

SOUTH AFRICA / JUDGMENT

Van Vuuren v Van Den Heever N.O and Others (2023-084243) [2025] ZAGPPHC 174 (26 February 2025) [2025] ZAGPPHC 174

COURT

North Gauteng High Court, Pretoria

BEFORE

Crutchfield

CASE / FILE NUMBER

2023-084243

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

Number: 2023-084243

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

DATE:

26 February 2025

SIGNATURE

In

the matter between:

DEON
VAN
VUUREN
Applicant/Defendant
and
THEODORE
WILHELM VAN DEN HEEVER N.O.
First Respondent/First Plaintiff
MELONY
SIMONE KNIPE N.O.
Second Respondent/Second Plaintiff
THOMAS
THUTHIKA SIZUYISE KHUMALO N.O.
Third Respondent/Third Plaintiff
JABOLANI
KHUMALO N.O.
Fourth
Respondent/Fourth Plaintiff
RYNETTE
PIETERS N.O.
Fifth Respondent/Fifth Plaintiff

JUDGMENT

CRUTCHFIELD J

- [1] This is an opposed application in terms of rules 35(12) and (14) of the Uniform Rules of Court. The applicant, Mr Deon van Vuuren, is the defendant in the pending trial action. The respondents before me are the plaintiffs in the action proceedings.
- [2] The respondents delivered a supplementary affidavit prior to the hearing of the application before me. The respondents, at the hearing, did not seek the admission of that supplementary affidavit and in the circumstances I need not deal further with that affidavit.
- [3] On 10 October 2023 or thereabouts, the applicant delivered a notice in terms of rules 35(12) and 35(14) (“the notice”), requesting the production of a list of documents in terms of both rule 35(12) and rule 35(14). The applicant at this stage, has not delivered a plea to the respondents’ particulars of claim in the main action.
- [4] The respondents refused to produce any of the requested documents in terms of both rules 35(12) and 35(14) on the grounds that no reference was made in the particulars of claim to any of the documents requested by the applicant in terms of rule 35(12). In respect of the documents requested under rule 35(14), the respondents alleged that none of the requested documents were required by the applicant for the purposes of pleading to the particulars of claim and that the applicant was not entitled to the production of the requested documents for the purposes of rule 35(14). Those two grounds were the only grounds raised by the respondents in their notice in terms of rule 35(12) and rule 35(14).

- [5] Thus, the applicant instituted this application for production of the requested documents. The respondents oppose the application.
- [6] In terms of the notice of motion, the applicant claimed production of the documents sought in terms of the notice under both rules 35(12) and 35(14). At the hearing before me, the applicant narrowed the documents it sought to those items referred to in paragraphs 1.1, 1.2 and 1.4 of the notice of motion. Furthermore, the applicant, in terms of paragraph 11 of the replying affidavit, alleged that he accepted that he was not entitled to persist with the application to compel in terms of rule 35(12) but persisted with production of the documents required for the purposes of pleading in terms of rule 35(4). In the circumstances, I deal only with the production of the documents referred to in paragraphs 1.1, 1.2 and 1.4 of the notice of motion in terms of rule 35(14).
- [7] The applicant issued the compelling application before me without complying with rule 30A. There is some authority to the effect that compliance with rule 30A is a necessary precursor to procuring an order compelling production of documents in terms of rule 35(12) and / or rule 35(14). There is also authority to the effect that compliance with rule 30A is not necessary.
- [8] However, it is evident that the respondents are not willing to produce any of the requested documents absent an order of this court and delivery of a notice in terms of rule 30A will not change the respondents' stance. I do not criticise the respondents for their stance, they are entitled to take it if they consider it to be appropriate in the circumstances.
- [9] This court, however, has a discretion in respect of procedural issues and in the circumstances of this matter, postponing the application for purposes of compliance with rule 30A will serve only to delay the final outcome and result in the parties incurring unnecessary costs. In the circumstances, I do not require compliance with rule 30A in the specific circumstances of this matter and I intend to deal with the application on its merits as I find it before me.
- [10] Rule 35(14) requires that the requested documents be necessary for the requesting party to plead. "Necessary" in the sense contemplated in the rule means "essential" for the purposes of pleading. Only specific documents, described precisely in terms of the notice or request, are contemplated for production in terms of rule 35(14).
- [11] It is self-evident that the scope of rule 35(14) is far narrower than that of rule 35(12).
- [12] Insofar as the respondents submitted in argument before me that certain of the requested documents did not exist, that was not alleged in the respondents' reply to the applicant's notice. Nor did the respondents allege that the requested documents were not within their possession, only that the documents were not referred to as required in rule 35(12) and that none of the requested documents were required by the applicant in order to plead, even if the requested documents did exist.

- [13] Turning to the plaintiffs' particulars of claim, the first plaintiff is Theodore Wilhelm van den Heever N.O., who sues in his capacity as the jointly appointed liquidator of Praesidium Wealth (Pty) Ltd (in liquidation) ("Praesidium Wealth"). The first, second, third, fourth and fifth plaintiffs all sue in their official capacities as the duly appointed joint liquidators of Praesidium Wealth. The plaintiffs' claims against the defendant, the applicant before me, arose pursuant to the collapse of Praesidium Wealth, allegedly, what is colloquially termed a "pyramid" or "ponzi" scheme, in terms of s26 of the Insolvency Act read with s32 of the Insolvency Act, and in the alternative thereto, in terms of s29 of the Insolvency Act read with s32 of that Act.
- [14] The claims against the applicant are for payment of R1 231 000.00 and payment of R267 000.00, together with relief ancillary to both claims.
- [15] The plaintiffs allege that Praesidium Wealth conducted an unlawful business scheme, that it participated in fraudulent financial transactions and that it conducted a "Ponzi type" investment scheme in which participants were paid fictitious returns from the investments made by subsequent investors in the scheme. The plaintiffs allege inter alia in paragraph 15.1 of the particulars of claim that at all relevant times, the liabilities of Praesidium Wealth exceeded its assets and that Praesidium Wealth was unable to pay its debts as contemplated in s339 and s340 of the Companies Act of 1973.
- [16] The applicant contends that those statements are positive averments and sufficient to justify an order that the respondents produce inter alia the audited financial statements and further documents in respect of Praesidium Wealth in terms of paragraph 1.1 of the notice of motion.
- [17] The documents requested in paragraph 1.1 of the notice of motion comprise audited financial statements of Praesidium Wealth from 1 January 2016 to the date of liquidation. The documents are referred to in the notice as the audited financial statements with reference to the specified dates thereof being for the period 1 January 2016 to the date of liquidation. In the circumstances, I am of the view that the specification of the documents in paragraph 1.1, the audited financial statements, specified with reference to their nature and the specific date for which those audited financial statements apply, is sufficient to qualify as a description of the documents in terms of rule 35(14). Annual financial statements are referred as annual financial statements and these are specified with reference to the particular applicable dates. That is sufficient in terms of rule 35(14).
- [18] The same applies in respect of the documents referred to in paragraphs 1.1.1 being monthly management account statements, 1.1.2 being general ledger accounts, 1.1.3 being income and expenditure account statements, 1.1.4 being balance sheets, 1.1.5 being cash flow statements and 1.1.6 being auditors' reports in respect of Praesidium Wealth, for the period 1 January 2016 to date of liquidation. The reference to the documents in terms of their nature, the fact that they apply to Praesidium Wealth and

the period for which they apply, being 1 January 2016 to the date of liquidation, is sufficient to qualify as a description in terms of rule 35(14).

- [19] It is important in this context that Praesidium Wealth is a “pyramid” or Ponzi scheme. The applicant has no knowledge of what transpired in terms of Praesidium Wealth, pursuant to which the claims in terms of s26 and s29 of the Insolvency Act are being made against him, against the backdrop of the allegations referred to by me aforementioned. Documents that support the plaintiffs’ positive averments made against the defendant, such as those alleged in paragraphs 13, 14 and 15 to mention only three paragraphs of the particulars of claim and referred to by me above, are necessary for the plaintiff to plead.
- [20] It does not assist the plaintiff or the parties, if such documents are produced at a later stage. The sooner the applicant is able to properly plead to the case against him, the better for all the parties and the court. Access by the applicant to the documents referred to by description in terms of paragraphs 1.1, including 1.1.1, 1.1.2, 1.1.3, 1.1.4, 1.1.5 and 1.1.6 are adequately described by reference to their nature and date and are necessary for the applicant to plead in the particular circumstances of this matter, where the applicant was at arms’ length to Praesidium Wealth and the latter allegedly was a fraudulent scheme.
- [21] The applicant, in paragraph 1.2 of the notice of motion, requests the production of bank statements of Praesidium Wealth for the period 1 January 2016 to date of liquidation. The plaintiffs refer in paragraph 16 of the particulars of claim to a specific bank account held at First National Bank under account number 6[...] and referred to as “the designated bank account,” from which the alleged dispositions were made by Praesidium Wealth to the applicant.
- [22] It speaks for itself that the reference, even by the plaintiffs, to the specific First National Bank account referred to as “the designated bank account,” constitutes a sufficient reference for purposes of rule 35(14). Furthermore, the plaintiffs allege that immediately after each disposition, the liabilities of Praesidium Wealth exceeded its assets.
- [23] Accordingly, the applicant is entitled to production of the bank statements in respect of the designated bank account, the aforementioned First National Bank account, for the period 1 January 2016 to the date of liquidation, such bank statements being necessary for the applicant to plead to the allegations made by the plaintiffs against the applicant in the particulars of claim.
- [24] The reference to “bank statements of Praesidium Wealth” in terms of paragraph 1.2 of the notice of motion, (excluding the designated bank account), is far too general for the purposes of rule 35(14).
- [25] Hence, I am of the view that the applicant is entitled to production of the bank statements in respect of the designated bank account only, for the period of 1 January 2016 to the date of liquidation.

[26] As to the applicant's claim in terms of paragraph 1.4 of the notice of motion, for production of all agreements entered into between Praesidium Wealth and its investors, including the agreements entered into with the defendant for the period of 1 January 2016 to the date of liquidation, the applicant is entitled in terms of rule 35(14) to such agreements as were entered into between Praesidium Wealth and the defendant himself, for the period 1 January 2016 to the date of liquidation. The applicant is not entitled, at this stage of the proceedings, to agreements entered into between Praesidium Wealth and other investors.

[27] In the circumstances of this application and the order that I intend to make as contemplated in the judgment, both parties have had some success albeit that the applicant's success is limited. In the circumstances, I am of the view that the costs of this application should be paid by each party paying their own costs.

[28] In the circumstances, the following order

issues:

1. The plaintiffs / respondents are ordered to produce and / or make available for inspection and copying in terms of rule 35(4) of the Uniform Rules of Court, the documents referred to in:
 - 1.1. paragraphs 1.1 (including paragraphs 1.1.1; 1.1.2; 1.1.3; 1.1.4; 1.1.5 and 1.1.6) of the notice of motion;
 - 1.2. paragraph 1.2 of the notice of motion limited to bank statements in respect of First National Bank under account number 6[...] ("the designated bank account") only, for the period of 1 January 2016 to the date of liquidation; and
 - 1.3. paragraph 1.4 of the notice of motion limited to all agreements entered into between Praesidium Wealth and the applicant / defendant only, for the period of 1 January 2016 to the date of liquidation.
2. The parties are ordered to make payment of their own costs of the application.

I hand down the judgment.

CRUTCHFIELD J

JUDGE OF THE HIGH COURT

For the Applicant: Advocate P Venter instructed by Dunsters Attorneys. For the Respondents: Advocate M Jacobs instructed by Mostert & Bosman Attorneys. Date of Hearing: 19 February 2025. Date of Judgment: 26 February 2025.

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Prepared on 8 October 2026 · Esheria