REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

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

…………………………………… ………

SIGNATURE **DATE**

Case number: 43577/2019

In the matter between:

DNI FINANCIAL SERVICES (PTY) LTD	Applicant
and	
MORNINGSIDE 3 OF ERF ONE THREE FOUR THREE CC	First Respondent
KOPEL, JOANNA	Second Respondent
KOPEL, ROLAND MARTIN	Third Respondent
EMANUEL JEWELLERS	Fourth Respondent

JUDGMENT

SMIT AJ

INTRODUCTION

1. This judgment deals with an application to compel a response to various requests for further particulars under Rule 21(2), which also incorporated requests for documents made under Rule 35(3). Its recital of facts is purely based upon the parties' pleadings, and it should therefore not be construed as making any factual findings.

FACTUAL BACKGROUND

2. In December 2019, the plaintiff instituted action against four defendants (alleged to be liable jointly and severally). The plaintiff states that it is a registered financial services and credit provider and conducts business as such. It states that it made certain loans to the first defendant, which were not repaid, with the result that an aggregate amount of R7,889,091.50 was outstanding on 31 October 2019. In addition to the outstanding amount, the plaintiff claims interest at 36% per annum from 1 November 2019 to date of final payment.

3. The plaintiff bases its claims on:

    3.1. a written loan agreement concluded with the first defendant on 3 November 2014, for an amount of R4 million. Interest on the loan would be calculated at the rate of 36% per annum;

    3.2. a second written loan agreement concluded with the first defendant on 20 April 2015, for a further amount of R1.5 million. Interest on the loan would likewise be calculated at the rate of 36% per annum. This

second loan would be added to the first loan; and

3.3. a third written loan agreement concluded with the first defendant on 17 August 2015, for a yet further amount of R1 million. Interest on the loan would likewise be calculated at the rate of 36% per annum. This third loan would be added to the first and second loans.

4. The plaintiff states that the loans are secured by a mortgage bond over the first defendant's immovable property, as well as suretyships given by the second, third and fourth defendants. Hence the joinder of the second to fourth defendants to the action.

5. The plaintiff states that the first defendant beached the loan agreements, by failing to make the required repayments.

6. The defendants filed their plea in February 2020.[1] The main defence (articulated in a first special plea) is that the loan agreements were simulated transactions, in that it was never the intention that the first defendant would borrow the stated amounts. The loan agreements are therefore said to be unenforceable.

7. As evidence for the simulated nature of the loan agreements, the defendants plead that:

7.1. The first defendant is a property-owning company, and does not trade.

7.2. It had no need for the borrowed amounts and no financial resources to

[1] The first and second defendants amended their plea in February 2023, after the request was made.

repay them.

7.3. It did not receive the amounts, which instead were paid to the fourth defendant.

7.4. The fourth defendant is the true debtor and required such funds to purchase stock for its business.

7.5. All repayments which were made, were made by the fourth defendant.

8. In their second special plea, the defendants plead that the plaintiff's interest calculation is incorrect, contradictory and reflects a lack of agreement on the calculation of interest. The defendants' third special plea is that the interest rate of 36% per annum compounded daily is usurious, against public policy and unenforceable.

9. On 8 March 2022, the plaintiff requested extensive further particulars to the plea pursuant to Rule 21(2), running to ten pages. Several of the requests also embodied an alternative request for documents "in terms of the provisions of Rule 35(3)."

10. On 14 March 2022, the defendants replied, in a single paragraph, that:

> "The Further Particulars sought herein constitute an abuse, with particular reference to Uniform Rule 21(2), in that the particulars sought herein are not strictly necessary for the Plaintiff to prepare for Trial, and/or constitute impermissible interrogatories, and /or are matters for evidence, and/or are matters for argument."

11. The reply did not deal with the alternative requests under Rule 35(3).

12. On 6 May 2022, the plaintiff launched an application to compel the defendants to “furnish the [plaintiff] with a proper answer to the [plaintiff’s] request dated 8 March 2022” and to “answer the [plaintiff’s] request in terms of Rule 35(3)”. The plaintiff also sought a costs order against the defendants, on an attorney-client scale.

13. At the hearing, only the first and second defendants were legally represented. Any references below to “the defendants” must be construed as references to the first and second defendants only, save as otherwise indicated.

14. While the answering affidavit raised various defences against the application to compel, at the hearing the debate between the parties was:

    14.1. Whether the plaintiff, by incorporating requests for documents with reference to Rule 35(3) into the request for further particulars, gave the required notice under Rule 35(3) to enable it to compel an answer to its requests for documents; and

    14.2. Whether the further particulars sought to be compelled were strictly necessary for purposes of the trial, and whether the fact that the answers to some of them were apparent from the record, stands in the way of compelling an answer to them.

15. I deal with these aspects in turn.

THE REQUESTS UNDER RULE 35(3)

16. The request for further particulars was explicitly framed as being delivered

"[m]indful of the provisions of Rule 21(2)". Yet, in four of its subparagraphs, the plaintiff requests further particulars, alternatively documents in terms of the provisions of Rule 35(3). Other than these references, the request does not refer to Rule 35(3).

17. The defendants contended that this way of proceeding did not constitute a formal notice in terms of Rule 35(3). They accordingly did not respond to it, and took the view that they could not be compelled to do so.

18. At the hearing, Mr Nowitz argued for the defendants that one could not import a Rule 35(3) request in the alternative to a request for further particulars. He further argued that there is no authority permitting the giving of a Rule 35(3) notice in this way, and no reason why the plaintiff could not give notice under Rule 35(3) in the customary way (i.e. by embodying it in a separate document which replicates the wording of Rule 35(3)).

19. Mr Dobie argued for the plaintiff that the defendants' stance was overly formalistic. He stated that Rule 35(3) does not require a notice to be embodied in a separate document. All that was required was the defendants receive "notice" that the documents are required, which was clearly the case. He referred in this regard to *Pangbourne Properties*[2] for the proposition that the Courts have condoned technical imperfections in procedural steps in a variety of circumstances; and that the Courts should not encourage formalism in the application of the Rules. He fairly conceded that *Pangbourne Properties* did not deal specifically with Rule 35(3).

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[2] *Pangbourne Properties Ltd v Pulse Moving CC* 2013 (3) SA 140 (GSJ) para 16 (and further).

20. The starting point must be the wording of Rule 35(3):

> “(3) If any party believes that there are, in addition to documents or tape recordings disclosed as aforesaid, other documents (including copies thereof) or tape recordings which may be relevant to any matter in question in the possession of any party thereto, the former may give notice to the latter requiring such party to make the same available for inspection in accordance with subrule (6), or to state on oath within 10 days that such documents or tape recordings are not in such party’s possession, in which event the party making the disclosure shall state their whereabouts, if known.”

21. The defendants made discovery on 10 February 2022. Thus, the requests for documents embodied in the request for further particulars (on 8 March 2022) followed discovery. In my view, Rule 35(3) does not require a separate notice; it only requires notice from one party to the other “requiring [the latter] to make the same available for inspection in accordance with subrule (6), or to state on oath within 10 days that such documents or tape recordings are not in such party’s possession, in which event the party making the disclosure shall state their whereabouts, if known.”

22. In my view, the plaintiff’s requests for documents clearly specified which documents are required. I also do not consider it incompetent to require documents in the alternative to further particularity; doing so is beneficial rather than prejudicial to the party receiving the request, in that it gives such party an election to furnish either (or both).

23. Thus, in my view, the main question is whether the omission from the requests

of the indication to the defendants that the documents must be made available for inspection, or that the defendants must state on oath that the documents are not in their possession, render the requests for documents incompetent. In this regard, Mr Dobie contended that the mere reference to Rule 35(3) incorporates these aspects by reference.

24. It is desirable, in my view, that a request for documents under Rule 35(3) be embodied in a separate document and that such document should explicitly notify the party to whom it is directed of its obligations under the Rule.

25. This notwithstanding, the defendants in this matter are legally represented; and their legal representatives are fully aware of the requirements of Rule 35(3), including the proper way to respond to a request under that Rule. The plaintiff's *modus operandi* therefore was adequate to notify the defendants that, if they did not respond in a substantive manner to the relevant requests for further particulars, they were required to respond to the request for documents in the way that Rule 35(3) dictates.

26. In this regard, I fully endorse the propositions recited in *Pangbourne Properties (supra)*, including that the Rules are made for the Court, and that overly technical procedural objections should not stand in the way of expeditious determination of litigation, in the interests of justice. To require the plaintiff in these circumstances to formulate a separate Rule 35(3) notice would be overly technical and formalistic.

27. Accordingly, I find that the defendants were obliged to respond to the requests for documents under Rule 35(3) in paragraphs 7.1, 7.2, 9.5, 9.12 and 9.17 of

the request, in the manner dictated by that Rule.

THE REQUESTS FOR FURTHER PARTICULARS

Introduction

28. Rule 21(2) provides that:

> "(2) After the close of pleadings any party may, not less than twenty days before trial, deliver a notice requesting only such further particulars as are strictly necessary to enable him to prepare for trial. Such request shall be complied with within ten days after receipt thereof." (Emphasis added.)

29. The parties were *ad idem* regarding the principles applicable to requests for further particulars under Rule 21(2). The most relevant for present purposes are described in the following paragraphs.

30. A party is entitled to call for such further particulars as are strictly necessary to enable him to prepare for trial. The purpose of such a request is to prevent surprise at the trial. It is a mechanism for a party to ascertain with greater precision what the other party envisages proving at trial, to enable his opponent to prepare his case to combat the counter-allegations. It is not permissible, by means of such a request, to attempt to tie the other party down and limit its case unfairly at trial.[3]

31. The furnishing of details that are purely matters for evidence at trial may not be compelled, but the mere fact that the evidence proposed to be led at trial will have to be divulged in the reply to the request is no ground for refusing an

[3] *Thompson v Barclays Bank DCO* 1965 (1) SA 365 (W) at 369D-E.

order to compel such further particulars.[4]

32. As appears from the analysis below, the plaintiff's request did at times stray into territory not relevant to the pleading in question or more suitable to cross-examination. However, that cannot be said of all the requests. The fundamental problem with the defendants' answer is that it bluntly dismissed all the requests without attending to their specific nature. In my view, this is inappropriate; and this application may have been avoided had the defendants properly explained, in each instance, why the request was refused. I take this factor into account when making a costs order below.

Paragraph 1 of the request

33. Paragraph 1 of the request formulates eight questions seeking further particularity to the defendants' allegation that the three loan agreements embody simulated agreements.

34. The defendants' main defence to the action is their allegation that the loan agreements were simulated in that it was never the intention of the parties that the first defendant would borrow the monies advanced by the plaintiff. While the defendants contend in the first special plea that the fourth defendant is the "true debtor", the plaintiff's objection is that they do not set out what the true intention was of the loan agreements, nor why the loan agreements were structured in the way they were.

35. Before me, the plaintiff contended that where a party alleges an agreement is simulated or disguised, it must set out the true intention of the parties (which

[4] *Brett v Schultz* 1982 (3) SA 286 (SE) at 292H-293B.

are different from the form in which it was cast). Mr Dobie referred in this regard to *Vasco Dry Cleaners,*[5] *Skjelbreds Rederi*,[6] and *Erf 3183/1 Ladysmith*[7] for the proposition that there is a burden of rebuttal ("weerleggingslas") on a defendant in these circumstances to persuade the Court of the true intention of the parties. Mr Dobie's contention appears correct to me.

36. Mr Nowitz contended that it is clear from the plea, the affidavit resisting summary judgment and the answering affidavit in this application, that the defendants contend that the true intention was that the fourth defendant would be the borrower under the loan agreements. It is further clear, he contended, that the reason for the structuring (according to the defendants) was that the fourth defendant could not borrow money in its own name.

37. Mr Nowitz further contended, with reference to *Schmidt Plant Hire*,[8] that for purposes of establishing whether a party would be surprised at trial, and hence to establish whether the furnishing of further particulars is "strictly necessary" for preparation for trial, a Court is entitled to have regard to the entire record. These contentions of Mr Nowitz also appear correct to me.

38. In the result, I do not think that the requests in paragraphs 1.1, 1.4 or 1.8 are strictly necessary. The defendants' version – whether tenable or not – on what the true intention of the parties was (to make a loan to the fourth defendant), why they entered into the agreement in the form they did (because the fourth defendant could not obtain a loan in its own name) and to whom the money

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[5] *Vasco Dry Cleaners v Twycross* 1979 (1) SA 603 (A) at 611A-E

[6] *Skjelbreds Rederi A/S v Hartless (Pty) Ltd* 1982 (2) SA 710 (A) at 733C-G

[7] *Erf 3183/1 Ladysmith (Pty) Ltd and Another v Commissioner for Inland Revenue* 1996 (3) SA 942 (A)

[8] *Schmidt Plant Hire (Pty) Ltd v Pedrelli* 1990 (1) SA 398 (D) at 402I-403A

was advanced (the fourth defendant), is sufficiently clear on the record.

39. The requests in paragraphs 1.2 and 1.3 are different. These matters (the effect of enforcing the parties' true intention and the purpose of the disguise) were not said to appear from the record. It seems to me, in light of the cases quoted by Mr Dobie on simulated transactions, to be necessary for preparation for trial for the defendants to furnish this particularity.

40. In my view, paragraphs 1.5 to 1.7 of the request do not fairly flow from the pleading in paragraph 1 of the plea, and these requests are not competent.

Paragraph 2 of the request

41. In paragraph 11 of the particulars of claim, the plaintiff states that the defendants have admitted liability to repay the loans, and gave undertakings to do so, in four sets of correspondence addressed by the third defendant and annexed as "H1" to "H4".

42. Paragraph 1.6 of the plea states that:

> "no repayment undertakings were furnished by or on behalf of the First and Second Defendants, with such undertakings reflected in Annexures "H1" to "H4" having been furnished by the Third Defendant, on behalf of Rolko CC (in the *bona fide* but mistaken belief that additional monies were due, owing and payable to the Plaintiff by Rolko CC)."

43. Paragraph 2 of the request directs four questions said to be flowing from paragraph 1.6 of the plea. They ask questions about the contents of "H1" to "H3", in particular the ownership of a property referred to in that

correspondence.

44. In my view, these requests do not flow from paragraph 1.6 but constitute, instead, an attempt to interrogate the defendants as to how they could proffer the version set out in paragraph 1.6 in light of the contents of “H1” to “H3”.

45. It is not the function of further particulars to attempt to convince one’s counterparty (or indeed the Court) of the untenability of the counterparty’s version. That is the function of cross-examination and legal argument. Accordingly, the plaintiff is not entitled to the particularity requested in paragraph 2.

Paragraph 3 of the request

46. In paragraph 4 of the plea, the defendants make various allegations in relation to a schedule attached to the first loan agreement (Annexure “A” to the particulars of claim), which is an “interest/repayment calculation”. The defendants state that the calculation was merely a guideline, since the full amount of R4 million was not lent and advanced on 14 November 2014 (as reflected, according to the defendants, in the calculation) but “rather by 21 November 2014”.

47. Paragraph 3 of the request requires the defendants to state when the amount was paid; if in instalments, when each instalment was paid and to whom; and on what basis the interest is charged in the guideline.

48. The defendants contend that Annexures “DP1” and “DP2” to their plea set out when each amount was paid. “DP2” also sets out the (defendants’ version of)

the interest calculation, should the amounts be found to be owing. Therefore, the particularity requested in paragraph 3 of the request appears from the plea.

49. Insofar as it may be said that "DP2" does not explain the basis on which interest was calculated in the schedule to Annexure "A", but rather reflects the basis on which the defendants calculate interest, in my view the plaintiff is not entitled to request particularity in regard to its own pleading.

50. I therefore agree with the defendants that paragraph 1.4 of the plea, read with Annexures "DP1" and "DP2" to the plea, furnishes sufficient particularity in regard to the dates of payment and the method of calculating interest.

Paragraph 4 of the request

51. Paragraph 8 of the plea refers to "DP2" and states that it constitutes "schedules reflecting the interest calculations in terms of monies lent and advanced and repaid, based on a 36% per annum interest calculation on the reducing balance".

52. Paragraph 4 of the request requires the defendants to state whether payment was to be allocated to interest first and then to capital; if to capital first, what the basis was for this contention; and what the calculation would be if payment was allocated interest first, and then to capital.

53. Mr Nowitz contended that merely furnishing (in "DP2") two scenarios on which interest was recalculated (first, a "compounded interest table" and second a "simple interest table") furnished sufficient particularity. Mr Dobie contended, on the other hand, that the defendants were required to specify, narratively, what

their version was of the terms of the agreement regarding interest, and what the effect would be on the interest calculation.

54. It seems to me that the defendants' version (whether right or wrong) is that the terms of the various loan agreements regarding interest are contradictory in certain respects. They then put up two versions of the interest calculation based on different assumptions. Accordingly, Mr Dobie fairly conceded that the defendants cannot be required (as paragraph 4.3 of the request seeks to do) to put up a yet further interest calculation based upon an assumption specified by the plaintiff.

55. The requests in paragraphs 4.1 and 4.2 require particularity on whether the defendants' own calculations are based upon allocating repayment to capital first and then to interest, or the other way round, and if the former, what the basis in fact or law is to do so. These requests seem appropriate to me. In my view, the plaintiff is entitled to require the defendants to commit to a version on the allocation of repayments and the basis thereof.

Paragraph 5 of the request

56. The plaintiff attaches what it calls an "exposition" of the first defendant's indebtedness, as well as a certificate of balance, to its particulars of claim, as Annexures "D" and "E" respectively.

57. Paragraph 9 of the plea denies that the defendants are indebted to the plaintiffs in the amounts reflected in "D" and "E", with reference to the defendants' own calculation in "DP2".

58. Paragraph 5 of the request requires the defendants to state in what amount the defendants, alternatively the fourth defendant, is indebted to the plaintiff.

59. In my view, the defendants have already proffered two versions of their potential indebtedness, depending on whether simple or compound interest is used to calculate the outstanding balance. It is therefore not necessary furnish a yet further version in reply to this request and the plaintiff is not entitled to the particularity requested in paragraph 5.

Paragraph 6 of the request

60. Paragraph 11 of the plea sets out the bases on which the defendants contend that the interest specified in the loan agreements is "usurious in terms of common law, *contra bonos mores*, contrary to public policy and unenforceable in law".

61. Paragraph 6 of the request asks various questions relating to the risk attendant on making a loan to the first or fourth defendant and whether such risk justified the increased interest rate and its manner of calculation.

62. Mr Nowitz contended that these questions sought to elicit inadmissible opinion evidence from the defendants, in that it is a matter of opinion (for which expert evidence is required) what the risk is attendant upon a loan. He also contended that the defendants have already averred (in paragraph 11.3.4.2 of the plea) that the fourth defendant was cash-strapped and unable to raise finance through normal banking channels.

63. Mr Dobie contended, on the other hand, that the issue of risk is based on fact –

not opinion.

64. In my view, paragraph 11.3.4.2 of the plea sets out certain facts relating to the fourth defendant's financial status which could underpin an opinion on the risk of making loans to it. Insofar as the plaintiff requires additional facts, it may well be that such could be requested by way of further particulars. However, the questions as framed in paragraph 6 seeks to elicit opinion and not facts underlying that opinion. Accordingly, they do not appropriately form the subject-matter of a request for further particulars.

Paragraph 7 of the request

65. In paragraph 15.1 of the plea, the defendants state that Emmanuel Jewellers (the name under which the fourth defendant was cited in this action, although misspelt) is "the trade name of Rolko CC, a Close Corporation … incorporated … which was placed in voluntary liquidation on 8 July 2019".

66. Paragraph 7 of the request asks when it was incorporated, when the decision was made to liquidate it, and who the liquidators are. It also asks (under Rule 35(3)) for copies of the deed of incorporation and the decision to liquidate.

67. Mr Nowitz contended that the deed of incorporation, and the identity of the liquidators, are information available in the public domain. Further, the identity of the liquidators was disclosed in the answering affidavit in this application. Mr Dobie contended that it is irrelevant to the duty to furnish further particularity whether information is available in the public domain.

68. In my view, a party is entitled through further particulars to ascertain what the

opposing party's version is on a particular matter, even if information in that regard is available in the public domain. Further, the information on the decision to liquidate is not in the public domain and arises from the pleading.

69. It is correct that the information on the identity of the liquidator is disclosed in the answering affidavit in this application. However, this ought to have been done in the reply and the defendants' obligation to reply to the request had crystallised before the application was brought. Therefore, the defendants cannot escape their extant obligation to respond to the request by furnishing the requested information in the answering affidavit.

70. The defendants are therefore obliged to reply to the requests in paragraph 7.

Paragraph 8 of the request

71. In paragraph 9.3 of the particulars of claim, the plaintiff pleads that the fourth defendant, duly represented by the third defendant, gave a suretyship in favour of the plaintiff to secure the loans. The suretyship is annexed to the particulars of claim as Annexure "F3".

72. Paragraph 24 of the plea in essence repeats the averments in the special pleas and regarding Rolko CC.

73. Paragraph 8 of the request asks who signed "F3" and who the members are of the fourth defendant.

74. Mr Nowitz contended that it is clear from the plaintiff's own pleading that the third defendant (Mr Kopel) signed the suretyship on behalf of Rolko CC.

Further, he stated that the affidavit resisting summary judgment discloses that Mr Kopel is the sole member of the fourth defendant. Mr Dobie did not address argument, particularly in reply, in regard to this paragraph of the request.

75. I agree with the contentions of Mr Nowitz in this regard. The defendants are accordingly not obliged to furnish further particularity in relation to paragraph 8 of the request.

Paragraph 9 of the request

76. In paragraph 11 of the particulars of claim, the plaintiff states that the defendants have admitted liability to repay the loans, and gave undertakings to do so, in four sets of correspondence addressed by the third defendant and annexed as “H1” to “H4”.

77. Paragraph 27 of the plea states (aside from incorporating the special pleas) that the third defendant admitted liability for and on behalf of the fourth defendant, without the benefit of legal advice and in the *bona fide* but mistaken belief that the amounts were owing. Accordingly, the first, second and fourth defendants are not liable and the admissions were not made on their behalf.

78. Paragraph 9 of the request poses 16 questions dealing with the authorship of “H1” to “H3”, to whom they were addressed and their content. It incorporates several requests for documents under Rule 35(3).[9]

79. These requests are repetitive and therefore best dealt with when grouped thematically.

[9] I deal with the requests under Rule 35(3) above and nothing which is stated below in regard to the requests for further particularity detracts from the conclusion in paragraph of this judgment.

80. Paragraphs 9.1, 9.8, and 9.13 ask who the author is of “H1” to “H3”. I agree with Mr Nowitz that it is apparent on their face, and pleaded by both the plaintiff and the defendants, that the third defendant authored “H1” to “H3”. The defendants are therefore not obliged to furnish further particularity in regard to these paragraphs.

81. Paragraphs 9.2, 9.9, and 9.14 ask to whom “H1” to “H3” were addressed. Again, this is apparent on the face of the emails. The defendants are therefore not obliged to furnish further particularity in regard to these paragraphs either.

82. Paragraph 9.3 relates to the purpose of “H1”. The request appears appropriate, since the purpose of “H1” appears relevant to the plaintiff’s averment that it constitutes an admission of liability on behalf of all defendants, and the defendants’ version that it was given solely by the third defendant and did not implicate the other defendants.

83. Paragraphs 9.4 and 9.5 deal with a home loan the third defendant said (in “H1”) he had applied for. These requests do not relate directly to either the averments in paragraph 11 of the particulars of claim or paragraph 27 of the plea. Accordingly, the defendants are not obliged to furnish further particularity in regard to these paragraphs, since they do not flow from the pleading.

84. Likewise, paragraphs 9.6, 9.7, 9.10, 9.11 and 9.12 seek particularity on matters mentioned in “H2” which do not relate directly to either the averments in paragraph 11 of the particulars of claim or paragraph 27 of the plea. Accordingly, the defendants are not obliged to furnish further particularity in regard to these paragraphs.

85. And similarly, paragraphs 9.15, 9.16, 9.17 and 9.19 seek particularity on matters mentioned in “H3” which do not relate directly to either the averments in paragraph 11 of the particulars of claim or paragraph 27 of the plea. Accordingly, the defendants are not obliged to furnish further particularity in regard to these paragraphs.

86. Finally, paragraph 9.18 of the request seeks to point out a contradiction between the defendants’ averment that “H3” was addressed on behalf of the fourth defendant and the content of “H3” itself. As such, this request appropriately forms the subject-matter of cross-examination and not a request for further particulars.

Costs

87. The plaintiff sought the costs of this application to compel on a punitive scale, while the defendants sought the dismissal of the application with costs.

88. As I indicate above, if the defendants had responded to the request in a targeted fashion and not with a blanket dismissal, this application may have been avoided. For this reason, the plaintiff is entitled to costs.

89. I do not think a case has been made out for a punitive costs order, particularly because several of the plaintiff’s requests should not have been made, for the reasons set out above.

ORDER

90. For these reasons, I make the following order:

1. The defendants are ordered to respond to the requests for documents under Rule 35(3) in paragraphs 7.1, 7.2, 9.5, 9.12 and 9.17 of the plaintiff's request for further particulars in the manner dictated by that Rule.

2. The defendants are ordered to furnish the further particulars sought in paragraphs 1.2, 1.3, 4.1, 4.2, 7.1, 7.2, 7.3 and 9.3 of the plaintiff's request for further particulars.

3. The defendants are ordered to pay the costs of this application, jointly and severally.

DJ SMIT

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing: 3 May 2023

Date of judgment: 26 July 2023

Appearances:

Counsel for the applicant: Mr J. Dobie

Instructed by: Reaan Swanepoel Attorneys

Counsel for the first and second respondents: Mr M. Nowitz

Instructed by: Nowitz Attorneys