation of the interim order as well as the additional relief sought.

[104] The Respondents allege they only became aware of the fact that oral evidence had been led upon reading the applicant's heads of argument. Their attorneys of record then requested a transcript of this oral evidence from the applicant's attorneys of record.

[105] Their attorneys of record were provided with the said transcript on the 10 June 2024 which was also uploaded on Case Lines. The first respondent alleges that from the 10 June to the 13 July was unable to consult with his attorneys of record due to the fact that they have arranged for a consultation being the first available date for the end of July 2024. This is due to the constraint in the dairies of the attorneys of record and the voluminous transcription that needed to be read.

[106] In paragraph 9 of his further affidavit he alleges that on the 13 July 2024 he and his family were attacked in their home by unknown assailants. He was shot and admitted to Montana Hospital and the next day he was transferred to Unitas Hospital Intensive Care Unit. On 15 July he was transferred to a normal ward and discharged later that evening.

[107] The 3 weeks that ensued, he was resting and recovering due to the continuous pain he was experiencing. He was not even allowed to drive.

[108] The first available date to consult with his attorneys of record was the 14 August 2024 hence the affidavit was prepared thereafter.

[109] It is well- establish that the standard procedure permits the filling of 3 sets of affidavits: the founding, answering and replying. Should a party wish to submit an additional affidavit it must seek and obtain Court's permission. The decision to allow any further affidavit lies with solely within the Court's discretion.

[110] I have read the supplementary affidavit, the further affidavit and the answer to the further affidavit herein. My reading was in a general context, and is not intended to, and cannot, bind the Court determining the Main Application.

[111] It is worth mentioning that the transcript is not voluminous to any degree and would not have required a long and protracted consultation. A perusal of the Respondent's averments in this regard reveals no reliance on the representatives being unavailable due to their required presence at trial or other court attendances. The allegations are that these representatives were not available due to office and chamber related work.

[112] I hold the view that having regard to the volume and the extent of the further affidavit herein, it is inconceivable that neither the junior and/or senior counsel instructed on behalf of the Respondents could have attended to the finalisation of the said affidavit. They could have finalised the said affidavit between the 10TH June 2024 and mid July 2024 when the First Respondent was shot.

[113] The further affidavit was delivered at the last hour. It contains new evidence and defences that could have and should have been raised in the Respondent's initial opposing affidavit.

[114] The Respondents neglected to seek leave of the Court before filing this further affidavit.

[115] Mr Ackers' Supplementary Affidavit is dated 1 February 2024. It is common cause that Mr Acker was not present during the execution of the Anton Piller Order. On perusal of the said affidavit and the respondents' heads of argument I got the impression that the respondent labour the fact that: Mr Acker's reference to a plethora and large amount of evidence confiscated constitutes a misrepresentation and constituted a lie.

[116] I hold the view that the Respondents' submissions in this regard are misplaced. To this end, Mr Acker in paragraph 22 of the said Supplementary Affidavit, clearly pleaded that: "During the proceedings, a plethora of evidence was confiscated *I am advised* that three large bags of evidence were confiscated which include"

[117] Also, in paragraph 26 of the supplementary affidavit Mr Acker pleaded as follows: "Some of the evidence obtain, *so I am advised* were detailed client lists of the Applicant and blue prints of projects of clients of the Applicant. The prima facie view conveyed in the founding affidavit was therefore confirmed."

[118] In addition to the above, in the Applicant's Replying affidavit Mr Acker pertinently pleaded that:

118.1 Upon the execution of the Anton Piller order the applicant prima facie concerns were validated. Substantial incriminating evidence was allegedly (I say allegedly because I have not had sight of the confiscated evidence) discovered in the possession of the First Responded indicating that the Respondent's had operated a business in violation of contractual, statutory and common law obligations owed to the Applicant.

118.2 It is important to note that neither I nor my attorney has examined the collected evidence. We considered it essential to obtain the final order first, following which an arrangement will be made with the Respondents' attorneys to inspect and compile the evidence held at the sheriff's office. In other words, the evidence remains preserved.

[119] Premised on the above, I hold the view that Mr Acker did not misrepresent his actual and/or perceived knowledge of what was seized, as alleged or at all. It appeared to me that the contents of the Supplementary Affidavit simply constituted legal argument, and did not take the merits of the Main Action any further. The supplementary affidavit was submitted to provide the Court with insight into the execution of the interim order and to justify the applicant's request for costs. This does not constitute an additional claim for relief as suggested by the respondents. The Court dealing with the Main Action may, having regard to the Main Application as a whole, may find that the allegations contained in the Supplementary Affidavit were crucial.

[120] Having said that I hold the view that the further affidavit and further answering affidavit should be regarded as *pro Non Scripto*.

THE PROPORTIONALITY OF THE ORDER

[121] The interim order inter alia reads as follows:

3. "That the respondents and any other adult person in charge of the premises of the second respondent (being the residential address of the first respondent and the registered address of the first respondent and the registered address of the second respondent) at 10 VILLA CHENE, VERONICA ROAD, PRETORIA GAUTENG granted the Sheriff of the above Honourable Court and/or his deputy(ies), together with the Applicant's director (Mr Thomas Acker), the Applicant's attorney (Mr Carel Nicolaas Venter) an IT specialist nominated by

the Applicant and the independent supervising attorney (Mr David Botha Bekker) access to the said premises. for the purpose of:

3.1. Searching both premises (including any containers of whatsoever size and nature) for the purpose of enabling any of those persons to identify and point out to the Sheriff originals, copies, extracts, electronic copies, any data store on any medium or record of the following;

3.1.1 Communications between the First Respondent and clients; suppliers, employees, associates, affiliates and shareholders (past and present) of the applicant concerning the second respondent's affairs, including but not limited to shareholding, directorship, contracts and bank accounts;

3.1.2 Company documents of the Second Respondent and documents reflecting the Second Respondent's affairs including but not limited to shareholding, share registers and directorship;

3.1.3 Documents relating to the Second Respondent's affairs including, but not limited to contracts, bank statements, invoices, quotations, and proof of payments;

3.1.4 Documents relating to the Second Respondent's submissions in respect of projects, tenders, contracts of clients, suppliers, employees, associates, affiliates and shareholders (past and present) of the applicant;

3.1.5 Documents, containing particulars of shareholding in the Second Respondent.

3.2. Searching the premises for the purposes of finding any vehicle, computer, laptop, internal or external storage drive, cellular telephone, smart phone and/or tablet containing any of the items referred to above.

3.3. Examining any item for the purpose of identifying it and deciding whether it is of the nature mentioned in paragraph 1.1. And; 12.1 The Applicant and its attorneys may inspect any of the removed documents (save for any disc containing forensic copies or images of any hard drive, disks, cellular phones, smart phone or images of any hard drive, disks, cellular phone, smart phone or other electronic storage devices containing information found

at the premises) relevant to the present application; 12.2 The applicant will be entitled to cause an inspection to be held with the copies of the discs so provided, discs so provided, discs onto which information (including mages) had been copied and other electronic storage devices containing information found on the premises. The inspection will be done by the applicant's IT specialist under the supervision of the independent supervising attorney and the Sheriff. The respondents will be entitled to have present thereat an independent attorney and IT specialist. The inspection which shall be done in respect of each forensic disc of which a copy has been produced as aforesaid or other electronic storage device onto which electronic images had been copied during the search of the premises, shall be done for the purposes of searching the discs or other electronic storage devices and copying onto another disc or other electronic storage devices any of the listed items in paragraph 1.1. A copy of this disc or other electronic storage devices shall be provided to each of the respondents and to the Sheriff. 12.3 The applicant and its attorneys shall, 96 hours after the electronic copy of listed items had been made as contemplated in paragraph 10.2 be entitled to inspect such electronic copy relevant to the present application or to the further legal proceedings envisaged in the application."

[122] It is of interest to note that in the abovementioned Supreme Court of Appeal decision of *Non-Detonating* supra at paras 44 and 45 the Court says: "*in the circumstances, the court a quo erred when it discharged the interim order on the return day. The high court ought to have confirmed the interim order subject to a few amendments which do not alter the substances of the order but further ensures that the forensic search is limited to relevant items. Counsel for the appellant rightly conceded that the formulation of the interim order does not in some respects comply with requirements for Anthon Piller orders. In particular, the phrase in clauses 144.1 and 144.2 of the order, which reads '... in order to assess whether it provides evidence...' should be amended to limit the search and seizure to relevant documents by deleting the words 'identical or similar to '*"

in the second sentence and substituting these with 'substantially identical to. 'No case was made out for the search and seizure of photographs and videos and the appellant is thus not entitled to an order in this regard. Paragraph 16 of Schedule A is irrelevant and should be deleted. [45] The provisional order dated 16 August 2012 is amended by substituting paragraphs 10.1, 10.4 and annexure A thereto with the following- "10.1 Applicant and its attorneys may inspect any of the removed documents (save for any disc containing forensic copies of any hard drives, discs or other electronic storage devices containing information found at premises) relevant to the present application or the further legal proceeding envisaged in the application. 10.2 The Applicant and its attorney shall, 96 hours after the electronic copy of listed items has been made as contemplated in paragraph 144.1, be entitled to inspect such electronic copy relevant to the present application or to the further legal proceedings envisaged in the application."

[123] Firstly, the content of the interim order; differs from the orders, made by the courts, in the decisions relied on by the Respondents.

[124] Secondly, a perusal of the respondents opposing papers reveals that the Respondents do not dispute to be in possession of the items and documents listed in paras 1.11. -- 1.1.5 of the order, but rather tailored their opposition to the order being made final, on the allegation that the order is too "wide" and goes too "far".

[125] Counsel for the Applicant argued that if this Court agrees with the Respondents that (some) of the information seized, as recorded in paras 1.1.1-1.1.5 of the order; are to "wide", there is nothing prevents this court from 'tailoring' the order in a manner the court deems fit.

[126] In *Non-Detonating Solutions supra*, the SCA expressly found that the order that had been sought and obtained "does not in some respects comply with the requirements for Anton Piller order." Despite this, it considered that the Court should have upheld the reconsideration "subject to a few amendments which do not alter the substance of the order but further ensure that the forensic search is limited to relevant items".

[127] Similarly, in *Richards Bay Titatnium (Pty) Ltd and Another v Cosco Shipping Logistics Africa (Pty) Ltd and Others (020911/2023 [2023] ZAGPPHC 402*, the Court found that the scope of the search was framed in terms that would impermissibly "drag innocent third parties into the fray" but nevertheless did not set it aside in its entirety, and instead amended it to render it legally compliant on the basis that "[s]ince the order is being reconsidered, this court is seized with the application and empowered to vary any aspect of the order granted".

[128] For reasons mentioned, I hold the view that the allegation the order is not too wide or goes too far lacks merit as the core issue remains the Applicant's justified belief in the respondent's unlawful actions and their need to preserve crucial evidence for the upcoming legal proceedings. All the said items have a bearing on and is relevant to the cause of action pleaded by the Applicant.

[129] Furthermore, the proposed draft order was meticulously crafted to align with the necessary level of detail required to achieve the desired outcome. The relief sought is in line with established legal principles and caselaw, representing the appropriate course of action for the Applicant.

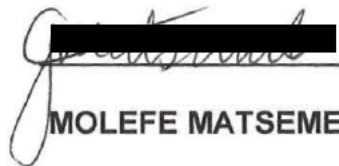
[130] The aforesaid is further strengthened by the fact that my sister Collis J did not merely grant the order, but was quite meticulous in her approach. She sought oral testimony, both

the deponents to the applicant's papers. One of the employees (Mr Vilakazi) of the applicant gave testimony under oath.

[131] I hold the view, that the applicant has successfully complied with the principles for an Anton Piller order enunciated above and is therefore entitled to the relief sought. The rule nisi should be confirmed. Therefore, the following order is made.

ORDER

- 1. The further Affidavit and answering Affidavit thereto are declared Pro Non Scripto.**
- 2. The interim order herein is confirmed.**
- 3. The Respondents are to pay the costs.**


MOLEFE MATSEMELA

Acting Judge of the Gauteng High Court, Pretoria

This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representative via email and by uploading it to the electronic file of this matter on Case Lines. The date of this judgement is deemed to the 27 December 2024.

Heard on the 19 and 21 September 2024 and 25, 27 October 2024

For the Applicant

Adv Goosen

Instructed by

Serfontein Viljoen & Swart

For the Respondents

Adv J Joubert SC

With her

Adv GL Kasselmann

Instructed by

AH Stander & Agengbag