THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

REPORTABLE

Case No: 244/13

In the matter between:

GRANCY PROPERTY LIMITED AND ANOTHER **Appellants**

and

SEENA MARENA INVESTMENT
(PTY) LTD AND OTHERS **Respondents**

Neutral citation: *Grancy Property* v *Seena Marena* (244/13) [2014] ZASCA 50 (01 April 2014)

Coram: Lewis, Mhlantla, Petse and Saldulker JJA and Legodi AJA

Heard: 3 March 2014

Delivered: 1 April 2014

Corrected: 9 May 2014

Summary: Civil Procedure – where an order made in the High Court is final in effect and definitive of the rights of the parties, the order is appealable – party is entitled to claim an order that there be an inquiry into the adequacy of an account before it is debated.

ORDER

On appeal from: Western Cape High Court, Cape Town (McDougall AJ sitting as court of first instance):

1 The appeal is upheld with costs, including the costs of two counsel.

2 The order of the high court is set aside and replaced with:

'(a) (i) The application under case no 15757/07 instituted by the second, third and fifth respondents in terms of Rule 6 (11)(the Spearhead application) is dismissed.

(ii) The counter-application instituted by the applicants in terms of Rule 6(11) is granted in terms of the order annexed to this judgment marked 'A'.

(b) (i) The application under case no 10547/08 instituted by the applicants in terms of Rule 6(11) (the Scharrig application) is granted in terms of the order annexed to this judgment marked 'B'.

(ii) The counter-application instituted by the first to sixth respondents in terms of Rule 6(11) is dismissed.'

JUDGMENT

Mhlantla JA (Lewis, Petse, Saldulker JJA and Legodi AJA concurring):

[1] This appeal is against a decision of the Western Cape High Court, Cape Town (McDougall AJ). It is in respect of four applications brought in terms of rule 6(11) of the Uniform Rules of Court and which are interlocutory to two main applications under case numbers 15757/07 and 10547/08. The appeal is

with leave of the court below. The underlying dispute between the parties relates to an entitlement of Grancy Property Limited and Montague Goldsmith AG in Liquidation (the appellants) to a proper statement of account by Seena Marena Investments (Pty) Ltd (Seena Marena Investments), Mr Dines Gihwala, Mr Lancelot Manala and the Gihwala Family Trust (the respondents).

[2] At issue in this appeal is the question whether the order of the high court is appealable and if so, whether the appellants have made out a case for a two – stage judicially controlled procedure dealing, first with the adequacy and second with the accuracy of the accounts in question.

[3] Some factual background is necessary before the determination of the issues. The appellants, who are based overseas, decided to invest moneys in South Africa. They communicated with Mr Gihwala regarding their interest in two investments, that I shall refer to as Spearhead and Scharrig. They transferred funds to him to invest accordingly and in certain instances advised him to collect funds from a firm of attorneys which held their moneys in its trust account. At a certain stage the relationship between the parties turned sour. It transpired that some of the funds were never invested, whilst the others were repaid to them. The appellants were not satisfied with the refunds and by way of letters demanded an account from the respondents. When this was not forthcoming they brought the two main applications in the Western Cape High Court.

[4] The Spearhead proceedings commenced in November 2007. In terms of a settlement agreement, which was made an order of court on 9 March 2009, the respondents were ordered to submit to the appellants an account setting out how the appellants' funds had been utilised. The respondents rendered the account. The appellants complained, however, that it was inadequate. They launched

proceedings under rule 6(11) of the Uniform Rules and sought an order declaring that the account rendered by the respondents was inadequate and directing them to provide an account in accordance with the March 2009 order. No relief was sought with regard to the debatement of the account.

[5] That application was heard by Binns–Ward J. On 15 April 2010 the learned judge found that the respondents had rendered a 'woefully inadequate' account. He directed the respondents to furnish the appellants with an improved account within 15 days of the order. He held that a debatement of the account still had to occur and the actual definition of what was in issue would take place after the appellants had had an opportunity to consider the account and privately debate with the respondents any issues arising out of such consideration. During May 2010 the respondents submitted a further account which was supplemented in June 2010 after the appellants had requested them to account properly. Despite this, a dispute arose as to the adequacy of the account. This dispute culminated in the respondents launching a further Spearhead application. The appellants subsequently filed their counter–application.

[6] Regarding the Scharrig project, during April 2005, Mr Gihwala advised the appellants of an opportunity to invest in Scharrig, a JSE listed company. The appellants decided to invest an amount of R1 million. Mr Gihwala also held funds on behalf of the appellants in the trust account of Hofmeyer, Herbstein & Gihwala Inc, a firm of attorneys, (Hofmeyer). He was authorised to utilise some of those funds for the Scharrig investment. During June 2005 a further opportunity arose to invest in Scharrig shares. On 16 June 2005 the appellants contributed a sum of R10 million which was transferred to Hofmeyer's trust account. This amount was subsequently invested in the name of Seena Marena Investments at Peoples Bank.

[7] It later transpired that Mr Gihwala did not invest the R10 million on behalf of the appellants and in August 2005, this amount was repaid to the appellants. Mr Gihwala paid the appellants an amount of R50 000 as interest but failed to furnish an account setting out the interest earned from 16 June to 11 August 2005. The appellants demanded an account dealing with receipts, growth and the application of the funds. Mr Gihwala refused, contending that the appellants had received a full and proper account. As a result, on 1 July 2008, the appellants launched the Scharrig proceedings in the court below and sought an order that the respondents provide a proper account, debatement thereof and payment of the amount due to them.

[8] This application was heard by Dlodlo J. On 18 June 2010, the learned judge concluded that the accounting rendered was inadequate. He ordered the respondents to provide the appellants a full and proper account within 14 days of the order; that the account should be supported by vouchers dealing with at least how, when, by whom and for what purposes the amounts of R1 million and R10 million were used.

[9] Pursuant to the order, the respondents handed over further documentation. The appellants were, however, not satisfied and alleged that the accounting was not adequate. A statement of account with supporting vouchers and a separate affidavit with annexures were provided by respondents. The appellants persisted in their position that the account was defective. The respondents sought to address the defects by submitting further documents on 27 and 29 September 2010 respectively.

[10] The appellants were still not satisfied with the adequacy of the accounts and brought an application in terms of rule 6(11) where they sought a judicially controlled procedure to debate the adequacy and accuracy of the accounts. The respondents filed a counter-application contending that the accounts were ready

for debatement and proposed an *extra curial* debatement. The four applications in the high court were:

(a) An application which was launched on 29 July 2010 by Mr Gihwala , Mr Manala and the Trust against the appellants (the Spearhead application);
(b) A counter-application launched on 30 September 2010 by the appellants against Mr Gihwala, Mr Manala and the Trust;
(c) An application launched on 12 November 2010 by the appellants against Mr Gihwala, the Trust and Hofmeyer, (the Scharrig application); and
(d) A counter-application launched on 24 January 2011 by Mr Gihwala and the Trust against the appellants.

[11] The four applications were consolidated and heard by McDougall AJ. The court recognised that there was no prescribed procedure for a statement and debatement of an account. It rejected the appellants' proposed approach for a two-stage enquiry where the accounts would first be debated for adequacy and then accuracy. It concluded that both the Spearheard and Scharrig accounts were ready to be debated. It thus upheld the respondents' application in the Spearhead application and their counter-application in the Scharrig application. The parties were directed to debate the accounts furnished by the respondents pursuant to the orders dated 9 March 2009, 15 April 2010 and 18 June 2010 respectively. The appellants now seek a reversal of the orders of the court below, and in particular the finding that the accounts were ready to be debated.

[12] With that background, I revert to the preliminary issue, that is, whether the order of the high court is appealable. In deciding this question, this court is guided by the principles laid out in a line of cases. It is useful to begin with *Zweni* v *Minister of Law and Order*[1] where Harms JA stated:

[1] *Zweni* v *Minister of Law & O'der* 1993(1) SA 523 (A) at 532J to 533A. *Health Professions Council of South Africa and another* v *Emergency Medical Supplies and Training* CC t/a EMS 2010 (6) SA 469 (SCA) para 15.

'A "judgment or order" is a decision which, as a general principle has three attributes, first, the decision must be final in effect and not susceptible of alteration by the Court of first instance; second, it must be definitive of the rights of the parties; and, third, it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.'

[13] In *Moch* v *Nedtravel (Pty) Ltd*,[2] Hefer JA pointed out that the principles are neither exhaustive nor cast in stone. The tests did not deal with a situation where the decision, without actually defining the parties' rights or disposing of any of the relief claimed in respect thereof, yet has a very definite bearing on these matters.

[14] Maya JA in *Jacobs* v *Baumann NO*,[3] said:

'. . . [A] court determining whether or not an order is final considers not only its form but also, and predominantly, its effect. An order may not possess all three attributes, but will nonetheless be appealable if it has final jurisdictional effect or is 'such as to "dispose of any issue or any portion of the issue in the main action or suit" or . . ."irreparably anticipates or precludes some of the relief which would or might be given at the hearing"'.

[15] In *NDPP* v *King*, [4] Harms DP held:

'. . . [T]he focused issue is whether the "order" was in substance and not in form final in effect. In other words, was it capable of being amended by the trial court? . . . If a party has been prejudiced by the order his prejudice is irremediable.'

[16] In *Absa Bank* v *Mkhize*,[5] the high court had been seized with an application for default judgment. It set out steps to be taken by the plaintiff to ensure that the notice of a consumer's default in meeting an obligation to the plaintiff was provided to the consumer in terms of sections 129 and 130 of the National Credit Act 34 of 2005. The court thereafter postponed the application *sine die* in order to give the plaintiff an opportunity to take the further steps it

[2] *Moch* v *Nedtravel (Pty) Ltd t/a American Express Travel Service* 1996 (3) SA 1 (A) at 10F.
[3] *Jacobs and Others* v *Baumann NO and others* 2009 (5) SA 432 (SCA) para 9.
[4] *National Director of Public Prosecution* v *King* 2010 (2) SA SACR 146 paras 42 and 45.
[5] *Absa Bank* v *Mkhize* [2014] 1 All SA 1 (SCA) paras 59, 61 and 63.

considered were necessary before the matter could be disposed of. The plaintiff appealed against that order. In this court, Ponnan JA stated:

'[The] order of the high court amounted to no more than a direction from the high court. The order is a preparatory or procedural order which does not bear upon or in any way affect the decision in the main action . . . The order does not amount to a refusal of default judgment, nor does it directly bear upon or dispose of any of the issues in the main action, it thus cannot be said that it is tantamount to a dismissal of Absa's action.'

[17] With these principles in mind, I revert to the contentions of the parties. Before us, counsel for the respondent submits that the judgment and orders are not appealable in that they relate to interlocutory applications; do not dispose of a substantial portion of the relief in the main application and are not final in effect.

[18] It is so that what was before the high court were four interlocutory applications. However once the relief sought was denied, it was not open to the appellants to seek it again: the effect of the denial was to deprive the appellants of a remedy.

[19] It is clear that the issue of *adequacy* of the account is at the heart of the dispute between the parties. This issue is very important to them. This is borne out by the history of the case outlined above. The court below said: 'In my view the Spearhead and Scharrig accounts are ready to be debated.' Implicit in that statement is that the accounts are adequate and that there should be no debate about the adequacy thereof. The court made this finding without furnishing any reasons therefor. It accepted the respondents' proposed method to deal with the debatement of the accuracy of the accounts. The effect of the order is that the appellant is now precluded from and has been denied the right to enquire and ensure that accounts to be debated are adequate. The question that has to be

answered is: can one debate the accuracy of an account that is inadequate? I think not.

[20] The appellants would thus be prejudiced if the judgment and order of the court below were allowed to stand. That was the case too in *NDPP* v *King* referred to above in which it was held that although the order on appeal was made during the course of proceedings, it was final in effect.

[21] Counsel for the respondent submitted that a piecemeal adjudication of the issues should be avoided. It is so that a piecemeal determination of issues is undesirable.[6] However, we were advised by both parties that the trial commenced in February 2014 and does not relate to the issues raised in this appeal. Furthermore the Scharrig issue does not feature in the consolidated actions. It follows that this court is properly seized with this matter.

[22] The order of the high court has effectively precluded the appellants from contesting the adequacy of the accounts, an issue that has been a bone of contention between the parties since 2009. It is thus final in effect. It has major implications for the appellants as it affects their rights to an adequate account. The effect of the order is that, for as long as it remains, the appellants will be precluded from contesting or revisiting the issue relating to the adequacy of the account. They will have no remedy to obtain an adequate account unless the judgment of McDougall AJ is set aside. It follows that the appellants will be prejudiced if this order stands. In the result, I conclude that the decision of the high court is appealable.

[23] Regarding the merits, the issue is whether the court below properly held that the respondents' proposed process for the debatement of the accounts was appropriate and thus correctly rejected the appellants' application for a two–

[6] See *Health Professions Council* v *Emergency Medical Supplies* para 16.

stage judicially controlled process. It was submitted on behalf of the respondents that the method proposed by the appellants is not supported by judicial authority; that it is inappropriate, unfair and unworkable and that the appellants' proposed second stage was not a debate but a conventional action process aimed at recovering the amounts due. The respondents urged us to accept the method proposed by them as it is consistent with the guidelines laid down by this court.

[24] In *Doyle & another* v *Fleet Motors PE (Pty) Ltd*,[7] Holmes JA accepted that in South Africa there is no prescribed procedure for a statement and debatement of an account. He made general observations about the procedure to be adopted when a party sought a statement of account, debatement and payment of moneys due. The learned judge noted:

'The degree or amplitude of the account to be rendered would depend on the circumstances of each case. In some cases it might be appropriate that vouchers or explanations be included. . . . [Where] the plaintiff has [already] received an account which he avers is insufficient, the court may enquire into and determine the issue of sufficiency in order to decide whether to order the rendering of a proper account . . . In general the court should not be bound to a rigid procedure, but should enjoy some measure of flexibility as practical justice may require.'

[25] In *Video Parktown* v *Paramount, Shelburne & Century*[8] Slomowitz AJ referred to the general observations made by Holmes JA in *Doyle* v *Fleet Motors* and said:

'It seems apparent from his remarks that the issue whether an account should be ordered may, in a suitable case, be tried separately from and before any question relating to the adequacy of the account. Viewing the matter as one of principle, it seems to me that the right to receive an account is one which is distinct from the right to have it debated and then to obtain payment of any monies found to be owing. Whether an account must in law be delivered is one

[7] *Doyle and Another* v *Fleet Motors PE (Pty) Ltd* 1971 (3) SA 760 at 762E-763D.
[8] *Video Parktown North (Pty) Ltd* v *Paramount Pictures Corporation, Video Parktown North (Pty) Ltd* v *Shelburne Associates and others, Video Parktown North (Pty) Ltd* v *Century Associates and others* 1986 (2) SA 623 (TPD) at 638E-G.

question. Whether it is correct is another. If an account which is bound in law to be furnished is found to be incorrect, the remedy of debatement arises, not so much from the duty to deliver it in the first instance, but from the failure to ensure its accuracy.'

[26] In *Doyle* v *Board of Directors*,[9] Slomowitz AJ said:

'The right to an account is at once two distinct concepts. It is both substantive and procedural. It is a right as well as a remedy. The duties of good faith, which are owed by an agent to his principal, are no different in kind to those which fall on a trustee ….

Inextricably bound up with this by no means exhaustive compendium of obligations is the agent's duty to *give an accounting* to his principal of all that he knows and has done in the execution of his mandate and with his principal's property.'

[27] In this case, the appellants contended for a two-stage judicially controlled procedure which would deal first with the adequacy and then with the accuracy of the Spearhead and Scharrig accounts rendered by the respondents. The procedure would involve the examination of the relevant respondents before the court in relation to the adequacy of the details of the accounts. If the accounts were inadequate, the judge would specify in which respect and state what has to be provided by the respondents and set the time frames. The court would thereafter order the provision of such information, explanations and documentation as it considered necessary to enable the appellants properly to debate the accuracy of the accounts.

[28] If the accounts were adequate or if the respondents had complied with the order of the court to cure the inadequacy, a second hearing would be convened at which the adequate accounts would be debated in relation to their accuracy and to determine whether any amounts were due to them. Once that is done, the parties would follow the procedure as envisaged in action proceedings.

[29] In my view, the court below erred when it rejected the two-stage process proposed solely because it has not been sanctioned previously. The method

[9] *Doyle* v *Board of Directors* 1999 (2) SA 805 (CPD) at 813D and 813G.

proposed by the appellants is appropriate and justified under the circumstances. It is unfortunate that the court criticised it as being unconventional. It appears that in coming to this conclusion, the court below overlooked the fact that there are no rules that are prescribed for the disputes of the kind in issue in this case. Accordingly the court is, in general, not bound to a rigid procedure but enjoys a measure of flexibility as practical justice may require.

[30] It was submitted on behalf of the respondents that the procedure involving their examination was invasive. I do not agree. The entire process envisaged would be presided over and controlled by a judge. The interrogation phase relates to the adequacy stage only. The respondents were the agents as the money was entrusted to them and they are the only parties who know how the funds were utilised. Therefore they have a duty to account and respond to the questions posed. There is no corresponding obligation imposed on the appellants. In my view the procedure proposed by the respondents is flawed as it does not cater for the provision of adequate accounts. In so far as the accuracy of the accounts is concerned, the parties will be able to debate the issues and will be afforded an opportunity to file pleadings and the matter will be set down for hearing.

[31] In the result, the appellants are thus entitled to the relief sought. The appeal therefore succeeds.

[32] For these reasons the following order is made:

1 The appeal is upheld with costs, including the costs of two counsel.
2 The order of the high court is set aside and replaced with:
‘(a)(i) The application under case no 15757/07 instituted by the second, third and fifth respondents in terms of Rule 6 (11), (the Spearhead application), is dismissed.
(ii) The counter-application instituted by the applicants in terms of Rule 6(11)

is granted in terms of the order annexed to this judgment marked A.

(b)(i) The application under case 10547/08 instituted by the applicants in terms of Rule 6(11), (the Scharring application), is granted in terms of the order annexed to this judgment marked B.

(ii) The counter-application instituted by the first to sixth respondents in terms of Rule 6(11) is dismissed.

NZ MHLANTLA
JUDGE OF APPEAL

A

Order in respect of Case No: 15757/07

1 The applicants and the second, third and fifth respondents (the respondents) are directed to debate the adequacy of the account delivered by the respondents on 7 May 2010 and supplemented on 3 June 2010 ('the May/June 2010 account') pursuant to the order of Binns-Ward J delivered on 15 April 2010 ('the April 2010 Judgment').

2 The applicants and the relevant respondents are directed to debate the accuracy of the May/June 2010 account.

3 The debatement of the account, contemplated in 1 and 2 above, shall be conducted before the Western Cape High Court (the high court) at a date and time that is convenient to all the parties involved, as well as their counsel.

4 The debatement of the May/June 2010 account is separated into two stages:

4.1 the first stage dealing with the adequacy of the May/June 2010 account; and

4.2 the second stage dealing with the accuracy of the final account as defined in paragraph 14 below.

5 The two stages of the debatement should be regulated in the following manner:

The first stage: adequacy

6 At the hearing, the applicants' legal representatives will be entitled to pose questions to the respondents in relation to the adequacy of the May/June 2010 account. The respondents' legal representatives will, thereafter, be entitled to question the respondents on issues raised by the applicants' legal representatives

during their questioning of the respondents, after which the applicants' legal representatives will be entitled to re-examine the respondents.

7 In questioning the respondents on the adequacy of the May/June 2010 account, the applicants' legal representatives will be entitled to question the respondents on every aspect and every detail of the May/June 2010 account, and the content of their legal duty to account under the court order delivered by the high court, under the above case number, on 9 March 2009 ('the March 2009 court order') and the April 2010 Judgment.

8 It is the respondents, rather than their accountants or legal representatives, who shall be obliged to answer the questions put to them by the applicants' legal representatives and/or the respondents' legal representatives relating to the May/June 2010 account.

9 The applicants will not be obliged to submit to questioning by the respondents during this stage of the procedure.

10 The questioning of the respondents will be done under oath.

11 After the applicants' and the respondents' legal representatives have finished examining the respondents, the high court shall make an order on the following issues:

11.1 whether the May/June 2010 account is adequate in the sense contemplated in the April 2010 Judgment;

11.2 If the May/June 2010 account is found to be inadequate in the sense contemplated in the April 2010 Judgment, in what specific respects it is inadequate;

11.3 what further explanations must be provided by the respondents, and by what date these explanations must be provided to the applicants;

11.4 what further documentation and/or information the respondents must provide to the applicants in order to comply with the April 2010 Judgment, and by what date this documentation and/or information, and further explanations in relation to this documentation and/or information, must be provided to the applicants.

The second stage: accuracy

12 Should the high court find that the May/June 2010 account is:

12.1 adequate in the sense contemplated in the April 2010 Judgment;

12.2 alternatively, inadequate in the sense contemplated in the April 2010 Judgment, and thereafter make the orders contemplated in paragraphs 11.2 to 11.4 above, and the respondents thereafter comply with these orders,

the applicants will be entitled to proceed to debate the accuracy of the account with the first to third and fifth to ninth respondents (the relevant respondents) before the high court.

13 Alternatively, if the respondents fail to comply with the order of the high court as contemplated in paragraph 12.2 above, the applicants will be entitled to proceed to debate the accuracy of the May/June 2010 account with the relevant respondents before the high court, subject to the court drawing any appropriate adverse inferences from the respondents' failure to comply with their legal duty to furnish a full and proper account.

14 In debating the accuracy of the May/June 2010 account, supplemented in accordance with paragraphs 11.2 to 11.4 above (the final account), the following procedures will be followed:

14.1 The applicants will, within 20 days of the court's finding that the May/June 2010 account is adequate; alternatively within 20 days of the

respondents' compliance with the court's order as contemplated in paragraph 12.2; further alternatively within 20 days of the respondents' failure to comply with this court's order as contemplated in paragraph 12.2, deliver a written notice to any one or more of the relevant respondents in the form of particulars of plaintiffs' claim in which they claim any amounts due to them, which arise from the debatement contemplated in paragraph 4 of the March 2009 court order and/or the second, third and/or fifth respondent's failure to provide an adequate and/or accurate account.

14.2 Any one or more of the relevant respondents will be entitled, within 15 days of the delivery of the particulars of claim, to respond in writing to the allegations in the particulars of claim in the form of a plea. The relevant respondents will not be entitled to lodge any counterclaim against the applicants.

14.3 The applicants will be entitled, within 10 days of the delivery of plea(s) by one or more of the relevant respondents, to respond in writing to such plea(s) in the form of a replication.

15 The above procedure does not preclude the applicants from initiating contempt of court proceedings against one or more of the respondents should such respondent(s) fail to comply with the high court's order as contemplated in paragraph 12.2.

16 Once the procedure contemplated in paragraphs 14.1 to 14.3 has been finalised, the applicants shall set the matter down to be heard by the high court at a date and time convenient to all the parties involved, as well as their counsel.

17 To the extent that the above procedure does not provide otherwise, the process of the debatement of the accuracy of the final account and adjudication of the claims in the particulars of claim will take place in accordance with the Uniform Rules of the Court which govern action proceedings.

18 The debatement of the accuracy of the final account and adjudication of the claims in the particulars of claim will, as far as possible, be argued before the same judge who heard argument on the adequacy of the May/June 2010 account.

19 The respondents (and the first and sixth to ninth respondents under WCC case no 15757/07, in the event of their opposing the relief herein) are ordered to pay, jointly and severally, the one paying the other to be absolved, the applicants' costs of suit on the scale as between attorney and client, including the costs of two counsel.

B

Order in respect of Case No: 10547/08

1 The applicants and the first, second and seventh respondents (the respondents) are directed to debate the adequacy of the account delivered by:

1.1 the first and second respondents on 2 July 2010 (the Gihwala July 2010 account) and supplemented on 27 September 2010 (the 27 September 2010 letter) (collectively, 'the first and second respondents' account'); and

1.2 the seventh respondent on 2 July 2010 (the HHG July 2010 account) and supplemented on 30 September 2010 (the 30 September 2010 letter) (collectively, 'the seventh respondent's account'), pursuant to the order of Dlodlo J delivered on 18 June 2010 (the June 2010 Judgment).

2 The applicants and the relevant respondents are directed to debate the accuracy of the first and second respondents' account and the seventh respondent's account (collectively, 'the respondents' accounts').

3 The debatement of the account, contemplated in 1 and 2 above, shall be conducted before the Western Cape High Court (the high court) on a date and time that is convenient to all the parties involved, as well as their counsel.

4 The debatement of the respondents' accounts shall be separated into two stages:

4.1 the first stage dealing with the adequacy of the respondents' accounts; and

4.2 the second stage dealing with the accuracy of the final accounts as defined in paragraph 14 below.

5 Directing that the two stages of the debatement should be regulated in the following manner:

The first stage: adequacy

6 At the hearing, the applicants' legal representatives will be entitled to pose questions to the respondents in relation to the adequacy of the respondents' accounts. The respondents' legal representatives will, thereafter, be entitled to question the respondents on issues raised by the applicants' legal representatives during their questioning of the respondents, after which the applicants' legal representatives will be entitled to re-examine the respondents.

7 In questioning the respondents on the adequacy of the respondents' accounts, the applicants' legal representatives will be entitled to question the respondents on every aspect and every detail of the respondents' accounts, and the content of their legal duty to account under the June 2010 Judgment.

8 It is the respondents, rather than their accountants or legal representatives, who shall be obliged to answer the questions put to them by the applicants' legal representatives and/or the respondents' legal representatives relating to the respondents' accounts.

9 The applicants will not be obliged to submit to questioning by the respondents during this stage of the procedure.

10 The questioning of the respondents will be done under oath.

11 After the applicants' and the respondents' legal representatives have finished examining the respondents, the high court shall make an order on the following issues:

11.1 whether the first and second respondents' account and/or the seventh respondent's account are adequate in the sense contemplated in the June 2010 Judgment;

11.2 If the first and second respondents' account and/or the seventh respondent's account are found to be inadequate in the sense contemplated in the June 2010 Judgment, in what specific respects they are inadequate;

11.3 what further explanations must be provided by the first, second and/or seventh respondents, and by what date these explanations must be provided to the applicants;

11.4 what further documentation and/or information the first, second and/or seventh respondents must provide to the applicants in order to comply with the June 2010 Judgment, and by what date this documentation and/or information, and further explanations in relation to this documentation and/or information, must be provided to the applicants.

The second stage: accuracy

12. Should the high court find that the first and second respondents' account and/or the seventh respondent's account is:

12.1 adequate in the sense contemplated in the June 2010 Judgment;

12.2 alternatively, inadequate in the sense contemplated in the June 2010 Judgment, and thereafter make the orders contemplated in paragraphs 11.2 to 11.4 above, and the first, second and/or seventh respondents thereafter comply with these orders,

the applicants will be entitled to proceed to debate the accuracy of the account with the relevant respondents before the high court.

13 Alternatively, if the respondents fail to comply with the order of the high court as contemplated in paragraph 12.2 above, the applicants will be entitled to proceed to debate the accuracy of the May/June 2010 account with the relevant respondents before the high court, subject to the court drawing any appropriate

adverse inferences from the respondents' failure to comply with their legal duties to furnish a full and proper account.

14 In debating the accuracy of the May/June 2010 account, supplemented in accordance with paragraphs 11.2 to 11.4 above (the final accounts), the following procedure will be followed:

14.1 The applicants will, within 20 days of the court's finding that the first and second respondents' account and/or the seventh respondent's account is adequate; alternatively within 20 days of the respondents' compliance with the court's order as contemplated in paragraph 12.2; further alternatively within 20 days of the respondents' failure to comply with the court's order as contemplated in paragraph 12.2, deliver a written notice to any one or more of the relevant respondents in the form of particulars of plaintiffs' claim in which they claim any amounts due to them, which arise from the debatement contemplated in paragraph 28(b) of the June 2010 Judgment and/or the first, second and/or seventh respondent's failure to provide an adequate and/or accurate account.

14.2 Any one or more of the relevant respondents will be entitled, within 15 days of the delivery of the particulars of claim, to respond in writing to the allegations in the particulars of claim in the form of a plea. The relevant respondents will not be entitled to lodge any counterclaim against the applicants.

14.3 The applicants will be entitled, within 10 days of the delivery of plea(s) by one or more of the relevant respondents, to respond in writing to such plea(s) in the form of a replication.

15 The above procedure does not preclude the applicants from initiating contempt of court proceedings against one or more of the respondents should

such respondent(s) fail to comply with the court's order as contemplated in paragraph 12.2.

16 Once the procedure contemplated in paragraphs 14.1 to 14.3 has been finalised, the applicants shall set the matter down to be heard by the high court at a date and time convenient to all the parties involved, as well as their counsel.

17 To the extent that the above procedure does not provide otherwise, the process of the debatement of the accuracy of the final account and adjudication of the claims in the particulars of claim will take place in accordance with the Uniform Rules of Court which govern action proceedings.

18 The debatement of the accuracy of the final account and adjudication of the claims in the particulars of claim will, as far as possible, be argued before the same judge who heard argument on the adequacy of the respondents' accounts.

19 The respondents (and the third to sixth respondents under WCC case no 10547/08, in the event of their opposing the relief herein) are ordered to pay, jointly and severally, the one paying the other to be absolved, the applicants' costs of suit on the scale as between attorney and client, including the costs of two counsel.

APPEARANCES:

For Appellants: P B Hodes SC (with him JPV McNally SC)
Instructed by:
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For Respondents: LA Rose-Innes SC (with him G Quixley)
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