IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

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

Date: **27/09/2023** Signatu[redacted]

CASE NO: 2020/19556

In the matter between:

ALF'S TIPPERS CC	Applicant
and	
BALOYI, PAUL CAMBO	First Respondent
CASTLE, DARRYLL JOHN	Second Respondent
LUVHENGO, SHAMMY AREWANGA	Third Respondent
MANNING, CLAUDIA ESTELLE	Fourth Respondent
MAPASA, KHATHUTSHELO	Fifth Respondent
NDONI, ANDISWA THANDEKA	Sixth Respondent
SEFOLO, TSHEGOFATSO	Seventh Respondent

Coram: Ternent AJ

Heard on: 23 May 2023

Delivered: 27 September 2023

JUDGMENT

TERNENT, AJ:

[1] I shall refer to the parties as they are cited in the trial action.

[2] This is an application in terms of Rule 35(7) in terms whereof the plaintiff seeks an order compelling the fifth defendant, Mr Mapasa, to discover documents requested under a Rule 35(3) notice delivered by the plaintiff subsequent discovery by Mapasa, purportedly on behalf of all of the defendants, on 22 April 2021.[1] In addition, the plaintiff seeks an order compelling the remaining defendants to delivery discovery affidavits in terms of Rule 35(1).

[3] In the event that an order is granted, and the defendants fail to comply with the order within ten days, the plaintiff also seeks leave to approach this Court on the same papers duly supplemented for an order striking out the defendants' defence in the action and for judgment by default. A costs order is sought against the defendants jointly and severally the one paying the other to be absolved on the attorney and client scale.

[4] The plaintiff seeks judgment in the amount of R994 581,83 from the defendants in their personal capacity it being contended that the defendants carried out the business of Basil Read Limited (Registration No. 1962/002313/06) recklessly and with the intent to defraud the creditors of Basil Read including the plaintiff in circumstances where Basil Read was not solvent and was financially distressed. Mapasa is employed at Basil Read as its Chief Executive Officer. The sixth defendant, Ms

[1] CaseLines, 048-59 to 048-66, Annexure **"FA5"**

Ndoni, is the Company Secretary and continues to hold that position. The remaining defendants are non-executive directors although it is contended that some of them no longer hold this position without identifying which of the defendants have terminated their employ.

[5] It appears from the defendants' plea that it is not disputed that Basil Read contracted with the plaintiff and hired tippers from it in relation to the Masina Ring Road Project. The dispute appears to be in relation to the quantum due in that it is conceded that there is an outstanding balance due of R547 056,30 but that the balance of the total sum claimed of R994 581,83 is not due. It is furthermore common cause that other than Ndoni, all of the defendants served on the board of directors of Basil Read. It is also common cause that Basil Read has been placed in business rescue on 15 June 2018 and that the plaintiff has lodged a claim in the business rescue process, which claim has been accepted by the business rescue practitioners. The remaining allegations pertaining to the reckless trading and personal liability of the defendants is denied.

[6] The discovery affidavit deposed to by Mapasa[2] reflects that Mapasa is the CEO of Basil Read which is in business rescue and he furthermore says that he is executing his duties as such at Basil Read's place of business which is Corporate Office: Block B, Viscount Office Park, Bedfordview, Gauteng. Under oath he records that he is authorised to depose to the affidavit on behalf of all the defendants because he has access to the documents related to this matter. Notably, no confirmatory affidavits are filed by any of the defendants to confirm that Mapasa is authorised to depose to the affidavit on their behalf nor their position in relation to the documents to be discovered for trial.

[7] As held in the ***MV v Urgup: Owners of the MV Urgup v Western Bulk***

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[2] CaseLines, 048-59 to 048-66, Annexure **"FA5"**

Carriers (Australia) (Pty) Ltd and Others:[3]

> *"Discovery has been said to rank with cross-examination as one of the two mightiest engines for the exposure of the truth ever to have been devised in the Anglo-Saxon family of legal systems. Properly employed where its use is called for it can be, and often is, a devastating tool. But it must not be abused or called in aid lightly in situations for which it was not designed or it will lose its edge and become debased."*

[8] It is trite, that parties to civil litigation must discover. It is an established principle of High Court practice that there is an obligation on parties to discover documents *"which may"* - not *"which must"* – either directly or indirectly enable the party requiring the affidavit of discovery either to advance his own case or to damage the case of his adversary.

[9] The documents which the fifth respondent is being compelled to discover relate to Basil Read's business operations namely its bank statements, documentation made available to SARS, documentation relating to the payment of income tax and VAT, how income derived from the hire out of plant and equipment was declared to SARS and treated in its financial records, various tax documentation including IRP5 forms, IT3(a) forms, IT14 forms and supporting schedules, tax documents relating to directors' remuneration *inter alia*, its share register and certificates.

[10] As this documentation was not discovered the plaintiff delivered a Rule 35(3) notice on 28 June 2021 requesting the defendants to produce these documents for inspection.

[11] A further affidavit was received but only from Mapasa.[4] In essence,

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[3] 1999 (3) SA 500 (C) at 513

[4] CaseLines, 048-67 to 048-69, Annexure **"FA6"**

Mapasa again states that he is duly authorised to depose to the affidavit on behalf of the defendants. He refers to the request for bank statements and documentation provided to SARS demonstrating proof of income, says he is not in possession of these documents and refers the plaintiff to the business rescue practitioners should the documents exist. The averment is made that the documents can be subpoenaed from the business rescue practitioners.

[12] On 15 July 2021, the plaintiff's attorney addressed an e-mail to the defendants' attorney wherein he recorded that the discovery affidavits filed by Mapasa were defective because Mapasa could have no knowledge of the documents that were in the possession of the remaining defendants. Furthermore, it recorded that it was not denied by Mapasa that the documents requested were in the possession of Basil Read. A ten-day period was afforded to Mapasa to obtain the documents and to all of the defendants to comply with the demand failing which the current application to compel would be brought. On 11 August 2021 the defendants' attorney responded. In the main his contention was that because Mapasa was authorised to depose to the discovery affidavit it was unnecessary for seven identical discovery affidavits to mulct the proceedings. As such, the defendants would not file separate affidavits. He affirmed that the documents were in the possession of Basil Read but not in the personal possession of the defendants. The plaintiff was forewarned that should it proceed with the application an adverse costs order would be sought against it.

[13] The current application to compel was launched on 18 November 2021. The defendants opposed the application and an opposing affidavit was filed by Mapasa, once again authorised by the remaining defendants, and which was deposed to by him on 17 December 2021. In the affidavit, it was recorded that the remaining defendants would file confirmatory affidavits to his opposing affidavit. Confirmatory affidavits were delivered, on 14 December 2022, almost a year later by the remaining defendants

in which they confirmed that they had read the opposing affidavit deposed to by Mapasa and that they confirmed the contents thereof insofar as it related to them. However, no confirmatory affidavits were filed to the affidavit filed by Mapasa in response to the Rule 35(3) request for documents. In essence, Mapasa stated that there was no objection to the plaintiff gaining access to the requested documents but that the documents were not in their possession and were now in the possession of the business rescue practitioners.

[14] Although not raised in argument by the defendants' counsel, the defendants sought to attack the merits of the plaintiff's claim as formulated. Wisely, this was not pursued as it is trite that it is not necessary when a Court considers an application to compel discovery to determine whether the requisite *facta probanda* to sustain a cause of action was pleaded. The only issue is to determine whether the documents that are requested are relevant to an issue in question.[5]

[15] Defendants' counsel submitted to me that it was unnecessary for each of the defendants to file confirmatory affidavits in confirmation of the Rule 35(3) affidavit filed by Mapasa. I do not agree. Without these affidavits, the allegations made about authority and that documents are not in the remaining defendants' possession constitute inadmissible hearsay evidence. The submission went further, however. Any defect was cured because the defendant had affirmed the self-same allegations in the opposing affidavit in their confirmatory affidavits.

[16] As submitted by the plaintiff's counsel this is not so. Cognisance has not been taken of Rule 35(1) which allows the plaintiff to request any other party thereto, i.e. the remaining seven defendants, to make discovery on oath *"relating to any matter in question in such action which are or have*

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[5] Unreported decision ***Hilbert Plant Hire CC v JS Brider and J Brider***, Case No. 41890/19 (dated 3 August 2021) at para [20]

at any time been in the possession or control of such other party". It is common cause that the remaining defendants have not made discovery under Rule 35(1).

[17] In ***Copalcor Manufacturing (Pty) Ltd and Another v GDC Hauliers (Pty) Ltd (formerly GDC Hauliers CC)***[6] Claassen J confirmed:

> *"[23] In answering the question whether the plaintiff has properly responded to the aforesaid request for discovery of further documentation, one will have to look at Rule 35(3) in its context with the other Rules of discovery …*
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> *[24] Rule 35(3) must be read in context with subrules (1), (2), (4) and (6). Questions such as when a document is under the control of a party referred to in subrule (1) … are in my view, mutatis mutandis applicable to discovery pursuant to a Rule 35(3) notice. These general principles of discovery are therefore as applicable to the discovery pursuant to a notice in terms of Rule 35(3) as they are pursuant to a notice for discovery under Rule 35(1)."*

[18] Importantly, the remaining defendants have not discovered at all and they are obliged to do so in terms of the provisions of Rule 35(1). Even if they have filed confirmatory affidavits to this application they have not complied with Rule 35(1) and until such time as they do so the provisions of Rule 35(3) cannot be triggered in relation to them. In any event, no confirmatory affidavits exist to the Rule 35(1) notice. Also, Mapasa pertinently says that he is deposing to the affidavit on behalf of the remaining defendants because *"I had access to the documents related to the abovementioned matter".*[7] The problem for the plaintiff is that in so

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[6] 2000 (3) SA 181 (W) at para [23] and [24]

[7] CaseLines, 048-60, para 2

doing his affidavit only refers to the documents which he has in his possession or under his control. Nowhere in that affidavit, do the remaining defendants stipulate as they are required to do in terms of Rule 35(1) the documents *"which are or have at any time been in the[ir] possession or control"*. As such, there clearly has been no compliance with Rule 35(1) and an order compelling them to comply in their personal capacity is sound. The submission that doing so would simply mulct the proceedings in unnecessary affidavits does not hold water.

[19] The real thrust of the defendants' opposition to the Rule 35(3) notice is that the documents which are requested belong to Basil Read which is not a party to the action and under Rule 35(3), Mapasa has stated that the documents can be obtained from the business rescue practitioners. As submitted, the focus is on the word *"possession"*. In other words, if the defendants are not in personal possession of the documents, they are not obliged to provide same to the plaintiff.

[20] As set out by Du Toit AJ in ***Loureiro L and Three Others v Imvula Quality Protection (Pty)***[8] personal possession alone is not what the Rule requires. In fact:

> *"[61] The words "control", "possession", "power" and "custody", occur in the various subsections of Rule 35 and in the related Form 11. The first two words occur in Rule 35(1), while only "possession" appears in Rule 35(2)(a) and 35(3). The words "power" and "custody" appear in Form 11, in addition to "possession".*
>
> *[62] Form 11 requires a litigant to state on oath the documents he has in his "possession or power". He is further required to specify what documents were, but are no longer, in his*

[8] [2019] JOL 43169 GJ at paras 61-67

"possession or power". He is further required to state that he does not have in his "possession, custody or power" or that of his attorney or agent or any other person on his behalf, any document other than the documents disclosed.

[63] The words "control" and "power" have a wide connotation. "Control" obviously means something different to "possession". "Power" suggests an even wider scope than "control". "Control" includes the function or power of directing. "Power" includes the ability to effect something. See also the discussion of "control" and "power" by Coetzee J. in The Unisec Group Ltd and Others v Sage Holdings Ltd 1986 (3) SA 259 (T), especially at 274I and Brits Investment (Pty) Ltd v Commissioner for Inland Revenue 1938 CPD 146 at 151, regarding "potential control".

[64] The plaintiffs submit that "possession" and "control" have a meaning something which is more than "mere detention". There had to be, it is argued, sufficient power or authority over the document to render the document discoverable in the hands of the party which holds it or has it under his power. Plaintiffs rely on the judgment of Goldstein J reported as MIP Holdings (Pty) Ltd v Dawkins [2003] JOL 12373 (W). In that matter Goldstein J relied on a dictum of Diemont J in R v Seeiso 1958 (2) SA 231 (GW) at 233G-H. That matter related to the interpretation of a particular statute regulating furtum usus and is perhaps not useful here.

[65] In further support of their argument, plaintiffs referred to a recent decision in the Free State High Court namely G.G. Ramakarane v Centlec (Pty) Ltd (4907/2006) [2016] ZAFSHC. In that matter Pienaar A.J. held that a litigant not in possession of income tax assessments could not be obliged under Rule 35(3) to procure them. He referred to Tooch v Greenaway 1922 CPD 331. There

Watermeyer A.J. refused to issue an order authorising the Receiver of Revenue, Cape Town, to allow a party's attorney "to inspect and make copies" of the other party's income tax return. Pienaar A.J. found, in effect, that a document with SARS to which a litigant had access, was not in that litigant's "possession".

[66] *Section 34 of the Constitution provides that "everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court ...." I would like to stress the word "fair".*

[67] *Section 173 of the Constitution provides that High Courts have the "inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice". I have underlined the words regarding the development of the common law, as, in my view, rule 35 is based on the common law.*

[68] *Section 69 of the Tax Administration Act 28 of 2011 deals with the secrecy of taxpayer information. Taxpayer information is in terms of s 67(1)(b) "any information provided by a taxpayer or obtained by SARS in respect of the taxpayer, including biometric information". That clearly includes a tax return and a tax assessment.*

...

[73] *A taxpayer can thus require his taxpayer information from SARS. Such a taxpayer can also authorise the taxpayer's information to be made available to someone else. This lies within his "power". Section 73 quoted above establishes the taxpayer's entitlement.*

...

[75] A "fair" trial means that parties to litigation should enjoy level playing fields. This includes disclosure of all information that is relevant to the matter.

...

[77] Plaintiffs principally argue that rule 35(3) refers only to documents in a party's possession. SARS cannot be said to be Mr. Loureiro's agent. I believe that this is too narrow an approach to rule 35 and Form 11. In my view the rule must be read as a whole. Cf Copalcor Manufacturing (Pty) Ltd and Another v GDC Hauliers (Pty) Ltd (formerly GDC Hauliers CC) 2000 (3) SA 181 (W). Secondly, the general considerations I have referred to above regarding fairness are overlooked by such literalism.

[78] As far back as 1866 an English judge rejected a discovery affidavit by directors of a bank who said they did not have documents in their "possession or power", other than what the bank had. Page Wood V.C. commented:

".... these documents, though in substance they may be the property of the bank, are in the possession or power of the directors, who are the only persons who can give an order for their production.""

[21] The submissions made that this Court cannot disregard the cases referred to and quoted in paragraph [65] of the ***Loureiro*** judgment is clearly wrong. Both of these judgments are not of this division, and are persuasive. Judgments in this division are binding and this Court, unless it is of the view that the judgments are clearly wrong, must apply these judgments.

[22] I, accordingly, find that the bank statements and/or the tax documents must be obtained from the relevant bank, and SARS because these documents are clearly within the control of Mapasa.

[23] To the extent that submissions were made about the non-executive directors, these submissions can be disregarded in the sense that relief is not sought against them in relation to the Rule 35(3) notice.

[24] Mapasa, in his capacity as the Chief Executive Officer of Basil Read, does have control of these documents more importantly as:

[24.1] he asserts that is the Chief Executive Officer of Basil Read and that he is exercising his duties at its place of business;

[24.2] he asserts that he has access to these documents;

[24.3] although baldly denied, the business rescue plan (definitions section)[9] refers to the first to fifth defendants and Ndoni, the Company Secretary, who are to continue with the management and control of Basil Read having been delegated certain functions.

[25] In this regard, I was also provided with a judgement involving the same plaintiff and plaintiff's counsel ***Alf's Tippers CC v Martha Susanna Steyn***[10] by Twala J. The plaintiff here too sought to compel discovery of documents in terms of Rules 35(1) and (3) which documents in the main corresponded with the documents sought in this application. Notably, the

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[9] CaseLines, 048-74 to 048-77, Annexures **"FA9.1"** to **"FA9.4"**

[10] Unreported decision, Case No. 11407/2019 dated 19 May 2020

learned Judge also refused to give a narrow interpretation to the word *"possession"* and held as follows:[11]

> *"[14] It does not assist the respondent to ascribe a narrow interpretation to rule 35 and make the operative word to be 'possession'. The plain interpretation of rule 35 is that the person who had the power and control over and or possessed the documents, should comply with the request under the rule. In terms of her fiduciary duties as the sole director of MSR, the respondent had the power and control over and possessed the documents as specified in the notice of motion and should comply with the rule. The answer provided by the respondent that the documents belonged to a separate entity is correct. However, the answer is inadequate since the separate entity was under the power and control of the respondent and she owed a fiduciary duty to keep its records."*

[27] In this matter, the defendant sought to allege that the documents were in the possession of the company and not the sole director. Yet, Twala J gave the order for the documentation to be discovered.

[28] I disagree with the submission by the defendants' counsel that this matter is distinguishable from the present case because there was a sole director and because she shared the premises with MSR. There is no suggestion that Mr Mapasa is no longer employed and does not have access to the documents. To the contrary. Further, the defendant's counsel also submitted that because the plaintiff knows that the business rescue practitioner has the share register it should go to the business rescue practitioner and request the documents. This begs the question why Mapasa cannot go to the business rescue practitioner and get the documents as he is obliged to do in terms of the Rules. Not only is he in

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[11] Page 9, para 14

possession and control of the documents, he is still involved in Basil Read and can easily access these documents. There is no reason why the plaintiff should issue expensive subpoenas to obtain the documents when Mapasa can easily "access" them and provide the documents to the plaintiff.

[29] I am further not persuaded by the argument that the ***Hilbert Plant Hire CC*** matter, to which I was also referred, is distinguishable because it was accepted that the documents were in the defendant's possession. This contention can only operate if the limited definition is given to possession, as the defendants' counsel sought to do.

[30] Insofar as the relevance of the documents is concerned, I agree with the submission that this dispute is sparse at best. It was apparent that the defendants' counsel did not seek to pursue this issue with vigour. He referenced the Mapasa opposing affidavit which raised an exception but as already stated, this point is not within the scope of this application and the Court's enquiry.

[31] As such, and particularly in the light of the ***Steyn*** judgment, I find that the documents are relevant and ought to be discovered. As submitted to me by the plaintiff's counsel I am not obliged at this stage of the proceedings to determine the liability of the defendants but rather the entitlement to discovery to enable a fair and proper hearing in due course.

[32] Although no submissions were made in argument in relation to the sixth defendant, she continues to be employed as the Company Secretary as set out in the business rescue practitioner's report. The contention that because she is not a director, this negates her obligation to discover is not sound. As submitted by the plaintiff's counsel the duties of a company secretary are extensive[12] and although her liability is yet to be determined,

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[12] Section 88(1) and 88(2) of the Companies Act

it is only discovery that is sought by the plaintiff.

[33] It was also submitted by plaintiff's counsel that no cogent explanation has been furnished as to why the defendants individually did not deliver discovery affidavits. I am not of the view that it is necessary for each litigant to deliver his/her own discovery affidavit. A joint affidavit can be delivered but there must be compliance with the rule. in doing so. Each defendant must be specifically mentioned and documents in their respective possession and control must be clearly identified. Confirmatory affidavits would need to be filed by each of the defendants. That said, it may then be more efficient for each of the defendants to prepare their own affidavit.

[34] As also submitted to me, in the decision of ***Sandy's Construction Co v Pillai and Another***[13] it was said:

> *"It has frequently been stressed that a discovery affidavit is an important document and that the legal advisors of the parties to cases must impress upon their clients the considerable importance which the Courts attach to such a document. The Courts have mentioned that dire results may flow unless there is a full compliance with the requirements laid down by the Rules and the common law in regard to discovery affidavits. I mention the case of Natal Vermiculite (Pty) Ltd v Clark 1957 (2) SA 431 (D) and also the case of Gunn, NO v Marendaz 1963 (2) SA 281 (W), in which BEKKER J. at p. 282, said:*
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> *"With reference to the discovery affidavit I wish to emphasize in the first place that an affidavit of discovery is a solemn document, it is not just a scrap of paper. It is a document to which the deponent swears as to the correctness of the contents*

[13] 1965 (1) SA 427 (N) at 429

thereof under oath."

[35] In all of the circumstances, I find that Mapasa has not complied with the provisions of Rule 35(3) and that an order is fitting that he make full and proper discovery of the documents to which he has access and as referred to in the Rule 35(3) notice.

[36] Insofar as the costs are concerned, plaintiff's counsel motivated that costs should be punitive and awarded on an attorney client scale. He emphasised that Mapasa has always conceded that he had access to the documents and, as a consequence, he should have simply made discovery in compliance with the Rules. It was impressed upon me that having filed an answering affidavit on 17 December 2021, no confirmatory affidavits were forthcoming until almost a year later, and after the application to compel was launched. Only when *"the shoe pinched"* the confirmatory affidavits came to the fore. This conduct, so it was submitted, reveals an intention to be obstructive and oppose an application when there was no real basis to do so. Furthermore, in considering Mapasa's response to the Rule 35(3) notice, his affidavit, too, was patently dismissive. Instead of simply providing the documents to which he had access a full blown opposed application had to be entertained wasting the Court's time. The attitude was clearly highhanded in the face of the clear indication that punitive costs would be sought. The submission was that the defendants have played games in attempting to avoid deposing to affidavits and persisting with the contrived reliance on the word *"possession"*. In essence, it was submitted to me that the opposition is frivolous and unnecessary legal costs were incurred so that the plaintiff is now out of pocket.

[37] The defendants' counsel submitted to me that should the Court be inclined to entertain a punitive costs order the defendants *bona fide* believed that they could rely on the ***Tooch*** and ***Ramakarane*** judgments and if they had mistakenly done so they should not be penalised therefor.

[37] Although I accept that the plaintiff has been put to unnecessary costs and time in bringing this application, I am reluctant to grant an adverse costs order given the nature of these proceedings. Discovery is a procedural process which the defendants would not necessarily understand and, more particularly, the requirements under the Rule. To my mind, the legal representatives should guide the defendants as to the content, import and necessity for proper and transparent discovery. It appeared to me from the submissions made by the defendants' counsel, that albeit misguided, there was a genuine reliance on the two decisions mentioned above. No costs orders were sought against the attorneys *de bonis propriis* which in any event are only awarded if there is *"negligence of a serious degree"*. In addition *"no order will be made where the representative has acted bona fide; a mere error of judgment does not warrant an order of costs de bonis propriis"*.[14] I am of the view that there was an error of judgment and as such costs cannot be awarded on a punitive scale.

[38] I accordingly make an order in the following terms:

1. The fifth respondent is to discover, in relation to Basil Read Limited, with Registration No. 1962/002313/06 for the period 2016 to 2019:

    1.1 bank statements reflecting all transactions on account in relation to the hiring out of plant and equipment and the outflow of funds previously paid into the bank account by the customer/customers in relation to the hiring out of plant and equipment, both for the deposit of its own money and for paying major creditors such as the applicant;

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[14] Erasmus, D5-30 to D5-31 and ***Multi-Links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd*** 2014 (3) SA 265 (GP) at 289A-D

1.2 all documentation made available by or on its behalf to the South African Revenue Services (Revenue authorities) demonstrating or evidencing proof of income, the source or sources of income and the expenditure incurred by it;

1.3 any documents evidencing, setting forth and/or supporting its income, the source or sources of its income and the expenditure incurred by it in the calculation of its income tax or VAT for the 2016 to 2019 tax years;

1.4 any documents showing how the income derived directly or indirectly by from the hire out of plant and equipment was declared by it to the Revenue authorities and how that income was treated in its financial records;

1.5 the IRP5 forms, IT3(a) forms, IT14 forms and supporting schedules, income tax reconciliation computations and schedules, directors' remuneration schedules and trial balances, EMP201 monthly employer declarations, EMP501 employer reconciliation declarations and any spreadsheet or calculation which shows how it determined the amount of PAYE to be deducted per month for the period 2016 to 2019, be they in draft or final form;

1.6 share register and certificates.

2. The first, second, third, fourth, sixth and seventh respondents are to deliver their discovery affidavits in terms of Rule 35(1).

3. Should the respondents fail to comply with this order within 10 (ten) days, the applicant is authorised to approach this Court on the same papers, duly supplemented, for an order striking out the respondents' defence in the action and for judgment by default.

4. The respondents are to pay the costs of this application jointly and severally the one paying the other to be absolved on the party and party scale.

P V TERNENT
Acting Judge of the High Court of South Africa
Gauteng Division, Johannesburg

Delivered: *This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be on 27 September 2023.*

HEARD ON:	22 May 2023
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