IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 27011/12

REPORTABLE: NO
OF INTEREST TO OTHERS JUDGES: NO

08/05/2016 .....
DATE **SIGNATURE**

In the matter between:

BUDGE: JONATHAN STUART	**First Plaintiff**
BOON: FARREL EAN N.O.	**Second Plaintiff**
BUDGE: VIVIEN BARBARA N.O.	**Third Plaintiff**
POLLOCK: RICHARD N.O.	**Fourth Plaintiff**
WAVELENGTHS 1147 CC (IN LIQUIDATION)	**Fifth Plaintiff**
MIDNIGHT STORM INVESTMENTS 256 (PTY) LIMITED (IN LIQUIDATION)	**Sixth Plaintiff**

and

GLYN-CUTHBERT: RUSSEL	**First Defendant**
SANTANA: ANTHONY N.O.	**Second Defendant**
SANTANA: LEANNE N.O.	**Third Defendant**

RUSKING REAL ESTATE MARKETING (PTY) LIMITED	**Fourth Defendant**
COREFACTS 1069 CC	**Fifth Defendant**
COPPER SUNSET TRADING 326 (PTY) LIMITED	**Sixth Defendant**
CENTRAL LAKE TRADING 304 (PTY) LIMITED	**Seventh Defendant**
DAVPROP 26 (PTY) LIMITED	**Eighth Defendant**
WEST DUNES PROPERTIES (PTY) LIMITED	**Ninth Defendant**
LITTLE SWIFT INVESTMENTS 338 (PTY) LIMITED	**Tenth Defendant**
TURQUOISE MOON TRADING 289 (PTY) LIMITED	**Eleventh Defendant**
ALFA BUSINESS VENTURES 33 (PTY) LIMITED	**Twelfth Defendant**

JUDGMENT

MPHAHLELE, J:

[1] The first plaintiff (Jon) and the first defendant (Russell) were business partners. Their partnership was formed in 2001 and purchased properties and shares in various property owning entities. The first plaintiff and the first defendant held equal shares in the various companies and close corporations in their personal capacities or through their family trusts. On 26 November 2007 they entered into a dissolution agreement in terms of which they dissolved their partnership with effect from 30 November 2007. The corporate entities through which they had conducted their partnership are parties to the dissolution agreement.

[2] The dissolution agreement provides, *inter alia*, that Russell would form a company to be called Rusco. Rusco would purchase the properties owned by the partnership property owning entities for a sum of not less than R29 000 000-00 gross. These entities are Wavelengths 1147 CC, Midnight Storm Investments 256

(Pty) Ltd, Turquoise Moon Trading 289 (Pty) Ltd and Alfa Business Ventures No 33 (Pty) Ltd. The sum of R29 000 000-00 would be paid to the entities and the nett proceeds would be paid to Jon and Russell or their nominated entities. Russell and Jon each hold a 50% equity in Davprop which sold its property to Rusco for R3 000 000-00 (gross). The dissolution agreement further provides that a R3 000 000-00 management fee would be paid to Rusco for the year 2008. The dissolution agreement bound Russell in his personal capacity and in his capacity on behalf of Rusco. After 30 November 2007 the first plaintiff no longer participated in the active management of the partnership businesses.

[3] The plaintiffs instituted nine separate claims against the first, second, third, fourth, eighth and eleventh defendants. The claims can be classified into three categories, namely, (a) claims by the first plaintiff in his personal capacity; (b) first, second and third plaintiffs' claims in their capacities as the trustees of the JSB family trust; (c) claims by the fourth plaintiff in his capacity as liquidator of the fifth and sixth plaintiffs (Wavelengths and Midnight storm)

[4] The claims emanate from the dissolution of the partnership, the alleged repudiation of the dissolution agreement by the first defendant and the subsequent cancellation thereof by the first plaintiff. Before dealing with the respective claims I deem it necessary to first determine whether the dissolution agreement has been validly repudiated and cancelled.

[5] According to the particulars of claim the grounds on which the first plaintiff relies upon for the repudiation are the following: (a) the first defendant's failure to

incorporate Rusco; (b) On 26 November 2010 the first defendant through his attorneys wrote a letter to the first plaintiff's attorneys stating that the first defendant "disputed that there was an agreement as contended for in your e-mail under reply". According to the first plaintiff, the first defendant's attorneys by that letter intimated that the first defendant did not consider the dissolution agreement to have come into effect or to be enforceable.

[6] The first defendant submitted that the alleged failure to incorporate Rusco did not constitute a repudiation of the dissolution agreement as he and the first plaintiff had made amendments to the dissolution agreement in order to give effect to its provisions. These amendments were not disputed by the evidence of the first plaintiff. The effect of the amendments allowed for the incorporation of different legal entities by the first defendant which subsequently concluded certain sale agreements with the partnership property owning entities (the entities).

[7] The evidence of the first defendant is that the amendments were accepted by the first plaintiff and the first defendant as due compliance with the provisions of clause 5.2 of the disillusion agreement. Clause 5.2 required the entities to sell the properties to Rusco. Through these amendments the first plaintiff personally agreed to each introduction of a new purchaser other than Rusco. This is evidenced by the sale agreements involving, *inter alia,* Davprop and Rusking Real Estate (REM), Turquoise Moon and Danking Properties, Wavelengths and Rusking Properties, Midnight Storm and Turquoise Moon. In the foregoing sale agreements the first plaintiff signed the offers to purchase on behalf of the seller entities and the first defendant signed on behalf of each purchaser.

[8] It is my view that the fact that the first plaintiff signed the offers to purchase by other purchasers other than Rusco indicates a clear intention of the parties to depart from the initial provision of the dissolution agreement requiring that the properties be sold to Rusco. These amendments or variations were in writing and in my view amount to compliance with the non-variation clause contained in the dissolution agreement. The effect of these amendments is similar to those contended for by the trustees of the JSB Family Trust in claim G relating to Davprop.

[9] In support of his assertions that the fist defendant repudiated the agreement the first plaintiff also relies on the first defendant's attorneys letter of 26 November 2010. In my view, the letter of 26 November 2010 is nothing more than the first defendant's response to the first plaintiff's apparent understanding or interpretation of the specific issues raised therein and must be read in context. It should suffice to state that, read in context, the first respondent's reply does not deny the existence of the dissolution agreement.

[10] The first plaintiff testified that the first defendant paid R3 million into the bank account of Wavelengths towards certain of the partnership properties in December 2009 and then withdrew that same R3 million in November 2010. The plaintiffs allege that the R3 million deposited into the Wavelengths bank account was incorrectly classified by the first defendant as "a loan" whilst it was in fact a deposit for the acquisition of Antonio Manor. The plaintiffs contended that the withdrawal confirms that the first defendant had elected by the date of the withdrawal to abandon the dissolution agreement, and repudiate the agreement.

[11] The first defendant testified that he loaned an amount of R3 000 000-00 to Wavelengths. This amount was deposited into the banking account of Wavelengths from the REM account and classified as a loan. On 6 November 2010 he withdrew the amount of R3 million from the Wavelengths bank account. The first defendant disputed that the deposit was in respect of the acquisition of Antonio Manor as at the time of the deposit there was no agreement of sale for the acquisition of the Antonio Manor property nor a contractual obligation on the his part or one of his legal entities to pay any deposits to Wavelengths. He contended that the failure by the liquidators of Wavelengths to claim payment of the R3 000 000 from him or REM confirms that it was accepted that the sum of R3 million had to be repaid to him or REM.

[12] The first defendant testified that a t the time of the withdrawal of the R3 000 000-00, agreements of sale had been tendered by the first defendant to the first plaintiff in terms of which the individual Rusking Manor CC's would acquire the individual stands constituting the Antonio Manor development; the unchallenged evidence of the first defendant was that the first plaintiff refused to permit those transactions to take place.

[13] The first defendant submitted that the plaintiffs' particulars of claim do not contend that the withdrawal by the first defendant of the R3 million "loan" constituted a repudiation of the dissolution agreement and the plaintiffs must be held bound to the allegations contained in their particulars of claim. I agree with the first defendant that the first plaintiff cannot rely on the withdrawal as a basis for

the repudiation as it is not pleaded as conduct from which the repudiation is inferred. In short, the plaintiff must allege and prove the conduct, not only prove it.

[14] It is also alleged by the first plaintiff that in his affidavits opposing the winding-up of Wavelengths and Midnight Storm, the first defendant stated that the dissolution agreement was impossible of performance, and that by mid-2010 he had determined that the dissolution agreement could not be performed.

[15] The first defendant testified that he performed in terms of the dissolution agreement and tried to enforce it until 2011 when the first plaintiff obtained court orders for the winding up of Wavelengths and Midnight Storm which hampered the first defendant from giving effect to the dissolution agreement.

[16] It is trite that the test for repudiation is an objective one and the onus rests on the party alleging the repudiation to prove it. Repudiation is not a matter of intention but a matter of perception. See *Datacolor International (Pty) Ltd v Intamarket (Pty Ltd*[1]

[17] It is clear from the foregoing that, viewed objectively, the allegations of repudiation made by the first plaintiff are not supported by a reasonable interpretation of the dissolution agreement, the totality of the evidence presented in court or the conduct of the parties during the period leading up to the date of the alleged repudiation. Consequently, I am not able to find that there was a valid repudiation and cancellation the dissolution agreement.

[18] Having made a finding that there was no effective cancellation of the dissolution agreement, the claims of the plaintiffs must therefore be determined

[1] 2001 (2) SA 284 (SCA) at paras [16]-[19].

based on a reasonable interpretation of the dissolution agreement. I now deal with each claim individually.

Claim A

19 In this claim the plaintiffs seeks the following relief:

Declaratory orders that:

(a) The first defendant repudiated the dissolution agreement;

(b) The first plaintiff's cancellation of the dissolution agreement following the repudiation was lawful;

(c) The effect of the cancellation of the dissolution agreement was to leave the partnership agreement in existence;

20 The plaintiffs claim an order directing that the partnership be dissolved with effect from the date of this order;

21 The plaintiffs claim an order that Mr Pollok who is the liquidator of Wavelengths and Midnight Storm (the fifth and sixth plaintiffs) be appointed as the liquidator to wind up the partnership and to distribute the assets of the partnership equally between the first plaintiff and the first defendant taking into account the monies received by each of them from the partnership to date.

22 The first plaintiff claims that Mr Pollock as liquidator of the partnership make accounting adjustments in order to give effect to the orders of this court in respect of the damages award that this court might order at the end of the trial;

23 The first plaintiff claims that the first defendant be directed to pay the costs of Mr Pollok as the liquidator together with the costs of claim A;

24 The first plaintiff claims against the first defendant an order directing the first defendant to furnish the first plaintiff with a detailed accounting in respect of the conduct of the business and partial dissolution of the partnership within 15 days of this order and directing the partners to debate that account within 30 days from the date of same being rendered and then directing the first defendant to pay to the first plaintiff the amount found due in respect of that accounting within ten days of the 30 days in which they would have been debating the account.

[25] As a consequence of having found that there was no valid repudiation and cancellation of the dissolution agreement, the relief sought in 19 and 20 above must fail.

[26] The first plaintiff conceded in his evidence that it is only in the event of the Turquoise Moon shares and/or the Davprop shares being returned to the partnership that the partnership will be vested with any assets which would require sale and distribution by a liquidator of that partnership. Those shares could only be restored to the partnership if the dissolution agreement had been validly cancelled. The only assets which have not yet been distributed are those which vest in Wavelengths and Midnight Storm. Those assets will be dealt with by the liquidators of those companies. I will return to the relief sought under claim A 21-23 when dealing with claims F and G relating to the shares in Turquoise Moon and Davprop respectively.

[27] The first plaintiff claims that the first defendant be directed to furnish detailed accounting in respect of the conduct of the business and its partial dissolution. It is

not in dispute that the dissolution agreement came into effect on 30 November 2007 and that as of that date the first plaintiff played nor further part in the running of the partnership business. The first defendant was the sole manager of the business until the liquidation orders regarding Wavelengths and Midnight Storm were granted in 2011.

[28] On the first defendant's own evidence he has not accounted to the first plaintiff in full. He stated that he would need his auditor to assist with explaining the transactions between Turquoise Moon, REM, and Wavelengths. The first defendant cannot be said to have accounted in full if he does not even understand the basis of his own accounting. In the circumstances it is just and equitable that the first defendant be ordered to render a proper and detailed accounting.

Claim B

[29] This is a claim in the amount of R2 483 552.96 in respect of the damages suffered by the first plaintiff as a result of the first defendant's repudiation of the dissolution agreement. The claim includes payment of interest charged in respect of the balance outstanding to the first plaintiff from time to time. Claim B is contingent upon there being a valid repudiation and cancellation of the dissolution agreement. As already found, there was no valid repudiation and cancellation of the dissolution agreement, claim B must therefore fail.

Claim C

[30] This is a claim by the fourth plaintiff in his capacity as liquidator of the fifth plaintiff. This is a claim for the repayment to Wavelengths of an amount of R3 420

000.00. That claim is pursued against the fourth defendant, alternatively, the first defendant and relates to an agreed management fee payable for the year 2008 which the first defendant caused to be paid to the fourth defendant (Rusking Real Estate Marketing (Pty) Ltd – "REM"). The management fee is in respect of the winding up of the partnership that had to be performed by the first defendant and the claim is premised on the allegation that the first defendant failed to perform in terms of the dissolution agreement.

[31] The claim is also based on 2 alternative basis. In the first alternative basis, the repayment is claimed on the basis that REM was not entitled to payment of the management fee in the event that the court finds that REM was not Rusco. This alternative claim is an enrichment claim based on the *condictio sine causa.* The second alternative basis for the claim is that if REM was not Rusco, the payment by Wavelengths was made pursuant to a breach of a fiduciary duty owed by the first defendant as a member of Wavelengths and therefore the first defendant personally must pay back the R3 420 000-00.

[32] The fourth plaintiff alleges that the first defendant did not perform as required under the dissolution agreement, alternatively, that even if he did perform, the entity that was paid the management fee was not the entity entitled to receive same. It was contended that in order to earn a management fee the first defendant has to show that he performed the contractual obligations resting on Rusco on behalf of Rusco.

[33] It was submitted that if Rusco was not formed, there was no enforceable obligation contained in clauses 7 of the dissolution agreement and the management

fee of R3 million was not due to any existing company and clause 7 relating to the management fee may be severed from the dissolution agreement and treated as *pro-non scripto*, in which event there would be no obligation on Wavelengths to pay the R3 million management fee. The fact that the monies were then paid to REM would give rise to the enrichment action on an *actio sine causa*, and/or an action against the first defendant personally for the repayment of the R3 million based on his breach of his fiduciary duty under the Close Corporations Act 69 of 1984.

[34] Even though the first plaintiff conceded that the management fee was to be earned by the first defendant and it made no difference to him whether that fee was paid to REM or to any other entity, it does not detract from the fact that the agreement specifically provides that the management fee would be payable to Rusco. There was no variation of this requirement contrary to what was the case in respect of the sale of the properties to other entities other than Rusco. The fact that the first plaintiff never objected to those payments despite that they took place monthly over a period of 12 months or that he had throughout intimated that Rusco had been incorporated as REM make no difference.

[35] The first defendant submitted that Rusco itself would not undertake any management activities and its initially proposed purpose was simply to purchase the properties and no more. This argument is without merit as the agreement that Rusco would be paid a management fee without stipulating who was to carry out the management duties implies that it was Rusco's responsibility to do so.

[36] It is clear from the totality of the evidence presented that there was no amendment of the dissolution agreement to provide for the payment of a management fee for management and collection services to any entity other than Rusco. In the result this claim must succeed.

Claim D

[37] This is a claim by the fourth plaintiff in his capacity as liquidator of the fifth plaintiff. This is a claim against the fourth defendant, alternatively, the first defendant for the repayment to Wavelengths of R4 560 000.00 in respect of the management fee paid by Wavelengths to the REM for the year 2009. The alternative claim against the first defendant is based on his alleged breach of a fiduciary duty owed by him as a member of Wavelengths.

[37] The first defendant alleges that the R4 million was paid pursuant to an oral agreement between himself and the first plaintiff that the first defendant would be paid an additional R4 million management fee for the calendar year 2009. The agreement is denied by the first plaintiff. It was submitted on behalf of the first plaintiff that the conduct of the first defendant was consistent with no agreement. He took the precaution of going to see Mr Glyn-Cuthbert at his home to protest the events of the meeting of 4 December 2008 (where Mr Glyn Cuthbert alleges the management fee was agreed to) and followed that meeting up with the one in January 2009 when the

cancellation announcement was made and resulted in that "agreement" never taking place.

[39] The first plaintiff further submitted that this oral agreement was without any legal force or effect as it was precluded by the non-variation clause in clause 14(b) of the dissolution agreement. It is clear that clause 14(b) prohibits oral variations of the agreement but does not preclude the parties from concluding additional oral agreements which cater for circumstances not dealt with in the written dissolution agreement. See *National Sorghum Breweries Ltd v Corp Capital Bank Ltd*[2]; *Randcoal Services Ltd and Others v Randgold and Exploration Co Ltd*[3].

[40] The evidence presented on behalf of the parties to this claim is at variance and mutually destructive. I am of the view that the balance of probabilities concerning this claim favour the version of the first defendant as it is most likely than not that the parties would have agreed on the management fee for the year 2009 given the winding up of the partnership was still ongoing at the time. See *Stellenbosch Farmers' Winery Group Ltd & Another v Martell et CIE & Others*[4]. In the circumstances claim D must fail.

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[2] 2006 (6) SA 208 (SCA).
[3] 1998 (4) SA 825 (SCA) at pp.841-842.
4 2003 (1) SA 11 (SCA) at 14I-15D.

Claim E

[41] This is another claim by the fourth plaintiff in his capacity as liquidator of the fifth plaintiff. This is a claim by Wavelengths for repayment of an amount of R300 000.00 which is brought against the first defendant. It is in respect of the liquidators' claim for the two amounts of R150 000-00 salary paid by the first defendant to himself out of Wavelengths in the months of March and April 2010. The claim is based on the *condictio sine causa* with the alternative of the breach of the fiduciary duty of s 42 (3)(a) of the Close Corporations Act.

[42] The fourth plaintiff submitted that the money had to be refunded as the first defendant conceded in evidence that he had not reached an agreement with the first plaintiff regarding payments. It was submitted on behalf of the first defendant that he rendered the services on behalf of Wavelengths as a member and employee of that company in 2010 and was accordingly entitled to be paid a salary. It was further submitted that in the circumstances of their relationship, it was incumbent upon the first plaintiff had he objected to the payment of the salary for March and April 2010 to convey that objection to the first defendant. In the absence of any agreement regarding the payments, claim E must succeed.

Claim F

[43] This is a claim brought by the first, second and third plaintiffs in their capacities as the trustees of the JSB Family Trust. This is a claim for the rectification of the share register in the eleventh defendant (Turquoise

Moon). It seeks to have the JSB Family Trust shares restored to it in Turquoise Moon and to have the first plaintiff restored as a director of Turquoise Moon retrospectively to 11 June 2012.

[44] The basis of the plaintiffs' claim is that the remaining trustees of the JSB Family Trust had not consented to the sale and the transfer of the shares occurred without the requisite CM42 securities transfer forms being signed; alternatively, that the cancellation of the dissolution agreement as a whole has as a direct consequence of the cancellation of the sale of share agreement for the Turquoise Moon shares. Alternatively, the plaintiffs rely on the lack of authority from the JSB Family Trust to transfer the shares. The plaintiffs submitted that the first defendant did not consider himself the owner of the shares in Turquoise Moon as of 26 November 2010, his attorneys wrote a letter wherein they requested the first plaintiff to sign the share transfer forms relating to these shares.

[45] The plaintiffs further submitted that the Turquoise Moon transaction was to be overturned by reason of non-payment as it was common cause that the price agreed on for those shares was R2 750 000-00 and the first defendant had failed to pay the purchase price.

[46] The first defendant submitted that there is no suggestion in the particulars of claim that the agreement of sale must fail owing to alleged non-payment of the purchase price or that the dissolution agreement was cancelled due to non-payment

of the purchase price for the Turquoise Moon shares. The first defendant contended that there is no allegation of a written notice of breach followed by a valid cancellation. The first plaintiff confirmed that no demand for payment had been made on the RGC Family Trust. The first defendant submitted that RGC Family Trust is not *in mora* as there was no demand.

[47] The first defendant discovered and presented in evidence a blank CM42 form signed by the first plaintiff consenting to the transfer of shares. The authenticity of the signature in the CM42 was not placed in dispute. The signing of the CM42 was a step taken to give effect to the trustees consent to transfer the shares.

[48] As regard the main claim the plaintiffs rely on lack of consent by the trustees and failure to complete the CM42 form. In the particulars of claim, the first alternative claim F is made contingent upon the proper cancellation of the dissolution agreement. I have already found that, on the probabilities, the CM42 form was properly signed, the dissolution agreement was not cancelled and that the lack of authority from the JSB Family Trust to transfer the shares has not been established. Consequently, this claim F must fail.

Claim G

[49] This is a claim brought by the trustees of the JSB Family Trust for the return to the first plaintiff by the first defendant of a shareholding in the eighth defendant (Davprop). The plaintiffs submitted that if the Court should find that the Davprop transaction stands as a completed one, that should not be reversed, then the claim in respect of Davprop would have to be dismissed. The plaintiffs however contended that although that sale was perfected, it formed part of a larger transaction which was cancelled at the time of the repudiation and being a "package deal" it would be unduly advantageous to the first defendant to retain the proceeds of the Davprop transaction when justice demands that the entire transaction be reversed and the Court should exercise its discretion in favour of the first plaintiff in this regard. See *Baker* v *Probert*[5].

[50] In the particulars of claim, claim G is made contingent upon the proper cancellation of the dissolution agreement. This claim must fail as there was no proper cancellation of the dissolution agreement.

[51] Having made a determination that the relief sought in claims F and G regarding the return of the shares in Turquoise Moon and Davprop to the JSB Family Trust fail, it must follow that the relief sought in claim A 21-23 must also fail. It would therefore

[5] 1985 (3) SA 429 at 438G-H.

serve no practical purpose to have Mr Pollok appointed as liquidator of a partnership that has no assets.

Claim H

[52] This claim is for the distribution of the proceeds of the sale of the property which was owned by the twelfth defendant (Alfa Business Ventures), a company in which the first plaintiff and the first defendant each held 25% of the issued share capital. The proceeds are being held in the first plaintiff's attorneys' trust account to be released once the dispute between the plaintiffs and the defendants has been resolved. It is stated in the claim that on judgment the funds are to be distributed in satisfaction of the judgments.

[53] Claim H sets out certain facts regarding the agreement between the first plaintiff and the first defendant concerning Alfa Business Ventures. The first plaintiff seeks a declarator for that the sum of R501 088-91 paid into the account of the first plaintiff's attorneys an order together with accrued interest be released in part-satisfaction of the claims of the plaintiffs in terms of this judgment. This claim succeeds.

Claim I

[54] This is a claim for the payment of R375 723 -50 in respect of costs incurred by the first plaintiff in the applications he brought for the winding-up of Wavelengths and Midnight Storm. It is alleged that but for the first defendant's repudiation of the dissolution agreement, the first plaintiff would not have incurred these costs. It is for the damages suffered by the first plaintiff because the distribution that will be paid out by the liquidators of Midnight Storm and Wavelengths will be diminished by the costs of the winding-up applications, that the first plaintiff had to pay to the attorneys who moved those winding-up applications. Those costs have been ordered against Wavelengths and Midnight Storm. In the particulars of claim, Claim I is contingent upon the proper cancellation of the dissolution agreement. In view of the finding that the dissolution agreement was not cancelled, this claim must fail.

In the result, I hereby grant the following orders:

Claim A

1. The first defendant is ordered to furnish the first plaintiff with a detailed accounting in respect of the conduct of the partnership business from 30 November 2007 within 15 days of this order.
2. The first plaintiff and the first defendant are ordered to debate the account referred to in paragraph 1 within 30 days from the date of same being rendered.
3. The first defendant is ordered to pay to the first plaintiff the amount found due in respect of that accounting within ten days of the 30 days in which they would have been debating the account.

4. The first defendant is ordered to pay the plaintiff's costs of suit in respect of claim A.

Claim B

1. The claim is dismissed. .

Claim C

1. The fourth defendant is ordered to pay the amount of R3 420 000.00 to the fourth plaintiff.
2. The fourth defendant is ordered to pay the fourth plaintiff's costs of suit.

Claim D

1. The claim is dismissed.
2. The fourth plaintiff is ordered to pay the costs of suit.

Claim E

1. The first defendant is ordered to pay the amount of R300 000-00 to the fourth plaintiff.
2. The first defendant is ordered to pay the costs of suit.

Claim F

1. The claim is dismissed.
2. The first, second and third plaintiffs are ordered to pay the eleventh defendant's costs of suit.

Claim G

1. The claim is dismissed.
2. The first, second and third plaintiffs are ordered to pay the eighth defendant's costs of suit.

Claim H

It is declared that:

1. The sum of R501 088.91 paid into the account of the first plaintiff's attorneys together with accrued interest be released to the first plaintiff in part-satisfaction of the plaintiffs successful claims in terms of this judgment.
2. No order as to costs.

Claim I

1. The claim is dismissed.
2. The first plaintiff is ordered to pay the costs of suit.

MPHAHLELE J

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION,
JOHANNESBURG

Counsel for Plaintiff: Advocate L Morisson, SC

Advocate E Keeling

Instructed by: Ramsay Webber

Counsel for Defendant: Advocate A Mundell, SC

Instructed by: Schwarz North Inc.

Date of hearing: 27, 28, 29, 30, 31, July; 03, 04, 05, 07 August; 16 September 2015