IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION BLOEMFONTEIN

Case no.3547/2015

In the matter between:

THE LAW SOCIETY OF THE FREE STATE Applicant

and

W LE ROUX 1st Respondent
GOODRICK & FRANKLIN ATTORNEYS INCORPORATED
(Registration number: 2003/031198/21) 2nd Respondent

JUDGMENT BY: RAMPAI, J

HEARD ON: 27 AUGUST 2015

DELIVERED ON: 4 SEPTEMBER 2015

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[1] These were motion proceedings. The matter came to court by way of an urgent application on Friday, 31 July 2015. The applicant sought an interim order whereby the respondents were provisionally interdicted and restrained from operating on the trust account of the second respondent and ancillary relief. A notice of intention to oppose was filed on behalf of both respondents.

[2] Notwithstanding the resistance of the respondents, I was persuaded that various unprofessional and unlawful actions attributed to the first respondent *prima facie* posed danger to the public that they were potentially harmful to the interest of the

Attorneys Fidelity Fund as represented by the applicant; that the applicant's apprehension of the applicant was not unfounded and that its decision to immediately obtain an interim interdict was informed and prompted by its good intentions to do some damage control by reducing the risk of potential harm to the said fund in particular and the public in general.

[3] Given the alleged circumstances, I found that the matter was urgent as the applicant contended. I was not persuaded by the contention of the respondents that the matter was not urgent. Thereupon I granted an immediate rule *nisi* returnable on 28 August 2015. The interim order practically and immediately restrained the respondents from practising pending the final outcome of the judgment under case number 3039/2014. That case concerns the main application the primary purpose of which is to have the name of the first respondent permanently removed from the roll of attorneys.

[4] The full text of the interim order reads:

> "1. Condonation is granted for non-compliance with the rules relating to form and process regarding service and that this application be heard as an urgent application in terms of the provisions of Rule of Court 6(12).
>
> 2. A *rule nisi* is issued calling upon the respondents to show cause, if any, on **Thursday 27 August 2015** at **08h30** or as soon thereafter as applicants representatives may be heard, why the following order should not be granted:
>
> 2.1 That first respondent be suspended from practice pending the outcome of case number **3039/2014**.

2.2 Respondent is ordered to deliver his books of account, records, files, documents containing particulars of information relevant to his practice as an attorney, to applicant.

2.3 That should the respondents fail to comply with the provisions of the preceding paragraphs of this order within 1 (one) week after service thereof upon him, or after a return by a person entrusted with the service thereof that he has been unable to effect service thereof on the respondents, as the case may be, the Sheriff of the district in which such books of account, records, files and documents are, is empowered to take possession thereof and to deliver them to the applicant or curator entrusted with this case.

2.4 The respondents are interdicted and prohibited from operating on the second respondent's trust account(s).

2.5 The respondents are ordered to pay the costs of this application on an attorney and own client scale.

3. The relief in paragraph 2.1 to 2.4 operates as a *Rule Nisi* with immediate interim effect pending finalisation of this application."

[5] Aggrieved by the interim order, the respondents anticipated the return day. The matter was then argued before Daffue J on the 6th August 2015, a day after the first respondent had served and filed his answering affidavit. The order granted by Daffue, J reads as follows:

"1. Leave is granted to the applicant to file his replying affidavit on or before the 14 August 2015.

2. Paragraph 3 of the order of 31 July 2015 is struck out. Save for paragraph 3 of the order of 31 July 2015 the rest of the order stands as it is.

3. Costs to stand over for later adjudication."

[6] The order varied the interim order in a sense. A death knell was sounded and the immediate interdictory operation of the interim order ceased.

[7] The crisp question I was called upon to decide was whether or not the second respondent had a director to see that its affairs and operations were lawfully run at the time the current application was launched.

[8] On Thursday, 27 August 2015 the matter was argued before me. On behalf of the applicant Mr Grewar argued that at the time these proceedings were instituted the second respondent did not have and never had a director since the resignation of Ms Stella Smith. Accordingly counsel submitted the applicant had made out a proper case for the interim suspension of the first respondent. Therefore, counsel urged me to conditionally confirm the interim suspension order of the first respondent.

[9] On behalf of the first respondent, Mr Benade contended that at all times material to these proceedings the second respondent had a director through whom it legally conducted its operations. Counsel submitted that the first respondent acted as a consultant and not a director to the second respondent at all relevant times. Accordingly counsel urged me to discharge the interim suspension order of the first respondent.

[10] There were a number of undisputed facts in the matter. Originally the second respondent, an incorporated company, had three directors, namely:

9.1 Mr Werner le Roux, the first respondent herein;

9.2 Mr Bunhardus Jacobus Viviers;

9.3 Ms Stella Smith.

I shall revert to the directors later.

[11] One of the first respondent's creditors, Absa Bank Limited, applied to this court under case number 2942/2013 to have the first respondent sequestrated. The provisional sequestration order was granted against the first respondent on 20 February 2014. On 20 March 2014 that order was confirmed as a final sequestration order. His application for leave to appeal against the final sequestration order came to naught. Jordaan, J dismissed it on 17 April 2014. His further application to have such refusal set aside failed on 22 July 2014. The final order of sequestration was confirmed.

[12] The applicant subsequently brought an application under case number 3039/2014 against the second respondent and its aforesaid directors. From now on I shall refer to that case as the main application. Mr Le Roux, Mr Viviers, Ms Smith and Goodrick & Franklin Inc were cited as the first respondent, the second respondent, the third respondent and the fourth respondent respectively. The main application was filed for the initial hearing on 16 October 2014. It was initially heard by Molemela, JP *et* Daffue, J. The purpose of the main application was to have the name of the first respondent removed from the roll of practising attorneys. It was the primary relief sought. The main application was postponed many times. The last date to which it was postponed was 6 August 2015. On that day it was finally argued

before Molemela, JP, Daffue, J *et* Mia, AJ. Judgment was then reserved. I was given to understand that on 27 August 2015 when the current application was argued before me the reserved judgment was still outstanding.

[13] Let me take a step backwards. It appeared that on 22 July 2014 the second respondent gave up all his attempts to have his sequestration reversed. Therefore, as from that particular date, the first respondent became an insolvent person and, as such, he could no longer lawfully act as a director of the second respondent in the instant matter. As a result of the sequestration of the first respondent, the number of directors of the second respondent dropped from 2 to 1. The one and only remaining director was Ms S Smith. The main application was filed on 10 October 2014. By then Mr B J Viviers had already resigned from the second respondent as a director. After his resignation the first respondent continued to practise as a consultant. The affairs and operations of the second respondent were, legally speaking, supposed to be exclusively in the hands of the second respondent's remaining director, Ms Smith, at that stage.

[14] The composition of the second respondent's directorship drastically changed soon after the main application was launched. By 31 January 2014 there was no attorney appointed as a director of the second respondent. Mr Viviers resigned before 10 October 2014 and joined Messrs Horn & Van Rensburg Attorneys in Bloemfontein. Ms Smith resigned before 30 January 2014, not long before the provisional sequestration order was granted against the first respondent. She subsequently joined Messrs

Bokwa Attorneys also in Bloemfontein. Her resignation created a vacuum in the second respondent's board of directors. The first respondent purportedly resigned as a director on 25 February 2014 but carried on all alone after her resignation, under the pretext that he was the second respondent's consultant.

[15] In an endeavour to fill up the void, a gentleman by the name of Mr Lloyd George Charles Lielies was approached with the view of having him appointed as a director at Goodrick & Franklin. He accepted the offer and he was accordingly registered with the registrar of companies in terms of the Company Law. The effective date of his appointment was 22 December 2014. Mr Lielies practised as a director of ADW van der Berg in Welkom. The problem was, he had no fidelity fund certificate in respect of that particular law firm. On 29 July 2015 he revoked his earlier decision to become a director of the second respondent.

[16] On 3 August 2015 Mr Rehan Coetzee, a partner in the law enterprise known as Steenkamp, De Villiers & Coetzee of Bloemfontein stepped forward and certified that he had become a new director of Goodrick & Franklin Incorporated from that day – vide "anx wlr9", Cipro registration document.

[17] From 30 January 2015 until 11 August 2015 many letters were exchanged between the applicant and the first respondent. Among them were letters written or received on behalf of the parties by their attorneys Messrs Azar & Havenga Incorporated and Messrs Steenkamp, De Villiers & Coetzee. The important letters were attached to the affidavits filed by the parties.

[18] Section 41 of Attorneys Act 53 of 1979 provides:

> "(1) A practitioner shall not practise or act as a practitioner on his or her own account or in partnership unless he or she is in possession of a fidelity fund certificate.
>
> (2) Any practitioner who practises or acts in contravention of subsection (1) shall not be entitled to any fee, reward or disbursement in respect of anything done by him or her while so practising or acting."

[19] The case of the applicant was that subsequent to the launch of the main application the circumstances of the respondents materially changed. The first respondent was sequestrated. The sequestration inevitably disqualified him from lawfully acting as a director of the second respondent any longer.

[20] On 30 January 2015 the applicant informed the first respondent that he was contravening subsection (1) and subsection (2) of section 41 firstly, by practising without a fidelity fund certificate and secondly, by so practising at Goodrick & Franklin, an incorporated law firm which no longer had a director who was a holder of a valid fidelity fund certificate – "anx vm1". The applicant called upon the first respondent to refrain from practising in such an unlawful manner. The anomaly was obvious. The second respondent did not have any director at all and the first respondent did not have the requisite certificate – subsection (1) *supra.*

[21] The first respondent replied to the applicant's letter on 2 February 2015. The second paragraph of his letter reads:

> "Writer acknowledges receipt of your letter of the 30th ultimo.
>
> Kindly note that writer practises under Mr LGC Lielies of ADW van den Berg of Welkom who has become a director of Goodrick & Franklin Inc. **Mr Lielies is in possession of a valid fidelity fund certificate.**
>
> Your requirements as well as the formalities of the Companies Act is in the process of being complied with and will shortly be forwarded to you."

The first respondent's reply showed that he implicitly admitted that he was no longer qualified to practise law autonomously for his own account; that the applicant's averment that he was not duly certificated or licensed in terms of section 41 to practise independently as an attorney was correct; that he could no longer lawfully act in his representative capacity as director of the second respondent and that the resignation of Ms Smith necessitated the appointment of someone else as a director to prevent the second respondent from becoming defunct. However, he disregarded the applicant's cordial request to stop practising.

[22] At paragraph 7.2.2 of the founding affidavit, Mr Morobane, the applicant's deponent and president, averred that the first respondent was practising without the required fidelity fund certificate. The first respondent answered as follows:

> "I deny the contents of paragraph 7.2.2. I have at all times since the sequestration of my Estate been practising as a Consultant with somebody else carrying the necessary Fidelity Fund Certificate."

As can be seen, the first respondent insisted, from 2 February 2015 that he was entitled to practise as a consultant of the second respondent by virtue of a fidelity fund certificate issued to the second respondent's director – vide par 8.3, answering affidavit dated 3 August 2015.

[23] It was his case that he was legally not required to have such a fidelity certificate because he was not practising as a director of the second respondent but rather practised as its consultant. He alleged that the second respondent had a duly accredited or certificated attorney who practised and acted as its director. Although the first respondent did not mention any specific name, it was common cause that he was referring to Mr Lielies. He stated that he resigned as the second respondent's director on 25 February 2014, in other words, 5 days after he was provisionally sequestrated. It would, therefore, be readily appreciated that the first respondent heavily relied on Mr Lielies alleged fidelity fund certificate. The essence of his case was that the resignation of Ms Smith did not render the second respondent legally inoperative or defunct because, as he contended, she was replaced by a duly certificated Mr Lielies.

[24] The applicant averred and the first respondent ultimately conceded that Mr Lielies who became a director of the second respondent in terms of the Cipro registration records himself did not have a fidelity fund certificate in respect of Goodrick & Franklin. It followed as a matter of logic therefore that the first respondent could not have lawfully acted as a consultant of a law firm whose purported sole director possessed no fidelity fund certificate issued in terms of section 41, Attorneys Act 53 of 1979.

Moreover, Mr Lielies practised law in Welkom at all times material to the current application. At no stage did he ever physically move to Bloemfontein, and physically occupied the premises or offices of Goodrick & Franklin and practically took effective control of the operations or affairs of Goodrick & Franklin. Therefore, even if he had the requisite certificate, he would have been an absent sole director of the second respondent. The rules of the applicant do not countenance such a situation.

[25] Not one letter written by Mr Lielies for or on behalf of the second respondent, was attached to the answering affidavit. His resignation note, signed *ex post facto* on 15 August 2015 as "anx wlr6", was the only document written by him on the letterheads of the second respondent. Apart from such note, there was virtually no documentary evidence to show that Mr Lielies ever took control of the second respondent as its director. On the contrary, numerous letters written by the first respondent for and on behalf of the second respondent were attached to the answering affidavit. The facts tended to fortify the applicant's contention that, notwithstanding the first respondent's sequestration and his alleged resignation on 25 February 2014, he continued to act on behalf of the second respondent as if nothing prohibited him from actively and independently representing the second respondent and running its day to day affairs. All this appears strange bearing in mind that according to the first respondent Mr Lielies became a director of the second respondent with effect from 22 December 2014 (vide paragraph 11.4 answering affidavit) and that he remained a director throughout and that he would so remain until

his name is deregistered by the registrar of companies or until 15 August 2015.

[26] I am persuaded that the first respondent never relinquished his *de facto* control of the second respondent even though he was legally disqualified. On behalf of the second respondent he apparently approached Mr Lielies and offered him a position of being a director of Goodrick & Franklin. It was not his case that Ms Smith, the only *de iure* director of Goodrick & Franklin at the time, was involved in those negotiations. On 19 March 2015 the first respondent wrote:

> "… we pointed out to you (Ms Maree, the applciant's chief executive officer) that Mr Lielies is in the process of being appointed …" – vide "anx wlr3".

[27] It will be recalled that according to paragraph 11.4 of the answering affidavit, Mr Lielies was alleged to have become a director of the second respondent with effect from 22 December 2014. The impression created was that his appointment was an accomplished fact by then. The previous inconsistent statement strongly militated against the version of the first respondent. It showed that as on 19th March 2015 Mr Lielies was still not yet appointed director of Goodrick & Franklin. If this was so, and I think it must be so accepted, then it becomes clear and obvious that the second respondent was a defunct incorporated entity. As an insolvent, the first respondent was unaccredited attorney. Consequently he was disqualified from acting on behalf of the second respondent as he did.

[28] In his confirmatory affidavit signed in Welkom on 29 July 2015 Mr Lielies declared:

> "1.1 Ek is 'n meerder jarige prokureur wat as sulks praktiseer in die naam van stul ADW Van Den Berg Prokureurs te 380 Longroad, Jan Cilliers Park, Welkom.
>
> 1.2 Al die feite hierin vervat is binne my persoonlike kennis en wete en is beidewaar en korrek.
>
> 1.3 Ek was van voorneme om toe te tree as Direkteur by die Prokureurs Firma Goodrick & Franklin. Ek het intussen na deeglike oorweeging van my gesegde voorneme herbesin en het besluit om nie meer toe te tree nie as Direkteur.
>
> 1.4 Ek is tans ook besig om 'n regstelling by cipro tedoen deur onder andere aan hulle behoorlik kennis tegee dat my naam as Direkteur by Goodrick & Franklin verwyder moet word."

(vide "anx vm9")

It is clear from this that Mr Lielies intention to become a director of the second respondent remained just that, an intention, and nothing more.

[29] The contention of the first respondent that Mr Lielies became a director of Goodrick & Franklin as evidence by the Cipro records failed to impress me. It is a hollow argument to say that an attorney who possesses no fidelity fund certificate can, by virtue of his registration in terms of the company legislation, lawfully act as a director of an incorporated lawfirm. The provisions of the Companies Act and those of the Attorneys Act must be read together. It takes more than a mere cipro registration for an attorney to be lawfully certified to practise as such. Over and above the registration in accordance with the provisions of the

Companies Act Mr Lielies was also obliged to go a step further and to comply with the applicant's requirements in accordance with the Attorneys Act and the domestic rules of the applicant. He needed, among others, to have a fidelity fund certificate issued to him in respect of Goodrick & Franklin.

[30] The applicant provided the first respondent with a list of certain requirements to facilitate the process relative to the resignation of directors and the appointment of new directors. The situation was untenable because Goodrick & Franklin had no director in good standing since the resignation of Ms Smith. Ms Maree visited the offices of the second respondent on 2 March 2015. She met the first respondent. She explained to him the procedures according to the rules of the applicant (vide "anx vm3"). After her visit, Ms Maree addressed a letter to the first respondent on 17 March 2015. The heading of the subject concerned the requirements for the appointment of a new director, Mr LGC Lielies. The procedure and the rules were spelled out to assist the first respondent to comply with the rules in order to expedite Mr Lielies appointment – vide "anx vm4". The first respondent did not reply.

[31] By 1 April 2015 the first respondent still had not complied with the applicant's requirements as per "anx vm4". On that day the applicant's attorneys, Messrs Azar & Havanga Incorporate addressed a letter to the first respondent's attorney, Messrs Steenkamp, De Villiers & Coetzee. They pointed out that the applicant was concerned about the unlawful conduct of the first respondent who, in spite of previous requests and warnings, continued to practise as an attorney in contravention of section

41(1) of the Attorneys Act 53 of 1979. The applicant demanded written undertaking from the first respondent whereby he immediately undertook to stop practising as an attorney firstly pending the outcome of the main application and secondly pending compliance with the applicant's outstanding requirements – vide "anx vm6".

[32] The next day, on 2 April 2015 the respondent's attorney Mr Rehan Coetzee replied on behalf of the first respondent. The letter ("anx vm8") was for the attention of Mr Groenewald. It was worded as follows:

> "Ons het die kwessie met kliënt bespreek en het hy onderneem om op te hou praktiseer met ingang 15:00 vandag (die oggend word benodig om kliënte in kennis te stel van die toedrag van sake) tot en met die een van die volgende gebeurtenisse:
>
> 1. Die uitslag van die aansoek om skrapping onder saaknommer 3039/2014;
> 2. Daar ten volle voldoen word aan die vereistes soos gestipuleer deur die Prokureursorde van die Vrystaat soos vervat in die skrywe van ons kliënt gedateer 17 Maart 2015 asook die vereistes waarin mnr Lielies nog aan moet voldoen, alternatiewelik die aanstelling van 'n Direkteur wat oor 'n geldige Getrouheidswaarborgfonds sertifikaat beskik en origsens aan die Orde se vereistes voldoen."

It will be readily appreciated, therefore, that the first respondent gave the applicant an unequivocal undertaking primarily to cease practising pending the outcome of the main application for the removal of his name from the role. The first respondent alternatively undertook to fully comply with the requirements of the applicant.

[33] Subsequent to the aforesaid unequivocal undertaking the first respondent tried to comply but failed to do so to the satisfaction of the applicant. The applicant maintained that its requirements were not fully met. The shortcomings of his written undertaking included, for instance, his failure to furnish the applicant with a list of cases that required urgent attention for referral to other firms of attorneys seeing that there was no longer any qualified attorney at Goodrick & Franklin to handle any files. The applicant further alleged that the first respondent neglected to attend to the applicant's requirements relative to the contemplated appointment of Mr Lielies. The applicant declined to waive those requirements at the request of the first respondent. Instead the applicant also called upon the first respondent to submit the trust audit report for the financial year ending on 28 February 2015 – see "anx wlr6".

[34] Two weeks after the first respondent's written undertaking the applicant's attorneys address a letter dated 16 April 2015 to the first respondent's attorneys. Mr Groenewald wrote (vide "anx vm10"):

> "Dit het tot ons kliënt se kennis gekom dat u kliënt se kantore steeds oop is en dar steeds pleitstukke aldaan ontvang ontvang word."

[35] The essence of the complaint was that the first respondent had violated the primary condition of his written undertaking. The first respondent reacted as follows to the aforesaid complaint of 16 April 2015 (see "anx wm10):

> "17.3 The contents of Annexure VM10 is totally untrue. I was not practising and the doors were not open. What has happened, is in one or two instances when a staff member left the firm somebody came through the gate while it was still open and demanded that somebody at our office sign for a particular document. This happened despite the fact that there was a notice attached to the front wall of the firm that the firm was closed and not open for the public;"

Vide 17.3, answering affidavit.

[36] The interesting thing about the first respondent's denial was that no letter was attached to his answering affidavit whereby the alleged breach of his written undertaking was contemporaneously refuted as untrue. Apart from that, his denial was formulated in vague terms but so was the applicant's complaint. The point was, if the office of Goodrick & Franklin was closed and not open to the public, staff members had no business to be on the premises let alone in the office where they received and signed for documents or pleadings. There was no explanation as to why all the gates were not locked. All these tended to fortify the applicant's allegation that the first respondent breached his unequivocal undertaking not to practise pending the outcome of the main application or pending compliance with specific requirements of the applicant which included but were not limited to the winding up of Mr Lielies law practice before he could be appointed director of the second respondent.

[37] With the passage of time the applicant received information from certain law-firms in Bloemfontein concerning the state of affairs at Goodrick & Franklin. In the first place De Lange & Du Plessis

received notice of intention to defend purportedly served by Goodrick & Franklin and signed by Mr W le Roux on 10 June 2014 – vide “anx sm13”. The notice concern an application between C J Fourie and B G Stevens issued out of this court under case number 2338/2015.

[38] In the second place the applicant became aware that Van Deventer & Thoabala Inc received a letter dated 22 June 2015 from Goodrick & Franklin. The letter concerned a divorce case between Chris Oosthuizen and Marlene Oosthuizen. Although the name of the author was not written at the foot of the letter, the name W le Roux appeared at the top thereof as part of the reference. The signature was strikingly similar to that of the first respondent. At any rate, on the papers, there was no dispute that the first respondent was the author of the letter in question. – vide “anx vm12”.

[39] In the third place, the applicant also received a letter from Messrs Van den Berg & Van Vuuren. The letter concerned Mr W le Roux’s involvement in an interpleader in the Bloemfontein Magistrate Court. The letter dated 10 July 2015 to the applicant read:

> “We confirm that our offices represents the execution creditor in an interpleader summons this afternoon at 14H00 and that Mr W Le Roux from Goordrick & Franklin represents the claimant.”

[40] The applicant took the matter up with the respondents through its attorneys. On 25 June 2015 Mr Groenewald brought it to the attention of Mr Coetzee that the first respondent was continueing to practise as an attorney. He pointed out that the actions of the first

respondent amounted to breach of his written undertaking of 2 April 2015. At paragraph 4 of the letter Mr Groenewald warned:

> "Dit is ons instruksies om hiermee op rekord te plaas dat, sou ons kliënt weer kennis ontvang dat u kliënt wel praktiseer as prokureur alvorens daar voldoen is aan een van die voorwaardes soos uiteengesit in u skrywe gedateer 2 April 2015, ons onmiddelik 'n dringende aansoek sal loods ten einde 'n interdik te bekom met die gepaste regshulp."

[41] The first respondent denied the applicant's allegation that he was continuing to practise unlawfully as an attorney as the applicant alleged. He said the following at paragraph 20 of the answering affidavit:

> "20.1 I deny that I failed to keep to my undertaking towards the Applicant. I kept to the undertaking as long as it took to comply with the Applicant's requirements.
> Thereafter **I was entitled to practise again as a Consultant with Mr Lielies as the Director**;
>
> 20.2 I am thus not in transgression of my own undertaking as well as several rules of the Applicant;
>
> 20.3 Contrary to what is alleged in paragraph 11.3, I was entitled to practise again;
>
> 20.4 I deny that the matter is urgent as alleged in paragraph 11.4;
>
> 20.5 In view of the aforegoing I submit that the Applicant is not entitled to relief as set out in paragraph 11.5."

[42] I have already found that Mr Lielies never became a director of the respondent. Because he could not lawfully run his own practice in Welkom, it is a matter of simple logic that he could not, likewise, lawfully act as a director for the second respondent. It also follows that, if it is accepted, and I think it should, that the second

respondent had no lawful director at the time, the first respondent could, likewise, not act as a legitimate consultant of the second respondent since the second respondent had no director to consult him.

[43] No consultant exists in a vacuum. A consultant is customarily a retired attorney. More often than not he or she is an ex-partner or ex-director of the firm consulting him. His or her dealings with the law -firm are confined to the internal sphere of the operations of the law-firm concerned. His work is often of an advisory nature. He is immuned from public liability of the active directors or partners of the law-firm consulting him. He plays no visible active role on the external sphere of operations of such a lawfirm. He is, therefore, precluded from signing pleadings, writing letters or making appearances like the currently active directors or partners of his or her old firm. The Oosthuizen matter and the Fourie matter, earlier cited, showed, beyond any shadow of doubt, that the first respondent failed to distinguish between the role of an active director of a law company and the inactive role of the retired director of that company used by that company as consultant. This is precisely where the danger lies. The public is protected against the wrongful acts of the active directors of a law practice but the public is not so protected as regards the actions of a retired director used as a consultant.

[44] In my view the complaint of the applicant was valid. The first respondent continued and still continues to act as an attorney and also as a representative of a law enterprise without a director as evidenced by “anx vm13” and “anx vm12”. His actions constituted

a direct violation of an important condition of his written undertaking not to practise pending the outcome of the main application.

[45] Besides the aforesaid complaints the applicant further received enquiries from other practitioners who previously had dealings with Goodrick & Franklin as advisories but were frustrated by the adverse impact of the operational paralysis of the directorless law enterprise. Among the concerned practitioners were:

45.1 Van Deventer & Thoabla Inc

45.2 W J Botha

45.3 Rossouw & Conradie

45.4 E G Cooper Majiedt.

The concerns and enquiries of those attorneys were attached to a letter from the applicant to Mr Coetzee as "anx a", "anx b", "anx c" and "anx d" respectively. The letter concerned was dated 30 June 2015 and marked "anx vm11":

> "Ons versoek dringend dat u kliënt intussen by sy onderneming hou waar ingevolge hy nie sal praktiseer nie. Ons heg hierby aan 'n afskrif van skrywes aan hom versend ten aansien van 3 sake waarin verneem word met wie the teenkant moet korrespondeer, dit wil sê wue due leer by hom sal oorneem. Op geen aangeleentheid is ons geantwoord nie en sal u merk dat Van Deventer & Thoabala aandui dat Mnr Le Roux met hul korrespondeer in die Oosthuizen aangeleentheid."

[46] On his own say-so, the first respondent continues to practise as an attorney. As he says, with effect from 6 April 2015 the offices of Goodrick & Franklin remained closed but re-opened on 8 June 2015. If the first respondent did not practise unlawfully, as the

applicant alleged he did, why did he close the offices of the second respondent from 6 April 2015 until 7 June 2015? The answer is obvious. Judgment in the main application was still outstanding at the time the applicant launched these proceedings for an interim relief. In my view that is the end of the matter. The respondent has breached his own undertaking on very flimsy grounds. I would, therefore, grant or confirm the interim relief for the immediate suspension of the respondents pending the outcome of the main application.

[47] The first respondent contention that he complied with all the outstanding requirements of the applicant was on 2 March 2015, to ridiculous, to put it mildly. He heavily relied on "anx wlr5". The last sentence of Ms Maree's letter dated 2 June 2015 reads:

> "Your request as per your letter dated the 27th of May 2015 refers.
>
> Council resolved that they are not prepared to waive the requirements as per Annexure A hereto clause 1.1 and 1.2 thereof with regard to Mr Lielies entering as a Director and Mrs Smit retiring.
>
> Council insists on compliance with the above, alternatively they are prepared to accept the audit certificate for 2014/2015 financial year, which period expired on 28 February 2015.
>
> This audit is only due by end of August, but will this be accepted as a prerequisite for giving consent that an auditors certificate as per clause 1.1 and 1.2 of Annexure A, be handed in, as at date of joining.
>
> This is in the interest of the new director and will also not cause any extra costs since an audit report must be handed in, in any event about a little earlier.

> The rest of the requirement for LGC Lielies and Goodrick & Franklin is in order."

[48] Though the last sentence was vague and confusing, the undisputed facts were that in the end Mr Lielies never actually became a director of the second respondent. Before these current proceedings were launched, no qualified and certificated attorney acted as a director of the second respondent. There was overwhelming correspondence between the parties which negated the first respondent's allegation that he had fully complied with the outstanding requirements of the applicant. The very letter ("anx wlr5) on which he heavily relied does not support his contention. The first respondent hopelessly clutched on straws to find an escape route. In my view he also breached the alternative condition. It must be pointed out that it was the prerogative of the applicant's law council and not the first respondent or anyone else to decide whether the outstanding requirements have been met or not. There exists no such a resolution by the law council.

[49] As regards costs I am of the view that the second respondent was strictly speaking not before me in these current proceedings. This is so because the second respondent is a defunct law enterprise. The second respondent had no one to represent it before me notwithstanding the notice of intention to oppose which was filed purportedly on behalf of the first and the second respondent. It would be absurd to perpetuate the anomaly by saddling the second respondent with an order of costs.

[50] Accordingly I make the following order:

1. The first respondent is hereby immediately suspended from practising as an attorney under the name of the second respondent or any other name pending the outcome of the application under case number 3039/2014 or pending the issuing of a valid fidelity fund certificate to the incoming director designate of the second respondent, Mr Rehan Coetzee by the counsel of the applicant which ever event first shall take place.
2. The first respondent is interdicted and prohibited from operating on the trust account of the second respondent pending the fulfilment of one of the two conditions stipulated above.
3. The first respondent is directed to pay the costs of this application on the scale as between attorney and client.

M. H. RAMPAI, J

On behalf of the applicant: Adv. D. M. Grewar
Instructed by:
Azar & Havenga Attorneys
BLOEMFONTEIN

Attorneys for the applicants: Adv. H. J. Benade
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/eb