IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

CASE NO: 13994/2021

In the matter between:

CHRISTIAN FINDLAY BESTER N.O.	**First Applicant**
CHRISTINA MAUREEN PENDERIS N.O.	**Second Applicant**

and

EDITH DEANNA PIETERS	**Respondent**

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date of hand-down is deemed to be 11 May 2022.

JUDGMENT

Kusevitsky J:

Introduction

[1] This is an application by the insolvent trustees for repayment of monies which they contend are assets of the insolvent estate of the Pieters Family Trust ("the Trust"). The Applicants also seek relief on a number of alternative bases for the repayment of R 409 814.30 from the Respondent ("Mrs Pieters").

The background

[2] The Trust was the registered owner of the farm property known as the remainder of portion 3 (Molenstroom) of the Farm Diepekloof No. 226, George, Western Cape ("the farm"). The Trust caused various mortgage bonds to be registered over the farm in favour of Absa Bank as security for any debt that may be owed by *inter alia* the Trust to Absa. Mrs Pieters was at all relevant times a trustee of the Trust.

[3] On 2 October 2015, the Trust concluded a written agreement for the sale of the farm to Van Greunen Boerdery CC for the purchase price of R 13 250 000.00. Haycock Attorneys ("Haycock") was mandated as the conveyancer to attend to the registration of the transfer of the property on the instruction of the Trust. In terms of this mandate, Haycock attended to the cancellation of the mortgage bond registered over the Farm in favour of Absa as security for any debt that may be owed by *inter alia* the Trust to Absa.

[4] At the time that the transfer was to be effected, certain disputes arose between the Trust and Absa regarding the cancellation of the bonds registered against the farm, and more specifically whether certain monies were due and payable by the Trust to Absa in terms of such cancellation.

[5] These disputes were resolved in terms of a settlement agreement ("the settlement agreement") concluded between the Trust and Absa on the basis that the transfer of the farm could be effected and the bonds simultaneously cancelled, subject to the following conditions:

5.1 That Haycock as the conveyancer furnish an unconditional and irrevocable guarantee in favour of Absa for the payment of the amount of R 2 832 175.10 plus interest at 9.75% per annum from 22 January 2016 to date of cancellation or payment (“the guarantee”);

5.2 That Hancock furnish an undertaking to Absa and the Trust to retain from the proceeds of the sale of the farm the amount of R 1 667 824.90 in his trust account in a separate interest-bearing savings account in the name of the Trust pending the resolution of the money disputes between the Trust and Absa (“the undertaking’).

[6] On 18 March 2016, the farm was transferred in terms of the deed of sale and Haycock’s final account to the Trust reflected *inter alia* the following: the amount of R 13 250 000.00 was received by Haycock on behalf of the Trust as the primary proceeds of the sale of the farm; the amount of R 2 876 637.83 was paid by Haycock on behalf of the Trust to Absa in cancellation of the bonds; and the amount of R 7 431 552.21 which was the balance of the proceeds owing to the Trust, was paid into the bank account of the Trust. Furthermore, in accordance with the settlement agreement of 12 February 2016 wherein Haycock provided Absa with an irrevocable undertaking that the amount would be held on trust pending the finalization of the dispute between Absa and the Trust, Haycock caused the funds in the amount of R 1 667 824.90 to be retained and invested that amount in the name of the Trust with the Standard Bank (“the invested funds”).

[7] Subsequent to the transfer of the farm, the following transpired in relation to the invested funds: On 29 March 2017 and on the instruction of the trustees of the Trust, Haycock called up the invested funds and reinvested it in the name of Mrs Pieters personally with Absa Bank. According to the founding affidavit, the reason for this transfer was purportedly that the trustees were in the process of dissolving the Trust and the interest on such investment "*would cause problems to the Trust*". Based on this instruction and without the consent or authorisation of Absa, Haycock closed the investment in the name of the Trust held with Standard Bank and re-invested the amount of R 1 764 178.31 in the name of Mrs Pieters with Absa.

[8] On 21 January 2019, Haycock again called up the invested funds and reinvested same in the name of Mrs Pieters personally, again with the Standard Bank. During the period of March 2018 to May 2020 and purportedly on the instruction of Mrs Pieters or the previous trustees of the Trust, Haycock paid the interest accrued on the invested funds and withdrawn from the investment, to Mrs Pieters personally, the combined sum of which amounted to R 409 814.30. It is common cause that during the period 13 March 2019 to 6 May 2020, the sum of R 129 273.61 was paid to and received by Mrs Pieters *after* the date of sequestration of the Trust and after the date on which the *concursus creditorum* was instituted, being 4 March 2019. It is on this basis that the Applicants claim the amount of R 129 273.61 in the alternative.

[9] It is common cause on 3 June 2017, the trustees of the Trust resolved to cede the invested funds and more specifically the claim thereto, to Mrs Pieters personally as repayment towards her purported loan account in the Trust ("the cession"). The relevant provisions are as follows:

> *"b. Die R 1 667 824.90 wat bele is by die prokureursfirma Haycock Prokureurs tot voordeel van die Pieters Familie Trust die eindom van mev ED Pieters is en alle reg om dit terug te eis aan ED Pieters sedeer en verleen word.*
> *…*
> *f. Die geld het deur die Pieters Familie Trust aan mev ED pieters verskuldig is vir die betaling van haar leningsrekening aan die Pieters Familie Trust asook ander gelde aan die trust geleen."*

On the same date, the trustees of the Trust also resolved to dissolve the Trust. The Trust was dissolved on or about 11 August 2018.

[10] According to the founding affidavit, this resolution occurred against the following factual backdrop and knowledge of the trustees: that the trustees received the remaining proceeds from the sale of the farm, its only asset; that they confirmed to the Master that the remaining proceeds of the sale received by the Trust was used to repay and discharge the loan accounts[1]. In fact, according to the Trust's financial statements, Mrs Pieters loan account showed that she owed the Trust money and not *vica verca*[2].

[11] It was also averred that the trustees failed to effect payment of a judgment obtained against it by one of its creditors, Tuinroete Agri (Pty) Ltd ("Tuinroete Agri") on 23 November 2016 in the Magistrates Court, George for payment in the amount of R 593 373.93 and also failed to inform Absa of their intention to dissolve the Trust notwithstanding the pending disputes, undertakings furnished and other claims raised by Absa against the Trust.

[1] As reflected in a subsequent Trust resolution dated 3 June 2017

[2] The balance sheet and financial statements for the years 28 February 2015 to 2018 and signed off by Ed Pieters and C Pieters as trustees reflect a debit for ED Pieters in the amount of R 21 717.00

[12] On 23 May 2019 and on application of Tuinroete Agri, an order was granted in terms whereof the decision and resolution of the trustees of the Trust dated 3 June 2017 to dissolve the Trust was rescinded and set aside and the Trust was re-instated. Simultaneously, Tuinroete Agri also applied for the sequestration of the Trust, which order was granted and finally obtained on 26 August 2019. On 29 July 2020, the Applicants were appointed as the insolvent trustees of the Trust.

The previous litigation

[13] Subsequent to the sequestration of the Trust, the Applicants were appointed as the provisional insolvency trustees of the Trust and on 20 August 2020, they issued an application for an order *inter alia* extending their powers and directing that Haycock pay the invested funds together with all interest accrued thereon to them in their capacities as the insolvency trustees. According to the Applicants, the basis for that application was that the invested funds constituted the property of the Trust as envisaged in and by section 2 of the Insolvency Act, 24 of 1936 ('the Insolvency Act").

[14] Prior to the hearing of the matter, Mrs Pieters and her husband ("the Pieters') sought to intervene and oppose that application. On 31 August 2020, Gamble J extended the powers and postponed the balance of the relief sought in order to afford the Pieters' the opportunity to deliver their application for leave to intervene together with their answering affidavit to the main application by 18 September 2020 and the Pieters' as intervening parties were ordered to file their reply, if any, in the application for leave to intervene by 6 October 2020. In the meantime, Haycock was interdicted from transferring or disposing of or in any way dealing with the amount of R 1 647 824.90 which was the subject of the main application and all interest

accruing thereon, in any way. The Pieters', as the recorded intervening parties, failed to file their application for leave to intervene and on 26 October 2020, Dolamo J ordered ('the Dolamo Order") that the invested funds and all accrued interest thereon constituted the property of the Trust and directed that Haycock pay the invested funds together with the interest accrued, to the insolvency trustees. In compliance with the Dolamo Order, Haycock transferred the invested funds and the remaining accrued interest into the trust account of the Applicants attorneys

The Applicants case

[15] The Applicants argue that:

15.1 The invested funds originated from the proceeds of the sale and transfer of the Trust's immovable and movable property and accordingly constituted the property of the Trust as contemplated in section 2 of the Insolvency Act. The invested funds were specifically invested for and on behalf of the Trust in terms of a specific settlement agreement concluded between the Trust and Absa;

15.2 A court has already pronounced on the aforesaid facts in that the invested funds constituted the property of the Trust and accordingly it follows that the interest accrued thereon also constituted the property of the Trust and now the insolvent estate and falls to be repaid;

15.3 The subsequent payments of the accrued interest on the invested funds to Mrs Pieters constituted dispositions of the Trust's property in that the payment of the accrued interest during the period 13 March

2019 to 6 May 2020 occurred and was effected after the sequestration of the Trust and was unlawful.

They submit that the Pieters' were afforded an opportunity to intervene in the proceedings and lay claim to the invested funds, however they elected to abide by the order of the court. Absa similarly did not lay claim to the invested funds and also abided by the decision of the court.

[16] The Applicants also claim that the Trust was insolvent at the time that the disposition of the accrued interest was made to Mrs Pieters in that the Trust owned no assets other than the prospective right of action[3]; it owed Tuinroete Agri the amount of R 593 373.93 together with interest and costs, and Absa in the amount of approximately R 10 million[4].

[17] The Applicants finally argue that the purported cession between the Trust and Mrs Pieters on 3 June 2017, which purported to constitute repayment or security for such repayment of Mrs Pieters' loan account in the Trust, is a nullity. This is because the financial statements of the Trust for the relevant period reflected that the Respondent's loan account was in fact in debit at the time of the purported cession, simply put, she owed the Trust money at the relevant time. They argue there is accordingly no *causa*, for value, for the purported cession and that the inference is that the intention was to divest the Trust of the invested funds, or the claim thereto, prior to its dissolution and shift the prospective claim against Absa to the hands of the trustees in their personal capacities.

[3] The possible claims against Absa

[4] This is in accordance with a subsequent claim submitted and proved by Absa against the Insolvent Estate of the Trust

The relief sought

[18] The interest withdrawn during the period 26 March 2018 to 6 May 2020 in the sum of R 409 814.30 and paid by Hancock to Mrs Pieters was not due, owing or payable to her. The interest withdrawn was paid to her without any legal or natural obligation to do so and was accordingly *sine causa*; Mrs Pieters was unjustly enriched in the amount of R 409 814.30 at the expense of the insolvent estate and the interest paid to her during the period 13 March 2019 to 6 May 2020 in the sum of R 129 273.61 was paid and received by her after the date of sequestration of the Trust and thus after the date on which the *concursus creditorum* was instituted, i.e. 4 March 2019.

The Respondent's defences

[19] Mrs Pieters denies that the investment funds held in trust by Haycock Attorneys or any interest paid thereon were assets of either the Trust or the Trust's insolvent estate. She admits receiving the claimed amount but avers that she was entitled thereto by virtue of the fact that she became the owner of the funds in the amount of R 1 667 824.90 invested in the name of the Trust and was accordingly entitled to the interest on the invested funds.

[20] This is because firstly, ownership vested in her in terms of the decision by the trustees to allocate the funds to her, which decision was taken when the farm was sold, but prior to the receipt of the proceeds of the sale by Haycock on or about March 2016. She says that there was a clear understanding that the Trust would be dissolved when the farm was sold and that all the loan accounts and debts owing to the beneficiaries, which she was one of, would then become payable.

[21] The Respondent also averred that the resolution, and more specifically paragraphs (b) and (f) were clear proof that the invested funds were already her property.

[22] The Respondent also claim that there are factual disputes in this matter which militate the decision by the Applicants to proceed *via* motion proceedings. This is so ostensibly because of the disputes between the Trust and Absa. She claims that the disputes with Absa, for example the claim by the Trust that the bonds registered with Absa did not have valid and binding resolutions from the Trust, strike at the root of the investment funds being the source of the interest claimed.

[23] The Respondent furthermore points out that '*no other decision made or resolution adopted by the trustees than the resolution to dissolve the trust, had been set aside by the court order of 23 May 2019*[5]." She therefore submits that on this basis, the allocation of trust moneys to beneficiaries, the payment of loans and loan accounts and any disbursement of trust assets as was done in the discretion of the trustees following the terms of the trust deed, and not contrary thereto, were all valid. This includes the money the Respondent was allocated out of the sale of the farm and what she received in her name when Haycock Attorneys re-invested the invested funds in her name.

[24] The Respondent denied that the Trust was commercially insolvent. This is because, according to the Pieters', the Trust did not owe Absa any money and the

[5] para 37.3 of the Answering Affidavit by Casper Hendrik Pieters, husband of the Respondent and confirmed by her

alleged claims by Absa were covered by the securities covered by the settlement agreement and the undertaking supplied by Haycock Attorneys. They also stated that the Trust did not owe Tuinroete Agri any money. They say that they '*did not forsee that the trust could have lost that case'* and in any event, the correctness of the amount was disputed.

[25] With regard to the decision not to intervene in the proceedings, the Respondent was ostensibly advised by her husband that she would not lose the sum of money invested by Hancock Attorneys in her name because it was part of her loan account as reimbursed to her by the Trust out of the proceeds of the sale of the farm. This was the reason for the decision not to proceed with the intervention application. They were also of the view that the court order of 23 May 2019[6] did not set aside any earlier decision made by the trustees regarding the repayment of loan accounts and money owed to any beneficiary.

[26] With regard to the purported cession, the Respondent denies that a court has already pronounced that the invested funds together with all interest accrued thereon should be paid to the insolvency trustees, contending that the Respondent had not been a party to the proceedings giving rise to the court order of Dolamo J.

[27] In sum, the Respondent avers that the money has been paid to her in terms of a valid decision taken by the trustees and in accordance with the agreement entered into between her and the Trust. It is also contended that on a proper interpretation of the court order, that the decision by the trustees to instruct Haycock Attorneys to transfer the investment onto the name of the Respondent has not been set aside and

[6] When the decision of the trustees to dissolve the Trust was set aside

therefore has no binding effect on the Respondent. They contend that the Dolamo Order should be seen as returning the investment to the Trust on that day and that the operative date is not the date of the sequestration order, but the date of the court order which is 26 October 2020. The invested funds became the Respondent's property the latest on 30 March 2017 which according to the investment schedule[7], was when the investment was made in the name of the Respondent and when she became entitled to the interest thereon.

Evaluation

[28] In order for the Applicants to succeed with the main claim, this court must be satisfied that the Respondent received the money to which the Insolvent estate of the Trust is entitled to; the absence of a valid cause justifying the receipt of the funds and that the Respondent was enriched at the expense of the Trust and that the Trust was simultaneously impoverished by the payments.

[29] It is common cause that the payments claimed from the Respondent, which payments are admitted, comprised the interest that accrued on the investment funds belonging to the Trust. It is also common cause that on 26 October 2020, Dolamo J ordered that i) Haycock Attorneys pay to the insolvent trustees the sum of R 1 667 824.90 *together with interest accrued thereon* and which it held on behalf of the Pieters Family Trust and ii) that the cost of the postponement of the application with regard to the intervention application of Mr Casper Pieters and Ms Edith Pieters would be paid jointly and severally by them. That court therefore pronounced that the capital and the interest thereon vests in the Insolvent estate. It would be an absurdity for the Respondent to suggest that she is entitled to the interest of capital which

[7] Annexure CB7

belongs to another. Furthermore, her claim that the matter is not *res iudicata* and in any event, that the order does not bind her, because she was not a party thereto, is similarly misguided.

[30] A plea of *res iudicata* takes the attenuated form commonly referred to as issue estoppel. *Res iudicata* deals with the situation where the same parties are in dispute over the same cause of action and the same relief and in the form, issue estoppel arises "[w]here the decision set up as a *res judicata* necessarily involves a judicial determination of some question of law or issue of fact, in the sense that the decision could not have been legitimately or rationally pronounced by the tribunal without at the same time, and in the same breath, so to speak, determining that question or issue in a particular way, such determination, though not declared on the face of the recorded decision, is deemed to constitute an integral part of it as effectively as if it had been made so in express terms …".[8] According to the Applicants, on 26 October 2020, this court, *via* the Dolamo Order pronounced in a final order that the investment funds together with all the accrued interest thereon must be paid to the Applicants. The order was made on the basis that the invested funds and all interest accrued thereon comprised an asset of the Trust to be dealt with in terms of the applicable provisions of the Insolvency Act in the normal course of its winding up. Thus the issue of the status of the funds and the Trust's entitlement thereto was finally decided – on the merits – on 26 October 2020 and became issue estopped and therefore *res iudicata*. The Applicants argue that Mrs Pieters accepted the correctness of the court order because she did not oppose the relief sought in the application despite her initial threats to intervene. The Respondent on the other

[8] *AON South Africa (Pty) Ltd v Van den Heever* NO (615/2016) 2017 ZASCA 66 (30 May 2017) at para 22

hand contend that the Dolamo Order is not a final order and that the order does not have a retrospective effect in that it is not a pronouncement by the court on any interest paid out to the Respondent by Haycock and that such an inference cannot be made. The basis for this, so the argument goes, is that they have not become parties to the proceedings and that the defence of issue estoppel is not applicable to them. In any event, she says that she will experience great hardship and injustice, relying on *Smith v Porrit & Others 2008 (6) SA 303 (SCA)* if issue estoppel is applied.

[31] In the *Aon* matter *supra*, the Appeal court had cause to deal with the requirements of issue estoppel. In that matter, the court *a quo* had initially found that the parties were different because the plaintiffs were the liquidators of Financial Services whereas in the previous litigation, the plaintiffs were the liquidators of Protector. The appeal court held that whilst there was a technical distinction between the plaintiffs in that action to the previous action, that that was a matter of form and not substance – their sole purpose of the litigation was to recover the amount of R 50 million in order that it could be distributed to Protector on the winding up of Financial Services. In the Dolamo Order, there was a complete identity of interests, i.e. the claim to the invested funds and ownership thereof, and a similar identity of interests between the parties[9], i.e. the Insolvent trustees of the Trust and Haycock in whose capacity he received the invested funds as stakeholder[10] (between the Trust and

[9] See generally *AON South Africa (Pty) Ltd v Van den Heever* NO (615/2016) 2017 ZASCA 66 (30 May 2017) para 27

[10] In *Bakers v Probert* 1985 (3) 429 (AD) at 441B-E Botha JA held as follows: "*The concept of a stakeholder is best known in our law in the context of a person who holds a res litigiosa pending the outcome of litigation between two rival claimants …In both instances it is of the essence of the stakeholding that at its inception it is uncertain which of the two parties involved will ultimately become entitled to receive what the stakeholder is holding. The identity of the creditor will only be established on the happening of an uncertain future event – the outcome of litigation…That being so, it can be said in these instances, that the stakeholder holds the money or the thing on behalf of that one of the*

Absa) and the Respondent, as intervening party. In my view, a party who intervenes as an 'intervening party' to existing proceedings and cause those proceedings to be postponed or stymied in order for them to participate, cannot at a later stage claim to have not been a party to the proceedings merely because they chose not to file any papers. They cannot approbate and reprobate. It is common cause that the Respondent applied to intervene in those proceedings, she and her husband were the intervening parties therein, they chose not to file their papers and they were accordingly penalised with a cost order[11] against them in that regard. That should be the end of the enquiry. In any event, one can hardly claim prejudice or hardship in those circumstances as claimed.

[32] Furthermore, the Respondent's claim that she became the owner of the invested funds because of a clear and express intention of the trustees that she would be entitled to it as the owner, is clearly untenable. The Respondent also sought to bolster their evidence in reliance of their claim that ownership vested in the Respondent and the *bona fides* of the cession, in a supplementary answering affidavit belatedly filed. In my view, the content of the supplementary affidavit and the annexures thereto are completely irrelevant to any of the real issues raised in this matter. As contended by the Applicants, in our law, ownership does not pass merely because the parties agree to transfer ownership, but pursuant to an act of publicity of the change in legal relationships to third parties. This publicity function is fulfilled by either delivery of the thing (in a case of corporeal movables) or registration of the transfer (in the case of immovable). Accordingly, transfer of movable property such

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two parties involved who will eventually become entitled to it, but it cannot be said that the stakeholder, when he received the money or the thing, or while he is holding it pending the happening of the future event, is acting as the agent of specifically one or the other of the two parties."

[11] Paragraph 2 of the Dolamo Order

as money requires delivery coupled with a real agreement between the parties.[12] The constituent elements of a real agreement are the intention of the owner to transfer ownership and the intention of the transferee to acquire ownership.[13] In *casu*, I am in agreement with the Applicants that the transfer of the invested funds could never have lawfully passed from the Trust to the Respondent because of the existence of the settlement agreement concluded between the Trust and Absa. Neither the Trust, nor Haycock could lawfully have had the intention to transfer ownership of the interest to the Respondent in contravention of a settlement agreement. Moreover, Haycock could never have lawfully 'delivered' the invested funds to the Respondent in contravention of his undertaking furnished to Absa Bank and without their consent. The trustees' resolution on 3 June 2017 in terms of which the money was to be paid to Mrs Pieters, rather than retained in Haycock's trust account was set aside by the court on 23 May 2019. It therefore follows that any decision by the Trust to pay the money to the Respondent for whatever reason was *pro non scripto*.

[33] However, to reinforce my decision, the Respondent fails on the alternative claims as well. It is common cause that part of the payments were made after the date of sequestration of the Trust. It is also common cause that the judgment debt of Tuinroete Agri, a creditor of the Trust, remained unsatisfied and that the dispute with Absa was still ongoing. The Respondent claimed that she was entitled to the money by virtue of a settlement agreement and resolutions adopted by the Trust. In terms of normal insolvency practice, that would have entitled her to prove a claim in the usual course against the Insolvent estate of the Trust as a creditor. In terms of section 29 of the Insolvency Act, a disposition may be set aside as being a voidable preference

[12] *Air-Kel h/a Morkel Motors v Bodenstein* 1980 (3) SA 917 (A)

[13] *Legator McKenna Inc. v Shea 2020* (1) SA 35 (SCA)

if an applicant can prove i) a disposition of the property of the Trust ii)within six months before the sequestration of its estate to the person, the Respondent, in whose favour the disposition was made, iii) which disposition had the effect of preferring one of the creditors above another and iv) that immediately after the making of such disposition, the Trust's liability exceeded the value of its assets.

[34] The payment made to the Respondent constituted a disposition of the Trust's property as envisaged by section 2 of the Insolvency Act. The property was also confirmed as belonging to the Trust in accordance with the order of Dolamo J. The disposition was made within six months of the sequestration of the Trust and in fact, the interest withdrawn and paid to the Respondent during the period 13 March 2019 to 6 May 2020 in the sum of R 129 273.61 was paid to and received by the Respondent after the date of sequestration of the Trust. As an aside, the contention that the operative date is the date of the Dolamo Order and not the sequestration date, is also misguided as this would be contrary to the prescripts of the Insolvency Act. The Trust's liabilities also exceeded its assets in that the Trust was dormant and its bank account closed; the Trust owned no other asset other than the potential right of action against Absa; and the debt to Tuinroete Agri remained unsatisfied. The Respondent on the other hand gave no evidence to prove that the disposition was made in the ordinary course of business and that it was not intended thereby to prefer one creditor above another.

[35] Whilst, in my view, there were some elements of collusion – the decision by the trustees to dissolve the Trust after judgment had been taken against it, so called understandings that the Respondent would be reimbursed for loans and services rendered - I do not find it necessary to make any pronouncements in this regard.

Suffice to say that in motion proceedings, a court is constrained by the principles of the Plascon-Evans[14] rule unless the allegations as stated by the Respondent are so far-fetched or clearly untenable that a court can safely reject it as false. I am in agreement with the Applicants reliance on *Ripoll-Dausa v Middleton NO 2005 (3) SA 141 (C)* which holds that denials by a respondent which are not *bona fide* or which do not raise real or genuine disputes of facts should not be accepted by a court. It is also trite that a court should adopt a common sense approach and reject a version which, although presented in some detail, is wholly fanciful and untenable[15] and if on the papers, the probabilities overwhelmingly favour a specific factual finding, the court should take a robust approach and make that finding.[16] In *casu*, the reliance placed by the Respondent on the disputes that the Trust has with Absa are irrelevant and misplaced. The invested funds were held by Haycock on behalf of the Trust in terms of an agreement between the Trust and Absa. Any subsequent agreement to divert the funds directly to the Respondent would have been unlawful. Second, as I have already stated, the convenient dismissal of the existence of the Dolamo Order or its effect on the Respondent is to be rejected. In fact, this is the cornerstone of the Respondent's defence, that the ownership of the invested funds was transferred to her at the latest when Haycock re-invested the funds and put it onto the Respondent's name on 30 March 2017. The Dolamo Order has made this argument moot. Third, the financial statements of the Trust do not support the Respondent's version that it had loan accounts which entitled her to any payments.

[14] *Plascon Evans Paints v Van Riebeeck Paints* [1984] ZASCA 51; 1984 (3) SA 623 (A) at 634H-635C

[15] *Truth Verification Centre CC v PSE Truth Detection* CC 1998 (2) SA 689 (W) at 689 I-J

[16] *South Peninsula v Evans and Others* 2001 (1) SA 271 (CPD) at 283F-I

[36] For all the reasons stated, the Respondent's defences must be rejected and the application granted as prayed.

In the circumstances, the following order is made:

1. The Respondent is directed to pay to the Applicants the amount of R409 814.30.
2. Interest on the aforesaid amount a *tempora morae*.
3. The Respondent is ordered to pay the costs of this application.

DS KUSEVITSKY

JUDGE OF THE HIGH COURT

COUNSEL FOR APPLICANTS:	**ADV. JANNIE VAN DER MERWE**
COUNSEL FOR RESPONDENTS:	**ADV. LOURENS JOUBERT**