REPUBLIC OF SOUTH AFRICA

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

CASE NO: 40823/2013

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

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DATE SIGNATURE

In the matter between:

ROBERT BENJAMIN BERGH Applicant

And

SIDNEY CAWOOD ROBSON First Respondent

KHANDA SEATING (PTY) LTD Second Respondent

DITTO DESIGNS (PTY) LTD Third Respondent

J U D G M E N T

KEIGHTLEY, AJ:

INTRODUCTION

[1] The applicant in this matter is Robert Benjamin Bergh ("Bergh"). The active respondents in the litigation are Sydney Cawood Robson ("Robson") and Khanda Seating (Pty) Ltd ("Khanda"). The third respondent, Ditto Design (Pty) Ltd ("Ditto"), is an entity under Bergh's control. It has not participated in the proceedings.

[2] Bergh seeks an order directing the first and second respondents, jointly and severally, to pay an amount of R500 000. 00, together with interest, and costs on an attorney and client scale.

[3] Bergh's cause of action is based on a sale of shares agreement ("the agreement") entered into between him and Robson. In terms of the agreement, Bergh sold his shares in Khanda to Robson for the amount of R4 million. The purchase price was payable in tranches. It is common cause that Robson has failed to pay a tranche in the amount of R500 000. 00. Payment of this tranche fell due on 30 September 2013.

[4] Robson opposes the application on his own and on Khanda's behalf. He has also instituted a counter application against Bergh and Ditto. As regards the counter application, Robson relies on a cession by Khanda of its rights to him.

[5] Before dealing with the legal issues that arise from the application and counter application, I briefly set out the background facts.

[6] Bergh and Robson previously were co-shareholders in Khanda. The company specialises in fixed or mass seating. It supplies seating products to institutions like churches, theatres, hospitals and universities.

[7] For economic reasons, Bergh and Robson decided that Bergh would exit from the business. This gave rise to the agreement providing for the sale of Bergh's shares in Khanda to Robson.

[8] The agreement was signed on 18 October 2012. For present purposes, the relevant terms of the agreement included the following:

[8.1] Bergh sold his shares to Robson for R4 million.

[8.2] Payment of the purchase price was structured so as to include various amounts to be paid in trances over a period of time. One of these was the amount of R500 000. 00, payment of which was due on the 30 September 2013. The remaining details regarding the structure of the payment are not relevant.

[8.3] Second respondent bound itself as surety and co-principal debtor for all monies owed by Robson to Bergh under the agreement.

[8.4] The agreement provided for the auditors to prepare and execute the necessary share transfer forms to enable Bergh's shares to be registered to Robson.

[8.5] Bergh undertook to resign as a director of Khanda.

[8.6] Both parties were required to sign the necessary documents to give effect to the agreement.

[8.7] Robson undertook to use his best endeavours to procure the release of Bergh as a surety of Khanda within 30 days of the agreement.

[8.8] The agreement included a number of provisions under the heading "*Specific conditions agreed upon between the parties pursuant to signing of this agreement*" ("the clause 6 terms"). Essentially, they laid the groundwork for the terms on which Bergh, through his entity Ditto, could operate from Khanda's premises and make use of some of Khanda's facilities.

[8.9] These specific conditions also included terms on which the parties were to deal with work to be completed by Khanda and Ditto after signature of the agreement. Two of these terms are relevant.

[8.10] The first relates to existing contracts regarding the De Aar and Boitumelo hospitals. Bergh undertook to provide Khanda with the products for these contracts.

[8.11] The second term of relevance was clause 6.4. It provided that:

"*Insofar as it is not expressly recorded or implied elsewhere in this agreement, and for the duration thereof, it is specifically agreed that neither (Ditto), nor (Bergh) shall either directly or indirectly approach any of (Khanda's) former or existing customers with the*

aim of procuring business from them and shall in general refrain from soliciting business from such customers in any manner whatsoever." (emphasis added)

[8.12] Any legal costs incurred by either party in enforcing its rights under the agreement were to be on the scale as between attorney and own client.

[9] There is some dispute as to the date of Bergh's resignation as a director of Khanda, and the termination of his employment with the company. Bergh's contention is that his employment terminated on 30 September 2012, and that the effective date of his resignation as director was 1 October 2012. This is based on the effective date of the sale of shares agreement, being 1 October 2012. Robson contends that Bergh resigned on 24 October 2012. This contention is based on the formal letter of resignation prepared by the auditors, which is headed with the latter date.

[10] For reasons that will become clear later, the exact date of Bergh's resignation as director and employee of Khanda is not material to a determination of this matter. I do not deal with it any further.

[11] There is no dispute that Bergh signed all the appropriate resolutions to give effect to the agreement and to the transfer of shares. Consequently, Robson became the holder of Bergh's shares.

[12] While Robson complied with certain of his payment obligations, he defaulted on his obligation to pay an amount of R400 000. 00 that fell due on 30

November 2012. Robson undertook to make the payment by 28 February 2013 at the latest. However, he sent an email to Bergh on that date indicating that he could not make the payment. He explained that Khanda was experiencing financial and cash flow strains. Robson made an alternative repayment proposal.

[13] Consequently, in March 2013 the parties reached agreement on a restructured payment schedule. This covered the outstanding amount of R400 000. 00. It also covered the amount of R500 000. 00, which was to fall due on 30 September 2013. The revised payment schedule reduced this latter payment to R402 165.75.

[14] It was also agreed to cancel Khanda's order from Ditto in respect of the De Aar and Boitumelo hospital contracts, although the underlying reason for this is disputed.

[15] Bergh's attorneys prepared a written addendum to the sale of shares agreement to give effect to these amendments. This was required under the non-variation clause included in the sale of shares agreement. While Bergh and Ditto signed the addendum on 8 March 2013, Robson and Khanda never did so. In the circumstances, the amendments agreed between the parties did not take effect.

[16] In June 2013 Robson's attorneys wrote to Bergh's attorneys asserting that Ditto had failed to deliver to Khanda the products ordered in respect of the De Aar and Boitumelo hospital contracts under the clause 6 terms of the

agreement. In this letter, the attorneys stated that insofar as Robson's delayed payments under the sale of shares agreement may have influenced Ditto's failure to supply the product, "*the payment of the purchase price for the shares and the supply of the goods are two distinctive matters between different parties and should not be confused*" (emphasis in the original).

[17] Relying on the March 2013 agreement, Ditto asserted that the order had been cancelled and it was not under any obligation to deliver.

[18] Despite this, Robson paid the outstanding amount of R400 000. 00 in accordance with the agreement. This was the amount originally due on 30 September 2012. However, Robson failed to pay the amount that fell due on 30 September 2013, i.e. the amount of R500 000. 00 that the parties had agreed would be reduced to R402 165.75.

[19] It was this breach by Robson that gave rise to Bergh's application. Bergh claims payment of the amount of R500 000. 00 from Robson rather than the amount of R402 165.75. Bergh avers that Robson's failure to sign the written addendum to the sale of shares agreement rendered the agreement to reduce the amount ineffective. Accordingly, Bergh relies on the written terms of the agreement in seeking payment of the full amount.

[20] Robson and Khanda oppose Bergh's application for an order enforcing payment of the amount due. They base their opposition on the following allegations of breach:

[20.1] Bergh's breach of clause 6.4 of the agreement;

[20.2] Bergh's breach of his fiduciary duties owed to Khanda as a director; and

[20.3] Ditto's contractual breach of the clause 6 terms in failing to comply with its obligations under the agreement to supply Khanda with product in respect of the De Aar and Boitumelo contracts.

[21] Robson contends that clause 6.4 of the agreement constitutes a general restraint clause prohibiting Bergh from competing with Khanda in any way. Robson cites a number of what he describes as incidents that, he says, demonstrate that Bergh did not act as he ought to have acted. According to Robson, these incidents indicate that Bergh breached the general restraint contained in clause 6.4 of the agreement, and that he breached his fiduciary duties as director to Khanda.

[22] Not surprisingly, the facts averred by Robson to support his case in respect of the incidents described are in dispute. However, for reasons that appear later, it is not necessary for me to set out any details of the incidents, nor to make a determination on how to deal with the related disputes of fact.

[23] Robson states that, on the basis of these incidents, he has "*good reason to suspect that (Bergh's) actions have caused damage to (him) and to Khanda in excess of the amount claimed by (Bergh)*". While Robson provides some figures in respect of these possible damages in his answering affidavit, he says that he cannot finally quantify them without the benefits of a discovery process.

[24] Consequent on these alleged breaches, Robson contends that Bergh is not entitled to the relief he seeks. He avers that he is excused from the obligation to pay the amount owing to Bergh for the sale of shares on two grounds.

[25] First, Robson relies on the principal of reciprocity. He asserts that his and Bergh's obligations under the agreement were reciprocal. Thus, he contends, he cannot be held to his obligation to pay the balance of the purchase price for the shares in light of Bergh's alleged breach of his own reciprocal obligations.

[26] Second, Robson raises the defence of set-off, based on the damages alleged to have been caused by Bergh's breaches.

[27] In addition to opposing Bergh's application, Robson contends that the alleged breaches provide him with a basis for a claim for damages against Berg. On this basis, he instituted the counter application in which, on his own and Khanda's behalf, he seeks an order:

[27.1] Referring their (Robson's and Khanda's) counter application to trial.

[27.2] Directing that the counter application should stand as their simple summons.

[27.3] Directing them to deliver their declaration within 30 days of the court order.

[27.4] Directing that the normal Rules of Court pertaining to trial will apply after the delivery of the declaration.

[27.5] Directing that Bergh's application be stayed pending the finalisation of the trial.

[28] Clearly I must make a determination on the counter application before I consider Bergh's application. This flows from the fact that if I decide the counter application in favour of Robson and Khanda, the effect will be to stay Bergh's application. In that event, the application must await another day.

[29] It is immediately apparent from the notice of motion that the counter application is devoid of a prayer seeking any form of substantive relief. This is a significant attribute of that application. Mr Van der Merwe, for Bergh, submitted that this in itself rendered the counter application fatally flawed. Mr Steyn, on behalf of Robson and Khanda made contrary submissions.

[30] Before dealing with this issue, I refer first to an underlying question. The question relates to the discretion of a court to grant a stay in civil proceedings on equitable grounds. Robson motivates for the grant of a stay of the application on the following basis. He says that if the relief is granted, Bergh will not be prejudiced. Bergh will retain his claim against the respondents and interest will accrue on the amount he claims. On the other hand, says Robson, if the relief in the counter application is refused, it will give rise to a grave injustice to him and Khanda. They will be denied the opportunity to

investigate fully Bergh's actions, and from instituting claims for damages where appropriate.

[31] From this it is clear that the counter application is cemented squarely on equitable grounds. The underlying question I adverted to earlier is the following: does the court have a discretion to grant a stay in civil proceedings on general grounds of equity? In other words, where the interests of justice demand it.

[32] Both parties assumed that I have this power. Mr Van der Merwe, for Bergh, submitted that I must exercise this discretion sparingly and in exceptional and clear cases.

[33] This is in line with the decision of Van Dykhorst J, in this division, in *Abdulhay M Mayet Group (Pty) Ltd v Renasa Insurance Co Ltd and Another* [1] ("*Abdulhay*"). In that case, Van Dykhorst J accepted that he had the discretion to stay an application for an interdict pending the determination of related proceedings by the respondent. He based his acceptance of the existence of the discretion on the decision by Nicholas J in *Fisheries Development Corporation SA Ltd v Jorgensen and Another; Fisheries Development Corporation SA Ltd v AWJ Investments (Pty) Ltd*[2] ("*Fisheries*").

[34] However, more recently, the Supreme Court of Appeal has held that neither of these decisions is good authority for the existence of a power to grant a stay in civil proceedings on equitable grounds. In *Clipsal Australia (Pty) Ltd*

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1 1999 (4) SA 1039 (T) at 1048H-I
2 1979 (3) SA 1331 (W)

and Others v GAP Distributors and Others[3] ("*Clipsal*") the SCA pointed out that Nicholas J in *Fisheries* did not find that the discretion existed. He merely proceeded to determine the dispute on the assumption that it did, and refused to grant the stay on the basis that no case had been made out to warrant it. In the circumstances, Van Dykhorst's reliance on *Fisheries* in support of his finding that he had a discretion to grant a stay on equitable grounds was ill-founded.[4]

[35] The SCA has not yet made a determination on whether the discretion does exist. In *Clipsal*, the court proceeded on the assumption that it did, without making a finding in this regard. Streicher ADP held that:

> "… I am of the view that if the court below did have a discretion, on equitable grounds, to stay the contempt application, the exercise of that discretion in favour of the respondents was not justified and should be set aside. I shall, therefore, likewise assume that the court below had such a discretion."[5]

[36] In view of the finding a reach in this matter, I do not have to decide this issue. Like the courts in two of the cases discussed above, I am also able to make a determination on the counter application on the assumption that I have a discretion to grant a stay on equitable grounds. I make no finding on the principled question of whether that discretion exists.

[37] Returning to the counter application before me, I consider, first, Mr Van der Merwe's submission that the counter application is fatally flawed in view of

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3 2010 (2) SA 289 (SCA)
4 *Clipsal* at [18]
5 At [19]

the absence of any substantial relief in the prayers set out in the notice of motion.

[38] Mr Steyn, who appeared for Robson and Khanda, submitted that there was no substance to this contention. He submitted that the relief sought in the notice of motion is in line with the order normally made where applications are referred to trial. Mr Steyn cited the well established authorities of *Haupt t/a Soft Copy v Brewers Marketing Intelligence (Pty) SA and Others* [6] ("*Haupt*"), and *Standard Bank of SA Ltd v Neugarten and Others* [7] ("*Neugarten*"), in this regard.

[39] I am unable to accept Mr Steyn's submissions. When a matter is referred to trial, the purpose of the trial is for the court to determine whether it can grant the substantive relief that was originally sought by the applicant in his or her notice of motion, or counter application, as the case may be. As a matter of legal logic, therefore, a referral to trial in motion proceedings requires the pre-existence of a prayer for some form of substantive relief. Without this, there is nothing that can be referred to trial. Moreover, it is essential that the issues that are in dispute are defined before a court refers an application to trial.[8]

[40] This pre-requisite for a referral to trial does not exist in the case before me. While the affidavit filed by Robson in support of his counter application refers to possible damages claims against Bergh, the notice of motion in the

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6 2006 (4)SA 458 (SCA)
7 1987 (3) SA 695 (W)
8 *Haupt*, [19]

counter application does not include any prayer for damages, or any other substantive relief against Bergh or Ditto. The relief sought in the counter application is circular and nonsensical: Robson and Khanda seek a referral of the counter application to trial, but the counter-application is directed at obtaining a referral to trial and a stay. If they succeed with the relief sought in the counter application, there is nothing left to refer to trial.

[41] It may be that what Robson intended by launching the counter application was that his allegations of breach and entitlement to damages would be referred to trial. However, he could not include prayers based on breach and damages in his notice of motion in the counter application for at least two reasons.

[42] The first is the obvious reason that a claim for damages cannot be instituted via motion proceedings. Robson will have to institute an action to pursue his claim. He cannot avoid this difficulty through his counter application.

[43] Secondly, it is clear from the affidavit filed by Robson in support of his counter application that he is not yet able properly to formulate a claim for damages. He states on more than one occasion that one of the benefits of a referral to trial will be that he and Khanda will be able properly to investigate their possible damages claims and the quantum of any appropriate claims. Courts should not refer matters to trial or oral evidence unless the issues are properly identified and clearly defined.[9] Apart from the flaws already

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[9] *Haupt*, loc cit
Neugarten, at 699D

identified, it would not be appropriate, in any event, to refer Robson's case to trial.

[44] For all the above reasons, I conclude that the counter application was ill conceived and fatally flawed. I cannot grant a referral to trial on the basis of the counter application. As such, there is no basis on which I can properly order a stay of Bergh's application. In the counter-application, the stay is inextricably linked to the referral to trial. Once the latter falls off the table, the application for a stay must follow suit.

[45] Even if the counter application was not fatally flawed, in my view the interests of justice do not weigh in favour of granting Robson's request for a stay of Bergh's application. As I have indicated, Robson avers that a refusal of the relief in the counter application will prevent him and Khanda from investigating Bergh's alleged breaches and proceeding against him for damages. It is not clear to my why Robson and Khanda will be prevented from seeking legal recourse against Bergh if the counter application is dismissed. If there is sufficient evidence of Bergh's alleged breach to sustain a claim for damages, nothing prevents them from following the usual legal route and instituting proceedings against Bergh. Their right to do so exists regardless of the outcome of Bergh's application.

[46] Rather belatedly, on behalf his clients Robson and Khanda, Mr Steyn proposed an alternative to the relief set out in the notice of motion in the counter application. He requested me to consider granting a postponement of Bergh's application *sine die* coupled with a directive to Robson and

Khanda to issue summons in their envisaged damages claim within a set period of time.

[47] Even on the assumption that it would be appropriate to consider this request under the prayer for further and alternative relief in the notice of motion in the counter application, I cannot countenance granting such an order in this case. I have already indicated that the interests of justice do not support the granting of a stay of Bergh's application. For the same reasons, a postponement of that application is not warranted. Robson and Khanda do not need a postponement of Bergh's application to pursue a damages claim.

[48] The case for a postponement may have been stronger if there was real merit in Robson's defences to the application. The defences are based on set-off and reciprocity and are accordingly linked to Robson and Khanda's proposed action for damages. However, as I will indicate in due course, the defences lack merit. In the circumstances, there is no warrant for a postponement on this basis either.

[49] For all of these reasons, I find that the counter application, whether in its original or proposed new form, cannot be sustained. It must be dismissed.

[50] I turn now to consider Bergh's application. As I indicated earlier, Robson does not dispute that he has failed to pay the amount of R500 000. 00 under the agreement. However, he asserts that he is legally excused from doing so on two grounds. First, on the basis of the principle of reciprocity, and second, on the basis of set-off.

[51] Obligations in a contract are regarded as reciprocal where the performance of one obligation is conditional on the performance of the other obligation. There must be such a relationship between the obligation by the one party and that due by the other as to indicate that one was undertaken in exchange for the other.[10] The *exceptio non adempleti contractus* acts as a defence to a defendant who is sued by plaintiff who has not yet performed or tendered the performance of his or her own reciprocal obligation.[11] It is a matter of interpretation of the contract and obligations in question to determine whether the parties intended reciprocity of obligations, and hence whether the defence is open to a defendant.[12]

[52] Robson asserts that his (Robson's) obligation to pay for the shares attracted a reciprocal obligation on Bergh's part to comply with his obligations under the clause 6 terms of the agreement. As I have indicated, Robson's case is that Bergh has breached his obligations under clause 6 and therefore Robson is excused from complying with his obligation to pay the final tranche of the payment price for the shares.

[53] There are a number of reasons why this contention cannot succeed.

[54] To begin with, in terms of the sale of shares agreement, there was obvious reciprocity between Bergh's obligation to effect a transfer of shares to Robson, and Robson's obligation to pay for the shares on the dates

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10 *ESE Financial Services (Pty) Ltd v Cramer* 1973 (2) SA 805 (C) at 808

11 R H Christie The Law of Contract in South Africa (6ed) p437

12 *BK Tooling (Edms) Bpk v Scope Precision Engineering (Edms) Bpk* 1979 (1) SA 391 (A) at 418B

prescribed in the agreement. As with any agreement of sale, reciprocity lies between the seller's (Bergh's) obligation to transfer the object of the sale, the shares, and the purchaser's (Robson's) obligation to pay for them. In the absence of clear indications to the contrary in the specific agreement itself, reciprocity of these obligations would not normally extend to include the kind of obligations set out under the clause 6 terms.

[55] The clause 6 terms are aimed at governing and laying down ground rules for the working relationship between Khanda, on the one hand, and Ditto and Bergh, on the other, in the period following signature of the agreement. There is nothing in these terms to indicate that the parties intended any reciprocity to apply between these obligations and Robson's obligation to pay the purchase price for the shares.

[56] Furthermore, the agreement specifically created a personal obligation on the part of Robson to pay Bergh for his shares, whereas the clause 6 terms apply to an expanded group of parties, viz. Khanda and Ditto. In other words, the sale of shares aspect of the agreement gave rise to a completely different nexus of obligations than that established under the clause 6 terms. In my view, this is a clear indication that the sale of shares aspect of the agreement and the clause 6 terms did not overlap in terms of reciprocity.

[57] In fact, as I set out earlier, Robson himself took this view. In the letter sent by his attorney in June 2013, they record that Robson's obligation to pay for the shares and Ditto's obligation to provide Khanda with product under the

clause 6 terms "*are two distinctive matters between different parties and should not be confused*".

[58] In light of all of this, I find that there is no merit in Robson's contention that he is entitled to withhold payment of the balance of the purchase price of the shares on the basis that Bergh allegedly has breached his obligations under the clause 6 terms of the agreement. Robson's reliance on the *exceptio non adempleti contractus* was misconceived, and must be rejected.

[59] The substance of his defence appears to me to be more properly founded on a contention that Bergh's alleged conduct amounted to a breach of material terms of the agreement. This would entitle Robson, or more properly Khanda, to claim damages from Bergh or Ditto. It does not, however, permit Robson lawfully to avoid his obligation to pay the purchase price for the shares.

[60] I turn then to the Robson's second defence of set-off. The defence is raised in respect of his obligation to pay the balance of the purchase price for the shares, on the one hand, and the alleged claim for damages against Bergh and Ditto on the other.

[61] Set-off or *compensatio* is a means of extinguishing or expunging debts. It comes into operation when two parties are mutually indebted to one another and both debts are liquidated and fully due.[13] A defendant may raise set-off as a defence to an action in terms of which he or she is sued for payment of his or her debt.

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[13] *Ackermans Ltd v Commissioner, South African Revenue Service; Pep Stores (SA) Ltd v Commissioner, South African Revenue Service* 2011 (1) SA 1 (SCA) at [8]

[62] The requirements for set-off to apply are the following:

[62.1] Both debts must be due to and owed by the same pair of persons, i.e. they must be mutual or reciprocal.

[62.2] Both debts must be liquidated.

[62.3] Both debts must be due and payable.[14]

[63] These requirements are not satisfied in the case before me.

[64] To begin with, as I have already discussed, there is no mutuality of obligations. Robson is personally indebted to Bergh for the balance of the purchase price for the shares. The damages claims are based on alleged obligations owed by Bergh and Ditto to Khanda. Thus, the debts in question are not owed between the same two parties.

[65] Furthermore, the claims relied on by Robson are neither liquidated nor due and payable. They are claims for damages flowing from the alleged contractual breach of Bergh under clause 6.4 of the agreement, Ditto's alleged breach of its obligation to provide product to Khanda in respect of the De Aar and Boitumelo contracts, and Bergh's alleged breach of his fiduciary duties to Khanda. This court has recently held that:

> "The correct computation of contractual damages can never, in principle, be mere arithmetic. A value judgment is an element of the computation of the quantum, which computation embraces the effects of a reasonable effort to mitigate the damages. The

[14] *Standard Bank of South Africa Ltd v Renico Construction (Pty) Ltd* 2015 (2) SA 89 (GJ) at [9]

> figure of damages cannot under such circumstances be determined until that debate is exhausted, as a rule, before a court. … Moreover, until a court has pronounced, no sum is yet due and payable."[15]

[66] Khanda's claims for damages fall into this category. They are not claims for damages that are capable of easy and speedy proof. They will only become liquidated claims that are due and payable after an appropriate damages claim is instituted, a court rules in Khanda's favour, and the court determines the amount of damages payable. Until then the claims are not liquidated, nor due and payable.

[67] In my view, for these reasons, Robson cannot rely on set-off as a defence to Bergh's claim.

[68] The facts before me establish that Robson was indebted to Bergh to pay R500 000. 00, being the balance due on the purchase price of the shares. Payment of this amount fell due, and Robson did not pay. Having dismissed both of Robson's defences aimed at establishing a lawful basis for his non-payment, I conclude that Bergh is entitled to the relief he seeks.

[69] I make the following order:

[69.1] The first and second respondent's counter application is dismissed.

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15 *Standard Bank of South Africa Ltd v Renico Construction (Pty) Ltd*, above, [25] & [26]

[69.2] The first and second respondents are ordered to make payment to the applicant in the amount of R500 000. 00 jointly and severally, the one paying the other to be absolved.

[69.3] The first and second respondents are ordered to pay interest on the amount of R500 000. 00 calculated on the prime interest rate, jointly and severally, the one paying the other to be absolved.

[69.4] The first and second respondents are ordered, to pay the applicant's costs in the application, counter-application and the applicant's conditional counter-application on the scale as between attorney and own client, jointly and severally, the one paying the other to be absolved.

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R KEIGHTLEY
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Date Heard: 4 June 2015

Date of Judgment: 3 August 2015

Counsel for the Applicant: Adv H A Van der Merwe

Instructed by: Senekal Simmonds Inc

Counsel for First and Second Respondents: Adv W Steyn

Instructed by: Bento Incorporated