



Republic of South Africa

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

CASE No: 6214/2010

In the matter between:

DIANA LIEBENBERG

Applicant

and

GERARD FRATER N O

First Respondent

YVETTE FRATER N O

Second Respondent

JACOBUS PETRUS ROSSOUW N O

Third Respondent

THE GERARD FRATER FAMILY TRUST

Fourth Respondent

DRAKENSTEIN MUNICIPALITY

Fifth Respondent

AND

CASE No: 19763/2010

DRAKENSTEIN MUNICIPALITY

Applicant

and

GERARD FRATER N O

First Respondent

YVETTE FRATER N O

Second Respondent

JACOBUS PETRUS ROSSOUW N O

Third Respondent

ORDER HANDED DOWN ON : 23 SEPTEMBER 2010

MOOSA, J:

Having read the papers filed of record and having heard counsel, **it is ordered as follows:**

1. The forms and the periods prescribed by the Uniform Rules of Court are dispensed with to the extent necessary and the applications are heard as matters of urgency in accordance with Rule 6(12).
2. In terms of Rule 10 of the Uniform Rules of Court, the application brought by the Drakenstein Municipality under case No 19763/2010, is consolidated with the application brought by Diana Liebenberg under case No 6214/2010. For the purpose of convenience the parties are cited as in the application of Diana Liebenberg (case No 6214/2010).
3. A Rule Nisi is hereby issued, calling upon the first to fourth respondents (“the Trust”) to show cause, if any, on 8 December 2010, why an order should not be granted in the following terms:
 - 3.1 the Trust is interdicted and restrained from causing or permitting any further building or construction work to be undertaken on Erf 2681, Paarl (“Erf 2681”), until such time as it has obtained approval of building plans reflecting the construction in fact undertaken or intended to be undertaken on Erf 2681, **alternatively** provisional authorisation under s 7(6) of Act 103 of 1977 in respect thereof ;
 - 3.2 the Trust is interdicted and restrained from causing or permitting the operation of the Primi Piatti restaurant or any other restaurant on the remainder of Erf 2681, Paarl until such time as all of the following have been granted:

- 3.2.1 approval of building plans reflecting the construction in fact undertaken or intended to be undertaken on Erf 6281, **alternatively** provisional authorisation under s 7(6) of Act 103 of 1977 in respect thereof;
 - 3.2.2 an occupancy certificate, **alternatively** written permission to use the building under s 14(1A) of Act 103 of 1977;
 - 3.2.3 appropriate trading licences.
 - 3.3 The Trust is interdicted and restrained from:
 - 3.3.1 occupying or permitting occupation of that part of the building from which the restaurant on Erf 2681 is being operated;
 - 3.3.2 occupying or permitting occupation of any other part of the buildings on Erf 2681 until such time as an occupancy certificate, **alternatively** written permission to use the building under s 14(1A) of Act 103 of 1977, has been granted.
 - 3.4 ordering the Trust to pay the costs of applicant and that of fifth respondent, which cost shall include the costs of two counsel, where applicable, jointly and severally, the one paying the other to be absolved.
4. Paragraphs 3.1 and 3.3.2 of the Order shall operate as an interim interdict with immediate effect pending the return day.
 5. Service of this Order shall be effected on Windfall 32 Restaurant (Pty) Ltd in the person of Elizabeth Frater and on the representative of the employees and/or the trade union and a copy thereof shall be displayed prominently on a notice board of the restaurant and/or in the staff room.

6. Filing of additional affidavits and heads of argument shall be done in accordance with the Uniform Rules of Court.

7. All issues of costs stand over for determination on the return date.

BY ORDER OF THE COURT

REGISTRAR