

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG  
(REPUBLIC OF SOUTH AFRICA)

CASE NO: 15402/2011

In the matter between:

**THE ESTATE AGENCY AFFAIRS BOARD**

Applicant

and

**CONSTANTIA SECTIONAL TITLE MANAGEMENT (PTY) LTD**

First Respondent

and

**QUINTIN BROWN**


Second Respondent

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**FILING SHEET: REPLYING AFFIDAVIT**

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FILED BY:



**A B SCARROTT ATTORNEYS**

Attorney for Applicant

c/o HARRISONS ATTORNEYS

11 Pilrig Place

5 Eton Road

PARKTOWN

Tel: 011 463 7336 or Fax 011 463 2007

Ref: MR A SCARROTT

TO:

THE REGISTRAR OF THE  
ABOVE HONOURABLE COURT  
JOHANNESBURG

AND TO:  
CONSTANTIA SECTIONAL TITLE MANAGEMENT  
First Respondent

AND TO:  
QUINTIN BROWN  
Second Respondent

738

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**REPLYING AFFIDAVIT**

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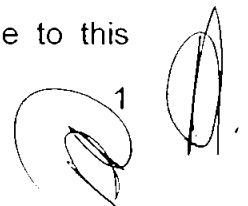
I, the undersigned,

**CLIVE MARTIN ASHPOL**

(ID number 5112175023082)

do hereby make oath and state that:

1. I am an adult male and I am the Executive Manager: Education and Training and employed by the Applicant. I am duly authorised to depose to this

 1

affidavit and to file this replying and supplementary affidavit for and on behalf of the Applicant. A resolution of the Applicant confirming my authorisation was annexed to the founding papers as annexure "A."

2. The facts contained herein are, save where the converse is stated or where the context indicates otherwise, within my own personal knowledge and are to the best of my knowledge and belief, both true and correct.
3. Where any legal issues are dealt with in these papers, they are dealt with on the advice given by the Applicant's attorneys and Counsel and I accept that such advice is correct.
4. Where any allegation or contention contained in the Respondents' answering affidavit is not expressly dealt with and admitted, same is to be taken as having been expressly denied.
5. I make this affidavit in order to reply to the Answering Affidavit filed by First and Second Respondents.
6. Since this matter was heard on 19 April 2011 the following has transpired :
  - 6.1 The inspectors have continued their inspection;
  - 6.2 Mr Gerrit Van Schalkwyk (the former Chief Financial Officer of the First Respondent – hereinafter "Van Schalkwyk") has assisted the inspectors and has provided additional information to them regarding the Respondents misuse of trust monies;
7. Mr Lawrence Moepi (hereinafter "Moepi") the monitor appointed in terms of the agreement between the parties has made certain enquiries and has tried to monitor the trust account transactions of the First Respondent. What has been confirmed is that the shortfall in the balance between the trust creditors

as ascertained by Moepi and the balance held in the First Respondents Nedbank trust accounts as at 9 May 2011 was R 18,342,158.56.

8. The inspectors have confirmed, and this is corroborated by the evidence received from Van Schalkwyk, that notwithstanding the Respondents protestations that they have kept their use of trust monies to the amount they are entitled to as fees and other income, is false to the knowledge of the Second Respondent. The inspectors have reported that following their further investigation and information provided by Van Schalkwyk, that :

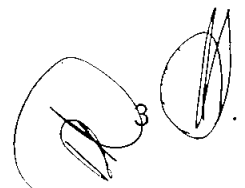
8.1 There has been what can only be viewed as a wholesale plundering by the Respondents of their trust account ;

8.2 The Respondents do not check that they are entitled to funds from the trust account before taking them and certainly do not limit their use of trust money to what they are entitled to;

8.3 The Respondents books and records include false entries and accounts created to intentionally mislead;

8.4 The Respondents misuse of trust money includes use of money the Respondents are not entitled to, to fund activities unrelated to trust creditors including, the First Respondents trading, trading losses, cars, personal bond payments, salaries for the First Respondent, loans to other sectional title schemes and payments to family of the Second Respondent; and

8.5 The shortfall in the trust account is causing the First Respondent to not pay expenses of the sectional title schemes, particularly municipal accounts which are currently in arrears by an amount of approximately R9, 000, 000.00.



9. The foregoing all appears from the affidavits of George Nicholls and Van Schalkwyk attached hereto. The information contained in these affidavits is absolutely shocking, confirms the inspectors initial findings, and shows the absolute necessity for the relief sought in the amended notice of motion to be granted.

10. The amendment to the relief sought (the withdrawal alternatively suspension of the First Respondents fidelity fund certificate) is required and necessitated as a result of the information in the affidavits of George Nicholls and Van Schalkwyk which show that the First Respondent should not be allowed to trade as an estate agent.

11. I will deal below with the Answering affidavit as filled by the Respondents.

12. Ad Paragraph 1 - 5

Save to deny that the contents of the Respondents' answering affidavit are true and correct, the contents hereof are admitted.

13. Ad Paragraph 6

13.1 I note the Respondents acceptance that the Applicant is entitled to investigate the First Respondent and to act in accordance with the results of the investigations.

13.2 It is denied that any conclusions that have been reached were premature or incorrect. If anything the additional information that has come to light has shown that the extent and nature of the Respondents misuse of trust funds is worse than was initially thought and that as a result of the extent of the misuse, it is urgent that the relief sought by the Applicant be granted. The Respondents are wholly unsuited to hold the positions of trust required of estate agents. This will be dealt

4

with and expanded both below and in the supplementary portion of this affidavit.

14. Ad Paragraph 7

The contents hereof are noted.

15. Ad Paragraph 8

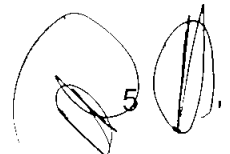
The contents thereof are admitted.

16. Ad Paragraph 9

16.1 I note the acceptance by the Respondents of the legal position relating to the requirement that both the First and Second Respondents are required to have valid Fidelity Fund Certificates whilst the Second Respondent is the only director of the First Respondent. Had the Second Respondent been an admitted and fully qualified estate agent, the Second Respondent would have been fully aware of the requirements to operate an estate agency.

16.2 Notwithstanding the Respondents suggestion that this matter is easily resolved by the Second Respondent resigning as a director and through the appointment of Rita Ferreira and Tiaan Nawn as directors, the inspectors appointed by Applicant have received no confirmation or evidence that this has taken place. In fact, the actual position as to who are the directors of the First Respondent at this time is remains unclear.

16.3 The Second Respondent has stated that he would resign as a director of the First Respondent but has provided no proof that he has done so. The Respondents attorney of record has specifically being asked twice

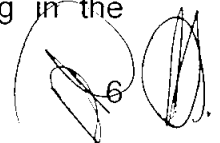
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to ascertain from her clients who the director of the First Respondent are. Copies of these letters are annexed as CA 1 and CA 2. To date no response has been received to what should be a simple issue to respond to. As appears from the affidavit of George Nicholls the inspectors have also ordered the Respondents to state who the directors of the First Respondent are. A copy of this order is attached to the affidavit of George Nicholls. The Respondents have likewise failed to respond to the inspectors on this issue.

16.4 Indeed the evidence suggests that the Second Respondent is still actively holding himself out as the director of the First Respondent. I refer in this regard to the affidavit of George Nicholls and what he was told by Christine Van Graan regarding the opening of the FNB accounts by the Second Respondent and the Second Respondent being the only person currently authorised to transact of these accounts.

16.5 Tiaan Nawn has delivered to the offices of the Applicant a written statement that, effective 21 April 2011; He is no longer a "principal" of the First Respondent. In that written notice, Nawn is clearly attempting to distance himself from the affairs of the First Respondent. This notice is attached hereto as CA3. In the manuscript notes which are in Nawn's hand, he clearly states that he is not a director of the First Respondent and has not been since 22 October 2009. Patently, Nawn has no interest in and no intention of becoming a director of the First Respondent.

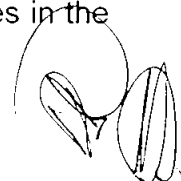
16.6 On 6 May 2011, George Nicholls expressly asked Rita Ferreira whether she had been appointed as a director of the Second Respondent. This question was put to her in a meeting in the





presence of the Respondents attorney of record. As appears from the affidavit of George Nicholls, Rita Ferreira could not confirm that she was a director of the First Respondent. In the circumstances, the relief sought in part A of the Applicant's Notice of Motion remains necessary and the Applicant remains entitled to such relief.

- 16.7 The Applicant is well aware of the distinction and difference between a trust bank account and the accounting which records the transactions relating to trust monies. Any difficulties or confusion that arises as a result of the poor and purposely misleading accounting records maintained by the First Respondent. I refer to the affidavits of Van Schalkwyk and George Nicholls in this regard.
- 16.8 A letter from the Respondents' attorney was received at 15h00 on the 17<sup>th</sup> of May 2011, attached hereto as CA2(1). This was after preparation of these papers had begun. This is the first response that has been received notwithstanding the Respondents undertakings to the Court almost one month ago and the repeated requests from the Applicants attorney.
- 16.9 Paragraph 3 of that letter purports to claim that the Respondents are fully co-operating with the inspection and the requests of the inspectors. This is not true and I refer to the affidavit of George Nicholls further in this regard. This is precisely the diversionary tactics noted and intended to divert attention away from the findings of the inspectors.
- 16.10 The letter from First Respondent's attorney refers to annexure FA1 to the Respondents answering affidavit as proof of the Second Respondents resignation. With respect, annexure FA1 resolves in the

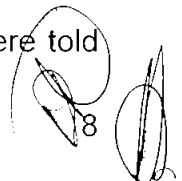


name of the First Respondent that the Second Respondent would resign and that Rita Ferreira and Tiaan Nawn are appointed as directors. This resolution by the First Respondent does not constitute the Second Respondent's resignation. There is no proof that the Second Respondent has resigned as director, nor is any such proof attached to the First Respondent attorney's letter.

16.11 It is telling that the letter from Dimitri Cossadianos, attached as part of CA2(1) and dated 17 May 2011, alleges that the CIPRO documentation has now been lodged, nearly a month after the undertakings of the Respondents. His letter is silent as to who is being appointed as a director. It should have been a simple matter to provide the Applicant with a copy thereof, bearing in mind, the Second Respondent's undertakings, the Applicants repeated requests for proof and the provisions of Section 26 of the Act.

16.12 The letter from the First Respondent's attorney states that Tiaan Nawn is to be appointed as a director. This flies completely in the face of the writing from Nawn annexed to the affidavit of George Nicholls papers as GN16. The actual position as to who the directors of the First Respondent are at this time remains unclear.

16.13 Paragraph 6 of the letter states that the new accounts opened with FNB were not opened in the names of the First Respondent but in the name of the individual bodies corporate. The information supplied by the employees of FNB who met with the inspectors and individual trustees of the bodies corporate who contacted FNB, clearly present a very different picture; namely that the information contained within the First Respondent's attorney letter cannot be considered to be correct. Both George Nicholls and Mornay Crouse (both inspectors) were told

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by FNB that the accounts had been opened in the name of either "CSTM" or Strata "trading as [the body corporate]". I, additionally, I refer to annexure GN 19 which confirms this position.

16.14 The inspectors have not been given the "building balances" (trust creditors) for the Pretoria branch.

16.15 Save as aforesaid, each and every allegation contained herein is denied.

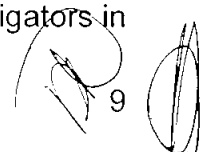
17. Ad paragraph 10

17.1 The identity of the "whistle blower" is not known to the Applicant.

17.2 Whether the "whistle blower" is the individual or entity alluded to by the Respondents or not is similarly not known by the Applicant. The tip-off that was received from the "whistle blower" was anonymous.

17.3 Whether the identity of the "whistle blower" is that alluded to by the Respondents or not, is also, I am advised, irrelevant. The Respondents have conceded the Applicant's right to conduct the investigation and the issue that is of relevance is whether there has been found to be any merit to the allegations made or not. Regardless of what motive the "whistle blower" may have had to make the report, the fact of the matter remains that numerous of the allegations of wrong doing that have been made have been found to be correct and to have substance.

17.4 The Respondents continuously suggest that they are willing to co-operate with the Applicant and the inspectors. Notwithstanding this purported tender, the conduct of the Respondents has clearly been geared towards attempting to discredit and obstruct the investigators in

 9

the conduct of their investigation with the view to diverting attention away from the investigation itself and the results of the investigation.

17.5 The Applicants have been assisted recently by Van Schalkwyk, the former chief Financial officer of the First Respondent. He has confirmed facts that show that the Respondents have not and have never intended to co-operate. The Second Respondent sending him home for two days to prevent the inspectors from speaking with him is proof of this. This appears from his affidavit.

17.6 The Respondents have repeatedly denied the inspectors access to both employees and the specified records of the company, both of which are readily available to hand of the Respondents.

17.7 The Respondents through their attorney refused to provide any information to the inspectors without a written order of demand. This is unnecessary and time-consuming process. This notwithstanding, written orders were issued by the inspectors to the Respondents, which were simply ignored and brushed off. This is dealt with by George Nicholls in his affidavit.

17.8 Save as aforesaid each and every allegation contained herein is denied.

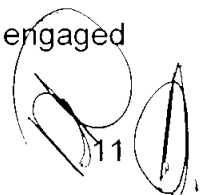
18. Ad Paragraph 11

18.1 I deny that KPMG have been engaged to conduct a complete and thorough forensic audit on the Respondents' trust account. I refer to the affidavit of George Nicholls.

18.2 The inspectors have seen no evidence of the appointment of KPMG.

  
10

- 18.3 The Respondents have clearly sought to suggest that one of the “big five” auditing firms would be engaged to provide an audit of the trust account. This has not happened.
- 18.4 As will be seen and set out below, it is the view of the inspectors and Mr Lawrence Moepi (hereinafter “Moepi”) and of the First Respondent’s bookkeeper, Van Schalkwyk that due to the activities of the Second Respondent and the state of accounts of the First Respondent, it will be an extremely arduous undertaking to determine accurately and reconcile the total amount owed to each of the respective trust creditors. For instance, there are numerous entries on client accounts showing that money owed by them to municipalities have been paid, whereas in truth, they have not.
- 18.5 The accounting records of the First Respondent as a result of the actions of the Second Respondent and the First Respondent's employees, are simply a total shambles, as comprehensively dealt with by van Schalkwyk.
- 18.6 Due to the shortfalls in the trust accounts resulting from the misappropriation of trust fund monies by the Respondents, calculating whom is owed what, where their fund are and whether they can be paid will be an arduous task.
- 18.7 Save as aforesaid each and every allegation contained herein is denied.
19. Ad paragraph 12
- 19.1 The Respondents seek to discredit the inspectors without basis or justification. The inspectors have undertaken their task as engaged

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and have, despite the obstructive behaviour of the Respondents, been able to confirm that the Respondents are not complying with the provisions of the Act and that the whistle blowers report is correct in many of the allegations it contains.

19.2 It is denied that the inspectors have in any manner or fashion behaved inappropriately, improperly or unlawfully or in any manner other than in the bona fide exercise of their powers.

19.3 The application launched in this matter was by no means or manner punitive and neither do the actions of the investigators have any malice in them. The Applicant is a statutory body empowered and obliged to protect members of the public and to regulate the industry. Pasco has been appointed as inspectors and is undertaking that inspection. The Respondents are intent on doing what they can to point a finger at Pasco in an attempt to divert the focus away from the findings of Pasco and their investigation.

19.4 The simple and irrefutable fact of the matter is that the investigations have found evidence of substantial misconduct by the Respondents.

19.5 Save as aforesaid, each and every allegation herein is denied.

20. Ad paragraphs 13 – 15

20.1 I have dealt with this above.

20.2 The important point is that notwithstanding the Respondents advices that the Second Respondent would resign as a director and that Rita Ferreira and Tiaan Nawn would be appointed as directors of the First Respondent, the inspectors and the Applicant have received no evidence that this has happened and no such proof thereof has been

produced by the Respondents. In the circumstances, it is humbly submitted that the Applicant is entitled to the relief sought in part A of the Notice of Motion on this ground alone.

20.3 The Respondents' answering affidavit clearly acknowledges the Applicant's contentions that where all of the directors of the First Respondent do not hold valid Fidelity Fund Certificates, that such relief would be appropriate.

20.4 Save as aforesaid, each and every allegation contained herein is denied

21. Ad Paragraph 16

21.1 It is correct that the Applicant has introduced an amnesty. The terms of the amnesty are set out in annexure "FA3" to the Respondents answering affidavit.

21.2 The Respondents have not applied for nor been granted amnesty.

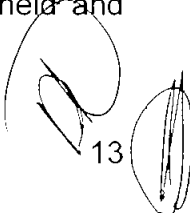
21.3 It is important to note that the amnesty was provided for persons to apply for and obtain valid Fidelity Fund Certificates and not to obtain amnesty for transgressions of nature committed by the Respondents.

21.4 Save as aforesaid, each and every allegation contained herein is denied.

22. Ad Paragraph 17

22.1 As is set out in the Applicant's founding papers, the activities undertaken and advertised by the First Respondent designate them as "estate agents" in terms of the Act. Any funds, which are held and

13





controlled by the Respondents in a separate account on behalf of any third party, are trust monies.

22.2 It is correct that the First Respondent is one of the largest managers of Sectional Title complexes.

22.3 It is noted that the First Respondent acts in terms of a mandate given by the various bodies corporate (Sectional Title Schemes) which they administer. This would be appropriate and correct. Indeed, any use by the First Respondent of any of their clients (body corporate') funds would require the consent of the body corporate in question. This would also be consistent with the provisions of the Act relating to payment of trust monies.

22.4 I note the activities that the First Respondent advises that it undertake. I specifically note that in paragraph 17.3.3 the First Respondent suggests that they undertake reconciliations. One of the biggest issues that the inspectors and indeed Moepi has experienced is the fact that they are unable to obtain any reconciliation of payments against funds held on behalf of specific entities.

22.5 I specifically note the contents of paragraph 17.3.5 of the Respondents' answering affidavit. The Applicant understands this aspect of the Respondents' business very well. The payment of the monthly fees to which the First Respondent is entitled in accordance with its agreement with its clients from its collections on behalf of the various bodies corporate is not disputed. What is disputed is that the amounts that have been appropriated by the Respondents are clearly not related or limited in any manner to the amount of the fees and indeed other income that the Respondents are entitled to. The

  
14  




amounts appropriated by the Respondents from the monies in trust far exceed the amounts that the First Respondent is entitled to be paid or to transfer to itself from the trust monies. The affidavit of Van Schalkwyk and the findings of the inspectors provide detail of this and show the extent of the misappropriation and the abuses that have taken place.

22.6 The Respondents have made a great deal in their answering papers of the proposition that the monies that have been transferred from trust either to the First Respondent or to Mr Brown or to Mr Brown's creditors are funds to which the First Respondent was entitled and that they have accounting for these amounts correctly and truly. This is simply not true. As is set out by George Nicholls and Van Schalkwyk in their affidavits, the Respondents have taken many millions of rands more than they were entitled to. For the year ended February 2011 alone, the inspectors have identified and confirmed with Van Schalkwyk, the respondents took R 9 093 340.88 more than the total they were entitled to (the financial accounts show that the Respondents were entitled to total income of R20 101 025.71 and took R29 194 342.88 which Van Schalkwyk has confirmed was paid from the First respondents trust account). By way of further illustration of the foregoing, I refer this court inter alia to the following which is contained in van Schalkwyk's affidavit:

22.6.1 The raising of a fictitious trust account creditor namely Building 27 which was used as the mechanism to unlawfully channel money from the trust account to the Respondents;

- 22.6.2 The falsification of payments to municipal creditors on the Power Props system to conceal the reality that the accounts were overdue by more than R9,000,000.00
- 22.6.3 Regular payments to the Second Respondent's family members from the trust account. The respective family members were not and have never been trust creditors.
- 22.6.4 Trust monies loaned to various bodies corporate for varying prime plus interest rates, as determined by the Second Respondent.
- 22.6.5 The practice of rolling balances of bodies corporate call accounts between those accounts and the main trust account to plug shortfalls in respective accounts when queried by clients of the First Respondent.
- 22.6.6 Non-payment of income tax on salaries for certain employees that were paid from the trust account.
- 22.6.7 The pledging of approximately R3, 000,000.00 of trust fund money by the Second Respondent to secure (and subsequently partly repay) an overdraft facility taken out largely to pay a deposit on the purchase of a home for the Second Respondent. Van Schalkwyk has confirmed that this pledge is recorded in the books of accounts of the first Respondent as an investment belonging to the First Respondent.
- 22.6.8 The regular and continuous falsification of accounting records to obscure and conceal the true nature of the

transactions occurring on the trust account that were instructed by the Second Respondent.

22.6.9 The supply of falsified accounting records to the auditor of the First Respondent for purposes of obtaining a "clean" audit report.

22.7 The only reasonable conclusion that can be drawn from the foregoing is that the Respondents over the period ended February 2011 have taken substantially more from their trust account than they were entitled and have not and cannot accurately account for the monies they have taken.

22.8 It is noted that the Respondents do not deny that they took the funds reflected under the 8901 reference in this trust account attached to the founding papers for the benefit of the Second Respondent.

22.9 Save as aforesaid, each and every allegation contained herein is denied.



23. Ad paragraphs 19 and 20

The contents hereof are noted.

24. Ad paragraph 21

The contents hereof are denied. It is apparent that the Respondents have taken funds that they were not lawfully entitled to from the First Respondent's trust account and that the funds which the Respondents have taken from the First Respondent's trust account far exceed the fees and amounts which they are entitled to be paid from the funds held in trust.

25. Ad paragraph 22

 17 

25.1 The section quoted correctly reflects the wording thereof.

25.2 Save as aforesaid, each and every allegation contained herein is denied

26. Ad paragraph 23 and 24

26.1 It is denied that the First Respondent kept separate accounting records of all trust monies deposited. The inspectors have shown that the trust account is recorded as a balance sheet general ledger in the books of account of the First Respondent.

26.2 The net effect of the foregoing (confirmed by Moepi and Van Schalkwyk) is that the Respondents are not in a position to ascertain:

26.2.1 how much money each of their clients is entitled to;

26.2.2 what the true amount due to each of the clients is;

26.2.3 whether it has sufficient funds in trust to cover the trust creditors;

26.3 that there is a material and very real shortfall of funds in the trust account is beyond doubt.

26.4 Save as aforesaid, each and every allegation contained herein is denied.

27. Ad Paragraph 25 and 26

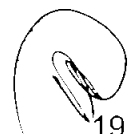

27.1 The manner in which the Respondents' accounts should be dealt with is noted. The fact of the matter is that the Respondents accounts are not dealt with in the fashion set out in paragraph 25.

27.2 Sometime during April 2011, around the time that this application was launched, the Respondents caused trust fund money to be transferred into more than 80 separate bank accounts opened by the Second Respondent at First National Bank, 5<sup>th</sup> Avenue branch Springs. As is set out in the affidavit of George Nicholls and as appears from the email complaint sent to the Applicant from Advocate Dryer (a trustee of a client of the First Respondent), attached thereto, the First respondent is suggesting to its clients that they intend closing their trust account. It is clearly intended by the Respondents that these new accounts would not to be regulated by the Applicant or the Act. As these accounts are under the control of the Second Respondent, have been opened in the name of the First Respondent purportedly "trading as ..." the body corporate, the accounts are clearly intended to contain trust money under the control of the Second Respondent, at least for a period, in the name of the First respondent and in accounts which the Respondents believe will not be under the jurisdiction of the Applicant or subject to the Act. This is very disturbing.

27.3 Save as aforesaid, each and every allegation contained herein is denied.

28. Ad Paragraph 27

28.1 The entries on the First Respondent's accounts are all undertaken at the express and specific instance of the Second Respondent. It is denied that it is only human error that may give rise to an irregularity in the Respondents affairs. I refer specifically in this regard to the affidavit of van Schalkwyk, attached hereto. Save as aforesaid, each and every allegation contained herein is denied

  
19  


29. Ad Paragraph 28 to 30

29.1 It is denied that it is proper or appropriate for the Second Respondent to have made payments from the trust account directly to himself or to his creditors. The appropriate and proper procedure is for the First Respondent to transfer to its business account any funds in trust and thereafter to disburse the monies.

29.2 It is apparent that the Respondents do not distinguish between the trust monies and their own funds. This is apparent not only from the overdrawing of the trust account on occasion and, the application of trust monies for their own purposes but also from the fact that there is absolutely no evidence that the Respondents ever undertake any check or query that the funds are in fact available for their use prior to transferring funds from trust for their own purposes or for the Second Respondent's use. Indeed, it is apparent that the Respondents regard their trust account as a convenient source of funds available for their use as and when required. By way of example, I refer to annexure GN28 to the affidavit of Nicholls, an email instruction from the Second Respondent to Jeannette Van Wyk on 7 October 2009 in which Jeannette Van Wyk advises that she requires R120,406.41 for payment to the South African Revenue and a further amount of approximately R24,000.00 to pay "Momentum", that the First Respondent's business account is overdrawn in the amount of approximately R12,000.00 and in which she enquires whether R55,000.00 to enable the payments to be made could be transferred to business from trust. The Second Respondent's response was that the First Respondent also required monies for salaries and accordingly that a sum of R300,000.00 in addition to that required by Jeannette



20



Van Wyk should be transferred to the First Respondent's business account from trust.

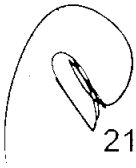

29.3 At no time is there any indication that there is any assessment undertaken in order to ascertain whether or not these funds are available for the First Respondent in the sense that they could be paid from funds which had been earned or against whose accounts these transfers should be taken. It is trite that any funds transferred from trust would require debiting to specific client's accounts or as fees. Van Schalkwyk has confirmed that this process of simply using trust money whenever money was required was the norm.

29.4 Although the Respondents claim that there is a financial record for each transaction, it is trite to state that any such record patently cannot be relied upon as a true and correct reflection as appears from the affidavit of van Schalkwyk. Many of the entries in the First Respondents books and records were falsified to hide and conceal the true nature of those transactions.

29.5 Save as aforesaid, each and every allegation contained herein is denied.

30. Ad Paragraph 31

30.1 Humbly, I submit that the inspectors have made no error in their interpretation of the books of account of the First Respondent, in so far as they have been made available to them. As the affidavit of van Schalkwyk shows, the inspectors were correct in their preliminary findings that gross and serious irregularities in the management of the trust account had taken place.

  
21 

30.2 It is expressly denied that the Applicant is in any manner misleading the court or withholding any information. To the contrary, it is the Second Respondent who is not revealing the full and true position to this Court.

30.3 Save as aforesaid, each and every allegation contained herein is denied.

31. Ad Paragraph 32

The contents hereof are noted.

32. Ad Paragraph 33

32.1 I refer to the affidavit of van Schalkwyk and the specific point that trust account cheques were purposefully altered by the Second Respondent to cause them to be returned and not paid with the sole purpose of delaying payment for which monies were not available to cover the amount of the cheques.

32.2 Van Schalkwyk has confirmed that there was no arrangement that the municipalities would deposit cheques as alleged.

32.3 Save as aforesaid, each and every allegation is denied.

33. Ad Paragraph 34 and 35

33.1 I refer again, to what is stated in the affidavit of van Schalkwyk concerning the alteration of cheques by the Second Respondent. Van Schalkwyk has further confirmed that the cheques were returned as there were insufficient funds in the trust account to cover same.



33.2 The email from Freda Scheepers attached as annexure GVS4 to the affidavit of Van Schalkwyk addressed to the Second Respondent and complaining of the needless alteration of the cheques causing returns and the confirmation by Van Schalkwyk that cheques were intentionally altered to cause them not to be met and that on this occasion there were no funds to meet the cheques, puts the lie to the assertion of the Second Respondent that there is an innocent explanation for the return of cheques.

33.3 Save as aforesaid, each and every allegation is denied.

34. Ad Paragraph 36 - 46

34.1 I have no knowledge of the circumstances under which the Respondents came to be in possession of the business of the First Respondent. Such circumstances are, with respect, irrelevant to the current proceedings.

34.2 The identity of the "whistle blower" is likewise irrelevant as to what is respectfully submitted to be the primary issue: whether there is merit to the allegations made by the "whistle blower" or not. As has been set out in these papers, there is merit to numerous of the allegations.

34.3 The Respondents are again attempting to divert attention away from the foregoing. This, with respect, is the same tactic as the Respondents are employing regarding the inspectors: the Respondents are attempting to divert all attention to the manner in which, they allege, the investigations have taken place and the fact that the Respondents are of the view that the investigation should be handled differently. This is a transparent attempt to divert attention away from the findings of the inspectors.

34.4 The R600, 000.00 which the Respondents state was paid to the First Respondent by way of damages was paid. What is noted, however, is that the amount received, although due to the First Respondent as indicated by the Second Respondent in paragraph 39.1, was credited to the Second Respondent's loan account as an amount loaned to the First Respondent by the Second Respondent. This appears from annexure CA4 hereto. Van Schalkwyk has confirmed that he credited the Second Respondents loan account with this payment as it was not a "normal" business receipt and would reduce the Second Respondents loan account. This is contrary to the contents of paragraph 39.1.

34.5 Save as aforesaid, each and every allegation contained herein is denied.

35. Ad Paragraph 47

35.1 I deny that KPMG have been appointed as independent forensic auditors. I refer to the affidavit of George Nicholls in this regard.

35.2 Save as aforesaid, each and every allegation is denied.

36. Ad Paragraph 48

36.1 It is denied that the trust funds have not been misused. They clearly have.

36.2 The alleged alleviation of the need for the relief sought in part B of the Notice of Motion through the appointment of KPMG falls away, to the extent that there was ever any merit in the suggestion, through the failure of the First Respondent to appoint KPMG or to provide any reports from a suitably qualified person independently confirming that

the First Respondent's trust account is being appropriately conducted. Clearly such a report cannot be given.

36.3 The Respondents have accepted Mr Lawrence Moepi as an independent monitor in accordance with the provisions of the agreement reached between the parties and as made an order of court on 19 April 2011. The Respondents have not queried nor challenged Mr Moepi's credentials or his ability to monitor the trust accounts. The task of monitoring the trust accounts involves many of the same tasks that would be required of a *curator bonis*. That Mr Moepi is suitably qualified is patent from the task that he has performed to date; the acceptance of his position by the Respondents and from the contents of his CV, a copy of which is attached hereto marked CA5.

36.4 The highlights of Mr Moepi's qualifications include:

- 36.4.1 he is a qualified Chartered Accountant (CA);
- 36.4.2 he holds the qualifications B.Com (Honours), and a certificate in the Theory of Accounting (CTA);
- 36.4.3 he has in excess of ten years experience in forensic accounting and investigations;
- 36.4.4 he was previously a partner at Price Waterhouse Coopers Incorporated;
- 36.4.5 he has considerable experience in fraud investigations;
- 36.4.6 he heads up the forensic services practice at Sizwe Ntsaluba Chartered Accountants;

36.4.7 he has been accepted as an expert witness on commercial and accounting matters by the court on various occasions;

36.4.8 he has held an appointment by the Auditor General of South Africa as one of the members of the investigations team into the Strategic Arms Procurement contracts;

36.5 it is respectfully submitted that Mr Moepi is suitably qualified to undertake the role of *curator bonis* in this matter. He has the additional advantage of having already familiarised himself with the environment and circumstances present at the First Respondent.

36.6 Save as aforesaid, each and every allegation contained herein is denied.

37. Ad Paragraph 49

37.1 With the greatest of respect to the Respondents, the affect on their business arising through the appointment of a *curator bonis* is an issue that should have been considered by them prior to their decision as to the manner in which they would use their trust account.

37.2 The Applicant has the statutory duty to regulate the activities of estate agents "with due regard to the public interest" as appears from Section 7 of the Act. In the circumstances, the Applicant is compelled to apply for the relief sought in this matter.

37.3 The Respondents have sought to create as much "atmosphere" as they could suggesting a campaign to victimise them, inappropriate investigative techniques and malice behind the "whistle blower's" report. This is all in an attempt to divert attention away from the fact that it is apparent that the Respondents have misused their trust

accounts and have not conducted themselves in accordance with the provisions of the Act.

37.4 Save as aforesaid the each and every allegation contained herein is denied.

38. Ad paragraph 50 and 51

38.1 It is denied that Section 32(5) of the Act constitutes an appropriate remedy. It is apparent from the investigations of the inspectors and the statement of Van Schalkwyk, that:

38.1.1 the Respondents have treated the contents of their trust accounts as their own;

38.1.2 the First Respondent's books and records are incomplete and inaccurate to the extent that it is not possible to determine the exact status of the Respondent's trust creditors;

38.1.3 it is further apparent from the recent activities of the Second Respondent in continuing to purport to act as a Director of the First Respondent, notwithstanding his undertakings to resign, and notwithstanding his lack of a Fidelity Fund Certificate, that the intention of the Respondents is to continue to have access to the funds through a mechanism which they mistakenly believe will remove the funds from the jurisdiction of the Applicant;

38.1.4 the sole intention of Applicant is to comply with its statutory duties to maintain and promote the appropriate standards of

conduct of estate agents and to regulate the activities of estate agents with due regard to the public interest;

38.1.5 while it is correct that the Respondents have not co-operated with the inspectors, this has merely created a situation where the task of the inspectors has been made more difficult. The inspectors have nonetheless managed to obtain sufficient evidence of non-compliance with the provisions of the Act as appears from the balance of this affidavit and its annexures;

38.1.6 the Respondents are resorting to attempt to discredit the inspectors and to seek to focus the attention of the court on the fact that they disapprove of the manner in which the inspectors have conducted their investigations in order to divert attention away from their activities and findings of the inspectors.

38.2 Save as aforesaid, each and every allegation contained herein is denied

39. Ad Paragraph 52 to 56

39.1 It is denied that the inspectors have conducted themselves beyond the parameters of the Act.

39.2 The inspectors have continuously attempted to obtain access to information and to conduct their inspection in terms of their statutory powers. In spite of the difficult circumstances created by the Respondents, the inspectors have been effective in finding evidence of the material and serious breaches of the provisions of the Act.

39.3 As appears from the certificate of appointment of the inspectors, issued by the Applicant (annexure GN1), they have been appointed as inspectors both in terms of the Act and the Financial Intelligence Centre Act. The Applicant is a supervisory body as defined in the Act and appointed the inspectors in line with the provisions of both FIC and EAA Acts.

39.4 Save as aforesaid the each and every allegation contained herein is denied

40. Ad Paragraph 57 to 61

40.1 The contents hereof are denied. The Respondents actively and intentionally deleted information. The "IT specialist" employed by the Respondents did not disconnect the Applicant's access to the computers (he would not have been able to do so) from outside of the Applicant's premises as the Applicant had connected their computers directly to the file servers of the Respondents.

40.2 The activities of the Respondents were not geared towards stopping the copying of privileged data; they were geared expressly towards deleting damning information from the servers.

40.3 The conduct of the Respondents in deleting the information in order to keep it from the inspectors and the Applicant was patent.

40.4 The deletion of information by the Respondents continues. For instance, the fictitious building account for Building 27 that existed on the Respondent's Power props accounting system was deleted off of the system. I refer in this regard to the affidavit of Van Schalkwyk who has confirmed that such accounts were present on the system and are

no longer. The affidavit of George Nicholls refers to the inspectors' confirmation of this and provides evidence of the previous inclusion of the Building 27 account on the Power Prop system.

- 40.5 It is apparent that the Respondents have a lot to hide and are doing their best to stop the inspectors and the Applicant from accessing this information.
- 40.6 Had the Applicant not made the copy of the Respondent's computers on their first visit to the Respondents' offices, evidence that the accounts existed would not have been easily obtainable.
- 40.7 The Respondents purport to offer co-operation but in truth and in fact are conducting themselves such as to frustrate, slow down, and delay the inspectors.
- 40.8 Save as aforesaid, each and every allegation contained herein is denied.
41. Ad Paragraph 62
- The contents hereof are noted.
42. Ad Paragraph 63
- 42.1 The contents hereof are denied.
- 42.2 The inspectors are employees of Pasco, a professional multi-national company which has been engaged and retained by the Applicant to undertake numerous high level, high value investigations including other investigations for the Applicant.





42.3 Where any issues found by the inspectors to date were unclear, such lack of clarity arises from the poor state and condition of the books and records of the Respondents and the fact that the Respondents' records patently do not accurately and correctly reflect the state of affairs of the Respondents or their trust account.

42.4 Save as aforesaid, each and every allegation contained herein is denied

43. Ad Paragraph 64

I have dealt with this above.

44. Ad Paragraph 65

The contents hereof are noted. It is denied that the inspectors have exceeded their powers as previously stated.

45. Ad Paragraph 66

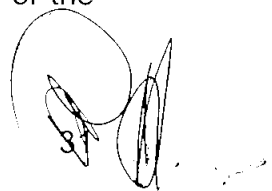
45.1 The activities of the Respondents clearly designate them as estate agents and as such they are subject to the provisions of the Act.

45.2 Save as aforesaid, each and every allegation contained herein is denied.

46. Ad Paragraph 67

46.1 The contents hereof are denied.

46.2 No evidence of the Second Respondent's resignation as a director has been received. In fact quite the contrary. The Second Respondent has held himself out to First National Bank as being a director of the First Respondent.



46.3 The inspectors have confirmed that any of their queries or questions relating to any specific transactions or accounting procedures is always referred to the Second Respondent who is clearly still the only person with the knowledge and authority to make decisions.

46.4 The inspectors have confirmed that through all of their interaction with the employees of the Respondents, all decisions and all queries save for the most basis queries, are all referred to the Second Respondent.

46.5 The Second Respondent remains the controlling mind of the First Respondent.

46.6 Save as aforesaid, each and every allegation contained herein is denied.

47. Ad Paragraph 68

The contents hereof are noted.

48. Ad Paragraph 69

The inspectors are conducting themselves in terms of the Section 32A of the Act and the FIC Act.

49. Ad Paragraph 70

It is denied that proper investigation has not taken place or that the purpose of the application is to "beat compliance out of the First Respondent and [the Second Respondent]". The conduct of the Respondents directs that this application must be brought by the Applicant.

50. Ad Paragraph 71

The contents hereof are denied.

Handwritten signature and initials, possibly "R" and "32", in the bottom right corner.

51. Ad Paragraph 72

The contents hereof are denied.

52. Ad Paragraph 73

The contents hereof are noted.

53. Ad Paragraph 74

The contents hereof are irrelevant but are noted

54. Ad Paragraph 75

It is denied that the activities of the inspectors exceeded their powers. Save as aforesaid, the contents are denied.

55. Ad Paragraph 76

The contents hereof are denied.

56. Ad Paragraph 77

56.1 The inspectors have not viewed or used or referred to or distributed or in any other manner dealt with any documents or communications that may be of a privileged nature. The inspectors have no interest in such communications and have confined their activities only to an inspection of those documents and that information pertinent to the issue of whether or not the Respondents are complying with the provisions of the Act.

56.2 Save as aforesaid, each and every allegation contained herein is denied.

57. Ad Paragraph 78

57.1 I have dealt with all of these issues elsewhere. Save as aforesaid, each and every allegation contained herein is denied.

58. Ad Paragraph 79

58.1 The South African Police Services were engaged as it became apparent through the conduct of the Respondents that it may be necessary to lay charges of obstruction in accordance with the provisions of Section 34 of the Act, the Respondents conduct clearly constituting a failure to comply with the lawful direction of the inspectors in an effort to hinder and obstruct the inspectors.

58.2 Save as aforesaid, each and every allegation contained herein is denied.

59. Ad Paragraph 80

59.1 The Respondents were given ample opportunity to make any submissions they wished to regard an appropriate mechanism to deal with and identify any evidence and information which they believed may be privileged.

59.2 The inspectors briefed and instructed their computer forensic expert to exclude from any documents extracted from the Respondents computers, any communications between the Respondent and its attorneys. It will be noted that no reference to any such information has been made and indeed, the inspectors have confirmed that they have not accessed any such information. I would point out that any privileged information that may exist remains un-accessed and further that the Respondents have not requested access to, nor identified any



information which may be in the possession of the inspectors in respect of which they require specific arrangements to made.

59.3 It is correct that the Second Respondent did request a meeting with the Applicant. The Second Respondent also made requests through its attorney of record to meet with the Applicant, the inspectors and the Applicant's attorney of record. Despite numerous opportunities to meet, no such meeting has taken place.

59.4 The Applicant's attorneys of record have advised the Respondents' attorney of record that, if such meeting is to take place, any disclosures or information which the Respondents should make, are to be made immediately and that they should not be held over until such time as a meeting between the parties does take place. I refer to annexure CA6 in this regard. The inspectors have met with the Second Respondent on numerous occasions and the Second Respondent has had every opportunity to make any disclosures or to pass on any information or communications to the inspectors. The Respondents are also represented by a competent attorney who is able to transmit and pass on any communications that are required to be addressed to the Applicant, via the Applicant's attorney of record.

59.5 Despite the invitation to address any communications in respect of any issues that should be disclosed to the applicant, in writing, the Respondents have not done so.

59.6 Save as aforesaid, each and every allegation contained herein is denied.

60. Ad Paragraph 81

The contents hereof are noted.

61. Ad Paragraph 82

61.1 The Respondents have actively sought to keep the inspectors away from their employees. As Mr Van Schalkwyk sets out in his affidavit, the Second Respondent has made it clear to all the staff members that they are not to speak to the inspectors alone, notwithstanding any desire they may have to do so.

61.2 This has been a consistent pattern since the beginning of the inspection in this matter.

61.3 Save as aforesaid, each and every allegation contained herein is denied.

62. Ad Paragraph 83

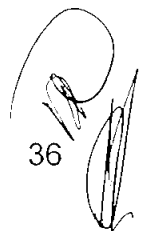
62.1 The potential divergence of interest between the First and Second Respondents is noted. What has happened however is that attorneys Fisher Roeland alone have dealt with the inspectors and the Applicant since the hearing of this matter?

62.2 Save as aforesaid, each and every allegation contained herein is denied.

63. Ad Paragraph 84

63.1 I deny that there is any debate about whether the Act applies to the activities of the Respondents. The act clearly applies.

63.2 It is denied that the Respondents "have no difficulty in being regulated by the Applicant nor that they seek to hide there from."



63.3 The Respondents from the time that they first suggested that the Act does not apply to them up until their most recent efforts to transfer funds from their trust accounts at Nedbank into newly opened accounts in First National Bank (which although controlled by the First Respondent and being accounts intended to hold funds belonging to the various sectional title scheme constituting the clients of the Respondents) and clearly constituting trust monies, the Respondents have sought to avoid the operation of the Act. I refer to an email from Advocate Dryer as annexure GN18. She is a trustee of a body corporate which is a client of First Respondent. Dryer makes it clear that any suggestions that their funds are being dealt with, without at least potential Fidelity Fund Cover, is unacceptable. This attitude is hardly surprising. This annexure makes it clear that the communications being put out by the Respondents are to the effect that:

63.3.1 the trust account is to be closed;

63.3.2 new accounts have been opened by the First Respondent in the name of the various bodies corporate (quite how they have achieved this without the authority of the sectional title schemes is not known but is being investigated);

63.3.3 the new accounts are being opened without the consent of the trustees.

63.4 I attach hereto a printout from the website "helloworld.com" detailing an anonymous complaint published on line confirming that without the authority of the trustees, Quintin Brown had opened a bank account purportedly in the name of the body corporate under the name and

style "Status-trading as CSTM-trading as Hillstone 9048". The complaint makes it patently clear that the Respondents had opened this account without the authority of their client and that they were disapproved of this action.

63.5 It is apparent that the Respondents are under the mistaken impression that if they open these accounts and the various bodies corporate ultimately become signatories thereon, that the funds therein are not trust funds. This is patently incorrect for the following reasons:

63.5.1 the accounts have been opened by the Second Respondent on behalf of the First Respondent and not by the Trustees of the complexes;

63.5.2 the accounts have been opened in the name of the First Respondent merely "trading as" various bodies corporate, making them accounts of the First Respondent regardless of how they may be styled;

63.5.3 at the very least and until such time as sole control over the accounts is signed over to the bodies corporate, the Second Respondent remains the only party authorised to transact on those accounts;

63.5.4 the accounts opened are clearly intended to hold funds for the various bodies corporate and as they are being held, at least in the interim, by the First Respondent, they constitute trust funds.

63.6 On 10 May 2011 the monitor, Mr Moepi, became aware of the existence of the various First National Bank accounts and requested





that he be allowed access to those accounts. Moepi was told by Rita Ferreira that the funds are not trust accounts and he had no authority to monitor the activities on those accounts. Moepi explained to Ferreira that in his view these funds were trust accounts. In his presence Ferreira contacted Lisa Roeland the Respondent's attorney of record who advised Rita Ferreira on speaker phone in the presence of Moepi that if the Respondents retained control over the funds (as opposed to the trustees of the bodies corporate), the funds were trust funds. This confirmed Moepi's view which is, with respect, the correct legal position.

63.7 The Respondents have accordingly been advised by Moepi and by their attorney of record of the correct legal position.

63.8 The applicant is alarmed at the fact that the First Respondent would purport to open accounts in these circumstances without the permission and consent of the Sectional Title Schemes and would be advising the Sectional Title Scheme, as appears from the email of Dreyer, that the trust account was being closed down clearly suggesting that these would not be regarded by the Respondents as trust funds.

63.9 The Applicant in order to protect the member of the public pending the hearing of this application published a notification as appears from annexure CA7, hereto warning members of the public to exercise caution in this regard. I would also refer to annexure CA1 being a letter from the Applicant's attorneys of record of 11 May 2011 sent to the Respondent's attorneys of record setting out that funds under the control of the Respondents and held in a dedicated account, constitute trust funds. This has not been disputed.

63.10 The circumstances under which the accounts have been opened have been referred to First National Bank for investigation, it being of great concern that accounts have apparently been opened without the authorisation of the parties whose accounts they purport to be by the Second Respondent who as appears from his answering affidavit, was to have resigned as a director of the First Respondent in circumstances where the Second Respondent holding no valid Fidelity Fund Certificate, is currently shown as the only party authorised to transact with the funds in the accounts.

63.11 The fact that the Respondents have refused to provide Mr Moepi with details of the First National Bank accounts and the funds held to their credit is a further indication that the Respondents clearly intend these funds to be held outside of the provisions of the Act and the controls of the Applicant and Mr Moepi, the monitor. In all of the circumstances, it is apparent that the Respondents are clearly intent on attempting to restructure their affairs such that the Applicant and the provisions of the Act are not applicable to them.

63.12 Save as aforesaid, each and every allegation contained herein is denied.

64. Ad Paragraph 85

The contents hereof are denied.

65. Ad Paragraph 86

The contents hereof are noted

66. Ad Paragraph 87

The powers of the inspectors are set under both the Act and the Financial Intelligence Centre Act.

67. Ad Paragraph 88

I have dealt with this above, save as aforesaid, the contents are denied.

68. Ad Paragraph 89

The contents hereof are denied.

69. Ad Paragraph 90

69.1 It is correct that the relevant section is 32(2) (e).

69.2 Save as aforesaid, each and every allegation contained herein is denied.

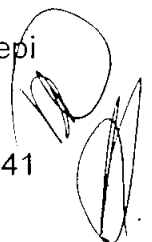
70. Ad Paragraph 91

The contents are noted.

71. Ad Paragraph 92

71.1 The appropriate procedure to be followed in this matter is the procedure that the Applicant has followed.

71.2 It is noteworthy that the Respondents have been unable to produce to the inspectors, Mr Moepi or to the Applicant's attorneys any documentation showing that there are sufficient funds in trust to cover the trust creditors as at any date. As appears from Moepi's report attached hereto as CA8 he too finds a substantial shortage between the trust creditors as the Respondents records show them, and the trust account balances as the Respondents have provided. Moepi



reports the shortfall as R 18, 342, 158.56. What sums have been transferred to the First National Bank accounts is unknown.

71.3 Save as aforesaid, each and every allegation contained herein is denied.

72. Ad Paragraph 93

72.1 The inability by the Respondents to provide confirmation that as at any date the balance in the various trust accounts is sufficient to cover the trust creditors is a blatant indication that the First Respondent cannot ascertain that as at any date it holds funds sufficient to cover its obligations to the trust creditors.

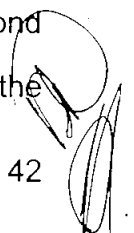
72.2 The monitor, Mr Moepi, has confirmed a similar difficulty.

72.3 I refer this Honourable Court to the affidavit of Van Schalkwyk which confirms that the trust account was used by the Respondents as if it was their own funds and for purposes other than that which the Respondents were entitled to use the funds for (including loans to bodies corporate and for providing cash flow for the First Respondent's needs numerous other purposes that they are not entitled to use the funds for).

72.4 Save as aforesaid, each and every allegation contained herein is denied.

73. Ad Paragraph 94

73.1 These are not the only payments that have been made to the Second Respondent and the Second Respondent's creditors directly from the



trust account. The fact that the Second Respondent openly admits to having debit orders on the trust account is simply astounding. Regardless of the basis on which the First Respondent may be obliged to make payment of any amounts to RMB bank or to any other creditor, there is no basis for the payment of these funds directly from the trust account particularly not by way of debit order. The arrogance of the Respondents in placing debit orders on the trust account ensuring that these amounts are paid automatically (without any assessment on each and every occasion as to whether the monies are in fact due to the First Respondent in any month and whether they are available to be paid to the First Respondent) is alarming indeed.

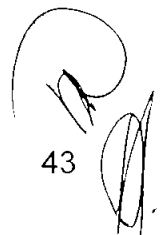
73.2 The fact that the Respondents believe that the vast sums of monies that are paid directly from the trust account "do not aggregate to more than the annual value (being 12 x R1.800.00) to which the First Respondent is entitled" is astounding. As is set out in the affidavit of van Schalkwyk and George Nicholls, the funds with the Respondents took from the trust account in no way were limited to the fees and payments to which they were legitimately entitled to.

73.3 The fact that the Second Respondent has removed the debit orders from the Trust account does not rectify the wrongdoing or transgressions that have taken place.

73.4 Save as aforesaid, each and every allegation contained herein is denied.

74. Ad Paragraph 95

The contents hereof are denied for the reasons aforesaid.



75. Ad Paragraph 97

The contents are noted.

76. Ad Paragraph 98

76.1 For the reasons aforesaid, the contents hereof are denied.

77. Ad Paragraph 99

77.1 It is denied that any investigations have been handled inappropriately in any manner.

78. Ad Paragraph 100

The contents are noted

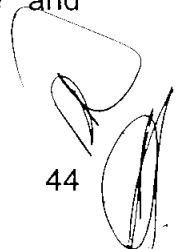
79. Ad Paragraph 101

79.1 The inspectors received the Bank statements in electronic format only on the day that they conducted their first inspection. The physical copies constituting many thousands of pages were only received some time later.

79.2 Save as aforesaid, each and every allegation contained herein is denied.

80. Ad Paragraph 102

80.1 The Respondents did not disclose the existence of the Power prop accounting system to the inspectors. It has now been made available (to the extent that it exists at present) and as is confirmed by Van Schalkwyk, the contents thereof are hopelessly inaccurate and



inadequate and are not an accurate reflection of the state of play of the trust creditors. This is precisely why a *curator bonis* is required.

80.2 Save as aforesaid, each and every allegation contained herein is denied.

81. Ad Paragraph 103

The contents are denied

82. Ad Paragraph 104

The contents are denied

83. Ad Paragraph 105

The supplementing of the Applicant's papers takes place in terms of the agreement reached between the parties and as made an order of court on 19 April 2011.

84. Ad Paragraph 106

The contents are noted.

85. Ad Paragraph 107

85.1 I am the person who attends to matters such as these within the Applicant. My authority appears from the resolution of the board of the Applicant attached to the Founding Affidavit.

85.2 Save as aforesaid, each and every allegation contained herein is denied.

86. Ad Paragraph 108

The contents hereof are denied

87. Ad Paragraph 109

The contents hereof are admitted

88. Ad Paragraph 110

88.1 The Applicant is entitled to the relief sought. This is particularly so in light of the further information that has come to the fore.

88.2 My "pre-occupation" with the administering of trust accounts flows from the Applicant's statutory duty to do so and due to the circumstances of this matter which are set out in the Founding Affidavit and this Affidavit.

88.3 Save as aforesaid, each and every allegation contained herein is denied.

89. Ad Paragraph 111


89.1 It is denied that Section 32(7) of the Act is not applicable. Once the Respondents became disentitled to act as Estate Agents (which occurred once the Second Respondent's Fidelity Fund Certificate had lapsed) the Respondents were obliged to wind up their trust account in the prescribed manner.

89.2 Save as aforesaid, each and every allegation contained herein is denied.

90. Ad Paragraph 112

The contents thereof are noted.

91. Ad Paragraph 113





The contents hereof are noted.

92. Ad Paragraph 114

The contents hereof are denied.

93. Ad Paragraph 115

93.1 I repeat that there is no evidence that the Respondents have procured the resignation of the Second Respondent. I refer to what is set out above regarding the appointment of directors and regarding Tiaan Nawn and Rita Ferreira. It is hardly surprising that they may have some reluctance in assuming the responsibilities attaching to the position of director of the First Respondent at present.

93.2 Save as aforesaid, each and every allegation contained herein is denied.

94. Ad Paragraph 116

The contents hereof are denied.

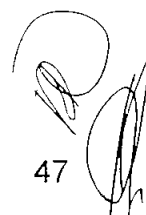
95. Ad Paragraph 117

The contents hereof are denied. I refer also to the supplementary affidavits filed in this matter and again repeat that KPMG auditors have not been appointed.

96. Ad Paragraph 118

The contents hereof are denied

97. Ad Paragraph 119

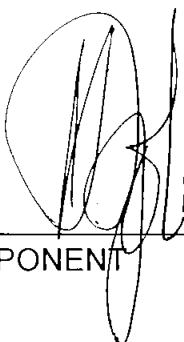


97.1 This matter remains urgent and is again so by virtue of the fact that the extent of the transgressions has become better known to the inspectors through the co-operation of Van Schalkwyk and by virtue of the fact that there is an urgent need to preserve the balance of the trust monies and to prevent the Respondents from attempting to place the trust monies into accounts which they believe are not subject to the Act and the jurisdiction of the Applicant.

97.2 I note the Second Respondent's admission, "if the correct facts are present, the interventions which the Applicant seeks to bring about would be urgent." The facts alleged are present.

97.3 Save as aforesaid, each and every allegation contained herein is denied.

Wherefore I pray for an order in terms of the notice of motion.

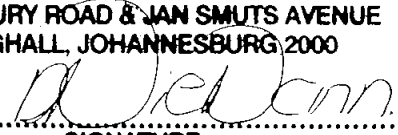
  
\_\_\_\_\_  
DEPONENT

Signed and sworn to at Johannesburg on this 19th day of May  
2011 the Deponent having acknowledged that he know and understands the  
contents of this Affidavit, that it is true and correct to the best of his knowledge,

that he has no objection to taking the prescribed oath and that the prescribed oath will be binding on his conscience.

BEFORE ME

  
\_\_\_\_\_  
DL NIEMANN  
COMMISSIONER OF OATHS

COMMISSIONER OF OATHS  
BY VIRTUE OF MY OFFICE AS A DULY  
AUTHORISED REPRESENTATIVE OF FNB  
HYDE PARK  
CNR ALBURY ROAD & JAN SMUTS AVENUE  
CRAIGHALL, JOHANNESBURG 2000  
  
.....  
SIGNATURE

Desire' Lynn Niemann,

Message Confirmation Report

CAI

11-MAY-2011 15:40 WED

788

Fax Number : 0114632007  
Name : SCARROTT ATTORNEYS

Name/Number : 0866167612  
Page : 2  
Start Time : 11-MAY-2011 15:38 WED  
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A.B. SCARROTT ATTORNEYS

FISHER ROELAND ATTORNEYS  
ATTENTION: LISA ROELAND  
FAX: 086 616 7612

URGENT

Our Ref: A B SCARROTT/gs/

Your Ref:

Date: 11 May 2011

Dear Madam,

**MY CLIENT: ESTATE AGENCY AFFAIRS BOARD**  
**YOUR CLIENTS: Q BROWN AND CONSTANTIA SECTIONAL TITLE MANAGEMENT (PTY) LIMITED**

**Directors of Constantia Sectional Title Management.**

Your client, Mr Quintin Brown, undertook that he would resign as a director of Constantia Sectional Title Management (Pty) Limited. This is stated on oath by him in paragraph 15 of his Answering Affidavit filed in this matter. It is provided further in paragraph 15 of your client's Answering Affidavit that Rita Ferreira and Tiaan Nawn would be appointed as directors of Constantia Sectional Title Management (Pty) Limited. At the Instance of my client, the Estate Agency Affairs Board and at the instance of the inspectors, your client is requested to provide, immediately:

1. a copy of the documentation evidencing the resignation of Quintin Brown as a director of Constantia Sectional Title Management (Pty) Limited;
2. confirmation of the effective date of such resignation;
3. copies of the documentation evidencing the appointment of Rita Ferreira and Tiaan Nawn as directors of Constantia Sectional Title Management (Pty) Limited;
4. confirmation of the effective date on which Rita Ferreira and Tiaan Nawn became directors of Constantia Sectional Title Management (Pty) Limited.

Your client, Mr Quintin Brown, appears not to have done what he undertook to do in resigning as a director of Constantia Sectional Title Management (Pty) Limited. If your client has not resigned and ceased to act as a director of Constantia Sectional Title Management (Pty) Limited then on that basis alone, my client would be entitled to the relief sought in part A of the Notice of Motion.

**Andrew Bryan Scarrott BA LLB**

58 Ormonde Street  
Bryanston  
SANDTON

P.O. Box 1314  
Magaliesburg  
2087

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