

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

Before: Golden AJ

Date of hearing: 20 February 2024

Date of judgment: 7 May 2024

Case No.: **21717/2023**

In the matter between:

ACE FILMS CORPORATION

Applicant

and

**MIMOSA ROLPRENT PRODUKSIES (PTY) LTD
(In Liquidation)**

First Respondent

CHRISTINA MAUREEN PENDERIS N.O.

Second Respondent

JOCHEN ECKHOFF N.O.

Third Respondent

MILANI BECKER N.O.

Fourth Respondent

TRACEY LEE TROSKIE

Fifth Respondent

EXCELSIOR TRUST (PTY) LTD

Sixth Respondent

TRACEY LEE TROSKIE N.O.

Seventh Respondent

ELNA TROSKIE

Eighth Respondent

YOGO CHATBOT (PTY) LTD

Ninth Respondent

WJ MOOLMAN INC

Tenth Respondent

GODFRIED JACOBUS JOHANNES KOTZE

Eleventh Respondent

MOOIDAM BOERDERY (PTY) LTD

Twelfth Respondent

MIMOSA MALL (PTY) LTD

Thirteenth Respondent

SOUTH AFRICAN REVENUE SERVICE

Fourteenth Respondent

THE MASTER OF THE HIGH COURT

Fifteenth Respondent

JUDGMENT

GOLDEN AJ:

Introduction

- [1] This is an interlocutory application brought in terms of Rule 7 of the High Court Rules relating to the authority of CK Attorneys (“CK Attorneys”) who purports to represent the applicant, ACE Films Corporation (“ACE”), in an application to place the first respondent, Mimosa Rolprent Produksies (Pty) Ltd (“Mimosa”) in business rescue. Ms Rina Troskie (“Troskie”) and Johan Victor Attorneys (“JVA”) (supported by the liquidators of Mimosa) assert that CK Attorneys who is acting on the instructions of Mr Steven Salant (“Salant”) does not have the authority to act on behalf of ACE and that only Troskie and JVA have authority to act on ACE’s behalf.

[2] The dispute relating to authority (“the authority dispute”) arises from the liquidation of Mimosa who was placed under provisional liquidation on 26 July 2022 and the subsequent business rescue application (BR application) for an order to place Mimosa in business rescue.

[3] Rule 7 of the High Court rules provides as follows:

7. Power of attorney

(1) Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of the party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or the application.

[4] Authority concerns the question whether a party is properly before court in legal proceedings. It is the institution of the proceedings and the prosecution thereof that must be authorised (*Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) at G-I and *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA)). The rule does not limit the challenge to the authority of the attorneys and includes the authority of anyone who purports to act on behalf of another. The Court must be satisfied that authority exists at the time when proof of it is proffered (Erasmus, *Superior Court Practice*, 2nd Edition).

[5] The first issue which I am required to determine is whether Salant has the authority to represent ACE. The obvious antecedent to this is whether he was validly appointed by CAT as a director of ACE. If this issue is decided in

Salant's favour, then the issue of his authority does not necessarily end there as Troskie's appointment as the director of ACE may have subsequently overtaken his appointment and authority. If on the other hand Salant's appointment was invalid *ab initio* and Troskie's appointment as the sole director of CAT and ACE was valid, then this is dispositive of the authority dispute.

- [6] It is necessary to set out the corporate relationship between the parties first before I turn to deal with the legal questions.

MIMOSA, CAT and ACE

- [7] Mimosa is a South African registered company incorporated in terms of the company laws of South Africa.
- [8] Mimosa was originally a family-owned company, established in 1964 with its primary focus the production and distribution of cinematographic films in South Africa and internationally. It generated its income primarily from marketing and distributing film rights through local companies, like Ster-Kinekor, M-Net and SABC.
- [9] To facilitate the distribution of its films in the USA, Mimosa formed a 100%-owned subsidiary, CAT Films Inc ("CAT"), incorporated in Nevada, USA.
- [10] CAT in turn owns 100% of ACE. ACE is also a US incorporated entity with offices in Los Angeles, California.
- [11] ACE in turn owns 95% of New Horizon Films LLC.
- [12] Mimosa is thus at the apex of the corporate structure and owns 100% of the shareholding in CAT, and through CAT, it owns ACE.
- [13] Mimosa is in liquidation and in the process of being wound-up.

The relevant facts and events leading up to the authority dispute

- [14] On 30 November 2023, Salant, who purported to act on behalf of ACE, launched a BR application to place Mimosa in business rescue in terms of Section 131 of the Companies Act, 2008 (“the Act”), and for an order appointing Mr Daniel Terblanche as the interim business rescue practitioner subject to ratification by the holders of a majority of the independent creditors’ voting interest at the first meeting of creditors, as envisaged in Section 147 of the Act. Salant instructed CK Attorneys to launch the BR application and did so in his purported capacity as the sole director of ACE.
- [15] In paragraph 42 of the founding affidavit in the BR application (I have had the benefit of the papers filed to date), Salant sets out the reason why he, through ACE, sought to bring the application for business rescue. He alleges that it became progressively clear over time that a group of relatives in the Troskie family involved in the business of Mimosa sought to improperly exclude and sideline certain creditors and other stakeholders, including ACE, himself and Ms Mireschen Marx (“Marx”). Marx was previously employed by and an erstwhile director of Mimosa. Salant alleges that the liquidators of Mimosa as well as attorney Mr WJ Moolman (“Moolman”) (whose firm is cited as the tenth respondent), played a significant role in engineering the liquidation of Mimosa. I shall revert to the allegations pertaining to Moolman.
- [16] I need not in any further detail deal with the basis of the BR application save to state that the outcome of the authority dispute will clearly have an impact on the fate of that application. It is for this reason that the authority dispute has been so robustly litigated.
- [17] The liquidators (the second to fourth respondents) corresponded with Salant on 25 October 2022 after Mimosa was placed in liquidation. Salant ran the affairs of CAT and ACE at the time. Mr Jochen Eckhoff’s (“Eckhoff”) (the third respondent) email to Salant confirmed that Mimosa was liquidated, and that he

(Eckhoff) was appointed as the liquidator by the Master of the High Court. The email *inter alia* records that Mimosa is the 100% shareholder of CAT which in turn is the 100% shareholder of ACE who owns 95% shares in New Horizon Films. The email records that Mimosa is the ultimate beneficiary / shareholder of CAT and ACE and requested of Salant to send the annual financial statements for each company for the past three years, including the bank statements and a brief background on the current activities taking place in each company. Eckhoff also informed Salant that no distribution / disposition of funds or assets may be made out of the company without his (Eckhoff's) prior written consent.

- [18] The liquidators were attending to the winding up of Mimosa as they were required to do in accordance with their statutory duties.
- [19] Troskie, supported by the liquidators, allege that Salant was uncooperative and obstructive in the winding-up of Mimosa's affairs which Salant denies. According to them, Salant was subpoenaed to an enquiry in terms of Section 415 of the 1973 Companies Act and failed to appear. Salant denies this.
- [20] According to Troskie and the liquidators, Marx, who had attended the Section 415 enquiry in October 2023, testified that various funds had been paid out of ACE into Salant's personal bank account. She provided ACE's financial statements at the enquiry, which reflected that significant amounts were paid to Salant and herself after the date of Mimosa's provisional liquidation on 26 July 2022.
- [21] At Salant's instance and purportedly as ACE's sole director at the time, Salant caused an application for business rescue to be issued on 30 November 2023. He instructed CK Attorneys to act on behalf ACE in the application, which application was served on the liquidators on 6 and 12 December 2023.

- [22] According to Troskie, the BR application is a disguised stratagem to disrupt the liquidators in the discharge of their duties in the winding-up of Mimosa. She alleges that Salant is alive to the fact that business rescue practitioners lack the investigative powers of liquidators and that any malfeasance on his part will likely go undetected. She alleges that this is likely the motive of the BR application, rather than a restructuring of Mimosa, who is hopelessly insolvent.
- [23] CK Attorneys received a letter from Moolman Inc on 16 January 2024 with a letter from Troskie where Salant was informed that he and Marx had been dismissed as directors of ACE, and that Troskie had been appointed in their place.
- [24] According to Salant, he was the only director of ACE who could be replaced as Marx was no longer a director at the time.
- [25] On Troskie's instructions, correspondence was also sent to CK Attorneys on 16 January 2024 where they were informed that she was appointed as the director of ACE on 11 December 2023, and where she instructed them to withdraw the BR application within 48 hours of receipt of the letter as well as to file a notice of withdrawal as attorneys of record for ACE.
- [26] CK Attorneys, acting on the instructions of Salant, refused to withdraw as the attorneys of record for ACE.
- [27] On 18 January 2024, JVA acting on the instructions of Troskie, addressed correspondence to CK Attorneys for them to comply with the instructions in Troskie's letter of 16 January 2024. JVA also placed on record that they were acting for ACE upon Troskie's instructions.
- [28] On 19 January 2024, CK Attorneys delivered a notice in terms of Rule 7 calling on Troskie and JVA to satisfy the Court of their authority.

- [29] On the same day JVA filed a Notice of Substitution as Attorneys of Record for ACE. This was followed by the delivery of a similar Rule 7 notice calling upon CK Attorneys to satisfy the Court as to its authority to act in the BR application on behalf of ACE.
- [30] CK Attorneys delivered a notice that they intended to prove their authority at the hearing of the BR application which was then enrolled in the Third Division on 25 January 2024. The parties then reached agreement on the further conduct of the dispute, which agreement was made an Order of Court. The Order *inter alia* provided for the postponement *sine die* of the hearing of the BR application pending the outcome of the authority dispute. The Order also recorded that in terms of Rule 7(1), CK Attorneys may no longer act for ACE unless the Court is satisfied that CK Attorneys is authorised so to act.
- [31] The two resolutions (written consents) dated 8 and 11 December 2023 were sent to Salant on 15 January 2024 by Moolman on Troskie's instructions.
- [32] The resolution dated 8 December 2023 by the liquidators on behalf of Mimosa appointed Troskie as the director of CAT.
- [33] The resolution dated 11 December 2023, signed by Troskie on behalf of CAT, replaced Salant with Troskie as director of ACE.
- [34] Salant asserts that the purported appointment of Troskie as director of CAT by the liquidators is invalid in law as is the purported decision by Troskie on behalf of ACE's shareholder, CAT, where she replaced him with herself as director. He contends that the invalidity arises by reason of the invalidity of her appointment as CAT's director, but also by its own terms.
- [35] Salant's position is that:

[35.1] He was reappointed as the sole director of ACE on 17 January 2023, and thereby had the authority to instruct attorneys to represent ACE in the BR application.

[35.2] The written consent (resolution) of the sole shareholder of CAT, whereby Troskie was appointed as director of CAT, was not valid.

[35.3] Troskie never signed the written consent of CAT which consent replaced him with Troskie.

[35.4] The written consent was instead signed by Moolman, and the written consent was a forgery.

[36] Troskie on the other hand alleges that the resolution which purportedly appointed Salant as the director of ACE in January 2023, supposedly by the written consent of its sole shareholder CAT, was invalid. According to Troskie, Salant's claim that he was reappointed as the director of ACE on 17 January 2023 cannot be correct given that he was not appointed with the written consent of the shareholders of CAT. She alleges that the liquidators "*most certainly did not give consent*" as claimed by Salant and that the resolutions which appointed her as the sole director of both CAT and ACE, clearly gave her the authority to act on behalf of ACE, and to thereby instruct JVA to withdraw the BR application.

[37] She alleges that the liquidators on behalf of Mimosa, the sole shareholder of CAT, signed the consent appointing her as sole director of CAT:

[37.1] Eckhoff and Penderis signed the consent in Cape Town on 11 December 2023.

[37.2] Eckhoff sent a copy of the consent to Becker on 11 December 2023 and requested her to consider and sign.

- [37.3] Becker signed the consent and sent same back to Eckhoff on 11 December 2023.
- [37.4] Insofar as the date of 8 December 2023 is concerned, this was an error and according to her was the date that the consent was drafted by Mr Ward, the American attorney.
- [37.5] She signed the consent on behalf of CAT appointing her as the sole director of ACE and where Salant was removed on 11 December 2023 and the consent was sent to Mr Moolman that same evening. Although the email attachment of the consent appears to cut off the full image of the consent, she confirmed that the signed consent was incorporated in the body of the email.
- [38] Troskie confirms that her appointment as sole director of ACE was in accordance with the wishes and directions of the liquidators which took place on 11 December 2023.
- [39] All three liquidators have filed confirmatory affidavits where they support the allegations made by Troskie. Eckhoff confirmed that the joint final liquidators appointed Troskie as director in CAT, that they support Troskie's appointment as a director in ACE and confirms her authority to act as such. He denies the authority of Salant to act in any capacity on behalf of ACE.
- [40] Since Salant contends that the written consent of the liquidators dated 8 December 2023 is invalid, it is necessary to consider the position of the liquidators when a business rescue application is filed. The status and powers of the liquidators is a prominent feature of the dispute and central in the overall determination of the main issue, which is the issue of authority.

The status and powers of the liquidators

[41] Mimosa is in liquidation. When a company is in liquidation, a *concursum creditorum* is established and the liquidator is entrusted with the estate's assets, including the property rights and obligations of the insolvent company. The liquidator is obliged to hold and administer the estate and distribute the proceeds among the competing creditors specified in the Insolvency Act. (*Emontic Investments (Pty) Ltd v Bothomley N.O. and Others* [2024] ZASCA 1 at paragraph [17]; see also *Cohen v ABSA Bank Limited* (1280/2021) [2024] ZASCA 16 (19 February 2024) at paragraph [24])

[42] In terms of Section 391 of the Companies Act 61 of 1973, the liquidators are under an obligation to forthwith recover all the assets and property of the company for satisfaction of all proven claims of creditors and the costs of winding-up. In the case of Mimosa, the recovery of assets would include the shareholding and interests in its subsidiaries, which includes CAT and ACE.

[43] The SCA in *GCC Engineering v Maroos 2019 (2) SA 379* confirmed in terms of Section 131(6) of the Companies Act 71 of 2008 that the liquidation proceedings - and not the winding-up order- is suspended by the institution of business rescue proceedings. What is suspended is the *process* of continuing with the realisation of the assets of the company in liquidation with the aim of ultimately distributing them to the various creditors. The winding-up order is still in place; and prior to the granting or refusal of the BR application, the provisional liquidators secure the assets of the company in liquidation for the benefit of the body or creditors.

[44] Section 131(6) of the Companies Act 2008 reads as follows:

“131 Court order to begin business rescue proceedings

(6) If liquidation proceedings have already been commenced by or against the company at the time an application is made in

terms of subsection (1), the application will suspend those liquidation proceedings until-

(a) the court has adjudicated upon the application; or

(b) the business rescue proceedings end, if the court makes the order applied for.”

[45] The position was more recently confirmed in *Southern Sky Hotel and Leisure (Pty) Ltd t/a Hans Merensky Hotel and Spa (in liquidation) and Others v Southern Sky Food Enterprises (Pty) Ltd 2023 (4) SA 1999 (SCA)* where the SCA held that it was not controversial that one of the most important functions of the liquidators is to commence with the process of winding-up or liquidating the assets of the company with the aim of constituting a *concursum creditorum*. This process, it held, is exhaustive and includes recovering and reducing into possession the assets of the company, to realise them and to distribute the proceeds thereof to the satisfaction of the costs of the winding-up as well as the claims of creditors, and to distribute the residue (if any) amongst the shareholders in accordance with their rights.

[46] It is not in dispute that on 7 October 2022 a majority of the creditors of Mimosa passed a resolution which granted the liquidators the power and authority to take control of Mimosa’s subsidiary companies and to appoint directors of the subsidiaries as they see fit.

[47] Thus, the powers of the liquidators arise from the operation of law and the 7 October 2022 resolution where they were authorised to take control of CAT and ACE, Mimosa’s subsidiaries. Their powers as liquidators were undisturbed at the time of Salant’s purported appointment as director of CAT, and his purported re-appointment as director of ACE on 17 January 2023.

[48] The liquidators decided to appoint Troskie as director of CAT, and she decided to remove Salant as director of ACE.

Salant's re-appointment as director of ACE

[49] Salant asserts that he has been re-appointed as director of ACE on 17 January 2023. He relies on the written consent of CAT, being the shareholder of ACE.

[50] The written consent upon which he relies reads as follows:

***ACTION TAKEN BY WRITTEN CONSENT
OF THE SHAREHOLDER OF
ACE Films Corporation
(a Californian corporation)***

By written consent of the Shareholder of this corporation, pursuant to the provisions of Section 603(a) of the California General Corporation Law, and Section 10 of Article II of the bylaws of this Corporation, without a physical meeting, the following resolutions are hereby adopted and effective as of the 17th day of January 2023.

REMOVAL AS DIRECTOR: CORNELIS ABRAHAM TROSKIE passed away on December 24, 2022. He has been removed as a Director of the Board of Directors of ACE Films Corporation effective that date.

RESOLVED, that the following persons be, and are hereby elected as Directors of this Corporation to serve for a term of one year or until their successor/s are elected and qualified:

***MIRESCHE TROSKIE-MARX
STEVEN A SALANT***

RESOLVED FURTHER, that all acts of the directors of this corporation during the preceding year are hereby ratified, confirmed and approved.

CAT FILMS INC.
a Nevada Corporation

- [51] The resolution is signed by Salant as President of CAT.
- [52] However, on Salant's own version "*it is common cause that at the time prior to Rina Troskie's purported appointment, CAT had no director*".
- [53] It is undeniable that CAT's shareholder, Mimosa, who is represented by the liquidators, had the authority to appoint directors to CAT. It is uncontroverted that the liquidators did *not* give their consent for Salant's appointment as the director of CAT, and therefore ACE.
- [54] As it reads, the CAT written consent was: i) ostensibly obtained by the written consent of the shareholder, CAT, whom we know not to be factually correct nor valid in law for reasons already addressed; ii) was obtained pursuant to section 603 (a) of the California Corporation Law and; iii) obtained pursuant to Article II (10) of the bylaws of CAT.
- [55] The bylaws of CAT do not assist Salant. In fact, it considerably weakens his position.
- [56] I set out only the most salient provisions of the bylaws.
- [57] The bylaws demonstrate the power of the shareholder/s to decide on director and board appointments.

- [58] At the outset, Article I of the bylaws provides that a meeting of the shareholders shall be held annually for the election of directors and the transaction of other business on such date in each year as may be determined by the Board of Directors.
- [59] Article II (1) provides that the business of the Corporation shall be managed by the Board of Directors.
- [60] Article II (2) provides that the number of directors constituting the entire Board of Directors shall be the number, not less than one, nor more than ten, fixed from time to time by a majority of the total number of directors which the Corporation would have, prior to any increase or decrease, if there were no vacancies, provided, however, that no decrease shall shorten the term of an incumbent director. Until otherwise fixed by the directors, the number of directors constituting the entire board shall be four.
- [61] Article II (3) provides that at each annual meeting of shareholders, directors shall be elected to hold office until the next annual meeting and until their successors have been elected and qualified or until their death, resignation or removal in the manner herein after provided.
- [62] Article III (4) deals with the term of office and removal of directors. It provides that each officer shall hold office for the term for which he is elected or appointed, and until his successor has been elected or appointed and qualified. Unless otherwise provided in the resolution of the Board of Directors electing or appointing an officer, his term of office shall extend to and expire at the meeting of the board following the next annual meeting of shareholders. Any officer may be removed by the board with or without cause, at any time. Removal of an officer without cause shall be without prejudice to his contract rights, if any, and the election or appointment of an officer shall not of itself create contract rights.

- [63] Article III (5) provides that the President shall be the Chief Executive Officer of the Corporation, shall have general and active management of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall also preside at all meetings of the shareholders and the Board of Directors.
- [64] The bylaws make it clear at the outset that a meeting of the *shareholders* shall decide on the election of directors. Mimosa as the 100% shareholder of CAT thus decides who is elected and appointed as a director of CAT. It follows, by the operation of South African law, that the conferral of authority for the appointment of directors' vest with the liquidators of Mimosa. Their decision to appoint Troskie, and not Salant, was an exercise of this power.
- [65] Salant's self-appointment as a director of ACE is clearly invalid and unlawful by virtue of the absence of the required written consent of the shareholder, CAT. This position is also consistent with the bylaws of CAT.
- [66] But since CAT had no directors prior to the decision to appoint Troskie, it could not have been legally competent in any event for Salant to re-appoint himself as a director of CAT.
- [67] In any event, I agree with counsel for Troskie and JVA, that even if Salant's appointment was properly authorised and he was validly re-appointed as a director of ACE, he was subsequently removed and a successor was appointed in his place, namely, Troskie. This decision was also consistent with Article III (4) of CAT's bylaws which provides for the appointment of director successors.
- [68] I accordingly find that Salant's re-appointment as the director of ACE on 17 January 2023 was invalid and unlawful.

- [69] Taken to its logical legal conclusion, this means that Salant did not have the authority to represent ACE and he therefore did not have the authority to instruct CK Attorneys to represent ACE in the business rescue application.
- [70] Salant and CK Attorneys have failed to satisfy the Court of their authority to represent ACE.
- [71] I am inclined to give Salant the benefit of the doubt based on the bylaws of CAT that a resolution was not required by the board of directors for the institution of business rescue proceedings and for the appointment of CK Attorneys. But this does not assist him. Even if the decision was properly authorised at the time, it was short-lived, as eleven days later after the business rescue application was launched Salant was removed as director of ACE and replaced with Troskie, who subsequently decided to withdraw the application.
- [72] I need not further consider the validity of Troskie's appointment as the sole director of ACE given the conclusion that Salant's re-appointment as a director of ACE was invalid but will do so for the avoidance of doubt as to the validity of her appointment.

Rina Troskie's appointment as the director of ACE

- [73] Salant asserts that Troskie's appointment as director of CAT and ACE was invalid by reason of the invalidity of her appointment as CAT's director. He challenges the validity of the written consents of 8 December 2023 and 11 December 2023. More specifically, he challenges the "*execution*" of these documents.
- [74] According to him, the "*obvious prompt*" for the decisions to appoint Troskie as director of CAT and ACE was the service of the BR application.

- [75] He alleges that the 8 and 11 December 2023 consents were part and parcel of a sinister plan where attorney Moolman (who represents all the creditors of Mimosa), Troskie and the liquidators collaborated to remove him as a director. The stratagem, according to him, was to deliberately replace him as director of ACE to incapacitate the BR application.
- [76] Salant alleges that the liquidators and Moolman were part of this scheme to sabotage the BR application by giving notice to defend the application without having raised his dismissal as a director with him. He alleges that Moolman did not once allude to the alleged decision where his (Salant's) directorship was terminated in the time leading up to the special creditors' meeting, and that Moolman only did so belatedly on 15 January 2024 when his hand was forced. Salant alleges that the deliberately clandestine conception and withholding of the decisions from him and his attorneys, was "*therefore clearly fraudulent*".
- [77] He alleges that it is "*extremely doubtful*" whether Troskie was at all relevant times even aware of decisions purportedly taken by her (referring to the 8 and 11 December 2023 written consents), as it was Moolman whom, according to Salant, had sent the resolutions to him.
- [78] He asserts that the decisions taken by the liquidators and Troskie were not *bona fide* and were done for an improper purpose. He alleges that the decisions were conceived on a fraudulent basis, namely by making the misrepresentation that he had remained as director from 11 December 2023 until 15 January 2024. He was deliberately kept in the dark, for the nefarious reason that they deliberately wanted him out in order to scupper the BR application.
- [79] He alleges that in the given context, the intention of the consents was that they would only take legal effect when they were disclosed to him, namely, on 15 January 2024. He alleges that the two decisions were not serious in the sense

that they were unambiguous and solemn legal acts intended to create legal rights.

- [80] According to him, the liquidators had not played open cards with him from the start and that they had acted in bad faith insofar as the decision of 8 December 2023 was not taken in the interests of all creditors in an even-handed manner, but that their decision was clearly taken in the interests of the "*Troskie group*" which excludes him and Marx and the other unproved creditors.
- [81] Salant has made very serious allegations against Troskie, the liquidators and Moolman of improper conduct, male fides, misrepresentation and fraud. There is however nothing on the papers before me which supports these accusations. Salant alleges that Moolman was complicit in the false misrepresentation to him and the alleged forgery of Troskie's signature on the written consents. Troskie has emphatically denied this and confirmed that she gave instructions for the 11 December 2023 written consent which she had signed but that in the transmission of the email, a portion of the consent was inadvertently cut off.
- [82] Moolman addresses the signature of the written consents in his affidavit dated 12 February 2024 in support of his application to strike. He confirms that he is the attorney for all the proven creditors in the insolvent estate of Mimosa, save for ACE, who is represented by JVA in the application. He confirms that he acted on the instructions of Troskie and the liquidators in relation to the 8 and 11 December 2023 written consents and that Salant's allegations in relation to him is false, abusive, defamatory and made with the intention to harass him.
- [83] In my view the application to intervene was not necessary, but to the extent that it was, it is granted. The allegations against Moolman are baseless and speculative. I accordingly grant the application to strike as the allegations are vexatious and scandalous.

- [84] Turning to the written consents. For ease of reference, I shall continue to identify them as the 8 and 11 December 2023 consents mindful that according to Troskie, both consents were in fact signed on 11 December 2023.
- [85] Salant challenges the ‘execution’ of the consents with the support of an expert in information technology, Mr Matthew Vos (“Vos”). Salant has devoted a considerable portion of his affidavit to Vos’s findings which, in my view, does not assist his case. In his examination of the metadata and properties of the written consents, Vos concluded *inter alia* that the purported signature of Troskie was a picture as opposed to a verified signature inserted with Adobe Reader. Vos’s conclusion was that the 11 December 2023 consent was potentially created by Moolman and never actually signed by Troskie herself. As regards the 8 December 2023 consent, he concluded that it appears to be a scanned document for which the metadata is limited but the conclusion, by way of inference, is that it would most likely also have been originally drafted by Moolman prior to the signature of the liquidators.
- [86] Relying on the expert opinion of Vos, Salant alleges that Troskie “*potentially never actually signed the consent*” by which he was dismissed, and that the document was deliberately backdated to 11 December 2023 to make it appear as if the consent was signed and which purportedly dismissed him. Salant disputes that these written consents were actually signed by the liquidators and Troskie and asserts that the signatures were a forgery. The import of all of this, as I understand it to be, is that the consents were never properly and validly executed on the dates that they were allegedly signed, which meant, according to Salant, that they were not valid or were never intended to be bona fide and valid.
- [87] According to Troskie, the written consents were drafted by US attorney, Henry Ward, and that she signed on behalf of ACE. She asserts that there was nothing untoward about this and that the contents of the letter and the consent represents the wishes of the liquidators. She pertinently denies that the

consents were not signed / executed in accordance with her and the liquidators' instructions.

- [88] Her explanation for the delay in providing the consents to Salant timeously was that they were waiting on legal advice from the US attorney Ward before any further steps were taken, but that they were eventually advised that their conduct (hers and the liquidators) complied with the California Corporations Code. They also wanted to gain control of ACE's bank account before notifying Salant as they were fearful that he would loot the account and destroy the company records given that he was uncooperative with the Section 415 [liquidation] enquiry. Salant denies that he was uncooperative.
- [89] It is not clear what is meant by Salant's allegation that the written consents were not serious and that they did not have a binding legal effect for the reason that they were only disclosed to him on 15 January 2024. This proposition does not make sense, nor has counsel for Salant provided the Court with authority for this proposition. The delay does not invalidate the consents or make them less serious. Whilst it may not have been ideal to withhold the consents from Salant, I cannot disregard the circumstances and rationale for doing.
- [90] Salant's challenge in relation to the "execution" of the consents is illogical but is also manifestly improbable. In any event, the rule in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA623 (A)* dictates that I decide the application on Troskie's version.
- [91] The liquidators have independently confirmed the removal of Salant and the appointment of Troskie and have explained that this decision was necessary in order to preserve the assets of Mimosa for the benefit of the general body of creditors.
- [92] It is without doubt that Troskie's appointment as director of CAT and ACE was properly authorised and valid.

Conclusion

- [93] For the reasons set out herein, Salant's self-reappointment as director of ACE was clearly unauthorised and invalid.
- [94] Troskie, on the other hand, was validly appointed as the director of CAT and ACE.
- [95] Consequently, it follows that Salant does not have the authority to represent ACE and to instruct CK Attorneys, or any other attorneys for that matter, to represent ACE and to institute business rescue proceedings on its behalf. CK Attorneys is accordingly not authorised to represent ACE.
- [96] Since only Troskie has the authority to represent ACE, only she can appoint attorneys to represent ACE. Accordingly, the appointment of JVA to represent ACE was properly authorised by her.
- [97] CK Attorneys should not be mulcted in costs. They were instructed by Salant to represent ACE and to launch the BR application and did so in the *bona fide* belief that Salant was properly authorised to represent ACE. On Salant's own version, CK Attorneys believed that they were lawfully acting on behalf of ACE in the BR application on the basis that he (Salant) was the *bona fide* appointed director of ACE.
- [98] Salant and CK Attorneys have accordingly failed to satisfy the Court of their authority as required in terms of Rule 7.
- [99] In the result, I make the following Order.

ORDER:

- [a] Mr Steven Salant and CK Attorneys are not authorised to act on behalf of ACE Films Corporation.
- [b] Ms Rina Troskie as the validly appointed director of CAT and ACE Films Corporation is authorised to represent ACE.
- [c] JV Attorneys, acting on the instruction of Ms Troskie to represent ACE Films Corporation, are the validly appointed and authorised attorneys of record for ACE Films Corporation in the business rescue application.
- [d] Mr Salant in his personal capacity, shall pay the costs of the Rule 7 application.
- [e] Mr Salant in his personal capacity, shall pay the costs of Mr W Moolman in the application to strike, on an attorney and client scale.

T J GOLDEN
Acting Judge of the High Court
7 May 2024

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