

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG DIVISION)**

In the matter between

SHAREMAX INVESTMENTS (PTY) LTD.

CASE NO.: 27136/10

4/6/2010
Applicant

and

CECILE OTTILIE BASSON

First Respondent

**THE SHERIFF OF THE COURT,
KEMPTON PARK**

Second Respondent

CORAM: EBERSOHN AJ

DATE HEARD 31/5/2010

JUDGMENT HANDED DOWN ON 4/6/2010

JUDGMENT

EBERSOHN AJ.

[1] The main action instituted under case number 2492/2006 by the plaintiff (the applicant in the matter now before this Court) against one Andre Roberts N.O., in his capacity as executor in the deceased estate of the late Deon Basson, and who was joined in the matter after the death of Basson, became settled and an order was made by agreement (annexure "SM3" to the founding

affidavit in the matter before this Court) on the 24th February 2009 pertaining to the copyright in the book "Public Interest Warriors" and all articles authored and co-authored by Basson which pertain directly or indirectly to the applicant, its directors, etc., to the effect that ownership thereof and therein will be transferred to the plaintiff.

[2] Believing that the respondent in this matter now before this Court, the wife of the late Basson, was in possession of material meant in the order, annexure "SM3", the applicant (the plaintiff in matter 2492/2006) brought an ex parte application against the respondent and an order was granted, paragraph 1 whereof reads as follows:

"1. That the respondent and/or any adult person in charge of the premises of the respondent at Number 55 Strydom Street, Birchleigh-North, Kempton Park, grant the Sheriff of the above Honourable Court, attorney Maud Ferreira and a computer operator nominated by the applicant access to the said premises for the purposes of:

- 1.1 Searching the premises for the purposes of enabling any of those persons to identify and point out to the Sheriff originals or copies or extracts from any articles, notes, letters and/or publications authored and co-authored by Deon Basson, which pertain directly or indirectly, to the Plaintiff, its Directors, its business methods and all syndications promoted by the Applicant and its Directors.
- 1.2 Examining any item for the purpose of identifying it and deciding whether it is of the nature mentioned in the preceding paragraph.
- 1.3 Searching the premises for the purpose of finding any computer, computer disk or hardware of any computer, containing any of the items referred to *supra*."

{Own accentuation}

[3] It is common cause that the Sheriff and his party turned up at the residence of the respondent where the Sheriff attached eight boxes containing various

documents, publications and printed matter which the Sheriff later identified in a list, compiled by him, under 74 numbered headings and under each heading he described the items falling under the particular heading, together with electronic items listed by him over a further seven pages.

[4] The applicant then brought a further application against the respondent wherein the relief claimed is set out as follows:

- "1. That the Applicant be entitled to remove and to retain as its sole possession the documents and/or electronic data, as listed in annexure "SM1" currently in possession of the Second Respondent (the Sheriff).**
- 2. Costs of the Application only in the event of this application being opposed by the First Respondent.**
- 3. Further and/or ancillary relief."**

[5] Bearing in mind that the Sheriff was to attach only "originals or copies or extracts from any articles, notes, letters and/or publications authored and co-authored by Deon Basson, which pertain directly or indirectly, to the Plaintiff, its Directors, its business methods and all syndications promoted by the Applicant and its Directors", the first test ("test one") to be applied by this Court is to determine from the Sheriff's list which documents were authored or co-authored by the late Deon Basson and the second test ("test two") to be applied to the items positively identified as having been authored or co-authored by Deon Basson, is to determine whether it "pertain directly or indirectly, to the Plaintiff, its Directors, its business methods and all syndications promoted by the Applicant and its Directors."

[6] This Court studied all the items detailed in annexure "SM1" and after applying tests one and two, referred to supra, and based on the description furnished by the Sheriff it being the only material the Court could work on, concluded that (only) the following items are affected by the court order, annexure "SM2", and may be retained by the applicant as its property:

- 6.1 under the heading "Dokumente" (pages 16 - 21 of the record), only the item numbered 18 on page 17 of the record;

under the heading "Elektroniese lêers" (pages 22 - 28 of the record), the following items:

- i) **on page 22:**
none;
- ii) **on page 23:**
 - a) My Blog - Sharemax Naspers, Moneyweb & I Truth - D. Basson article posted on web 26/3/2008 (Sharemax Streetwise);
 - b) Annexure 2.1 pdf - Public Warriors - D. Basson Book (obviously referring to the book "Public Interest Warriors");
 - c) Annexure 2.2 pdf - Public Warriors - D. Basson Book (obviously referring to the book "Public Interest Warriors");
- iii) **on page 24:**
 - a) Annex4 Historic article - Sharemax se Oëverblindery D. Basson book article;
 - b) Annexures 2.1 pdf, 2.2 pdf, 2.3 pdf, 2.4 pdf and 2.5 pdf all followed by "D.Basson book - Public Warriors", (obviously referring to the book "Public Interest Warriors");
 - c) erly7 eml - D. Basson book - Public Warriors, (obviously referring to the book "Public Interest Warriors").
- iv) **on page 25:**
 - a) Louise6 eml - E-mail response from Basson regarding answer sent through to Sharemax;
 - b) Louise7 eml - E-mail response from Basson regarding answer sent through to Sharemax;
- v) **on page 26:**
none;
- vi) **on page 27:**
 - a) Stephan Fourie 25 November 2005.eml - Deon Basson e-mails and letters to Sharemax regarding financial statements;
 - b) Stephen Bowie 15 August 2006.eml - E-mail from Deon Basson to Old Mutual re acquisition of property by SA Retail from Sharemax;

- c) Stephen Bowie 7 August 2006.eml - E.mail from Deon Basson to Old Mutual re Om and SA Retail;
- d) Chapter D.18.doc, Chapter D.20 doc; Chapter D.21.doc,Chapter D.22.doc and Chapter D.24 doc all relating to D. Basson Book - Public Warriors (obviously referring to the book "Public Interest Warriors").

vii) on page 28:
none

[7] The matter not being opposed by the first respondent no order as to costs will be made against the first respondent.

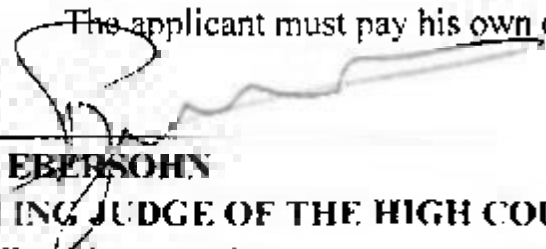
[8] The Court accordingly makes the following order:

1. The applicant may retain as its property the following items detailed in annexure "SM1" to the founding papers:
 - 1.1 under the heading "Dokumente" (pages 16 - 21 of the record), only the item numbered 18 on page 17 of the record detailed as follows "Berig in Auditing SA - How free is the Media in SA? Deur Deon Basson rakende Sharemax";
 - 1.2 under the heading "Elektroniese lêers" (pages 22 - 28 of the record), the following items:
 - i) on page 22:
none;
 - ii) on page 23:
 - a) My Blog - Sharemax Naspers, Moneyweb & I Truth - D. Basson article posted on web 26/3/2008 (Sharemax Streetwise);
 - b) Annexure 2.1 pdf - Public Warriors - D. Basson Book (obviously referring to the book "Public Interest Warriors")
 - c) Annexure 2.2 pdf - Public Warriors - D. Basson Book (obviously referring to the book "Public Interest Warriors").
 - iii) on page 24:
 - a) Annex4 Historic article - Sharemax se Oëverblindery D. Basson book article;

- b) Annexures 2.1 pdf, 2.2 pdf, 2.3 pdf, 2.4 pdf and 2.5 pdf all followed by "D.Basson book - Public Warriors", (obviously referring to the book "Public Interest Warriors");
 - c) erly7 eml - D. Basson book - Public Warriors, obviously referring to the book "Public Interest Warriors").
 - iv) on page 25:
 - a) Louise6 eml - E-mail response from Basson regarding answer sent through to Sharemax;
 - b) Louise7 eml - E-mail response from Basson regarding answer sent through to Sharemax;
 - v) on page 26:
 - none;
 - vi) on page 27:
 - a) Stephan Fourie 25 November 2005.eml - Deon Basson emails and letters to Sharemax regarding financial statements;
 - b) Stephen Bowie 15 August 2006.eml - E-mail from Deon Basson to Old Mutual re acquisition of property by SA Retail from Sharemax;
 - c) Stephen Bowie 7 August 2006.eml - E.mail from Deon Basson to Old Mutual re Om and SA Retail;
 - d) Chapter D.18.doc, Chapter D.20.doc: Chapter D.21.doc,Chapter D.22.doc and Chapter D.24.doc all relating to D. Basson Book - Public Warriors (obviously referring to the book "Public Interest Warriors").
 - vii) on page 28:
 - none.

The Sheriff must serve a copy of this judgment and this order on the first respondent, and return on or before 12:00 on the 7th June 2010 to the first respondent, after having made prior arrangements with the first respondent to be present and/or represented there to receive it. at the premises where the attachment was made by him, the rest of the documents, publications etc. and electronic files as is detailed in annexure "SM1" to the founding papers and are not referred to in paragraph 1 of this order.

3. The applicant must pay his own costs of the application.


P.Z. EBERSOHN

ACTING JUDGE OF THE HIGH COURT

Applicant's counsel:

Adv. C. Sevenster

Applicant's attorneys:

Botha Willemse and Wikenon Attorneys