REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NUMBER: 45995/2021

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

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SIGNATURE DATE

In the matter between:

CHRISTOPHER FINANCE PROPRIETARY LIMITED

Applicant

And

STEYN SMAL INCORPORATED **First Respondent**

THE PARTIES DESCRIBED IN ANNEXURE "A"

TO THE NOTICE OF MOTION **Second Respondents**

GERHARD NOTHNAGEL INCORPORATED **Third Respondent**

GERHARD NOTHNAGEL **Fourth Respondent**

JUDGMENT

WINDELL, J:

INTRODUCTION

[1] This is an application in two parts. The applicant seeks, in terms of Part A to, inter alia, interdict and restrain the first respondent, a firm of attorneys, "Smal Inc." from making any payment to any person, including itself, from any proceeds received by it from the Road Accident Fund ("the RAF") on behalf of its clients, (the second respondents). The second respondents' names are listed in annexure "A" to the Notice of Motion (hereinafter referred to as "the RAF clients"). It is alleged that the applicant is the cessionary of debts owed by the RAF clients to the third respondent, Gerhard Nothnagel Incorporated ("Nothnagel Inc."), also a firm of attorneys. Smal Inc. is the only respondent opposing the relief and denies that the applicant is entitled to the debts. The interim relief is therefore sought pending the final determination of the applicant's entitlement to those monies in Part B of the Notice of Motion. Only Part A is before the court.

[2] The applicant alleges that the RAF clients were previously clients of Nothnagel Inc., who had mandated them on a contingency basis in RAF matters. In terms of the contingency fee agreements, upon success on their claims, the RAF clients would become obliged to pay fees and disbursements owing to Nothnagel Inc.

[3] Smal Inc. denies that the erstwhile clients were that of Nothnagel Inc., but contends that they were the clients of Nothnagel Attorneys, a separate entity from Nothnagel Inc. It is submitted that the incorporated company (Nothnagel Inc.) had never been appointed as the firm of attorneys of record to institute and/or pursue

legal proceedings on behalf of clients —whether based on contingency fees agreements, or otherwise. At all times relevant, so it is argued, the sole proprietorship (Nothnagel Attorneys) was appointed as attorney of record to institute and/or pursue legal proceedings on behalf of clients.

[4] The present matter concerns 267 erstwhile clients.[1] Smal Inc. denies that it represents all 267 RAF clients, but admits that it represents at least 180 of the erstwhile clients in various RAF claims.[2]

[5] In 2018, when the RAF clients were still with Nothnagel Inc. (or with Nothnagel Attorneys, as alleged by Smal Inc.), Nothnagel Inc. approached the applicant for bridging finance. That is to finance the litigation of its clients' claims, given that its fees and disbursements would only become payable by the clients upon success of their claims and receipt of monies from the RAF. This resulted in the applicant and Nothnagel Inc. concluding a suite of financing agreements. As the primary purpose of these financing agreements was to enable Nothnagel Inc. to obtain monies in anticipation of being paid its fees and disbursements by the RAF on the individual RAF matters, Nothnagel Inc. was obliged to repay the capital amount of the financing, plus interest, upon receipt by it of the proceeds of a successful claim from the RAF on behalf of the client, or upon the expiry of the term of the particular loan for that client matter. As security for that financing, Nothnagel Inc. ceded to the applicant, by way of two cessions in *securitatem debitii*, its book debts which included the fees and disbursements that may become owing by the its clients ("the ceded fees and disbursements"). The two security cessions were concluded on

[1] Annexure "A" contains 254 RAF clients. Another 13 matters, the "Amputees" were added to the list.
[2] Ms Steyn of Smal Inc. in her list of 22 September 2021 records that Smal Inc. is in possession of 163 identified files. That number, now in the replying affidavit, has changed and has increased to 180 files.

13 June 2018 and 25 September 2018 respectively, and are dealt with in more detail later in this judgment.

[6] Smal Inc. denies that the applicant has taken security cession of Nothnagel Inc.'s entitlement to recovery of fees and disbursements from **all** its clients. It is submitted that the cession can only be over the files on which Nothnagel Inc. provided financing and that the applicant only provided financing on 20 of the files that were taken over from Nothnagel Attorneys. It is submitted that the parties' true intention is clear from an affidavit filed by Mr Nothnagel in opposition to court proceedings instituted by the applicant against Nothnagel Inc. in Pretoria. In this affidavit Mr Nothnagel stated that the sole proprietorship was appointed and would continue to be appointed as attorney of record to institute and/or pursue legal proceedings on behalf of clients, based on contingency fees agreements; and the sole proprietorship would obtain funding from the applicant to temporarily finance the payment of its contingency fees (or part thereof) in all approved client matters where such settlements have been reached. The applicant disputes this allegation and alleges that although the RAF practice was initially conducted by Mr Nothnagel as a sole proprietorship, his practice was subsequently incorporated on 25 January 2018 in the form of Nothnagel Inc. It is therefore submitted on behalf of the applicant that at all material times the practice traded under the name and style of Nothnagel Attorneys and that the financing agreements were concluded after the incorporation of Nothnagel Inc.

[7] After the applicant had provided financing and had taken security cession of Nothnagel Inc.'s entitlement to recovery of the fees and disbursements from its clients, files relating to the RAF clients were either transferred to, or taken over by Smal Inc. This occurred on or about December 2020. It is common cause that the

members of Smal Inc., Ms Smal and Ms Steyn, as well as Mr Verdoes (who was the business development caseflow manager at Nothnagel Attorneys since 2014) were previously employed by Nothnagel Attorneys. The applicant states that it does not know whether Nothnagel Inc. intended to cede the fees and disbursements on those client files and mandates to Smal Inc., but even if it had so intended, the applicant did not consent to the cession of any entitlement to those fees and recovery of those disbursements. It is submitted that as the applicant had a real right of security over those fees and disbursements, they could not be ceded or otherwise transferred to Smal Inc. It is further submitted that Nothnagel Inc. remained entitled to payment of its attorneys and own client fees and disbursements from its clients, as provided for in terms of the Contingency Fee Rules[3], promulgated in terms of section 6 of the Contingency Fees Act.[4]

[8] In any event, Nothnagel Inc. subsequently failed to honour its repayment obligations to the applicant in respect of the financing. What would follow, were extensive interactions, including by way of court proceedings instituted in Pretoria, between *inter alia* the applicant, Smal Inc. (Ms Smal and Ms Steyn), as well as Nothnagel Inc. to protect the applicant's security interests. The court proceedings eventually culminated in a settlement agreement on 20 August 2021 between the applicant, Nothnagel Inc. and the fourth respondent, Mr Nothnagel, the sole director of Nothnagel Inc. In terms of the settlement agreement both Nothnagel Inc. and Mr Nothnagel admitted their indebtedness, jointly and severally to the applicant in the sum of R23,313,571.42 in respect of the bridging loan financing. Nothnagel Inc. also agreed to appoint Ms Smal as a designated co-signatory on the relevant trust account operated by Nothnagel Inc. to co-authorise any payments, disbursements or

[3] Published in the Government Gazette No. 42739 on 4 October 2019.
[4] No 66 of 1997.

transfers out of that trust account for purposes of protecting the applicant's security interests. Smal Inc. disputes the validity of the settlement agreement and contends, *inter alia*, that it was not consulted.

[9] On 26 August 2021, the applicant sought certain undertakings from Smal Inc. relating to 254 RAF clients. It effectively sought an undertaking that Smal Inc. would retain the proceeds received from the RAF in respect of these RAF clients on trust, until a proper accounting had taken place. Whilst awaiting the undertaking, the applicant subsequently discovered that Smal Inc., inter alia, received monies from the RAF in respect of at least three of the RAF clients, without informing the applicant. The monies were received for the following RAF clients, namely, M.S. Hlaele (R507,330.00 on 27 August 2021), A. Banda (R3,470,110.20 on 30 August 2021) and L. Shibambo (R1,493,563.00 on 2 September 2021).

[10] Undertakings were eventually provided by Smal Inc., but it was limited to 163 RAF clients in circumstances where it is alleged that there were 254 RAF clients. This meant that 91 RAF client matters were not accounted for. In addition, Smal Inc. had failed to make any disclosure in relation to the proceeds received from the RAF on the said 163 matters. The applicant was not satisfied with the undertakings and it was finally rejected on 23 September 2021.

[11] As a result, the applicant approached the urgent court for interim relief during October 2021. The urgent court struck the matter from roll for lack of urgency. The matter was subsequently set down before this court in the ordinary motion court.

THE ISSUE

[12] The applicant submits that, as cessionary, it is entitled to be paid attorney and own client fees and disbursements on each of the RAF clients, as a first charge.

Because the applicant has not been paid, and does not know to what extent Smal Inc. has debited its fees against these receipts or made payment to third parties, the applicant had no alternative but to seek interim relief preserving the RAF proceeds in trust pending the final determination as to the applicant's entitlement to payment of the specified fees and disbursements.

[13] Smal Inc. disputes the applicant's entitlement to the fees and disbursements and submits that the files currently with the firm over which Smal Inc. hold mandates does not fall within the alleged cession and pledge agreement as the files were taken over from Nothnagel Attorneys and not Nothnagel Inc. It therefore denies that the applicant holds a valid cession and pledge agreement over the book debts of all the RAF clients. Smal Inc. further contends that Nothnagel Attorneys did not cause attorney-own client bills of costs to be drawn when terminations of mandates were sent to them in accordance with the Contingency Fee Rules (Rule 4.2) and that it was agreed to between Mr Nothnagel and Mr Verdoes, that all fees generated on the files taken over by Smal Inc. were to be utilized to service the list of creditors also taken over by Mr Verdoes. The applicant, so it is argued, is therefore not entitled to any fees and disbursements as it does not hold a valid cession.

[14] There is accordingly a dispute between the applicant and Smal Inc. as to who is entitled to those debts. This dispute is to be determined pursuant to Part B of the notice of motion in these proceedings.

THE CESSIONS

[15] As stated, the applicant provided Nothnagel Inc. with bridging finance. In return and as security for that financing, Nothnagel Inc. ceded to the applicant, by way of two cessions *in securitatem debitii,* its book debts which include the fees and

disbursements that may become owing by its clients. The applicant's rights as a security cessionary appear from the express wording of the two security cessions that are annexed to the founding affidavit. “Book Debts” is defined in clause 2.4 of each security cession as meaning *“all current and future proceeds to be received as consideration for services rendered by the Firm of Attorneys to its clients in general in the course of its business”.* Nothnagel Inc.’s entitlement to fees from each of its clients, fall within the “Pledged Proceeds” and “Book Debts” as was ceded as security to the applicant. It is clear from the operative clause 3.1 of each security cession as read with the definition of the book debts in clause 2.4 of each security cession that the security cessions extend over all current and future proceeds that were to be received by Nothnagel Inc. as consideration for services rendered to its clients in the course of its business.

[16] The attempt by Smal Inc. in its answering affidavit to confine the extent of the ceded book debts to certain debts only, conflicts with the express wording of the security cessions. The applicant accordingly has a real right of security over the attorney and own client fees and disbursements owing by its clients to Nothnagel Inc. Nothnagel Inc.’s clients effectively became the debtors of the applicant, subject to the ceded fees and disbursements becoming due and payable by the clients upon the recovery of proceeds from the RAF.

[17] When Nothnagel Inc.’s clients’ files were transferred or taken over by Smal Inc. the applicant continued to have cession over, *inter alia*, the ceded fees and disbursements owing by the clients to Nothnagel Inc. Any transfer and/or taking over of the files and mandates cannot deprive the applicant of its security over the fees and disbursements owing by the clients to Nothnagel Inc.

[18] In the settlement agreement that was concluded between the applicant and Nothnagel Inc. and Mr Nothnagel, they admitted their indebtedness to the applicant and confirmed the validity and efficacy of the security cessions over the pledge proceeds and book debts, which include those fees and disbursements that are owing by its clients to Nothnagel Inc. In addition, Nothnagel Inc. ceded outright those fees and disbursements to the applicant in settlement of that portion of the indebtedness which exceeds the settlement amount i.e. R13,143,809.92 plus interest thereon. In partial settlement of the admitted indebtedness, Nothnagel Inc. also agreed that all fees that were, or may become due and payable to Nothnagel Inc. by its clients (corresponding to the ceded fees and disbursements) would henceforth vest in the applicant. Nothnagel Inc. therefore expressly ceded in favour of the applicant all such claims as it may have against Smal Inc. in respect of its clients.

[19] Thus, while previously the applicant was a security cessionary of the fees and disbursements that were owing by its clients in terms of the two security cessions for purposes of securing the indebtedness owing to it by Nothnagel Inc., the applicant is now the outright cessionary of those specified fees and disbursements in terms of the settlement agreement.

THE CONTINGENCY FEE RULES

[20] The Contingency Fee Rules preserves an erstwhile attorneys' entitlement to his or her attorney and own client fees and disbursements consequent upon a transfer of mandate during the course of a contingency fee matter. Rule 4.1 of the Contingency Fee Rules expressly provides that the client remains liable to pay the erstwhile legal practitioner all fees and disbursements paid or incurred by the legal

practitioner as at date of termination of the mandate, on an attorney and own client basis in accordance with the agreed tariff as per the applicable contingency fee agreement. The Contingency Fee Rules go further and in Rule 4.4 thereof expressly provide that: -

> *"Any legal practitioner taking over the further conduct of proceedings pursuant to a termination of mandate shall be obliged to hold the first legal practitioner covered for all reasonable fees and disbursements (if payment of disbursements was deferred by agreement) to be paid as a first charge against the proceeds of the claim." (Emphasis added).*

[21] Therefore, notwithstanding any termination by the clients of their mandates with Nothnagel Inc., those clients remain obliged to pay attorney and own client fees and disbursements to their erstwhile attorneys, and the subsequent attorney. This means that if it is later determined that the RAF clients in the present matter are subject to the cession and pledge agreements, Smal Inc., will be obliged to pay those attorney and own client fees and disbursements as a first charge against any monies received by it from the RAF for the particular RAF client.

INTERIM RELIEF

[22] The applicant at this stage seeks interim relief preserving the status quo pending the determination of part B of the notice of motion. The requirements for an interim interdict are trite: a prima facie right even though open to some doubt; a well-grounded apprehension of irreparable harm to the applicant if the interim relief is not granted and he ultimately succeeds in establishing the right; the balance of convenience favours the granting of interim relief; and the applicant has no other satisfactory remedy.

[23] The nature of the applicant's right that it seeks to protect, namely its entitlement to the debts being collected by Smal Inc., is of a vindicatory or quasi-vindicatory

nature. In such matters irreparable harm is presumed,[5] and it is not necessary for the applicant to demonstrate irreparable harm if the interim relief is not granted or that it has no other satisfactory remedy.[6]

[24] The main issue to be decided is whether the applicant has established a *prima facie* right, although open to some doubt, to the debts that are being collected and used by Smal Inc. There is a clear factual dispute on the papers. Whether there is such a right has to be decided on the applicant's version together with those averments made by the respondent that the applicant cannot dispute. That means that there is a reversal of the usual Plascon-Evans approach that favours the respondent's version where there is a *bona fide* material factual dispute.[7] Clayden J, in *Webster v Mitchell*[8] qualified it as follows:

> "The use of the phrase '*prima facie* established though open to some doubt' indicates I think that more is required than merely to look at the allegations of the applicant, but something short of a weighing up of the probabilities of conflicting versions is required. The proper manner of approach is to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at a trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown on the case of the applicant he could not succeed in obtaining temporary relief, for his right, *prima facie* established, may only be open to 'some doubt'. But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and

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[5] *Ndauti v Kgami* 1948 (3) SA 27 (W) at 37; *Stern & Ruskin NO v Appleson* 1951 (3) SA 800 (W) at 813B–C;
[6] *Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* 2003 (3) SA 268 (W).
[7] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).
[8] 1948 (1) SA 1186 (W) .

> the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief.[9]"

[25] The nature of the applicant's real right to the debts, is that it is alleged that the applicant is a cessionary of those debts. It is alleged that the applicant acquired a security interest over the fees and disbursements as they became (and continue to become) owing to Nothnagel Inc. by its successful RAF clients. The applicant therefore has a limited real right over the debts pledged and ceded as security to it as security for the outstanding indebtedness of Nothnagel Inc. In the settlement agreement Nothnagel Inc. and Mr Nothnagel, unequivocally acknowledged their indebtedness to the applicant (Nothnagel Inc. as the principal debtor and Mr Nothnagel as guarantor) in a sum exceeding R23,3 million and confirmed the applicant's rights to the ceded debts in terms of the two security cessions. They went further in the settlement agreement and by way of an outright cession ceded to the applicant all fees to which Nothnagel Inc. were or may become entitled in respect of 254 identified matters, in partial settlement of the outstanding indebtedness owing by them to the applicant. Accordingly, in addition to the applicant's limited real right by way of the two security cessions over the debts, the applicant subsequently pursuant to the settlement agreement became outright cessionary (owner) of the fees that have become and/or will become owing by the specified RAF clients and which correspond with the list of clients which are annexed as annexure "A" to the notice of motion.

[26] Both parties and signatories to the security cessions, being the applicant and Nothnagel Inc., confirm the security cessions and the subject matter of the security cessions. Nothnagel Inc., as represented by the fourth respondent, Mr Nothnagel,

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[9] At 1189.

have also acknowledged the efficacy of the security cessions in the settlement agreement concluded on 20 August 2021. On the other hand, Ms Steyn and Ms Smal on behalf of Smal Inc., on their own version, accept that they did not have internal knowledge of the workings of Nothnagel Inc., but contends that such fees were not earned by Nothnagel Inc. but rather by the sole proprietorship, being Nothnagel Attorneys. Smal Inc., supported by another former employee of Nothnagel Attorneys, Mr Verdoes, contend that the incorporated practice of Nothnagel Inc. did not at any time trade and therefore cannot have any clients that owe them fees and disbursements and which could have been ceded to the applicant. But the documents, including documents signed by Mr Verdoes himself, demonstrates otherwise. For example: the written declaration furnished by Mr Verdoes to RMB Private Bank confirming his source of income as being his employment at Nothnagel Inc. with registration number 2018/039005/21, which corresponds with the incorporated third respondent and not the sole proprietorship fourth respondent; the letter emanating from First National Bank confirming the bank accounts opened by Nothnagel Inc.; a completed compliance assessment in which Nothnagel Inc. is expressly referred to; and a letter emanating from Nothnagel Inc.'s auditors addressed to Nothnagel Inc.

[27] Therefore, although the origin of the RAF clients (the applicant contends that they were the clients of Nothnagel Inc. and Smal Inc. contends that they were the clients of Nothnagel Attorneys) and the exact number of files in the possession of Smal Inc. are disputed (the applicant contends that there are 267 matters while Smal Inc. contends there are 180 matters), it is common cause that the debts that would fall within the ambit of the security cessions are limited in number. As Smal Inc. makes use of the ceded debt that it collects but which the applicant contends

belongs to it, that ceded debt is lost to the applicant as it is not replaced by other debts.

[28] Bearing in mind that the applicant need only at this stage to establish that it has a *prima facie* right, although open to some doubt, and taking into consideration the common cause facts or facts that cannot be seriously disputed, I am satisfied that the applicant has demonstrated that it has a *prima facie* right to the ceded debts.

[29] Smal Inc. contends that it needs monies to pay creditors and to run its legal practice and for this reason should be allowed to continue to make use of the collected book debts that the applicant contends it is entitled to. But the relief sought by the applicant does not extend over all monies collected by Smal Inc. from the RAF on behalf of all RAF clients. The relief that the applicant seeks, is limited only to those matters that it alleges emanate from Nothnagel Inc. Smal Inc. remains free to collect and make use of whatever monies are collected from the RAF on behalf of clients in its other matters. The balance of convenience therefore favours the granting of the interim relief.

[30] In any event, Smal Inc. can alleviate the prejudice that it contends for by affording the applicant access to the files which it took over to enable attorney and own client bills to be drawn on those matters as provided for in the Contingency Fee Rules. This would to some extent quantify the extent of the ceded debt to which the applicant is entitled. Once the extent of the fees and disbursements owing by the RAF clients has been quantified, then the surplus of any monies collected by Smal Inc. from the RAF for any particular listed client would fall beyond the interim interdictory relief and can be used by them.

CONCLUSION

[31] Smal Inc. disputes that it is in possession of all the matters that are the subject of these proceedings. There is a clear dispute between Nothnagel Inc. and Mr Nothnagel, on the one hand, and Smal Inc. on the other hand, as to which files were taken over by Smal Inc. The applicant was not a party to any arrangement during which Smal Inc. took over files from Nothnagel Inc. (or Nothnagel Attorneys for that matter) and therefore does not know whose version is correct. To the extent that Smal Inc. is not in possession of any particular file that forms the subject matter of the interim relief, Smal Inc. will not be prejudiced by the grant of the relief as it self-evidently cannot comply in relation to a matter that it does not have and in respect of which it does not collect any monies.

[32] Further provision must also be made for ancillary relief for purposes of monitoring and enforcing the interim relief. Smal Inc. must therefore report on a monthly basis to the applicant in respect of the proceeds received on behalf of each of the RAF clients from the RAF. Safeguards are provided for in the proposed interim relief so as not to prejudice the particular RAF client by permitting the RAF client to be paid the proceeds of his or her successful RAF claim subject to sufficient monies being retained in trust by Smal Inc. to settle that which is owing to the applicant but which has not been quantified.

[33] Smal Inc.'s annexure "SS8" to the opposing affidavit contains a further thirteen matters listed at the end, under the heading "Amputees". Ms Steyn admits that Smal Inc. took over these matters from Nothnagel Attorneys. These thirteen matters must therefore be added to the listed matters as described in the notice of motion as the applicant's security cession might extend over those files as well.

[34] The applicant in addition seeks leave to serve the application upon those RAF clients who might be affected by the grant of final relief under Part B of the notice of motion in due course by way of authorising service of the application and any further process or notices upon such persons, who have been collectively described as the second respondents by way of service upon Smal Inc. as their attorneys of record. There were no valid reasons provided why such an order should not be granted.

[35] In the result the following order is made:

1. Pending the final determination of the relief set out in Part B of this notice of motion:

1.1 the client in that listed matter, i.e. 25% of the total amount of the successful claim must be retained in trust before any payment is made to the particular client in that listed matter;

1.1.2 to the extent that the first respondent gives the applicant (and its nominated costs consultants) access to the file in any particular listed matter and so enables the applicant (and its nominated costs consultants) to attend to draw an attorney and own client bill of costs in respect of the fees and disbursements in that listed matter for the period preceding the first respondent taking over the mandate in that listed matter, at the rate and on the terms as set out in the relevant contingency fee agreement in respect of that listed matter, then the interdict in in relation to that listed matter will operate further only to the extent of the total of

that bill of costs, and will no longer operate in relation to the proceeds received in respect of that listed matter which extend the total of that bill of costs;

1.1.3 to the extent that the first respondent does afford the applicant (and its nominated costs consultants) access to any particular file as provided for in the preceding sub-paragraph, the applicant is to draw the attorney and own client bill within 60 court days of such access having been granted to that particular file,

1.1.4 the access so given to these files will be at the premises of the first respondent from the date of the granting of this order and where the first respondent will make available an office for the aforesaid purpose.

1.2 the first respondent (and/or any attorney appointed by any of the second respondents in substitution for the first respondent) is directed to provide to the applicant by no later than the end of each succeeding month an updated report of the proceeds received by it from the Road Accident Fund for each of the listed matters in the form of the template annexed as “B” to the notice of motion.

2. The thirteen clients listed in annexure “SS8” to the answering affidavit under the description “amputees” are joined to these proceedings as further persons described as the second respondent.

3. The applicant is granted leave to serve this application on each of the second respondents by serving one copy of the application on the first respondent as the attorneys of record for the second respondents.

4. Any further process or notices that needs to be served in any proceedings under this case number on the second respondents may be similarly effected as provided for in the preceding paragraph.

5. Costs reserved for determination in Part B.

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L. WINDELL
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

(*Electronically submitted therefore unsigned)*

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 28 May 2022.

APPEARANCES

Counsel for the applicant:	Adv. B.M. Gilbert SC
Instructed by:	Blake Bester De Wet & Jordaan Inc.
Counsel for the first respondent:	Adv. P.V.Z. Booysen
	Adv. R.J. de Beer

Instructed by:	Steyn Smal Inc.
Date of hearing:	17 March 2022.
Date of order:	25 May 2022.
Date of judgment:	28 May 2022.