

SOUTH AFRICA / JUDGMENT

Leitao v Easy Electric CC and Others (4164/2018) [2020] ZAMPMHC 22 (10 June 2020) [2020] ZAMPMHC 22

COURT

Middelburg High Court, Mpumalanga

BEFORE

Brauckmann

CASE / FILE NUMBER

4164/2018

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IN

THE HIGH COURT OF SOUTH AFRICA,
MPUMALANGA
DIVISION, MIDDELBURG
(LOCAL
SEAT)
CASE
NO: 4164/2018

In

the matter between:

JOSE
CARLOS CURADO
LEITAO APPLICANT
and
EASY
ELECTRIC
CC FIRST
RESPONDENT
(REGISTRATION
NUMBER: 1996/002753/23)
DAVID
STEPHEN
CLANCY SECOND
RESPONDENT
PAUL
ANTHONY
CLANCY THIRD
RESPONDENT

JOANNE
LOUISE DE
BEER FOURTH
RESPONDENT
THE
COMPANIES AND INTELLECTUAL
PROPERTY
COMMISSION FIFTH
RESPONDENT

JUDGMENT

BRAUCKMANN AJ

INTRODUCTION

AND BACKGROUND

- [1] The Applicant and the Second to Fourth Respondents are members of the First Respondent (“the corporation”). I will refer to the Second and Fourth Respondents as the “Respondents” collectively for the sake of convenience and to the First Respondent as “the Corporation”.
- [2] The Applicant holds 30% membership interest (“the interest”) in the Corporation. During 2017 the Applicant decided to emigrate to Portugal with his wife in order to take care of his ailing mother. The Applicant, and his wife, moved to Portugal during November 2017, but the Applicant returned to South Africa briefly during 2018. He resigned from the employ of the corporation and/or went on pension during February 2019 and returned to Portugal.
- [3] There was however an agreement between the Applicant and the Respondents that he would receive a monthly payment of R 25 000.00

until such time as the final agreement could be reached in respect of the cessation of his membership interest in the Corporation.

The amount R 25 000.00 was paid to the Applicant until August

2018. So much is common cause.

- [4] The Applicant instructed his attorneys, Krügel Heinsen and more specifically Mr. Heinsen, to enter into negotiations with the Respondents for the sale of his membership interest. Mr. Heinsen, who deposed to a confirmatory affidavit, negotiated with the Respondents and more specifically the Second Respondent regarding the sale of Applicant’s interest.[1]
- [5] During the negotiations the Applicant alleged an agreement was reached between the Applicant, represented by Mr. Heinsen, and the Respondents, represented by 2nd Respondent, that the value of the membership interest in the Corporation would be an amount of R 8 390 000.00, and that the nett

effect of the sale of the interests would amount to R 2 517 000.00. From Annexure JCC7[2] it appears that Mr. Heinsen accepted that the Respondents had accepted the offer to purchase the interest for an amount of R 2 517 000.00

“subject to the finalisation of acceptable payment terms and conditions within the 2 (TWO) weeks”.

[6] Mr. Heinsen requested acknowledgment of receipt of Annexure JCC7 and confirmation thereof.

[7] Annexure JCC8[3] was subsequently drafted by Mr. Heinsen and allegedly sent to the Respondents. It is however in dispute whether the said Deed of Sale of Interest in Close Corporation was actually sent to, and received by the Respondents. However, from the Deed of Sale the purchase price for the interest were to be paid by a once off payment of R 250 000.00 and the balance of the purchase price in 60 monthly instalments initially R 30 000.00 per month, also taking into account the instalments which has been paid since February

2018. The instalments would increase with 10% per annum and interest on the outstanding balance, from time to time, would be payable at 6% per annum calculated on the outstanding balance from time to time.[4]

[8] Immediately upon receipt of the letter (Annexure JCC7) the Respondents' attorney, Mr. Ian Bailie, replied to the said

letter and confirmed that the gross value of the equity as indicated in a valuation provided to the Respondents by the Applicant[5] may be used as a basis for establishing the amount which may be offered to the his client for the interests.[6]

[9] Mr. Bailie then indicated that the terms that will be acceptable to his client were:

[9.1] Monthly payments of R 25 000.00 per month;

[9.2] An amount of R 486 000.00 must be deducted in 30% of the amount of R1 620 000.00 due to one May Clancy;

[9.3] The sum of R 150 000.00 paid since December 2017 to date of Mr. Bailie's letter to be deducted;

[9.4] A hardship clause must be included to provide for work done at Kusile Power Station which might not be paid.

[10] This letter was dated 19 June 2018.

[11] I pause to mention that since the Applicant left South Africa he has been in constant communication with the Second Respondent via whatsapp messages.[7] It is of importance to note the tenor of the exchanges which were at all times friendly and indicated co-operation between Applicant and Second Respondent, except from the 20th of September when some animosity started to appear from the whatsapp messages. I will return thereto.

[12] Mr. Heinsen, on behalf of the Applicant, on 26 June 2018, addressed a letter to Mr Bailie requiring him to disclose who he was acting for and other information sought.[8]

[13] This was followed by a letter dated 25 July 2018[9] in which Mr. Heinsen sought the following information:

“Please arrange that we have the management accounts of the company for the last two

(2) months and the bank statement for the last six (6) months at least one (1) prior to the consultation in September 2018”

[14] It appears that some consultation or negotiations were to take place in early September 2018.

[15] On 11 September 2018, almost two months after Annexure JCC11[10], Mr. Heinsen follows up his previous email and a telephone conversation he had with Mr. Bailie on 3 September 2018. It was

recorded that neither the management accounts, nor the bank statements, requested on 25 July 201[7] (sic) was received. Further

that a one page document was received by the Applicant to sign to approve the financial statements of the Corporations. The

Applicant indicated, through his attorney, that he would not be signing any documentation to which he had not had sight and will

consider signing same once he received the full financial statements and the documentation referred to in his letters. The financial statements were subsequently signed by Mr. Heinsen, after receipt thereof.

[16] A threat is made that should the documents not be received within two weeks the Applicant instructed Mr. Heinsen to launch a liquidation application against the Corporation. This letter seems to have caused some animosity between Applicant and the Respondents.[11]

[17] On 25 September 2018, Mr. Bailie replied to Mr Heinsen[12] stating that:

“My clients advises as follows:

1. Easy Electrical does not keep management accounts.
2. Bank statements for the period six months are attached as requested.
3. A full copy of the Annual Financial Statements is attached as requested. Your client is required to sign same and return it to my office as a matter of urgency as Standard Bank requires same for the renewal of Easy’s banking facilities.
4. There is no basis for the liquidation of Easy and the threat of such application is merely an attempt to browbeat my clients into purchase of your client’s interest.”

[18] Subsequent to the said letter this application was launched by the Applicant.

THE RELIEF SOUGHT

[19] The Applicant seeks the following relief in his Notice of Motion:[13]

“(a) That the Applicant’s 30% membership interest in the First Respondent be acquired by the First Respondent, alternatively the Second Respondent, alternatively the Second, Third and Fourth Respondents pro rata to their existing membership in the First Respondent;

- (b) That the First Respondent, alternatively the Second Respondent, alternatively the Second, Third and Fourth Respondents, pro rata to their existing membership in the First Respondent, pay the Applicant the amount of R 2 517 000.00, alternatively such other amount calculated as being the fair value for the Applicant’s membership interest in the First Respondent, as provided for herein under, and against transfer of the Applicant’s membership interest;
 - (c) That the fair value of the membership interest, if applicable, is to be determined by Venter de Jager, alternatively a firm of auditors nominated by the South African Institute of Chartered Accountants (“SAICA”);
 - (d) That payment for the Applicant’s membership interest and transfer thereof is to be effected within 30 (thirty) days of the date of the order, if the membership interest is to be transferred against payment of the amount of R2 517 000.00, and within 30 (thirty) days of date of the final evaluation being provided, if the membership interest is to be acquired price value determined by the auditors appointed in terms of prayer (c), above;
 - (e) That the costs of the application paid by the Second, Third and Fourth Respondents jointly and severally one paying the other to be absolved.”
- [20] In the Applicant’s Founding Affidavit the Applicant relied on Sections 49 and alternatively 36 of the Close Corporations Act, Act 69 of 1984 (“the Act”) for the relief sought. At the hearing the Applicant abandoned its reliance on Section 49 and confirmed that he would rely on Section 36 of the Act, and to the extent dealt with in his affidavits.
- [21] It also became common cause that the amount of R 25 000.00 that was paid by the Respondents to the Applicant since February 2018, should be deducted from any amount determined to be a fair value for the interest in the Corporation, should the court find that the Applicant is entitled to the relief sought.

THE LEGAL POSITION

[22] In terms of Section 36 of the Act the court is entitled to intervene in the affairs of a close corporation and its members under certain circumstances. Section 36 reads as follows:

“36. (1) On application by any member of a corporation a Court may on any of the following grounds order that any member shall cease to be a member of the corporation:

- (a) Subject to the provisions of the association agreement (if any), that the member is permanently incapable, because of unsound mind or any other reason, of performing his part in the carrying on of the business of the corporation;
- (b) That the member has been guilty of such conduct as taking into account the nature of the corporation's business, is likely to have a prejudicial effect on the carrying on of the business;
- (c) That the member so conducts himself in matters relating to the corporation's business that it is not reasonably practicable for the other member or members to carry on the business of the corporation with him; or
- (d) That circumstances have arisen which render it just and equitable that such member should cease to be a member of the corporation:

Provided that such application to a Court on any ground mentioned in paragraph (a) or

- (d) may also be made by a member in respect of whom the order shall apply.
- (2) A Court granting an order in terms of subsection (1) may make such further orders as it deems fit in regard to-
 - (a) The acquisition of the member's interest concerned by the corporation or by members other than the member concerned; or
 - (b) The amounts (if any) to be paid in respect of the member's interest concerned or the claims against the corporation of that member, the manner and times of such payments and the persons to whom they shall be made; or
 - (c) Any other matter regarding the cessation of membership which the Court deems fit."

[23] A corporation is essentially a partnership between the members which is as such (and unlike a partnership at common law) a separate legal persona. The legislature's recognition of this fact is the reason for the enactment of these provisions. The purpose is to empower the court to dissolve the association between the members without winding-up the corporation on the ground that such would be just and equitable, (Section 81 (1) (d) (iii) of the 2008 Companies Act) in circumstances which, in the context of a partnership would warrant its dissolution.

[24] In *De Franca v. Exhaust Pro CC (De Franca Intervening)*[14] Nepgen J stated:

"In fact, it is my view that it is highly probable that enacting s 36 of the act one of the purposes of the Legislature was to create a mechanism whereby the inevitability of winding-up can be avoided where a 'deadlock' situation exists between members. Even if that was not the specific intention of the Legislature, s 36 of the Act clearly has such result."

- [25] The court has a discretion to decide whether to grant an order for the cessation of a member's interest in a corporation and as regards to the disposition of such member's interest, the terms and conditions under which such disposition should occur.[15]
- [26] A member who launches an application in terms of Section 36 (1) of the Act, bears the onus of proving that he is entitled to the relief which he seeks and it is encumbant upon him to place before the court the necessary evidence, not only to enable the court to decide whether it should grant an order in terms of Section 36 (1) (a), (b),
- (c) or (d), but also to make any further order envisaged in Section 36 (2).[16]
- [27] If an application is launched (like the one in casu) in terms of Section 36 (1) (c) and (d) and more specifically subsection 1 (c), the intention is that the court must determine, objectively, whether the impracticability exists to proceed with the relationship. It is submitted that the court must be satisfied that the conduct complained of by the Applicant is of such a nature that the reasonable man in the position of the Applicant cannot be expected to continue to carry on the business of the corporation with the delinquent member/s. I need to pause here and mention that it is apparent from the application (Founding Affidavit) read with the Opposing Affidavit and Replying Affidavit, that the court cannot find that a reasonable man in the position of the Applicant would not see any prospects or practicality in proceeding with the relationship, and I cannot find that any of the Respondents were delinquent either. To that I will return briefly in the discussion later on.
- [28] The Applicant was not prevented to take part, or participate in the actual conduct of the business of the corporation, nor refused access to any of the information held by the Corporation. The fact that Mr. Bailie's reply to request for information was delayed, in my opinion, does not indicate bad faith on the part of the Respondents.
- [29] If an application is launched in terms of Subsection 1 (d) the Applicant will have to establish that justice and equity and

circumstances relevant for the purposes for subsection (d) need not involve any conduct by the member concerned, whether with reference

to carry on of its business or any other matter relating thereto or otherwise. The circumstances that the Applicant needs to prove need not involve any conducts by any of the members with reference either to the conduct of the corporation's business or the corporation; for example where a dispute, pertaining to neither the conduct of the business as such, nor the corporation as such, results in the collapse of the relationship between the only two members which would result that continued corporation between them for any purpose is precluded, such an order would be justified.

[30] Subsection 1 (d) however gives wide and virtually unlimited scope for the application of Section 36 of the Act, the only limitation being that the “just and equitable” requirement. The order that the court can make in terms of Section 36 (1) of the Act is circumscribed, namely an order that the member shall cease to be a member of the close corporation. Once a court decides that an order for such cessation of membership should be made, it has a discretion to make further orders referred to in subsection 36 (2).[17]

[31] In deciding whether it is “just and equitable” to order the cessation of the Applicant’s membership in the Corporation, the reaching of a conclusion that it would be “just and equitable” involves the exercise, not of a discretion, but of a judgment on the facts found by the court to be relevant; once, however, such conclusion is reached, the making of the order for the cessation does involve the exercise of a discretion.

The ground of “just and equitable” postulates not only facts, but only a broad conclusion of law, justice and equity.[18]

[32] An applicant who relies on the grounds of “just and equitable” must come to the court with clean hands. That is, he must not himself have been wrongly responsible for, or have connived at bringing about, the state of affairs which he asserts results in its being “just and equitable” to make the order of cessation of members.[19]

[33] As a close corporation is akin to a partnership or a domestic company, that is a company with a small membership, winding-up or cessation is “just and equitable” where the “deadlock” principle derived from *In Re Yenidje Tobacco Co. Ltd* (1916) 2 Ch 426 (CA) can be applied. This is founded on the analogy of a partnership and is strictly confined to those small domestic companies/corporations in which, because of some arrangement, express, tacit or implied there exists between a members in regard to the company’s affairs particular personal relationship of confidence and trust similar to that existing between partners in regard to a partnership’s

business.

[34] Usually that relationship is such that it requires the members to act reasonably and honestly towards one another and with friendly co-operation in running the company’s affairs. If by conduct, which is either wrongful or not as contemplated by the arrangement, one or more of the members destroys that relationship, the other members are entitled to claim that it is just and equitable that the company should be wound-up in the same way as, if they were partners, they could claim dissolution of the partnership.[20]

[35] The destruction of a relationship may result in a literal deadlock, that is where the factions hold equal holding power in general meeting in which event winding-up must ordinarily inevitably ensued, but it is not necessary to establish literal deadlock. It is sufficient to show that as a result of the particular conduct, there is no longer a reasonable possibility of running the company (Corporation) consistently with the basic arrangement between the members.

- [36] Section 36 of the Act also deals with an application to court by a member of a close corporation, but such member is not required to establish conduct of the nature referred to in Section 49 of the Act, namely conduct affecting him. It is the conduct of the business of the close corporation that must be affected, either by the existence of the circumstances envisaged by subsection 1 (a) or by conduct as described in subsections 1 (b) and 1 (c). Subsection 1 (d), however, gives wide and virtually unlimited scope of application of Section 36.
- [37] Once the court has found that the circumstance as provided for in Section 36 (1) exists, it can proceed to apply the relief provided for in Section 36 (2).
- [38] The court can however not make an order in terms of Section 36 (2) if such an order will not be effective.

DISCUSSION

- [39] The Applicant relies on the following allegations for the relief sought. It is implicit in his case and he states that:

[39.1] The Respondents manages the affairs of the First Respondent and they carry on its business whilst the Applicant is not actively involved in the affairs of the Corporation;

[39.2] The Respondents do not keep the Applicant involved of the affairs of the Corporation;

[39.3] The Applicant is excluded from the decisions-making process regarding the business of the First Respondent;

[39.4] As a result and considering the fact that the Applicant no longer resides in South Africa, it will be just and equitable if the membership interest in the First Respondent is acquired by the Respondents;

[39.5] There have been a number of acts and/or omission on the part of the Respondents that are unfairly prejudicial, unjust and/or inequitable to the Applicant which entitles him to relief;

[39.6] The business relationship and/or the relationship of trust that subsisted between the Applicant and the Respondents has broken down irretrievably;

[39.7] Notwithstanding the fact that the Applicant resigned as an employee of the First Respondent, he remains a member of the Corporation and was entitled to participate in the business and management of the Corporation to provide it with all relevant information in this regard.

[39.8] Since the Applicant's departure the Respondents removed him from the whatsapp and emails of the Corporation and he has not been requested to sign any documents on behalf of the Corporation including banking facilities, financial statements and tender documents.

[39.9] The parties thereafter embarked on a process of evaluating the business for the First Respondent and pursuant thereto an agreement was reached in respect of the sale of Applicant's member's interest.

[39.10] On 26 June 2018 the Applicant sought information relating to the amount due to May Clancy and certain other documentation. During July the Applicant requested management accounts and bank statements of the Corporation and on 25 September 2018 the Respondents advised that it does not keep management accounts and provided the financial statements as well as the bank statements.

[40] The Applicant submits that it is just and equitable to terminate his membership in and to the close corporation, and submits that the valuation attached to the Applicant's application[21] was the valuation that the parties agreed upon, and that 30% of the said, amount less what was paid in respect of the R 25 000.00

per month from February 2018, should be paid to the Applicant for his interest.

[41] The nub of the Applicant's argument is that the Respondents took about two months to provide the Applicant's attorney with the financial documentation, as well as the fact that the Respondents stopped paying the R 25 000.00 instalments during August 2018, resulted in the relationship between the parties having irretrievably broken down. Also the Applicant was required to sign financial statements only having sight of one page.

[42] This, the Applicant alleges, destroyed the business relationship between the Applicant and the Respondents.

[43] The Respondents' version is simple:

[43.1] The Applicant out of his own accord decided to emigrate to Portugal;

[43.2] The Applicant by his own accord decided to resign from the employ of the First Respondent;

[43.3] Agreed to receive R 25 000.00 per month payment as pre-payment for his interest in the corporation until the purchase price for his interest could be agreed upon;

[43.4] That no agreement as alleged by Mr. Heinsen was entered into between the Applicant and the Respondents as set out in Mr. Heinsen's letter dated 5 June 2018;

[43.5] That Annexure JCC8 (the Deed of Sale of an interest in the Close Corporation) was never received by them;

[43.6] That the relationship between the parties has not irretrievably broken down, but that the Applicant jumped the gun and has to return to the table to negotiate the purchase price for his interest and the terms whereof he will be paid for his interest in the corporation.

[43.7] The Respondent state that the valuation annexed to the Applicant's Founding Affidavit was acceptable as a basis to start the negotiations on, but not as the purchase price.

- [44] In any event the Respondents confirm that they cannot afford to pay the Applicant an amount of R 2 517 000.00 as clearly evidenced from their Opposing Affidavit.[22]
- [45] From the discussions on the whatsapp that is annexed to the Respondents' Opposing Affidavit[23] it is clear that their discussions up and until 20 September 2018 was cordial, friendly and that there existed no dispute between the parties.
- [46] On 20 September 2018 however it appears that the letter from Mr. Heinsen threatening the First Respondent with liquidation upset the Second Respondent.
- [47] Suddenly the parties could not discuss the terms of the settlement in person anymore, and it appears that the Applicant was unhappy for being removed from the whatsapp group. The negotiations were however not at the point of deadlock at all. Applicant simply referred the Second Respondent to his attorney for further negotiations:

"Tuesday. [2018/09/28, 11:52:85 AM] David Clancy: I want to chat about the letter from Frank

[2018/09/20, 11:56:44 AM] Carlos Leitao: You can speak to Frank

[2018/09/28, 12:00:02 PM] David Clancy: So you don't want to discuss it with me

[2018/09/20, 5:14:53 PM] David Clancy: No problem I thought we could have discussed our issues. Obviously not. I'll speak to Frank.

[2018/09/20, 5:23:38 PM] Carlos Leitao: Dave that is what we agreed to use Frank for to deal with stuff on my behalf please I have enough worries and haven't been well I don't need arguments or more stress if you don't understand that I know where I stand. I been removed from everything and you want to discuss things why was u removed from the emails even whatsapp Kusile ? You think that is right?

[2018/09/20, 5:41:16 PM] David Clancy: No problem Carlos I haven't removed your email and I didn't think you wanted to be bothered with the shit from the Kusile group. I also don't want to have arguments I just thought your letter from frank was a bit harsh and wanted to discuss it with you.

[2018/09/20, 5:49:29 PM] Carlos Leitao: You should go and check and see what email I have seen to do with easy electric. Why don't I see the correspondence? It might be shit to you but I used to say hello to the guys is it wrong of me keeping friendly with the guys?

[2018/09/20, 6:01:46 PM] David Clancy: Carlos you have retired. I didn't think you wanted to be bothered with shit going on on site. I think you are out of line have you seen the letter frank sent. I think that is a bit harsh. Is this all about being removed from a fucking WhatsApp group??

[2018/09/28, 6:83:33 PM] Carlos Leitao: If you think I am out of line speak to Frank.

[2018/09/20, 6:04:08 PM] David Clancy: Okay will do

[2018/09/20, 6:05:06 PM] Carlos Leita: You very wrong if you think it's to do with whatsapp group. Let's leave it there speak to Frank”

- [48] From what is stated above, it is clear that the parties cannot agree, at this stage on a purchase price for the Applicant's interest in the First Respondent, however the parties' attorneys also did not attempt to further the negotiations. A counter proposal was made by the Respondent's attorney on 19 June 2018, but Applicant failed to engage further and elected to launch this application.
- [49] There is however no irretrievable breakdown of the relationship between Applicant and the Respondent, and it is my opinion that the Applicant jumped the gun. The fact that Applicant was removed from the whatsapp group does not render the negotiations as having reached a deadlock. The parties negotiated through their attorneys in any way. I cannot understand why the Applicant did not instruct his attorney to proceed and engage with Respondent's attorney
- [50] The Applicant should, in his Founding Affidavit, provide this court with sufficient information to enable this court to decide whether it is just and equitable, based on facts, that his membership in the Corporation should be terminated, and whether this court should apply its discretion and make an order in terms of Section 36 (2) of the Act.
- [51] I can find no objective facts in the conduct of the Respondents to justify a finding that it is just and equitable to terminate the Applicant's membership, and to make an order in terms of Section 36 (2) of the Act. The facts relied upon by the Applicant does not indicate a deadlock or serious dispute between them. All that remains in dispute is the purchase price for the interest and the terms of repayment. This cannot be interpreted as facts for the court to conclude that there has been an irretrievable breakdown in the relationship, nor does it constitute facts indicating that it is just and equitable to grant an order in terms of Section 36 (1) (c) and (d), read with Section 36 (2) of the Act.
- [52] The Respondents' version, that they cannot afford to pay the amount required by Applicant for his interest, and even if the court should find that the amount set out in the valuation attached to the Founding Affidavit was agreed upon, this court can also not make an order in terms of Section 36 (2) of the Act, as it will not be an effective order that could be enforced.
- [53] However, even before the court considers an order in terms of Section 36 (2), the court must first find that the jurisdictional facts as set out in Section 36 (1) is present, which this court cannot do, as explained supra.
- [54] I accordingly make the following order:
- [54.1] That the Applicant's application is herewith dismissed with costs.

HF BRAUCKMANN

ACTING JUDGE OF THE HIGH COURT

COUNSEL FOR THE APPLICANT: ADVOCATE DANIEL PRINSLOO

INSTRUCTED BY: KRUGEL HEINSEN INC

C/O TERBLANCHE PISTORIUS INC

COUNSEL FOR THE RESPONDENTS: ADVOCATE AN KRUGER

INSTRUCTED BY: IAN BAILIE ATTORNEYS

C/O ALTUS NEL WELTHAGEN

& GELDENHUYS INC

DATE OF HEARING: 30 MAY 2019

DATE OF JUDGMENT: 10 JUNE 2019

[1] Bundle, Page 69, Annexure JCC14 [2] Bundle, Page 52, Annexure JCC7

[1] Bundle, Page 69, Annexure JCC14

[2] Bundle, Page 52, Annexure JCC7

[3] Bundle, Page 53, Annexure JCC8

[4] Bundle, Annexure JCC8, Page 54, clause 2 and Page 55, clauses 2.3 and 2.4

[5] Bundle, Annexure JCC4, Page 43

[6] Bundle, Annexure JCC9, page 62-63

[7] Bundle, Pages 109-116

[8] Bundle, Page 64, Annexure JCC10

[9] Bundle, Page 65, Annexure JCC11

[10] Bundle, Page 65, Annexure JCC12

[11] Bundle, Page 116

[12] Bundle, Annexure JCC13, page 68

[13] Bundle, Page 1-2

[14] 1997 (3) SA 878 (SECLD) at 896

[15] Smyth and Another v. Mew 2010 (6) SA 537 (SCA) at paragraph 25

[16] Geaney

v. Portion 117 Kalkheuwel Properties CC & Others 1998

(1) SA 622 (T) at 631 and Smyth, *supra*, paragraph 26 and 27

[17] De Franca *supra*, page 893, F-I[18] Henochsberg on Companies Act, Issue 5, Page 318 (6), Volume 1

[19] Henochsberg on Companies Act and Commentary, Page 319 and the judgments quoted there

[20] Moosa

v. Mavjee Bhawan (Pty) Ltd. 1967 (3) SA 131 (T) at 137 to 138; and Apco Africa Co v. Apco Worldwide (Pty) Ltd

[2008] 4 All SA 1 (SCA) at paragraph 18; and Henochsberg *supra*, page 322

[21] Bundle, Annexure JCC5, pages 48 to 50

[22] Bundle, Page 90, Paragraph 21

[23] Bundle, Pages 105 to 116

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