

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: **2022/17020**

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: YES
<u>3 March 2025</u>	
DATE	SIGNATURE

In the matter between:

**MERCHANT COMMERCIAL FINANCE 1
(PTY) LIMITED**

Applicant

and

BERLEX 96 CC

Respondent

FLYNOTE : SLEUTELWOORDE

Ex parte Order – Judicial authorisation for the perfecting of a general notarial bond – fundamental principles dictate that material provisions in an ex parte order should be subject to a rule nisi rather than being framed as a final order.

Court Orders – Principles of interpretation – An ex parte order that appears to confer final relief must be interpreted in a manner consistent with its underlying purpose, contextual considerations, and overarching legal principles—ensuring alignment with fundamental rights of fairness and due process.

Ex parte Relief – Protection of creditor interests – The law does not require that an order authorising the perfecting of a general notarial bond be final - Established precedent confirms that confirmation of a rule nisi post-liquidation does not disturb the principle of concursus where the creditor lawfully obtained possession of hypothecated assets under an interim order prior to liquidation.

Urgent ex parte applications – Principles restated – Applicant to expressly make out a case that the matter is urgent, must justify the degree of deviation from the normal rules of court and must in particular justify application without notice.

Evidentiary threshold in ex parte application for perfecting of security - Applicant in a precarious position where respondent is a company – Specific time of presentation of application for liquidation to court (when it is issued) is upon granting of order the time of commencement of the winding-up – voluntary winding up commences when the special resolution for the winding up of the company is registered by the CIPC – applicant usually do not have knowledge of other creditors' intention to launch liquidation applications, nor of the intention of the company to go into voluntary liquidation – The usual circumstances surrounding an application for permission to perfect a security would often constrain an applicant to make rather generalised allegations about the possibility of the debtor being liquidated – However, an applicant cannot rely on pure conjecture or an *ipse dixit* – Applicant must disclose all information at its disposal relevant to the debtor's financial position and financial behaviour (such as its pattern of compliance or non-compliance with its financial obligations) – There should at least be evidence that the debtor is trading in insolvent circumstances or cannot pay its debts in the normal course of business, and that there is a risk or reasonable apprehension of liquidation – setting the evidentiary bar too high may result in an applicant not obtaining the redress it is entitled to.

Obligations of full and frank disclosure – The duty of an applicant in ex parte proceedings – courts have reaffirmed that non-disclosure of material facts in an ex parte application may warrant the rescission of the relief granted, irrespective of whether the applicant was otherwise entitled to the order sought.

Court's supervisory role in applications to authorise perfecting of notarial bonds and *parate executie* - Process is vulnerable to the abuse of the process of court - Supervisory role of the courts is of the utmost importance in preventing abuses – Court to be jealous of its role in this regard and any attempt by a litigant to

undermine the court's effective supervision over this process should not be countenanced.

HEADNOTE : KOPSTUK

In this matter the applicant applied for an *ex parte* order authorising it to perfect certain notarial bonds i.e., a special notarial bond and a general notarial bond, both registered in 2016. The applicant also sought to perfect two unregistered "bonds" i.e., two documents executed on behalf of the respondent, which would have become notarial bonds upon registration of the bonds by the Registrar of Deeds. The applicant disclosed the non-registration of the bonds to the court but contended that it was entitled to perfect the bonds notwithstanding non-registration. On the return date of the rule *nisi* the applicant conceded that it was not entitled to an order on the basis of the unregistered bonds.

The applicant alleged that the respondent was indebted to it in excess of R21 million in terms of a deed of suretyship in respect of the debts of another company, who was the principal debtor. The principal debtor failed to comply with its payment obligations towards the applicant and went into liquidation. This rendered the respondent liable to the applicant and entitled the applicant to obtain an order authorising it to perfect its general notarial bond (the special notarial bond already affording real security in the form of a pledge in terms of the Security by Means of Movables Act, 1993) by taking possession of the respondent's movable assets.

The applicant obtained such an order *ex parte*. This part of the order appeared to be granting final relief and was not expressly made subject to a rule *nisi*. The interim order prohibited the selling of the assets by way of *parate executie* pending confirmation of the rule *nisi*, while the rule *nisi* called upon the respondent to show cause why the applicant should not be permitted to deal with the assets in terms of the bonds and why it should not be ordered to pay the costs of the application on the agreed attorney and client scale.

The applicant alleged that due to the failure by the respondent to pay the applicant the amount due and payable to it, it was unable to pay its debts in the normal course and was allegedly trading in insolvent circumstances.

The applicant stated that "in the light of the threats of liquidation by the respondent's suppliers" the liquidation of the respondent in the very near future was imminent, if not in progress already. Thereby it created the impression that it was aware of other threats of liquidation. In response to a rule 35(12) and (14) notice to provide

documentary evidence of the threats, the applicant gave a nonsensical answer and discovered no documents in this regard. There was also no other evidence of imminent liquidation proceedings by other creditors. The applicant also failed to deal in its founding affidavit with the degree of urgency of the application and provided no other justification for bringing an ex parte application.

In its answering affidavit the respondent initially raised certain defences against the merits of the applicant's claim, which it did not persist with on the extended return date. On the extended return date, the respondent confined its opposition to the confirmation to the rule *nisi* to the following issues:

- The first issue raised was that a previous order, granting the applicant leave to take possession of the assets in terms of the registered notarial bonds, was granted 8 February 2019. The applicant executed the previous order and took possession of the respondent's movable assets after that order was granted. Consequently, so the argument ran, the applicant's security was perfected by the previous order and there was no need for the order sought in the present application. It was also argued that the matter was *res judicata* and the respondent attempted to demonstrate that all the requirements for a defence of *res judicata* was present.
- Second, the respondent relied on the principles set out in *Schlesinger v Schlesinger* regarding the disclosure of facts by an applicant in an ex parte application. It was argued that there was material non-disclosure by the applicant of facts which might have influenced the court granting the interim order herein, and that this court should exercise its discretion in favour of the discharge of the order.
- The third issue raised was that the only justification for bringing the application ex parte was conjecture that the respondent may be liquidated by its suppliers and that the order ought not have been sought on that basis.

Held, as to the effect of the interim order:

The substantive portion of an interim ex parte order should in principle not be final in effect. It should be subject to a rule *nisi* and confirmation on the return date.

To the extent that the interim order appeared to be final in effect, the order must be interpreted in accordance with the principles set out in *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

On a proper interpretation of the entire order against the purpose of the order, the purpose being to grant interim relief, the language of the rule *nisi*, which required the

respondent to show cause why the applicant should not be able to “deal with the assets” in terms of the notarial bonds should be widely interpreted to include the initial taking of possession, as opposed to confining it to the disposal of the assets. Such interpretation does not unduly stretch the language used and also upholds the respondent’s constitutional right to fairness in the adjudication of disputes.

There was also no need for the ex parte order to be a final order (not subject to rule *nisi*) to protect the creditor’s security in the event of a liquidation or sequestration. It is settled law that confirmation of rule *nisi* after liquidation or sequestration not disturbing *conkursus* where the creditor lawfully took possession of hypothecated assets in terms of the interim order prior to liquidation or sequestration.

Consequently, it was held that the entire substantive part of the order was interim and subject to confirmation on the return date.

Held, as to the granting of a previous order authorising the perfecting of the notarial bond and execution thereof and defence of *res judicata*:

On the facts before the court, relied on by both parties on the return date, the previous order was executed, the applicant took possession of assets in terms of the general notarial bond and established a pledge. However, the parties subsequently agreed that the assets would be returned to the respondent for purposes of conducting its business, which agreement was implemented. On the common cause facts, the applicant relinquished possession and control of the pledged assets and lost its pledge. Under circumstances where the respondent was once more in possession of the assets it was a constitutional imperative for the applicant to obtain the court’s *imprimatur* to take possession and dispose of the assets by way of *parate executie*.

Under the circumstances where the parties effectively jettisoned the previous order, there is no room for a defence of *res judicata*.

Held, as to the question of non-disclosure by the applicant in the ex parte application:

The court restated the relevant principles relating to non-disclosure in ex parte applications as set out in cases such as *Schlesinger v Schlesinger* 1979 (4) SA 342 (W), *National Director of Public Prosecutions v Basson* 2002 (1) SA 419 (SCA) and *Recycling and Economic Development Initiative of South Africa NPC v Minister of Environmental Affairs* 2019 (3) SA 251 (SCA).

The failure by the applicant to draw the court's attention to the fact that it was not entitled to an order based on the unregistered bond, as conceded on the return date, was a serious dereliction of the applicant's duty to the court.

The non-disclosure of the fact that the assets were returned to the respondent by agreement after the previous order was granted, might have influenced the court and caused it to question the wisdom of granting an order *ex parte*. Such non-disclosure was material.

Held, as to the alleged lack of evidence of imminent liquidation of the respondent as justification for *ex parte* application:

An applicant seeking to perfect a general notarial bond is in a precarious position where respondent is a company. The specific time of presentation of application for liquidation to court (when it is issued) is upon granting of order the time of commencement of the winding-up and voluntary winding up commences when the special resolution for the winding up of the company is registered by the CIPC. The applicant usually does not have knowledge of other creditors' intention to launch liquidation application against respondent, nor of the intention of the company to into voluntary liquidation. The usual circumstances surrounding an application for permission to perfect a security would often constrain an applicant to make rather generalised allegations about the possibility of the debtor being liquidated.

However, an applicant cannot rely on pure conjecture or an *ipse dixit*; an applicant must disclose all information at its disposal relevant to the debtor's financial position and financial behaviour (such as its pattern of compliance or non-compliance with its financial obligations). There should at least be evidence that the debtor is trading in insolvent circumstances or cannot pay its debts in the normal course, and that there is a risk or reasonable apprehension of liquidation.

Setting the evidentiary bar too high may well result in an applicant not obtaining the redress it is entitled to.

In casu, the applicant stated in its founding affidavit that "in the light of the threats of liquidation by the respondent's suppliers" the liquidation of the respondent in the very near future was imminent, if not in progress already. Thereby it created the impression that it was aware of other threats of liquidation. This allegation was, however, an unsubstantiated *ipse dixit*.

In response to a rule 35(12) and (14) notice to provide documentary evidence of the threats, the applicant gave a nonsensical answer and discovered no documents in

this regard. There was also no other evidence of imminent liquidation proceedings by other creditors.

The applicant also failed to deal in its founding affidavit with the degree of urgency of the application and provided no other justification for bringing an ex parte application. Consequently, the applicant was in the first place not entitled to an order on an ex parte basis.

Held, as to the exercise of the court's discretion:

It is settled law that unless there are very cogent practical reasons why an order should not be rescinded, the court will always frown on an order obtained ex parte on incomplete information and will set it aside even if relief could be obtained on a subsequent application by the same applicant. In exercising its discretion, the court must consider the extent of the non-disclosure, the question whether the judge hearing the ex parte application might have been influenced by proper disclosure, the reasons for non-disclosure and the consequences of setting the provisional order aside.

The fact that the applicant is entitled to the main relief, does not stand in the way of a court discharging an ex parte order due to the failure by the applicant to comply with its duty of disclosure.

It is settled law that *parate executie* in respect of movable assets by agreement is in principle valid (the exception being where the terms of the agreement are *contra bonos mores*), subject to the court's *imprimatur*, which is rightly described as a "constitutional imperative". The current state of the law is that a creditor can obtain an order authorising the perfecting of the security (i.e., taking possession) in terms of a general notarial bond (and for that matter any other instrument of security in respect of movable property), and an order authorising *parate executie*, without first obtaining a judgment.

This process is vulnerable to the abuse of the process of court. In this regard, the supervisory role of the courts is of the utmost importance in preventing abuses. A court must be jealous of its role in this regard and any attempt by a litigant to undermine the court's effective supervision over this process should not be countenanced.

In the present matter, the applicant effectively undermined the court's function of supervision by approaching the court ex parte without making out a case for an ex parte hearing, effectively misled the court to grant an order based on the

unregistered bonds it was not entitled to and failed to disclose facts which in all probability have led to a refusal of the order on an ex parte basis.

Having regard to the factors to be taken into consideration the court found no reason to exercise its discretion in favour of the applicant. To the contrary, there were compelling reasons why the interim order should be discharged in its entirety.

ORDER

- (1) The respondent's application to strike out, dated 8 January 2024, is dismissed, with costs.
- (2) The interim order granted on 17 May 2022 is discharged in its entirety;
- (3) The costs reserved in the course of this matter shall be costs in the application;
- (4) The applicant is ordered to pay 75% of the respondent's costs of the application on Scale B.

JUDGMENT

D MARAIS AJ

The ex parte order granted on 17 May 2022

[1] This is the extended return date of an order granted 17 May 2022 in favour of the applicant against the respondent, authorising the applicant to take and retain at the expense of the respondent possession of all or any moveable assets of the respondent, wherever they may be found as security for any amounts owing to the applicant in terms of the following registered Notarial Bonds "or yet to be registered" with the Registrar of Deeds, Johannesburg:

- a. Special Notarial Covering Bond Number: BN 28054/2016;

- b. Special Notarial Covering Bond Protocol Number: 922;
- c. Notarial General Collateral Covering Bond Number BN 28055/2016; and
- d. Notarial General Collateral Covering Bond Protocol Number: 923 (collectively referred to as 'notarial bonds').

[2] The applicant was ordered to hold these assets in pledge in terms of the rights granted to the applicant in terms of the notarial bonds, but which rights, pending the hearing on the return, were limited to the following extent:

- a. The applicant could not compromise the claims;
- b. Any asset attached by the applicant pursuant to the terms of the notarial bonds could only be sold if such sale was authorised by the court, and on such terms and conditions as the court, in granting such authorisation may impose, save that the applicant may sell any trading stock belonging to the respondent, in the normal course of business, without obtaining the leave of the court; and
- c. The applicant was ordered to keep complete record of all the transactions relating to the trading stock, and to make such available to the respondent on five days' notice.

[3] The sheriff was authorised and instructed to assist the applicant in the execution of the order.

[4] The respondent was ordered to direct and hand over possession of its assets to the sheriff.

[5] A rule *nisi* was issued calling upon the respondent to furnish reasons, if any, on 11 August 2022, as to why an order in the following terms should not be made final:

- a. that the applicant be authorised to deal with the movable property in terms of the notarial bonds; and
- b. that the respondent be ordered to pay the costs of this application on the scale as between attorney and client.

[6] Furthermore, orders were granted regarding the service of the order and the respondent's right to anticipate the return date or set the matter down for reconsideration was set out.

[7] The order purports to be final in effect with regards to the authority granted to the applicant to perfect the pledge by taking possession of the hypothecated assets, and this aspect of the ex parte order does not appear to be subject to confirmation on the return date of the rule *nisi*.

[8] In terms of the order, the respondent was merely called upon to show cause why the applicant should not be permitted to deal with the respondent's movable assets in terms of the notarial bonds and why it should not be ordered to pay the costs of the application.

[9] In this regard, the formulation of the order sought by the applicant was unfortunate. This is, because the order was granted ex parte, fundamental principles dictate that the order authorising the applicant to take possession of the respondent's assets should not have been a final order but should also have been subject to confirmation on the return date.¹

[10] To the extent that the substantive part of the interim order appeared to be final in effect, the order must be interpreted in accordance with the principles set out in, inter alia, *Natal Joint Municipal Pension Fund v Endumeni Municipality*²; consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A

¹ The same question arose in *Industrial Development Corporation of South Africa Limited v Bokone Group of Companies* 2023 JDR 2707 (GJ) in which Korf AJ resorted to an interpretation of the relevant part of the order as interim, subject to confirmation on the return date.

² *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA13; 2012 (4) SA 593 (SCA).

sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.

[11] On a proper interpretation of the entire order against the purpose of the order, the purpose being to grant interim relief, the language of the rule *nisi*, which required the respondent to show cause why the applicant should not be able to “deal with the assets” in terms of the notarial bonds, should be widely interpreted to include the initial taking of possession, as opposed to confining it to the disposal of the assets. Such interpretation does not unduly stretch the language used and also upholds the respondent’s constitutional right to fairness in the adjudication of disputes.³ A different interpretation would result in the objectionable conclusion that the court largely jettisoned the principle of *audi alteram partem*, which could never have been the intention.

[12] In view of the judgment of the Supreme Court of Appeal in *Contract Forwarding (Pty) Limited v Chesterfin (Pty) Limited and Others*⁴ there is no need to make any such final ex parte order to protect a creditor’s security rights in the face of the possible liquidation or sequestration of the estate of a debtor; a confirmation of a rule *nisi* after the liquidation or sequestration commenced, where the creditor in terms of an interim order lawfully took possession of the debtors assets *before* commencement, does not detract from the security established before commencement, nor can it be regarded as disturbing the *conkursus*.

[13] During the hearing of the extended return date before me, the matter was approached by both parties on the basis that the entire order was subject to confirmation in terms of the rule *nisi*. I am grateful to counsel for this approach, which I am of the view was the right and fair approach to adopt.

[14] Consequently, I shall deal with the matter on the basis that the entire order was provisional and subject to confirmation.

³ Section 34 of the Constitution of the Republic of South Africa, 1996.

⁴ *Contract Forwarding (Pty) Ltd v Chesterfin (Pty) Ltd and Others* [2002] ZASCA 143; 2003 (2) SA 253 (SCA).

The applicant's claim

[15] The applicant's claim against the respondent is premised on an unlimited deed of suretyship executed by the respondent in favour of the applicant on 26 October 2016, securing the indebtedness of JP Krugerrand Deals (Pty) Limited (JPKD) toward the applicant. The respondent bound itself as surety and co-principal debtor in terms of this deed of suretyship. On 21 April 2022 JPKD was indebted to the applicant in the amount of R21 028 152.00 in terms of a loan facility. The respondent was, in turn liable to the applicant in this amount in terms of the deed of suretyship.

[16] The respondent initially alleged that the person who signed the deed of suretyship on its behalf was not authorised to bind the respondent as surety. However, this defence was not relied on by the respondent during the hearing of the matter and it has to be accepted that the respondent was indeed liable to the applicant as alleged by the applicant.

The notarial bonds

[17] The applicant relied on the notarial bonds referred to above in its ex parte application. It is common cause that a special mortgage bond was registered by the respondent in favour of the applicant on 17 November 2016, specially hypothecating the movable assets listed in an annexure to the bond as security for the respondent's debt owing to the applicant. On 17 November 2016, the respondent also caused a general notarial bond to be registered, hypothecating all its movable assets, wherever it may be found, to the applicant.

[18] In obtaining the ex parte order the applicant also relied on two unregistered bonds, a special notarial bond and a general notarial bond which was executed by the respondent during 2022, but which was not registered by the Registrar of Deeds.

[19] The applicant informed the court at the hearing of the ex parte application that, it was entitled to enforce the unregistered bonds, merely on the basis that they

were executed by the respondent. However, at the hearing of the of the extended return date, the applicant disavowed reliance on the unregistered bonds and only sought an order based on the registered bonds.

The applicant's pledge in terms of the special registered notarial bond

[20] In terms of Section 1 of the Security by Means of Movable Property Act⁵ the aforesaid registered notarial bond provided real security in the form of a pledge of the assets listed in the bond, without the necessity of the applicant being in possession of the assets.

[21] Therefore, there was no need for the applicant to bring an application for an order authorising it to take possession of the specially hypothecated assets to perfect the pledge. This is because its pledge over the specially hypothecated assets had already been fully established.

[22] In its founding affidavit the applicant indicated that its pledge in terms of the special notarial bond had already been in place by operation of law but stated that it was entitled to attach and remove such assets in terms of the bond.

[23] To foreshadow the issues dealt with hereunder, the applicant did not make out any case that such relief should be granted to it on an ex parte basis.

The applicant's right to perfect its pledge in terms of the registered general notarial bond

⁵ Section 1 of Security by Means of Movable Property Act 57 of 1993 provides:

“(1) if a notarial bond hypothecating corporeal movable property specified and described in the bond in a manner which renders it readily recognizable, is registered after the commencement of this Act, in accordance with the Deeds Registries Act 1937 (Act No. 47 of 1937), such property shall—

- (a) Subject to any encumbrance resting upon it on the date of registration of the bond; and
- (b) Notwithstanding the fact that it has not been delivered to the mortgagee, be deemed to have been pledged to the mortgagee as effectually as if it had expressly been pledged and delivered to the mortgagee.”

[24] The applicant's registered notarial bond merely constituted a pledge agreement whereby a right to be placed in possession of the respondent's movable assets ("verbintenisskeppende ooreenkoms") was created, as opposed to a real agreement ("saaklike ooreenkoms") creating a real right ("saaklike reg"). Upon the applicant taking possession of the respondent's movable assets, the pledge would be perfected, and a real right of security created. This would render the applicant a secured creditor in respect of the assets in its possession.

[25] It is trite law that for a pledge, in the sense of a real right, to be established the creditor must be placed in possession or control of the hypothecated assets. The transfer of possession may be a physical transfer of possession, or some form of constructive transfer of possession. However, transfer of possession by way of *constitutum* possessorium i.e., the mere changing of intention on the part of the debtor to hold the assets in possession on behalf of the creditor while the assets remain physically in the possession of the debtor is not recognised as sufficient to establish a pledge.⁶

[26] Consequently, it is necessary for the holder of a general notarial bond to obtain an order that authorises it to take possession of the respondent's movable assets to perfect its security. The order does not in itself perfect the pledge, it merely authorises the bondholder to take possession, and the act of taking possession is what perfects the security.

[27] In this regard the applicant was entitled to approach this court for an order authorising it to take possession of the respondent's movable assets for purposes of perfecting its security and enforcing its other rights in terms of the notarial bond, notably to sell the assets by way of *parate executie*.

The unregistered notarial bonds

⁶ *Contract Forwarding (Pty) Ltd* above n 3.

[28] Section 61 of the Deeds Registries Act⁷ provides that a notarial bond must be registered within three months from date of its execution.

[29] The applicant conceded that the order should not be confirmed in respect of the unregistered bonds.

The ex parte application

[30] In the applicant's ex parte application, the applicant stated that the matter was urgent, in that it was imperative that it must take possession of the respondent's assets in terms of the general notarial bonds (including the unregistered bond) to perfect its pledge before the respondent was liquidated. This was to ensure that it was rendered a secured creditor before the commencement of a liquidation.

[31] In this regard the applicant submitted that the respondent failed to comply with its obligations to the applicant by failing to make payments to the applicant was clearly unable to pay this debt and was seemingly trading in insolvent circumstances. Furthermore, the applicant made the allegation that the respondent was failing to pay its other suppliers and that legal action by the said suppliers was imminent. The applicant stated that, "in the light of the threats of liquidation by the respondent's suppliers", the liquidation of the respondent in the very near future was imminent, if not in progress already. Thus, on that basis the applicant submitted that an order authorising it to perfect its security should be granted as a matter of urgency.

[32] The applicant seemed to suggest that it was aware of the threats made by the respondent's other creditors to liquidate it but provided no detail of such threats. The manner in which the applicant formulated this allegation, by relying on a conclusion without any supporting allegations and proof in support of this conclusion must be regarded with scepticism.

⁷ Section 61(1) of the Deeds Registries Act 47 of 1937 provides:

"Every notarial bond executed before or after the commencement of this Act shall be registered in a deeds registry within the period of three months after the date of its execution or within such extended period as the court on application allow."

[33] In this regard, the respondent served a notice on the applicant in terms of Rule 35(12) and (14) of the Uniform Rules of Court.⁸ In this notice the respondent, inter alia, sought discovery of documentary evidence regarding the threats by other creditors to liquidate the respondent. After the applicant had to be compelled by an order of court to answer, the applicant responded in a terse and non-sensical manner by simply stating “to be instituted”. From this it became clear that the applicant never had any documentary confirmation of an impending liquidation. Nor is there any evidence of any verbal confirmation by any supplier.

[34] The speculative statement made by the applicant that liquidation proceedings may have been in progress already is rather puzzling, as if this was the case, the applicant’s attempted perfecting of its security would be a futile exercise. This is due to the deemed commencement of a winding up, as which will be discussed fully herein below. However, this was another statement made by the applicant that should be doubted.

[35] In its founding affidavit, the applicant simply attempted to make out a case that the matter was urgent. Contrary to established practice, the applicant made no attempt to demonstrate what the appropriate degree of deviation from the normal Rules of Court was. Importantly, no attempt was made to justify the bringing of the application on an ex parte basis. It was simply stated that the matter was urgent.

⁸ Rules 35(12) and (14) of the Uniform Rules of Court provide:

“(12) Any party to any proceeding may at any time before the hearing thereof deliver a notice as near as may be in accordance with Form 15 in the First Schedule to any other party in whose pleading or affidavits reference is made to any document or tape recording to produce such document or tape recording for his inspection and to permit him to make a copy or transcription thereof. Any party failing to comply with such notice shall not, save with leave of the court, use such document or tape recording in such proceeding provided that any other party may use such document or tape recording.

(13)

(14) After appearance to defend has been entered, any party to any action may, for purposes of pleading, require any other party to make available for inspection within five days a clearly specified document or tape recording in his possession which is relevant to a reasonably anticipated issue in the action and to allow a copy or transcription to be made thereof.”

The respondent's objections against the confirmation of the interim order

[36] At the commencement of the hearing the court was informed that the question whether the interim order should be confirmed would be limited to two issues raised by the respondent. During the argument, the issues were expanded to include a third issue. These issues were the following:

- a. The first issue raised was that a previous order, granting the applicant leave to take possession of the assets in terms of the registered notarial bonds, was granted by Adams J on 8 February 2019. The applicant executed the previous order and took possession of the respondent's movable assets after that order was granted. Consequently, so the argument ran, the applicant's security was perfected by the previous order and there was no need for the order sought in the present application. It was argued that the matter was *res judicata* and the respondent attempted to demonstrate that all the requirements for a defence of *res judicata* was present.
- b. The second issue raised was that the respondent relied on the principles set out in *Schlesinger v Schlesinger*⁹ regarding the disclosure of facts by an applicant in an ex parte application. It was argued that there was material non-disclosure by the applicant of facts which might have influenced the court granting the interim order herein, and that this court should exercise its discretion in favour of the discharge of the order. The detail of the alleged non-disclosure will be dealt with hereunder.
- c. The third issue that was argued was that the only justification for bringing the application on an ex parte basis was conjecture that the respondent may be liquidated by its suppliers and that the order ought not to have been sought on that basis.

The respondent abandoned other defences raised in the answering affidavit

[37] The respondent raised certain defences to the merits of the application in its answering affidavit. Inter alia it alleged that the person who represented the

⁹ *Schlesinger v Schlesinger* 1979 (4) SA 342 (W) at 348E – 350B

respondent in executing a deed of suretyship in favour of the applicant, had no authority to do so.

[38] However, in confining its opposition to the confirmation of the rule *nisi* to the abovementioned issues, the respondent jettisoned any other defence it raised in its answering affidavit.

The first issue raised by the respondent: res judicata and no need for a new order

[39] In relation to the first issue set out above, it was common cause that the previous order was granted by Adams J on 8 February 2019, and that such order was executed by the applicant having been placed in possession of the relevant movable assets.

[40] However, in reply the applicant placed evidence before the court that subsequent to the execution of the previous order, the parties agreed that possession of the assets would be returned to the respondent, to enable the respondent to utilise the assets in conducting its business. The applicant's counter-argument was that the pledge in terms of the registered general notarial bond was lost when the applicant relinquished possession. Consequently, it was argued that the applicant was obliged to re-apply for an order authorising it to take possession of the respondent's movable assets to perfect the pledge.

[41] The respondent brought an application to strike out this evidence in the applicant's replying affidavit. This was on the basis of a contention that the applicant was attempting to make out a case in reply. However, at the commencement of the hearing, the respondent indicated that it was not persisting with such application, and that the application was withdrawn.

[42] The application to strike out was correctly abandoned, as the applicant's response in reply was a legitimate response to the allegations made in the respondent's answering affidavit.

[43] In any event, the abandonment of the application to strike out was not made entirely with altruistic intentions, as the respondent in argument sought to rely on the facts set out in the replying affidavit in arguing that those facts should have been disclosed in the ex parte application and that the applicant failed to do so, contrary to its obligations.

[44] Turning to the merits of the first issue, it is clear on the facts before me that the pledge which was created by the perfecting of the general notarial bond pursuant to the previous order became lost when the applicant returned the assets to the respondent by agreement.

[45] The respondent argued that even if that was the case, the previous order was extant and could be executed again. Thus, it was argued that there was no need for a second order and, moreover, that the matter was *res judicata*.

[46] The issue of *res judicata* was not sufficiently canvassed in the papers before me. Whilst the order made by Adams J on 8 February 2019 was placed before me, there is no information available pertaining to the issues that were addressed in that matter, such as what the act of default which was relied on by the applicant. In the present application, the applicant relied on events, such as the liquidation of the principal debtor as an act of default, which occurred subsequent to the granting of the previous order by Adams J. In the circumstances, whilst it is clear that the parties to the two matters are the same, it is unclear whether there is a commonality of causes of action in the two matters. Whilst the relief that was sought in the two matters seems to be substantially the same, in the circumstances of the present matter the relief sought in this matter is in reality not the same, especially insofar as the perfecting of the general notarial bond is concerned.

[47] A court order does not exist in a vacuum, unrelated to utility and time. It exists in the context of its purpose at a given moment in time. Thus, identically worded orders granted on different times may effectively grant different relief.

[48] The previous order, as far as the general notarial bond is concerned, authorised the applicant to take possession of the respondent's movable assets in possession of the respondent at that given time.

[49] In my view there was a compelling reason why the applicant could not simply rely on the previous order to take possession of the respondent's movable assets. In *Juglal NO and Another v Shoprite Checkers (Pty) Limited t/a Franchise Division*¹⁰ the Supreme Court of Appeal upheld the validity of a notarial covering bond which entitled the creditor, in the event of a default on the part of the debtor to take possession of the debtor's business and assets as security for the debt, to sell the assets and to apply the proceeds in settlement of the debt.

[50] The court *a quo* had granted the creditor an order perfecting its security. The court *a quo* held that the common law, insofar as stipulations for *parate executie* are concerned, was that stipulations, which were not so far-reaching as to be contrary to public policy, were valid and enforceable; that, as a matter of practice, creditors seeking to enforce such stipulations take the precaution of applying for judicial sanction before doing so; and that the debtor can avail himself of the court's assistance in order to protect himself against prejudice at the hands of the creditor.

[51] On appeal, Heher JA held that this exposition seemed to be a correct summary of the state of the common law, with the one qualification that the 'matter of practice' referred to by the court *a quo* was in fact a constitutional requirement and that creditors not in possession are *obliged* to apply for judicial sanction.¹¹

[52] In the present matter, after the applicant executed the previous order and took possession of the respondent's assets. The parties agreed that the assets would be returned to the respondent and used by the respondent in conducting its business. On the evidence before, and in the absence of any evidence that the return of the movable assets was conditional in any way, or that the applicant exerted some form

¹⁰ *Juglal NO and Another v Shoprite Checkers (Pty) Ltd t/a OK Franchise Division* [2004] ZASCA 33; 2004 (5) SA 248 (SCA).

¹¹ See also: *SA Bank of Athens Ltd v Van Zyl* [2006] ZASCA 2; 2005 (5) SA 93 (SCA).

of effective control over the assets after the return thereof to the respondent. Not only did the pledge become lost, but the parties effectively jettisoned the court order by agreeing to reverse its effect.

[53] The interim order granted herein authorised the seizure of the respondent's movable assets which were in its possession at that point in time (in 2022), which was approximately three years after the previous order was granted in 2019.

[54] Under the circumstances, I am of the view that it would have been inappropriate and unlawful for the applicant to simply have instructed the sheriff to execute the previous order once more and take possession of the respondent's movable assets. In my view, in the circumstances of this case this would have been tantamount to spoliation.

[55] Under the circumstances, I am of the view that it was indeed not only necessary, but a constitutional imperative for the applicant to approach the court afresh to obtain an order authorising it to take possession of the respondent's assets.

[56] Where the parties effectively jettisoned the previous order, there is no room for a defence of *res judicata*.

[57] Consequently, the respondent's first argument is dismissed.

The respondent's second and third argument: non-disclosure and the allegation of looming liquidation

[58] The second and third issues raised by the respondent are intertwined to an extent, thus will be dealt with together.

[59] In *Schlesinger*¹² the court referred to the exposition of the topic of disclosure in ex parte applications in *Herbstein and Van Winsen on The Civil Practice of the*

¹² *Schlesinger* above n 8.

*Superior Courts in South Africa*¹³, where it was stated that the applicant must make full disclosure of all material facts, which might affect the granting or otherwise of an ex parte order.

[60] The authors recorded that the utmost good faith must be observed by litigants making ex parte applications in placing material facts before the court; so much so that if an order has been made upon an ex parte application and it appears that material facts have been kept back, whether wilfully and *mala fide* or negligently, which *might* have influenced the decision of the court whether to make an order or not, the court has a discretion to set the order aside with costs on the ground of non-disclosure. It should, however, be noted that the court has a discretion and is not compelled, even if the non-disclosure was material, to dismiss the application or to set aside the proceedings.

[61] After referring to this summary and analysing certain judgments, the court came to the conclusion that unless there are very cogent practical reasons why an order should not be rescinded, the court will always frown on an order obtained ex parte on incomplete information and will set it aside even if relief could be obtained on a subsequent application by the same applicant.

[62] *Schlesinger* was followed by the Supreme Court of Appeal in *National Director of Public Prosecutions v Basson*¹⁴ and *Recycling and Economic Development Initiative of South Africa NPC v Minister of Environmental Affairs*¹⁵

[63] In the latter judgment Cachalia JA held that the applicant must be scrupulously fair in presenting its own case. It must also speak for the absent party

¹³ Dendy and Loots et al: Herbststein and Van Winsen on *The Civil Practice of the Superior Courts in South Africa* 2ed at 94.

¹⁴ *National Director of Public Prosecutions v Basson* [2001] ZASCA 111; 2002 (1) SA 419 (SCA) para 21.

¹⁵ *Recycling and Economic Development Initiative of South Africa v Minister of Environmental Affairs; Kusaga Taka Consulting (Pty) Ltd v Minister of Environmental Affairs* [2019] ZASCA 1; 2019 (3) SA 251 (SCA).

by disclosing all relevant facts it knows or reasonably expects the absent party would want placed before the court.

[64] The applicant must disclose and deal fairly with any defences of which it is aware or which it may reasonably anticipate. It must disclose all relevant adverse material that the absent respondent might have put up in opposition to the order. It must also exercise due care and make such enquiries and conduct such investigations as are reasonable in the circumstances before seeking ex parte relief. The applicant may not refrain from disclosing matter asserted by the absent party because she believes it to be untrue. And even where the ex parte applicant has endeavoured in good faith to discharge its duty, it will be held to have fallen short if the court finds that matter it regarded as irrelevant was sufficiently material to require disclosure. The test is objective.¹⁶

[65] The learned Judge proceeded to hold that points in favour of the absent party should not only be drawn to the Judge's attention but must be done clearly: "*There should be no thought in the mind of those preparing affidavits that provided that somewhere in the exhibits or in the affidavit a point of materiality can be discerned, that is good enough.*"¹⁷

[66] The ex parte litigant should not be guided by any notion of doing the bare minimum. It should not make disclosure in a way calculated to deflect the Judge's attention from the force and substance of the absent respondent's known or likely stance on the matters at issue. Generally, this will require disclosure in the body of the affidavit. The Judge who hears an ex parte application, particularly if urgent and voluminous, is rarely able to study the papers at length and cannot be expected to trawl through annexures in order to find material favouring the absent party.¹⁸

[67] Regarding the exercise of the court's discretion in the case of non-disclosure, the court approved the dictum referred to above in *Schlesinger* but also referred to

¹⁶ Ibid para 47.

¹⁷ Ibid para 48.

¹⁸ Ibid para 49.

*NDPP v Phillips*¹⁹ where it was held that in exercising its discretion, the court must consider the extent of the non-disclosure, the question whether the Judge hearing the *ex parte* application might have been influenced by proper disclosure, the reasons for non-disclosure and the consequences of setting the provisional order aside.²⁰

[68] the respondent argued that although the applicant informed the court that the unregistered bonds were not registered, it failed to draw the court's attention to the fact that the applicant was not entitled to relief based on such bonds. To the contrary, the applicant claimed to be entitled to relief and obtained an order for the enforcement of the unregistered notarial bonds. This was evidently a failure by the applicant to make the necessary disclosure. This resulted in the order in its present form being sought and granted erroneously. I agree with this contention.

[69] After this issue was raised by the respondent in its answering affidavit, the applicant in reply indicated that it would not seek confirmation of the rule *nisi* in respect of the two unregistered bonds. However, having correctly made this concession, the applicant did not have the interim order corrected, and allowed the erroneously sought interim order to stand until the hearing of the return date.

[70] The respondent also submitted that the failure by the applicant to disclose the existence of the previous order was a material non-disclosure which might have influenced the court in granting the order. The argument was that the Judge considering the matter should have been placed in a position to decide whether the previous order was extant, whether the matter was *res judicata*, and whether a new order is justified or necessary under the circumstances.

[71] I have already found that the applicant was obliged to bring a new application for the court's *imprimatur*. That did not relieve the applicant of the duty to make disclosure or the order and the subsequent events. It was common cause that that

¹⁹*Phillips and Others v National Director of Public Prosecutions* [2005] ZACC 15; 2003 (6) SA 447 (SCA) 2003 (2) SACR 41.

²⁰*Ibid* para 52.

the assets which was attached in terms of the court order were voluntarily handed back to the respondent. Whilst this should have been disclosed to the court, I am of the view that such disclosure would in all probability have persuaded the court that the granting of a new order was still necessary.

[72] This non-disclosure may, however, be relevant on a different level. In this regard a distinction must be made between the special and general notarial bond. There was no need for the applicant to bring an application for authority to perfect the special bond; its pledge was already fully established in respect of the specially hypothecated assets. It needed to take possession of the assets, not for purposes of preserving the assets or preventing its dissipation, but for purposes of eventually selling the assets by way of *parate executie*. The interim order prohibited the disposal of the assets pending confirmation of the rule *nisi*. Consequently, there was no need for the applicant to seek an order to take possession of the specially hypothecated assets by way of an ex parte application. It was already pointed out that the applicant failed to make any allegation that the respondent was secreting or disposing of assets which could have justified an ex parte application. In my mind a disclosure of the level of co-operation between the parties in shifting control over the assets would have influenced the court against granting an order on an ex parte basis in respect of the special bond.

[73] The general notarial bond is on a different footing. The purpose of the ex parte application was to obtain authority to take possession of the respondent's assets to perfect its pledge, under circumstances where the general notarial bond did not provide real security.

[74] This is intertwined with the respondent's criticism of the applicant's assertion that due to possible liquidation proceedings against the respondent, the matter was urgent.

[75] I am of the view that a court should be mindful of the fact that an applicant in the position of the applicant *in casu* (in relation to the general notarial bond) is in a most precarious situation. The winding-up of a company commences at the exact time when the application for winding-up was presented to the court (i.e., to the

registrar when it was issued).²¹ A voluntary winding-up commences when the special resolution for the winding up of the company is registered by the CIPC.²²

[76] A creditor in the position of the applicant usually has no knowledge of the actions of other creditors of the debtor and of intended liquidation applications. The same applies to voluntary liquidations. The result is that an applicant who gives notice of an application for an order authorizing the perfecting of a notarial bond runs the risk that another unsecured creditor, upon learning of such application, may present a liquidation application before the hearing, and regardless of when the liquidation order is granted, effectively prevent the applicant from perfecting its security before the commencement of the winding up. The same applies to a voluntary winding-up.

[77] This does not mean that all is lost; the holder of a general notarial bond still has some preference in the liquidation,²³ but it would not be a secured creditor.

[78] The usual circumstances surrounding an application for permission to perfecting a security would often constrain an applicant to make rather generalised allegations about the possibility of the debtor being liquidated. Hardly ever would such an applicant have any concrete evidence of a looming liquidation application by another creditor. The best it can usually do is to set out the financial position of the debtor as far as it is known to it, and if the information points to the debtor being unable to pay its debts in the normal course of business, hypothesise that the debtor's liquidation or sequestration is imminent.

[79] In this regard it is of importance that a company which continues to trade and incur debt whilst unable to pay its debts in the normal course of business may well

²¹ Section 348 of the Companies Act No 61 of 1973 provides:

“348 Commencement of winding-up by Court

“A winding-up of a company by the Court shall be deemed to commence at the time of the presentation to the Court of the application of for the winding-up,”; See also *Development Bank of Southern Africa Ltd v Van Rensburg and Others* NNO 2002 (5) SA 425 (SCA)

²² Section 352 of the Companies Act, note 21 above.

²³ Section 102 of the Insolvency Act 24 of 1936.

be carrying on its business recklessly with the result that anyone who took part in the management of the company in his fashion may be held personally liable.²⁴ Under such circumstances the company may well be obliged to place itself in liquidation on an urgent basis.

[80] An applicant can obviously not rely on pure conjecture or an *ipse dixit*. A creditor perfecting its security, must disclose all information at its disposal relevant to the debtor's financial position and financial behaviour (such as its pattern of compliance or non-compliance with its financial obligations). There should at least be evidence that the debtor is trading in insolvent circumstances or cannot pay its debts in the normal course, and that there is a risk or reasonable apprehension of liquidation. However, setting the evidentiary bar too high may well result in an applicant not obtaining the redress it is entitled to.

[81] A respondent against whom an order is granted *ex parte* is not entirely deprived of the benefit of *audi alteram partem*. *Audi alteram partem* can be attained in ways different ways than prior notice of an application. In *National Director of Public Prosecutions and Another v Mohamed NO and Others*²⁵ the Constitutional Court held that the common law has recognised both the great importance of the *audi* rule as well as the need for flexibility, in circumstances where a rigid application of the rule would defeat the very rights sought to be enforced or protected. In such circumstances, the court issues a rule *nisi* calling on the interested parties to appear in court on a certain fixed date to advance reasons why the rule should not be made final, and at the same time orders that the rule *nisi* should operate immediately as a temporary order, pending the return date.²⁶ The court also held that the flexibility and utility of the rule *nisi* acting at the same time as an interim order, has been recognised by the courts and it has been applied to modern problems in commercial suits.²⁷

²⁴ Section 424 of the Companies Act above n 21.

²⁵ *National Director of Public Prosecutions and Another v Mohamed NO and Others* [2003] ZACC 4; BCLR 476 (4) SA 1 (CC).

²⁶ *National Director of Public Prosecutions* above n 25 at para 28.

²⁷ *Id* at para 29.

[82] Additionally, the respondent against whom an order has been granted ex parte has the right under Rule 6 of the Uniform Rules of Court to set the matter down for reconsideration and/or anticipate the return date with 24 hours' notice to the applicant.

[83] In the present matter the applicant demonstrated that the respondent is indebted to it in the amount of approximately R21 million, which the respondent failed to pay despite demand. As such it was justified in alleging that the respondent unable to pay its debts.

[84] However, despite it being clear that the respondent was unable to pay its debts to the applicant the applicant, for obvious reasons, did not intend liquidating the respondent at that time. It wanted to perfect its security instead.

[85] As already referred to above, the applicant made the highly dubious, and unsubstantiated, assertion that the other creditors intended to liquidate the respondent. The respondent submitted that the fact that it has not been liquidated, despite a number of years having lapsed since the granting of the interim order, confirms the lack of veracity of these allegations made by the applicant. If there were sufficient evidence substantiating a risk of liquidation, this fact would not necessarily detract from the existence of the risk at the relevant time. However, in the present matter, the applicant has made dubious and unsubstantiated allegations that liquidation was imminent.

[86] In this regard, I hold that the applicant's allegation of an imminent liquidation was a completely unsubstantiated *ipse dixit*. It was also misleading, in that the applicant attempted to create the impression that it was relying on known information, whilst there is no evidence that it actually had such information.

[87] Consequently, while the applicant was generally entitled to an order authorising it to deal with the specially hypothecated property in terms of the special notarial bond, it was not entitled to such an order on an ex parte basis.

[88] I also hold that in respect of the general bond the applicant did not meet the threshold for demonstrating that its right may be irreparably frustrated by an imminent liquidation of the respondent, which would justify the granting of an ex parte order.

[89] Furthermore, I hold that the applicant's non-disclosures were of such a material nature that it might have influenced the court not to grant an order on an ex parte basis.

Discretion

[90] The above conclusions present the obvious problem as to the correct outcome and order to be granted by me, in the exercise of a judicial discretion.

[91] The fact that the applicant is in principle entitled to the relief it is seeking is an obvious source of concern. However, it is trite law that the fact that the applicant is entitled to the main relief, does not stand in the way of a court discharging an ex parte order due to the failure by the applicant to comply with its duty of disclosure.

[92] A factor which I regard as fundamentally important is that the applicant was not in the first place entitled to an order on an ex parte basis, based on the case it presented.

[93] The failure by the applicant to draw the court's attention to the provisions of the Deeds Registries Act and by incorrectly asserting that it was entitled to enforce the unregistered notarial bonds was a serious deviation from the expected standard of disclosure. As stated by Cachalia JA in the authority referred to above, there was indeed a positive duty on the applicant to draw the court's attention to the fact that the respondent had a defence in respect of these bonds.

[94] The failure to disclose the fact that the parties previously came to an arrangement regarding the assets and that the applicant returned the assets to the respondent after the previous order was granted was a serious non-disclosure which would have raised considerable doubt as to the wisdom of making an ex parte order,

to such an extent that it is probable that the order would have been refused, and the applicant would have been compelled to bring its application on notice.

[95] I take into consideration that the applicant's security in terms of the special notarial bond is extant in terms of the Security by Means of Movables Act, 1993, regardless of the existence of any order herein. Furthermore, in respect of the general bond, the applicant enjoys the preference it has in terms of section 102 of the Insolvency Act, also regardless of any order.

[96] Our law does not permit *parate executie* in respect of immovable property. A judgment must first be obtained and then executed, subject to all the safeguards contained in the Rules of Court. On the other hand, it is settled law that *parate executie* in respect of movable assets by agreement is in principle valid (the exception being where the terms of the agreement are *contra bonos mores*), subject to the court's *imprimatur*, which is rightly described as a "constitutional imperative".²⁸ The current state of the law is that a creditor can obtain an order authorising the perfecting of the security (i.e. taking possession) in terms of a general notarial bond (and for that matter any other instrument of security in respect of movable property), and an order authorising *parate executie*, without first obtaining a judgment.

[97] This process is vulnerable to the abuse of the process of court. In this regard, the supervisory role of the courts is of the utmost importance in preventing abuses. A court must be jealous of its role in this regard and any attempt by a litigant to undermine the court's effective supervision over this process should not be countenanced.

[98] In the present matter, the applicant effectively undermined the court's function of supervision by approaching the court *ex parte* without making out a case for an *ex parte* hearing, effectively misled the court to grant an order based on the unregistered bonds it was not entitled to and failed to disclose facts which in all probability have led to a refusal of the order on an *ex parte* basis.

²⁸ See the authorities referred to above.

[99] Having regard to the factors to be taken into consideration in the exercise of my discretion as set out in *Phillips*, referred to above, I find no reason to exercise my discretion in favour of the applicant. To the contrary, there are compelling reasons why the interim order should be discharged in its entirety.

The application to strike out

[100] The respondent abandoned the application to strike out at the hearing of the matter. Consequently, it ought to be dismissed with costs.

Costs

[101] Due to the applicant's conduct in this matter and the fact that the interim order will be discharged, the applicant is in principle liable for the costs of this application. However, the costs for which applicant will be liable ought to be limited to an extent.

[102] The respondent raised certain defences in its answering affidavit which evidently did not have merit and was abandoned. This led to unnecessary costs being incurred in replying thereto in the replying affidavit and preparation for argument thereon. In this regard, in the exercise of my discretion regarding costs, 25% of the respondent's costs shall be disallowed.

[103] Costs were reserved on a number of occasions in the course of this matter. Such costs shall be costs in the application.

Order

In the circumstances the following order is granted:

- (5) The respondent's application to strike out, dated 8 January 2024, is dismissed, with costs.
- (6) The interim order granted on 17 May 2022 is discharged in its entirety;
- (7) The costs reserved in the course of this matter shall be costs in the application;
- (8) The applicant is ordered to pay 75% of the respondent's costs of the application on Scale B.

DAWID MARAIS
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:	Adv AJ Reyneke instructed by BDP Attorneys
For the Respondent:	Adv AL Roeloffze instructed by Couzyns Incorporated
Date of Hearing:	27 November 2024
Date of Judgment:	03 March 2025