IN THE HIGH COURT OF SOUTH AFRICA,

KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO: D5815/19

In the matter between:

DHRAMALINGUM MOONISAMI Applicant

and

GLOBAL NETWORK SYSTEMS (PTY) LTD First Respondent

BLENDRITE CHEMICALS (PTY) LTD Second Respondent

MANIVASAN PALANI Third Respondent

ORDER

I make the following order:

1. The first respondent be and is hereby directed to *ante omnia* restore the applicant's access to the second respondent's email and network/server, forthwith.
2. The second and third respondents are to pay the costs of the application on an attorney-client scale, jointly and severally, the one paying the other to be absolved.

JUDGMENT

Chetty J:

[1] The applicant launched an urgent application on 19 July 2019 for a rule *nisi* seeking the following relief:

a. That the first respondent be and is hereby directed to *ante omnia* restore the applicant's access to the to the second respondent's email and network/server, forthwith.
b. That the respondents pay the costs of the application on an attorney-client scale, jointly and severally, the one paying the other to be absolved.
c. That the above relief operate with immediate effect pending the return day of the rule, or any further extension thereof.

[2] The application was opposed on 19 July 2019, with an Order granted by Moodley J adjourning the matter to 31 July 2019 for allocation as an urgent opposed application. In addition, the second and third respondents indicated their opposition to the application, and were directed to deliver answering affidavits together with heads of argument by certain specified dates. Moodley J recorded that the urgency of the application was still in dispute. The matter then served before Henriques J on 31 July 2019 when it was allocated preference on the opposed roll. It was recorded that in the event of the matter not being resolved without a referral to oral evidence, the applicant was to show cause why a punitive award of costs ought not to be granted against him, including an order for costs against his attorney *de bonis propriis*.

[3] At the time when the matter came before me, heads of argument had been filed by the applicant in accordance with the time periods set out in the order of Moodley J. However, it is necessary that I record my displeasure at the heads of argument filed by the respondents which comprise of three paragraphs containing one sentence each, with the first paragraph listing six cases, and the second paragraph listing a further two. The last paragraph was simply a statement that the application be dismissed with costs.

[4] The heads of argument were drawn by the second and third respondents' attorney, and with which their counsel, Mr *Manikam*, associated himself with. The heads of argument were at odds with what is set out in the Practice Direction for this Division, particularly Practice Direction 9, dealing with heads of argument in opposed applications. In *Caterham Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd &*

another 1998 (3) SA 938 (SCA) para 37 Harms JA explained that heads of argument means “points” of argument, and not a dissertation. What was however required was ‘argument’, which he described as involving “a process of reasoning which must be set out in the heads. A recital of the facts and quotations from authorities do not amount to argument.”

[5] The heads of the respondents did not pay any heed to what was set out in Practice Direction 9.4.1, nor did the cases cited therein indicate which pages or paragraphs the court ought to direct its attention to. In the circumstances where counsel associate themselves with such heads, this is not only unhelpful, but also disrespectful to the court. It is tantamount to a contemptuous attitude to the court. Despite the respondents not having complied with the Practice Direction, I was of the view that the matter should nonetheless proceed inasmuch as the applicant had complied and was desirous of having the matter heard on the day.

[6] The applicant approached court on an urgent basis seeking relief in the form of a mandament van spolie contending up until 17 July 2019 he was in peaceful and undisturbed possession of his access to the company’s internet server and his email address, namely KC@blendrite.co.za**.** It is not in dispute that the first respondent which is a web hosting company, hosts the internet server and email addresses of the second respondent. It is also common cause that the applicant and the third respondent jointly funded the formation of the second respondent (‘Blendrite’) in and during 2008. The applicant occupied the position of managing director of Blendrite, with the third respondent assuming position of financial director. Blendrite appears to be in the business of the manufacture of chemicals for the petroleum industry. Over the years it has grown into a thriving business, and as often happens with financial success, it brought with it strife amongst its only two directors, being the applicant and the third respondent.

[7] Matters reached a stage where the two directors were involved in unending litigation, most recently with the applicant having brought an application for the liquidation of the company, which is opposed by the third respondent. At the same time the third respondent also brought proceedings against the applicant and ABSA Bank for an order to unfreeze Blendrite’s bank accounts in order for it to pay salaries

for the month of May 2019, as well as creditors in an amount of approximately R7,2 million. In addition, in terms of the Order granted by Lopes J on 30 May 2019, Blendrite was directed to pay the applicant his salary in the amount of R37 447.82, for the months of April and May 2019 respectively. The relevance of this will become apparent from what appears below.

[8] The feuding amongst the directors also took on an attempt by the third respondent to remove the applicant as a director of Blendrite. These disputes are ongoing and are currently before the court.

[9] On 11 July 2019 the attorney for Blendrite wrote to the first respondent as follows:

'We act for Blendrite Pty Ltd.

Our instructions are that:

1. *Mr Moonisami is no longer a director of Blendrite, having retired.*
2. *The email and company network/server access that Mr Moonsami enjoyed as a director and employee of the company must be terminated with immediate effect.*
3. *In the circumstances, we confirm our client's instruction to you to terminate Mr Moonisami's comedy email and network/server access with immediate effec*t.'

[10] As a result of this instruction to the first respondent, the latter obliged and immediately disconnected the applicant from having access to the company email and internet server. The applicant contends that he is unable to get access to any of his business emails and information archived on his computer, including costing and formulations pertaining to the business of Blendrite. He states that the company email address was his only means of communicating with customers and suppliers of Blendrite.

[11] The applicant instructed his attorney, who wrote to the first respondent requesting that the applicant be reconnected to the network. The first respondent was caught in an invidious position as it has a service contract with Blendrite and were cautious that if they were to accede to the request, they could be exposed to a claim by Blendrite. Rather than become involved in the litigation between the parties, the first respondent's view, and correctly so in my view, was that the applicant should approach the court for an order directing the first respondent to reconnect him to the

internet server. As such, the first respondent does not oppose the relief sought by the applicant.

[12] The applicant contends that he meets the requirements for spoliation in accordance with the traditional test in that he was in possession of the 'property' and that the second and third respondent, through their instructions to the first respondent, deprived him of possession forcibly or wrongfully, and against his consent. In *Yeko v Qana* 1973 (4) SA 735 (A) at 739G-H the court held that "all that the *spoliatus* has to prove, is possession of a kind which warrants the protection accorded by the remedy, and that he was unlawfully ousted". That is the basis on which the applicant approached this court.

[13] The second and third respondents filed an answering and a supplementary affidavit. The crux of the opposition to the relief is the contention that the applicant was removed as a director with effect from 22 March 2019 and that he has no basis to approach the court for spoliation. In this regard, the second and third respondents rely on a company resolution dated 12 June 2008 in which both directors agreed that they would continue to hold their respective positions as directors until age 65. Based on mutual agreement, the age limit could be moved – I assume, upwards, to retire after 65. On that basis, the second and third respondents aver that a letter was addressed to the applicant in March 2019 referring to an agreement reached on 23 March 2018 that the applicant would retire a year later on 22 March 2019. It is somewhat odd that where the parties would have reached agreement on a matter as important as this, there is no minute of this decision shortly after the event in March 2018. Instead, a written recordal surfaced a year later.

[14] The second and third respondent's papers deal extensively with the issue of the applicant's directorship of Blendrite and their contention that as of 22 March 2019 he was no longer a director and consequently had no basis to use or retain access to the computer hosting the company's email server or acquire access to the internet via their server. Allied to this is the respondents' contention that upon termination of employment, employees are not entitled to email services or to access Blendrite's web server or their client information. I accept that this is the position generally when employees are suspended or terminated. However, in this case one is dealing with a

scenario where one director has purported to unilaterally terminate the directorship of the other and in circumstances where there is a flood of litigation around the issue. Added to this is that the Companies and Intellectual Property Commission ('CIPC') documents still record the applicant, as at April 2019, as being one of two directors of Blendrite. The response of the third respondent to this is that he is in the process of rectifying the records of the CIPC to have the applicant's name deleted.

[15] The second and third respondents dwell in their answering affidavits on matters totally irrelevant to a mandament van spolie and raise issues relating to notices that the applicant received from the municipality's fire department which he did not bring to the third respondent's attention; the use of the company email to send information to clients and acting adverse to Blendrite's interest; the applicant's attempts to discourage customers from continuing to do business with Blendrite; the freezing of Blendrite's bank account; the rescue of Blendrite from the brink of collapse under the watch of the applicant and numerous instances of his alleged contraventions of the Companies Act. All of this, despite the submission that the 'preliminary' answering affidavit was drafted in haste. The supplementary affidavit continues the theme of the initial answering affidavit and deals with the liquidation proceedings pending in this court under case number D3233/2019; the application before Lopes J on 30 May 2019 to unfreeze Blendrite's bank account and the ulterior motive attributed to the applicant in pursuing the liquidation application; attempts by the applicant to damage the reputation of Blendrite amongst large petro-chemical companies like Engen and Total and a photograph of the applicant during a fire safety inspection by the municipality on 28 May 2019.

[16] I have set out in some detail the issues above canvassed by the second and third respondents to illustrate the extent to which they have incorrectly interpreted or misconstrued the legal basis on which the applicant came to court. The applicant in his replying affidavit quite correctly points out that the respondents are repetitive and have canvassed matters which have no relevance to the determination of whether a mandament is capable of being granted by this court. The applicant correctly submits that the issue of his alleged termination as a director from Blendrite has nothing to do with the relief sought. Nor, for that matter are the alleged breaches of the Companies Act. In essence, it was submitted that the respondents have totally misconstrued the

nature of this application, the purpose of which has nothing to do with attempting to obtain an order for specific performance on the contract held with the first respondent or as a means of addressing the disputed directorship.

[17] The applicant maintains that he was in undisturbed 'possession' or enjoyed uninterrupted access to his email on the company's web server until this was interrupted by the first respondent, on the instructions of the second and third respondents. What is important is the third respondent's contention that the applicant retired in March 2019. If on the third respondent's version the applicant was to retire at age 65, he would have turned 65 in 2017, based on the information contained in the CIPC forms. There is no explanation of what his status was after reaching the age of 65. What is known is that according to the records of the CPIC he remains a director. Even after a letter had been communicated to him that his directorship would come to an end on 22 March 2019, he remained at Blendrite. This immediately begs the question what was his status from 23 March to 17 July 2019? According to Mr *Manikam*, the applicant was "nothing" in relation to Blendrite after 23 March 2019. If this is so, it does not explain why Lopes J granted, as part of the Order on 30 May 2019, relief that the applicant be paid his *salary* for the months of April and May 2019 in the amount of R37 447.82 per month. Moreover, if his directorship came to an end on 22 March 2019, why was his email and computer access to Blendrite not terminated on that date? On the basis of emails, copies of which have been put up by the third respondent, it is evident that the applicant was in communication with the fire department and clients up to June 2019. This runs counter to the assertion by the third respondent's counsel that the applicant was "nothing", or a person without status at Blendrite. There is also nothing on the papers to gainsay the applicant's contention that he was enjoying undisturbed use and access to his emails on the company web server until 17 July 2019 when it was interrupted.

[18] I am satisfied that the applicant meets the requirement of being in peaceful and undisturbed possession. It seems to me that the vexed issue is whether the applicant's access to the company's web server and his company email address can be described as property capable of protection via the mandament van spolie. Possession in the ordinary sense of the word conveys the impression of actual control over a corporeal thing. The issue which has arisen in recent times is that of quasi-possession. In other

words, what kind of rights are capable and worthy of protection of the mandament van spolie, and how does one possess such a right. The Supreme Court of Appeal in *Firstrand Ltd t/a Rand Merchant Bank & another v Scholtz NO & others* 2008 (2) SA 503 (SCA) stated the following on this issue:

'[13] The mandament van spolie does not have a "catch-all function" to protect the *quasi-possessio* of all kinds of rights irrespective of their nature… [it is not the appropriate remedy] where contractual rights are in dispute or specific performance of contractual obligations is claimed… The right held in *quasi-possessio* must be a "gebruiksreg" [right of use] or an incident of the possession or control of the property.' (Footnotes omitted)

[19] *Telkom SA Ltd v Xsinet (Pty) Ltd* 2003 (5) SA 309 (SCA) was a case in which the applicant, Xsinet, was an internet service provider. Telkom supplied Xsinet with bandwidth. When a dispute arose between the parties over payment in respect of the connectivity service, Telkom disconnected the telephone and bandwidth systems. Xsinet contended that the services had been terminated without their consent and they approached the court to restore the connection, applying for a mandament van spolie. Telkom contended that in effect what the applicant was seeking to do was use the mandament as a basis for obtaining specific performance of a contractual obligation. This argument is similar to that advanced on behalf of the third respondent in the present matter, although it did not articulate this defence either in its heads or in the papers. The High Court came to the assistance of Xsinet holding that bandwidth was an incident of the applicant's possession and granted the mandament. The SCA in para [10] described Xsinet's claim as suggestive of a "right to the continuous connection of the telephone and bandwidth systems, that it was in quasi-possession of the systems by making use of the services and that it has discharged the *onus* of proving that the disconnection amounted to unlawful interference with its quasi-possession." While the SCA found that the internet services were not an incident of possession, like the use of electricity and water in respect of occupation of certain rented premises, Jones AJA noted the following in relation to the interest sought to be protected:

'[9] Originally, the mandament only protected the physical possession of movable or immovable property. *But in the course of centuries of development, the law entered the world of metaphysics.* A need was felt to protect certain rights (tautologically called incorporeal rights) from being violated. The mandament was extended to provide a remedy in some cases. Because rights cannot be possessed, it was said that the holder of a right has "quasi-

possession" of it, when he has exercised such right. Many theoretical and methodological objections can be raised against this construct, inter alia that it confuses contractual remedies and remedies designed for protecting real rights. However, be that as it may, the semantics of "quasi-possession" has passed into our law. This is all firmly established.' (My emphasis)

It would seem that although the SCA upheld the appeal in favour of Telkom, the court accepted that with new developments in technology, the mandament may be resorted to where a person has quasi-possession of a right.

[20] The leading case on the quasi-possession of incorporeals is *Bon Quelle (Edms) Bpk v Munisipaliteit van Otavi* 1989 (1) SA 508 (A) in which the court was approached for a mandament in respect of the interruption of the flow of water under a servitude. It was contended that a servitude is incapable of possession in the same way that one would have possession over movable or immovable property. However, Hefer JA found that possession had existed in the exercise of the professed right and that it was not necessary for an applicant to prove the existence of the right in order to get a spoliation order. The ratio decidendi of the judgment is that it is sufficient for an applicant to prove quasi-possession of an alleged servitude by showing an outward manifestation of its use. An interference with such quasi-possession is an act of spoliation. See Duard Kleyn *The Protection of Quasi-Possession in South African Law*, Jurisprudentia, Vol.4,pp1-18. In the present matter, Mr *Dayal SC* for the applicant, relied on *Bon Quelle* as reflecting the position of our law as it stands in relation to incorporeal property such as access to the internet or email. *Bon Quelle* is also authority for the proposition that it is not necessary in mandament proceedings to prove the existence of a right. To the extent that the second and third respondents allege that the applicant has retired as a director and therefore has no right of access to Blendrite's computer systems, it is not necessary for him to prove such right. It is sufficient for the purposes of the mandament that he enjoyed undisturbed access to his email facilities at the time when they were terminated, pursuant to the letter from the attorneys. The enquiry into the right of the applicant in *Zulu v Minister of Works, KwaZulu, and others* 1992 (1) SA 181 (D) was criticised, where the applicant applied for a mandament following the interruption of water flow derived from the royal household. While affirming that the exercise of rights of servitude were protected by a mandament, Thirion J held that the restoration of a "*non-servitutal right of having water supplied*" was not protected. A similar approach was followed in *Plaatjie & another v*

Olivier NO & others 1993 (2) SA 156 (O) where the court appeared to be cautious to expand the protection of the mandament “to the exercise of rights in the widest sense.”

[21] Without delving into the merits of the matter, I enquired during the course of the hearing from Mr *Manikam*, on the basis that the dispute of the applicant’s directorship is already the subject matter of other litigation, whether the respondents concede that the applicant requires access to his email and the web server in order for him to carry out his duties as a director. The concession was not made. However, in the world of information technology in which we live, where notices and court processes can be served by electronic mail, and where receipt of mail via the post office is almost archaic, access to the internet and one’s emails constitute an indispensable facet of daily business operations. The internet has emerged as the foremost vehicle for handling corporate communication. It is not necessary for me in these proceedings to make any finding as to whether the applicant was a director of Blendrite at the time when his email access was terminated. What is sufficient is that access to his email and company server and internet systems was, in the words of Jones AJA in *Telkom v Xsinet*, an “incident of possession”. In *Xsinet at* para 12 the Court stated the following :

'In my opinion the learned Judge was not correct in concluding *on the facts* that the use of the bandwidth and telephone services constituted an incident of Xsinet's possession of its premises. Xsinet happened to use the services at its premises, but this cannot be described as an incident of possession in the same way as the use of water or electricity installations may in certain circumstances be an incident of occupation of residential premises.'

[22] What the authorities stress, following *Bon Quelle*, is that “although it might appear to be illogical that the servitude does not have to be proved, it is the status *quo* which has to be restored by the *mandament van spolie* until it is determined whether the servitude indeed exists.” See *De Beer v Zimbali Estate Management Association (Pty) Ltd & another* 2007 (3) SA 254 (N) para 44. In *Tigon Ltd v Bestyet Investments (Pty) Ltd* 2001 (4) SA 634 (N) the court confirmed that a mandament could be instituted where a shareholder’s name had been unilaterally removed from the register, following the cancellation of a contract resulting in the expungement of certain shares. Here too it was argued that the right sought to be restored was incorporeal and non-servitutal. Relying on *Bon Quelle* for the principle that the mandament is a possessory remedy

to restore the *status quo ante*, irrespective of the rights of the parties, the court held that incorporeal rights are capable of being possessed.

[23] The point emphasised by the applicant's counsel is that the applicant is not seeking to enforce any contractual term of an agreement with the first respondent, nor is he seeking relief from the court in relation to his disputed status as a director in relation to the second and third respondents. He simply comes to court to restore his email access, which he enjoyed prior to its termination on the instruction from the second and third respondent's attorney. The opposition is based on the construct that quasi-possession cannot be extended to the grant of computer and email access which is intrinsically linked to the directorship of Blendrite, which was cancelled when the applicant ceased to be a director. The respondents relied on *Microsure (Pty) Ltd & others v Net 1 Applied Technologies South Africa Ltd* 2010 (2) SA 59 (N) where Koen J noted that:

'[33] A number of well-meaning jurists appear to have encouraged the extension of the application of the mandament van spolie to instances of quasi-possession of incorporeals. That is undesirable and could possibly even be detrimental to economic and commercial activity. No argument requiring such an extension of the common law was advanced. It must also not be forgotten that a denial of the mandament van spolie would not leave the applicants remediless. They have other remedies, in contract and possibly also delict.'

[24] This case can be distinguished from *Microsure* in that the contract for the provision of the internet access lies between the first respondent and Blendrite. The applicant, in light of the second and third respondents' contention that he is no longer a director, is unable to assert any contractual right against the first respondent. He is left without remedy other than a mandament against the respondents. Koen J associated himself with the decision of *De Beer v Zimbali Estate* holding that even where rights are protected, there must be an element of possession, and not merely possession of the card or entry disc which would only facilitate access, whether it be to an estate (as in the *De Beer* case) or to a computer server, as in *casu*. The applicant was not on the periphery of the activities of Blendrite. He is, according to the CIPC forms, a director of Blendrite. To that extent, his position can be distinguished from the applicant in *De Beer*.

[25] More recently the SCA in *Eskom Holdings SOC Limited v Masinda* (1225/2018) [2019] ZASCA 98 (18 June 2019) considered whether the respondent, Ms Masinda, was entitled to a spoliation order in circumstances where the electricity supply to her property was disconnected by Eskom on the grounds that she was identified as having an illegal connection. The court affirmed the principle that spoliation provides a remedy in such situations by requiring the "status quo preceding the dispossession to be restored … as a preliminary to any enquiry or investigation into the merits of the dispute' as to which of the parties is entitled to possession". Accordingly, the court hearing the spoliation application does not require proof of a claimant's existing right to the property. Proof of possession is what is required. To this extent, it affirms the ratio in *Bon Quelle*. The SCA concluded that to direct Eskom to restore the electricity connections that were removed would be to compel it to commit an illegality and for that reason held that the appeal must succeed. The point of departure from previous cases appears to be that the SCA focused on the lawfulness of the possession. This however does not affect the right of the applicant, in my view, to approach the court for a mandamus, as the lawfulness of his access to the email and internet, are not disputed.

[26] The applicant's counsel submitted that support for his contention that the mandament is available to quasi-possession of incorporeal rights, like those of internet access and email, is to be found at para [14] of *Eskom v Masinda* where the court endorsed the views expressed in *Firstrand v Scholtz*. Counsel for the respondents sought to rely on para [22] of the court's judgment where it made reference *to Zulu v Minister of Works,* affirming that "spoliation should be refused where the right to receive it is purely personal in nature. The mere existence of such a supply is, in itself, insufficient to establish a right constituting an incident of possession of the property to which it is delivered." The right of the applicant in this matter to receive emails and access the internet and to view, as stated on affidavit, costings and formulations of products, are not merely 'personal' rights. They flow and are, in my view, an incident of possession of him being a director at Blendrite.

[27] It is also pertinent to point out that the notice to cancel the applicant's email appears not to coincide with the date when the second and third respondents allege his directorship came to an end. However, even after the directorship allegedly came

to an end, the applicant remained at the company and enjoyed undisturbed access to his email facilities. For all of the above reasons, I am of the view that the applicant has succeeded in making out a case for the relief sought.

[28] It was further submitted by the second and third respondents that this application was not urgent, relying on *Mangala v Mangala* 1967 (2) SA 415 (E) at 416D-F where the court held that the applicant has:

'not complied with the provisions of Rule 6 (12) *(b)* in the manner which would entitle him to cut across the whole procedure governing applications to Court. It is true that a spoliation order is a remedy which in the nature of things should be a speedy one, but the fact that there has to be restitution before all else simply means that, once an applicant has proved that he was in peaceful possession and his possession was disturbed, the respondent must restore that position before entering into the merits of the ownership or otherwise of the subject matter. It does not follow that, because an application is one for a spoliation order, the matter automatically becomes one of urgency. The applicant must either comply with the Rules in the normal way or make out a case for urgency in accordance with the provision of Rule 6 (12) *(b).'*

[29] The respondents took issue with the urgency of the application contending that the application papers were issued on 16 July 2019 but only served on the second and third respondent on 18 July 2019, a day before the hearing on 19 July 2019. When the matter came before Moodley J she did not strike the matter off the roll for lack of urgency. Instead, she recorded the respondents' contention that urgency was in dispute and adjourned the matter, enabling the second and third respondents to file a further set of affidavits. The respondents have not been prejudiced in any way. They have had ample opportunity to place all necessary facts before the court. The applicant's attorney wrote to the first respondent on 11 July 2019 and gave the respondents an opportunity to uplift the cause of complaint and restore the applicant's internet access. The second and third respondent took no steps to instruct the first respondent, who is merely a service provider, to comply with the request. The applicant moved with due promptitude to seek relief, which the authorities have held, is by its nature a speedy remedy intended to provide only temporary relief and to prevent people taking the law into their own hands. Silberberg and Schoeman, *The Law of Property*, Ch.13.2.1.2. I am of the view that the objections to urgency are without substance.

[30] Counsel for the respondents submitted that there were numerous disputes of fact on the papers and that the application should either be dismissed or referred to oral evidence. Neither of these aspects was either canvassed on the papers or in the respondent's pithy heads. The only dispute that emerges is whether the applicant retired as a director of Blendrite. As stated above, it is not necessary for me to make any finding in regard thereto for the purpose of this application. In any event, I am satisfied that there is no reason why the matter should be referred to oral evidence, less still, for the application to be dismissed. I am satisfied that the applicant has made a case out for the relief sought. The applicant's counsel submitted that the court has had the benefit of having all of the information placed before it (including a substantial amount of unnecessary information, having no bearing on the issues). On that basis, it was submitted that a final order should be granted as it would simply entail unnecessary escalation of costs for a rule to be issued. Predictably, the respondents were opposed to the suggestion that a final order could be granted, with Mr *Manikam* suggesting that on the return day "any or all other interested parties" may wish to oppose a final order being granted. The question that immediately comes to mind is who else other than the respondents, who have been cited, would have an interest in this matter? Counsel was unable to say who such "interested persons" could be. I suspect that there are none. In any event, the second and third respondents have opposed the application without success. The first respondent abides the decision of this court. Insofar as the parties have now filed their affidavits on the merits of the spoliation application and fully addressed me thereon, I find no need to consider issuing a rule.

[31] Lastly, I turn to the issue of costs. The applicant has been successful and there is no reason why costs should not follow the result. The applicant sought costs on an attorney-client scale against the respondents. Only the second and third respondents have opposed the application. No costs ought to be granted against the first respondent, who was acting on the instructions of its client, Blendrite and at the instance presumably of the third respondent, the 'remaining' director of the company. In light of the second and third respondents disregard for the Practice Direction of this Division, and the manner in which they introduced irrelevant information having

nothing to do with the issue before the court, I am persuaded that this is indeed a case where I should make an award of costs on a punitive scale.

[32] I make the following order:

1. The first respondent be and is hereby directed to *ante omnia* restore the applicant's access to the email company network/server respect of the second respondent forthwith.
2. The second and third respondents are to pay the costs of the application on an attorney-client scale, jointly and severally, the one paying the other to be absolved.

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M R Chetty

Appearances

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Date Reserved: 5 September 2019

Date Delivered: 4 October 2019