<u>IN THE HIGH COURT OF SOUTH AFRICA</u>
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No.: LA128/2003

In the matter between:

<u>R C G TRADE & FINANCE (PTY) LTD</u>	Plaintiff
and	
<u>MOORES ROWLAND</u>	Defendant

<u>CORAM:</u>	**BECKLEY, J**
<u>HEARD ON:</u>	**21 MAY 2004**
<u>DELIVERED ON:</u>	**27 MAY 2004**

In this matter the three exceptions taken by the defendant against the amended particulars of claim were upheld on 14 May 2003. The plaintiff now seeks leave to appeal against that order. In the Notice of Appeal a particular line of argument is suggested based on the pleadings as they stand at present, namely:

> "Trade Up Front was one of the financiers to which Peldins was indebted …. Accordingly Trade Up Front was nominated and specified third party in the pleadings …. Applying these criteria, Trade Up Front had *locus standi in*

> *iudicio* to sue the defendant …. Plaintiff acquired the claims which Trade Up Front have against Peldins by cession …. Plaintiff, having stepped into the shoes of Trade Up Front, as its cessionary, acquired the *locus standi in iudicio* to sue the defendant."

This ground of appeal was not relied upon by Mr Fischer at the time when the application was argued; the reason why it was not argued by Mr Fischer is probably because the entire argument is without merit, having regard to the fact that what was ceded to the plaintiff consisted of claims against Peldins and not any claims against the defendant.

Regarding to the first and second exceptions, Mr Fischer submitted that the proximity test applied by the Court *a quo* was too stringent and that, on a proper interpretation of section 20(9)(b)(i) of the Public Accountants and Auditors Board Act, Act No. 80 of 1991, and in particular the words "or any other transaction of a similar nature, with the client or any other person" the particulars words used in section 20(9)(b)(i) are not in accordance with such stringent test. I do not agree. In several cases it has been found that, in context and having regard to the common law, the particular section means that an auditor will only be liable if the auditor knew (or should have known) that the report would be used by the client to induce a specific third party (*in casu* the plaintiff) to enter into a specific transaction and that the particular third party would rely on the report. See **NPC ELECTRONICS LTD v S TAITZ, KAPLAN AND**

<u>CO.</u> 1998 (1) All SA 390 (W) at 405d; <u>RCG TRADE & FINANCE (PTY) LTD v MOORES ROWLAND</u>, 2003 (1) All SA 732 (O) at 738; and see also **<u>AXIAM HOLDINGS LTD v DELOITTE & TOUCHE</u>**, unreported judgment in the WLD, Case No. 03/9331, delivered on 26 April 2004 at p.8.

I am not convinced that there is a reasonable possibility that another Court may find that the interpretation of this Court referred to above, is too stringent.

Regarding the third exception, Mr Fischer submitted that the Court *a quo* erred in finding that the allegation that the defendants were to prove that the financial statements were correct in all respects was too wide and submitted that that was just another way of stating that the statements were a correct reflection of the affairs of the company.

Section 300(i) and section 301(1) of the Companies Act, No. 61 of 1973, refer to the auditor's duty to state that in his opinion the statements fairly present the financial position of the company. I do not think that "fairly" should be equated with "correct in all respects", and therefore hold that, as far as the third exception is concerned, the requirements to grant leave to appeal have not been met.

In the result the application is refused with costs.

A.P. BECKLEY, J

On Behalf of Plaintiff:	Mr P.U. Fischer instructed by Lovius-Block
On Behalf of Defendant:	Mr T. Plewman instructed by Claude Reid Inc.

/scd