



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

Case number: 1819/2020

In the matter between:

ANNA JOHANNA MEYER

Plaintiff

and

NICOLAS LESLIE MEYER

First defendant

NICOLAS LESLIE MEYER N.O.

Second defendant

THE REGISTRAR OF DEEDS

Third defendant

THE MASTER OF THE HIGH COURT

Fourth defendant

**THE COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION**

Fifth defendant

JUDGMENT DELIVERED ON 23 JUNE 2025

VAN ZYL AJ:

Introduction

1. The psalmist David had occasion to muse on the value of goodwill between brothers: “...*how good and how pleasant it is for brethren to dwell together in unity! It is like the precious ointment upon the head, that ran down upon the beard, ... to the skirts of his garment; ...*”¹ Sadly, the present case has nothing good or pleasant about it. It entails a bitter dispute between a mother and one of her sons, and there is discord amongst the sons.
2. The plaintiff, Mrs Meyer, and her then husband, Mr Johan Meyer,² had five sons, namely Nico, Johan Jnr, Anton, Marius, and Henk.³ This action involves a dispute between Mrs Meyer and her eldest son, Nico. She claims the following:
 - 2.1. By way of claim A, a declaration that two agreements for the sale of certain immovable properties are void. She therefore claims the setting aside of the agreements and the transfers that followed, and the setting aside of the dissolution and winding-up of a company named Rotsvas Ondernemings (Pty) Ltd (“Rotsvas”).⁴
 - 2.2. In the alternative, by way of claim B, Mrs Meyer seeks a statement and debatement of account on the basis that Nico stood in a fiduciary relationship towards her, and is obliged to render an account. She seeks payment of what is due upon debatement, and/or restitution of the two immovable properties that she claims Nico appropriated.

¹ Psalm 133 from the Bible (King James version).

² Mr and Mrs Meyer divorced in 1986, and Mr Meyer has since passed away.

³ I shall, for the sake of convenience, refer to the sons by their first names.

⁴ Registration number 1969/010570/07. The company’s name was later changed to AJM Ondernemings (Pty) Ltd.

3. The properties in question are the dwelling house situated at 2[...] F[...] Street, Paarl (Remainder of Erf 9[...], Paarl), and the residential block of flats situated at 3[...] M[...] Street, Paarl (Erf 1[...], Paarl). It is common cause that these properties were previously owned by Mrs Meyer and Rotsvas respectively. It is also common cause that the house was transferred to and registered in the name of Nico's family trust, the Courtrai Trust,⁵ on 23 October 2015. The block of flats was transferred to and registered in the name of Nico's business trust, the Rhemco Trust,⁶ on 16 November 2015.
4. These transfers occurred pursuant to an agreement of sale entered into between Mrs Meyer and the Courtrai Trust on 31 August 2015, in terms of which Mrs Meyer sold the Courtrai property to the Courtrai Trust for the sum of R1.8 million, and an agreement of sale concluded between Rotsvas and the Rhemco Trust on 31 August 2015, in terms of which Rotsvas sold the block of flats to the Rhemco Trust for the sum of R3 million.
5. As indicated, Mrs Meyer's main claim in respect of these properties (claim A) is for a declaration that the *"agreement underpinning the sale and transfer"* of each property be declared void, and for the re-transfer of the properties to herself and to Rotsvas. Her cause of action for this relief is essentially based on the alleged fraudulent misrepresentations by Nico and the late Mr Jacques Francois de Villiers ("De Villiers") to the effect that the conclusion of the agreements were in Mrs Meyer's best interest. Mrs Meyer purported to cancel the agreements of sale by means of the particulars of claim as a consequence of these fraudulent misrepresentations.
6. Nico denies having made these misrepresentations. He further avers that he and his wife, Sheila, assisted Mrs Meyer in the management of the flats and in other business affairs because they loved her, but did so under her control and supervision, and with her authority. At the trial Nico testified that there was an agreement between him and Mrs Meyer to the effect that he (being in control of the two trusts) would pay the purchase prices in respect of the

⁵ IT001947/2015.

⁶ IT001945/2015.

properties in instalments (in particular in relation to the dwelling house) so as to provide Mrs Meyer with a monthly income.

7. The latter defence (that it was agreed between him and his mother that payment would be in instalments rather than on registration of transfer) was raised for the first time in an affidavit in an interlocutory application instituted prior to the hearing of the action at Mrs Meyer's behest. The defence was however dealt with in detail in the course of oral evidence at the trial. Counsel for Mrs Meyer complained that it had not been pleaded but argued that, in any event, it holds no water as it violates the parol evidence rule.⁷
8. I am mindful, in relation this unpleaded defence, that the Supreme Court of Appeal ("SCA") held as follows in *Minister of Safety and Security v Slabbert*:⁸

"A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for a plaintiff to plead a particular case and seek to establish a different case at the trial. It is equally not permissible for the trial court to have recourse to issues falling outside the pleadings when deciding a case."

9. The SCA qualified⁹ this statement by pointing out that:

"[12] There are, however, circumstances in which a party may be allowed to rely on an issue which was not covered by the pleadings. This occurs where the issue in question has been canvassed fully by both sides at the trial. In South British Insurance Co Ltd v Unicorn Shipping Lines (Pty) Ltd, this court said:

'However, the absence of such an averment in the pleadings would not necessarily be fatal if the point was fully canvassed in evidence. This means

⁷ With reference to *KPMG Chartered Accountants v Securefin Ltd* 2009 (4) SA 399 (SCA) para 39. See also *University of Johannesburg v Auckland Park Theological Seminary and another* 2021 (6) SA 1 (CC) paras 88-92.

⁸ [2010] 2 All SA 474 (SCA) para 11.

⁹ *Minister of Safety and Security v Slabbert supra* para 12.

fully canvassed by both sides in the sense that the Court was expected to pronounce upon it as an issue'."

10. In the present case, the defence was squarely put forward in the interlocutory application, and dealt with at that juncture as well as in evidence at the trial. It was fully argued. As such, it became an issue between the parties upon which they expect this Court to pronounce.
11. The hearing of the evidence was emotionally fraught. Mrs Meyer is 86 years old, and the emotional toll of the case, her failing memory, and her despair in the midst of the situation was clear when she testified. She testified at length, and was not a good witness. Her counsel nevertheless argued that key parts of the factual narrative brooked no real dispute, and that those facts demonstrate that Mrs Meyer is entitled to the relief she seeks, whether in relation to claim A or claim B.
12. I proceed to discuss these claims in the context of the evidence, as well as in the light of a special plea of prescription raised by Nico.

The plaintiff's case as it appears from the evidence furnished on behalf of Mrs Meyer

13. There were various discrepancies throughout the evidence between what had been stated in the interlocutory application and the oral evidence eventually led, both in relation to Mrs Meyer's and Nico's evidence. The oral evidence itself, especially Mrs Meyer's, teetered between various different versions. Her *locus standi* in respect of the claim for the retransfer of the block of flats to Rotsvas (eventually known as AJM Ondernemings) was not clarified. In the leading of evidence and in argument, her counsel placed emphasis on particular events over the years leading up to the sale of the properties to bolster her allegations of fraud. A picture of the situation giving rise to these proceedings nevertheless presented itself upon consideration of the evidence in totality. It seems to me that in the present case a bird's eye view is the better approach, because it is easy to find fault with particular and essentially

innocuous past events when looking at them through glasses focused on finding fraud.

14. The broader background to this matter is common cause. Mr Meyer Snr was initially the sole shareholder in Rotsvas, holding 101 shares. In 1977 Rotsvas completed the construction of the flats.
15. It appears from the founding affidavit in the interlocutory application to which I have referred earlier, that Mr Meyer Snr transferred 50 of his shares to his sons at some point, with each son receiving 10 shares. On 28 August 1986, Mr and Mr Meyer were divorced. In terms of the divorce settlement Mr Meyer's 51 shares in Rotsvas were transferred to Mrs Meyer. Their sons retained their shares. It was also agreed that Rotsvas would not sell the flats to third parties ("*buitestaanders*") prior to Henk, their youngest son, turning 22 years of age. According to Mrs Meyer, the intention was that the shareholding in Rotsvas would eventually be bequeathed to their sons in equal shares.
16. Some years later Mrs Meyer purchased her sons' shares for R20 000.00 per share. She testified that she did this to assist them financially. Counsel argues that this made sense because they were to inherit the flats in any event. Mrs Meyer was thenceforth the sole shareholder in Rotsvas.
17. On 27 September 1999 Mrs Meyer caused the Annette Meyer Family Trust to be registered. She and her five sons were the trustees of the family trust, as well as the beneficiaries. The initial letters of authority were issued in September 1999. Johan Jnr resigned as a trustee and beneficiary of the family trust in June 2003 due to a disagreement within the family, primarily between him and Nico. Shortly thereafter, also in June 2003, Nico, Anton, and Henk resigned as trustees, but for administrative rather than emotional reasons. Marius remained on as a trustee.
18. There was much argument from Mrs Meyer's side about Nico's alleged attempts over the years to get rid of Marius as a trustee – the argument was that Nico had planned taking control of Mrs Meyer's affairs long before

concluding the property transactions, because dealing with Mrs Meyer instead of with Marius would be easier for Nico. Mrs Meyer's concession in relation to when the possibility of the sale of the properties first arose (I refer to her evidence below), however, took the sting out of this argument.

19. There was some dispute during the evidence about who the owner of the Rotsvas shares was at the times relevant to this action. Counsel for Mrs Meyer suggested to Nico in cross-examination that the shares had been held by the Annette Meyer Family Trust, on the basis of the Trust's financial statements for the year ended 28 February 2010, which reflected that the Trust held shares in Rotsvas. Mrs Meyer herself however testified that she was under the impression that she had been the owner of the shares in Rotsvas.
20. Nico was emphatic that the shares in Rotsvas had always been held by Mrs Meyer, and never by the Annette Meyer Family Trust. The financial statements of the Trust to which counsel referred was, so he testified, merely a draft (a *"mock up"*) which had been prepared in order to consider *"hoe die state sal lyk as Rotsvas Ondernemings binne in die Annette Meyer Familie Trust is"* [*"how the statements would look if Rotsvas Ondernemings was in the Annette Meyer Family Trust"*]. Nico had searched for documents, at Mrs Meyer's request, to confirm that she was (and had always been) the shareholder of Rotsvas. He could not find any document that proved the contrary.
21. In February 2011 Marius emigrated to Canada, and on 6 May 2011 Mr Meyer passed away. It was about this time that Nico took over the management of the flats. He also started assisting Mrs Meyer in other aspects, fulfilling the role that Marius used to play. This was the start of what Mrs Meyer described as Nico's taking control of her financial and business affairs – to her detriment and to his benefit.
22. In April 2013 Nico drafted a letter in Mrs Meyer's name on behalf of Rotsvas. In the letter he asked the company's auditors, Jackson Neethling Chartered

Accountants (“Jackson Neethling”) to hand him their file on Rotsvas. Anton testified that he remembers fetching the file from Jackson Neethling and giving it to Nico. Counsel for Mrs Meyer argues that, while this letter is on the face of it innocuous, it must be seen in the bigger context of what Mrs Meyer regards as Nico’s efforts to control her business affairs by, amongst other actions, making himself the custodian of any relevant documentation. Again, given Mrs Meyer’s evidence ultimately in respect of how the sale of the properties came about, the Rotsvas argument does not take Mrs Meyer’s case much further.

23. I have already mentioned that the two properties were sold and transferred to Nico’s trusts over the period August 2015 to November 2015. According to Nico (and subsequently conceded by Mrs Meyer), Nico and his wife Sheila informed Mrs Meyer that they were considering emigrating to New Zealand around the beginning of 2015. As will become clear from a discussion of the evidence, Mrs Meyer initially testified that their plans were revealed to her only after the conclusion of the property transactions, because Nico wanted to be sure that he had control of the properties prior to leaving the country.
24. I point out at this juncture that it was a recurring theme in Mrs Meyer’s evidence that, over the years, she had signed documents placed before her by Nico without applying her mind to the contents of the document in question. Mrs Meyer’s testimony was not a picture of clarity, but she was very adamant about this. Whether her evidence in this respect is to be accepted will be considered later. I gained the impression while Mrs Meyer testified that she was rather too adamant about the abdication of her responsibilities when it came to the signing of documents.¹⁰
25. Be that as it may, in her examination-in-chief Mrs Meyer testified in relation to the dwelling house and the block of flats that she had never intended to sell them to Nico. She did not know that what she had signed on 31 August 2015 were in fact agreements of sale. When her counsel asked her whether she

remembered how and where the transactions were concluded, she replied: *"Ek kan niks daarvan onthou nie"* [*"I cannot remember anything about it"*].¹¹

26. Mrs Meyer's inability to recall – or her complete absence of knowledge of - the salient details surrounding her conclusion of the agreements became a second refrain throughout her evidence.
27. Mrs Meyer was asked during her examination-in-chief whether she was able to recall the transactions and, if so, to explain how it came about that she had signed the agreements of sale. Her reply was that she had no knowledge thereof, and that she had not been interested at the time (whether in the nature of the transactions or in the documents that had been presented to her for signature), because Nico was in complete control of her and of everything that she had owned. Whatever Nico requested her to do, she did: "... as *Nico sou vir my gesê het gaan spring in die see in dan sou ek seker dit ook gedoen het*" [*"... should Nico have told me to go jump in the sea I probably would have done it"*].
28. In the interlocutory application Mrs Meyer alleged that on 31 August 2015 she was presented with agreements of sale in respect of the house and the block of flats at the offices of Abrahams & Kiewitz Attorneys. It is common cause that there were various drafts of the agreements prior to signature of the final ones. She signed the agreements, but did not know what she was signing (and was not interested in knowing because she trusted Nico). Her version during her evidence-in-chief and in the interlocutory application was that she only established the correct facts (being that she had been induced by Nico's fraudulent conduct to sell the properties to him) in November 2019 after receiving a telephone call from the Swellendam Municipality in relation to the transfer of another property which is no longer relevant to these proceedings.¹²
29. There is, at the outset, a contradiction between this version and the

¹¹ The translation of the Afrikaans into English is mine throughout this judgment.

¹² The so-called Malgas property.

averments pleaded in Mrs Meyer's particulars of claim. Her cause of action in the pleadings is based on fraud, and the crux of her case as pleaded is that Nico and De Villiers had represented to her "*that the transactions were in the best interest of the Plaintiff*". The pleaded version is therefore that Mrs Meyer knew that she had concluded sale agreements in respect of the properties, selling them to Nico's trusts. She concluded these transactions because she believed, based on the misrepresentations of Nico and De Villiers, that the transactions would be in her best interest. Her oral version of total ignorance in relation to the nature of transactions is therefore at loggerheads with her pleaded case.

30. In cross-examination Mrs Meyer initially confirmed the version that she had been unaware thereof that she had signed agreements of sale in respect of the properties. She stated further that it was only after Nico had procured her signatures on the agreement and the documents necessary to effect registration of transfer, that she was informed of Nico's and Sheila's decision to emigrate to New Zealand. She testified that Nico, having fraudulently procured her signatures on the sale and transfer documentation, then knew that he had secured his position ("*Hy weet hy is nou safe*" [*He knows he is sale now*]). He had accomplished his goal of divesting Mrs Meyer of her assets, at less than market value, so that he and his family could emigrate to New Zealand. This version therefore entailed that Nico and Sheila disclosed to Mrs Meyer that they intended to emigrate to New Zealand only after Nico had stripped Mrs Meyer of her assets: "*Hy het my nou absoluut gestroop van alles wat ek het*" [*He now absolutely stripped me of everything I have*].
31. This evidence glaringly contradicted Mrs Meyer's evidence the interlocutory application, namely that Nico had put pressure on her and manipulated her to sell the block of flats to him after he had received a business opportunity from Mr Robbie Ross in New Zealand, which caused him to consider emigrating to New Zealand. In other words, Mrs Meyer had known about Nico's plans to relocate to New Zealand prior to selling the properties to him.
32. When this contradiction was put to Mrs Meyer in cross-examination, she

changed her evidence, reverting to a semblance of the version in the interlocutory application. She told the Court that Nico used the New Zealand opportunity to pressurise her into selling the block of flats to him, by threatening to accept the offer from Mr Ross and to emigrate to New Zealand in the event that Mrs Meyer should refuse to do so. On this new version Mrs Meyer, in her own mind, questioned Nico's financial ability to buy the house and the block of flats from her: "... *in die eerste plek in het ek beginne dink nou maar hy het nie geld nie, hy lewe uit my bankrekening uit, waar gaan die geld vandaan af kom wat hy vir my wil betaal ... vir my huis en vir die blok woonstelle ...*" ["... *in the first instance I started thinking but he does not have money, he lives out of my bank account, where is the money going to come from that he wants to pay to me ... for my house and for the block of flats..*"].

33. Mrs Meyer testified that upon being told by Nico that he had received an offer from Mr Ross, she telephoned Mr Ross to confirm this information. Mr Ross was taken aback by her call, and denied to her that he had made any offer to Nico. Mrs Meyer testified that, having established that the New Zealand job offer was an empty threat, she did not discuss the matter any further, and carried on with her life. This evidence yet again contradicted her version in the interlocutory application, where she had stated: "*I do not know whether the offer of work in New Zealand was real*".
34. Mrs Meyer eventually conceded in cross-examination that she was upset by Nico and Sheila's plans to emigrate to New Zealand, and that it was she who persuaded them to stay in South Africa on the basis that she would sell the house as well as the block of flats to Nico. Nico testified that Mrs Meyer had told him that it was not necessary for him to emigrate to New Zealand ("*...dis nie my familie nie ...*" ["... *it's not my family ...*"]), and she needed him here in Paarl.
35. I return to Mrs Meyer's evidence to the effect that she did not know that she had signed agreements of sale in respect of the properties. As indicated, she initially testified that she had accompanied Nico to the offices of Abrahams & Kiewitz Attorneys to sign documents, and implied that she did not know what

these documents were, or what the purpose of the visit was. She explained her ignorance on the basis that Nico had a very strong influence (*"n geweldige invloed"*) on her, and she simply did whatever he told her to do.

36. I agree with the submission made by Nico's counsel that this evidence was manifestly untruthful. Mrs Meyer was clearly an intelligent person with years of business experience. She was in control of her personal and business affairs for many years. On her version, her relationship with Nico was, at the time of the sales, very good. It is highly improbable that the reason for the visit to Abrahams & Kiewitz, and the nature of the documents that she was about to sign, would not have been discussed between her and Nico prior to the visit. It is likewise highly improbable that the attorney, Mr Kiewitz, would not have explained the nature of the documents to Mrs Meyer prior to signature thereof.
37. That her professed ignorance cannot be true is illustrated by the fact that, on 25 May 2016, Mrs Meyer deposed to an affidavit entitled *"Confirmatory Affidavit"*, in which she explained that she had instructed attorneys Abrahams & Kiewitz *"to deal with the two property transactions at issue"*. Her counsel drew her attention to her statement in the affidavit that *"Deeds of sale and transfers were then effected"* in respect of both properties, and that the purchase prices were R1.8 million and R3 million respectively. To this she replied: *"Ja, ek sien dit. Ek weet niks van hierdie goed nie"* [*"Yes, I see it. I do not know anything about these things"*].
38. Mrs Meyer initially persisted in cross-examination with her version that she did not know why she had to sign the confirmatory affidavit. She later changed her evidence in relation to the reason why she did not know what she was signing, again blaming Nico and the absolute trust that she had in him to do whatever he asked her to do. This version is not supported by the surrounding evidence in relation to the confirmatory affidavit. Irrespective of the untenability and improbability of Mrs Meyer's version, she had made notes and corrected spelling errors on the first draft of the confirmatory affidavit. She conceded that the person who gave her the final version to sign at the offices of Abrahams & Kiewitz told her that it was an affidavit. She therefore

knew that it was an affidavit, and what its purpose was. She also conceded that she had had ample time to read, consider and sign the affidavit. This is confirmed by the evidence of Mr Kiewitz. That she knew what the situation was in which she found herself is further confirmed by the evidence of her sons Marius and Anton, to which I shall briefly refer below. The untenability of her evidence in this regard was apparent from the following passage of her evidence:

"Ja, u het die eerste een gelees. Trouens u het veranderinge aangebring. U het spelfoute reggemaak op die weergawe?"

Ja, maar ek het dit nie intens gelees om te weet waarom dit regtig gaan nie ... Ek het dit vlugtig gelees en die spelfoute uitgekry, maar om die waarheid te sê dit was seker my eie agterlosigheid dat ek nou beland het waar ek is, omdat ek lees nie graag nie. Dit is vir my 'n pyn, en Nico ook, sy vrou moet alles vir hom voorlees. Hy lees niks en ongelukkig het hy dit (by) my geërf."

["Yes, you read the first one. In fact, you made changes. You corrected spelling errors on the version?"

"Yes, but I did not read it intensely to know what it was really about ... I read it quickly and took out the spelling errors, but to tell the truth it was perhaps my own negligence that I am where I am, because I do not like to read. It is a pain to me, and Nico also, his wife has to read everything to him. Hy does not read anything and unfortunately he inherited it from me."]

39. Mrs Meyer eventually had to concede that she was unable to dispute Nico's version, namely that she did know what the nature of the documents was that she would have had to sign (and did sign) at the offices of Abrahams & Kiewitz, and that she did so willingly. One of the aspects, for example, in the agreement of sale for the house that Mrs Meyer emphasized in attempting to show that the transactions were to her detriment, was that the agreement contained a clause affording her a lifelong *habitatio*. This was never registered against the title deed of the property. Mrs Meyer conceded in cross-examination that the issue of a lifelong *habitatio* in her favour over the house had been discussed with her. Mr Kiewitz (whose evidence will be referred to further below) testified that the *habitatio* was abandoned in the

course of discussion prior to the signature of the agreement, because it would be too expensive to register it. The reference to the *habitatio* remained in the final version of the agreement as the result of a drafting mistake. It was in any event quite apparent from Mrs Meyer's evidence overall that, at the time, she knew that she had sold the properties to Nico.

40. It is clear, further, that Mrs Meyer had remorse about the transactions because she had come to the insight that her actions in concluding them were not fair to her other four sons. In fact, the evidence shows that her other sons were extremely dissatisfied with her decision to sell the properties to Nico, and that it caused a serious rift (*"n verskriklike verwydering"*) between her and her other sons. Mrs Meyer effectively conceded that she was to blame for this state of affairs, because it had been her decision to sell the properties to Nico to persuade him not to emigrate to New Zealand.
41. At the end of her cross-examination, Mrs Meyer admitted that she blamed herself for having made a huge mistake in selling the properties to Nico: *"Ek het die grootste fout van my lewe gemaak om te gedoen het wat ek gedoen het"* [*"I made the biggest mistake of my life in doing what I did"*]. She conceded that her decision caused a serious rift between herself, on the one hand, and her other four sons, on the other.
42. When asked exactly when her other sons became unhappy about the transactions, she testified that this occurred between the period of March 2015 and April 2016. They remained angry at her over the ensuing years, and the internal family relationships were strained. Eventually, when she was hospitalised four years later in 2019, seriously ill, her other sons were prepared to reconcile with her, but only on condition that the transactions be reversed.
43. Mrs Meyer's son Anton conceded in cross-examination that, during December 2019, his mother was regretting her decision to sell the properties to Nico: *"My ma het bedenkinge gekry of sy die regte ding gedoen het"* [*"My mother had second thoughts as to whether she had done the right thing"*].

44. Anton testified that after Mrs Meyer had been discharged from hospital in December 2019, she requested a meeting with Anton and Henk. They met at a restaurant, the "*Laborie Wynhuis*". During this meeting Mrs Meyer disclosed all the facts leading up to the transactions: "*Ons het daar om 'n tafel gaan sit en Ma het begin uitpak*" [*"We sat around a table and Mom starting unpacking"*].
45. At some stage during this conversation, Mrs Meyer apologised to Anton and Henk for what she had done. When this occurred, Anton decided that all was forgiven, and that he would assist Mrs Meyer in putting right what she had done wrong: "*Ma het gevra sy't ons hulp nodig om alles wat sy gedoen het te probeer regstel*" [*"Mom asked she needed our help to rectify everything she had done"*]. When pressed for details as to why (or in respect of what) Mrs Meyer had apologised, Anton replied: "*Die dokumente wat sy geteken het, die blok woonstelle wat sy verkoop het. Dit het grotendeels daarvoor gegaan*" [*"The documents she had signed, the block of flats that she had sold. It was mainly about this"*].
46. Anton's evidence in this respect aligns with Mrs Meyer's evidence in cross-examination, namely that the sale of the properties was the biggest mistake in her life, and that her other sons criticized her for having concluded the transactions, thus favouring Nico. The position is further confirmed by the evidence that on 11 April 2016 Marius wrote an e-mail to Mr van Wyk, in which he requested: "*Kan jy die proses begin om hierdie transaksie uit te daag en om te keer, sodat registrasie van die eiendom terug kom by sy regmatige eienaar*"? [*"Can you start the process of challenging and reversing this transaction, so that registration of the property can revert to its rightful owner?"*].
47. This passage from Marius's email was put to Mrs Meyer as follows: "... *die brief bevestig dat die verkoop van die eiendomme iets is wat plaasgevind het by ooreenkoms tussen u en Nico en dit het u ander seuns ongelukkig gemaak*".

48. Mrs Meyer responded: "Yes."
49. This, it seems to me, was in truth the origin of this action. Mrs Meyer regretted her decision to sell the properties to Nico, cutting out her other sons. She was under pressure from them to make things right as far as they were concerned. Her evidence to the effect that she did not know what she was signing, as she was under Nico's influence, was a way in which to overcome her guilt by attempting to reverse the transactions and everything that followed therefrom. This evidence, however, simply does not ring true.

The case that appeared from the evidence furnished on Nico's behalf

50. Nico's evidence was considerably more consistent than that of Mrs Meyer. He testified that he had assisted his mother over the years (especially since Marius had emigrated) because he loved her, and wanted to help her. The picture he painted of her was nevertheless that of a strong-minded woman who was adept at running her own affairs.
51. He testified that when he informed Mrs Meyer of his intention to emigrate to New Zealand, she became very emotional and upset, because she did not want him and Sheila to emigrate, effectively leaving her on her own in South Africa. Marius had by that time already emigrated. Nico wanted to emigrate because he had received what seemed to be a very favourable work opportunity from Mr Robbie Ross, and he was struggling in South Africa. Were he to remain in South Africa, he would have to restructure his own affairs.
52. This issue was discussed between them over a period of approximately four months. Mrs Meyer eventually persuaded Nico not to take up the business opportunity, on the basis that she would sell the house and the block of flats to him. The plan to sell the properties to him therefore originated with Mrs Meyer herself. The house would be renovated to provide accommodation for Mrs Meyer as well as for Nico and his family. There was accordingly an

agreement between Nico and Mrs Meyer about the sale of the properties to him (or to the trusts controlled by him). Nico's evidence in this respect was not challenged in cross-examination. Sheila corroborated Nico's evidence with regard to the agreement between Mrs Meyer, on the one hand, and Nico and Sheila, on the other, that Nico would not accept the business offer from Mr Ross in New Zealand, and that there would be a restructuring of their affairs on the basis that Mrs Meyer would sell the properties to Nico.

53. It is common cause that during April 2015, and on Nico's instruction, valuer Franci Malan prepared a sworn value for the block of flats which was considerably higher than what it was eventually sold for. Nico explained, however, that Mrs Meyer was of the view that the purchase price suggested by the valuation was too high. They eventually agreed on a price just below the municipal value at the time in respect of each of the properties.
54. Nico testified that he had accompanied Mrs Meyer at least on three occasions to the offices of Abrahams & Kiewitz, in order to provide instructions to Mr Kiewitz with regard to the drafting of the relevant documentation for the transactions, and for signature of the agreements. He stated that Mrs Meyer knew exactly what the purpose of these visits were, and what the documents were that she had signed. This evidence was also not challenged in cross-examination.
55. Mr Kiewitz testified that he had attended an initial consultation with De Villiers, Nico, and Mrs Meyer to discuss the transactions and to obtain formal instructions from Mrs Meyer in respect thereof. A further consultation was held in order to prepare and sign the agreements of sale. This was a drawn-out process (*"Dit was eintlik 'n marathon sessie"*) that lasted three to four hours. The second consultation was attended by the same people, and was an *"interactive "* conversation between Mr Kiewitz on the one hand, and De Villiers, Nico, and Mrs Meyer on the other. Mrs Meyer actively participated in the conversation.
56. I pause to point out that Mrs Meyer testified that she had accompanied her

son, Marius, to consult with attorney Anvil van Wyk on 31 March 2016, because Marius was concerned about Mrs Meyer's conduct in selling the properties to Nico. During this consultation, Mr van Wyk pointed out various discrepancies in respect of both transactions. Mr van Wyk subsequently prepared a memorandum in which he advised that the transactions should be investigated. To this end, Mr van Wyk sent a letter of demand to Abrahams & Kiewitz on 18 April 2016, seeking information regarding the transactions.

57. Mr Kiewitz testified that the confirmatory affidavit was the product of a joint effort between Mr Kiewitz and attorney Aubrey Magerman after receipt of the letter of demand. They obtained the instructions to draft the affidavit from Mrs Meyer. Mr Kiewitz and Mr Magerman prepared a draft affidavit, which was sent via email to Mrs Meyer. A final draft was prepared after receipt of her input, and she signed it. Mr Magerman testified that the purpose of the draft confirmatory affidavit was to capture Mrs Meyer's instructions ("*om die klient se instruksies vas te vang op 'n stuk papier*") to reply to the letter received from Mr van Wyk. A consultation was held for this purpose, which was attended by De Villiers, Mr Kiewitz, Mrs Meyer, and Nico.
58. Mr Magerman was also involved in the settlement of the draft confirmatory affidavit. He was emphatic that Mrs Meyer knew what had been recorded therein. He recalled that during his interactions with Mrs Meyer she expressed her sadness about the fact that the relationship between herself and her other sons, as well as the relationship among them, had broken down.
59. Again, the evidence of Mr Kiewitz and Mr Magerman, namely that Mrs Meyer knew that what the nature and content was of the agreements of sale and the confirmatory affidavit, was not challenged during cross-examination.
60. Mrs Meyer's counsel attempted to discredit Mr Kiewitz's testimony because he had failed to implement the terms of the agreements of sale which stipulated that the purchase price would in each case be paid on registration of transfer; and he only obtained valuations in respect of the properties after the

conclusion of the agreements. This criticism does not detract from the evidence in relation to Mrs Meyer's involvement in and knowledge of the transactions and the subsequent confirmatory affidavit. Mr Kiewitz's conduct in this regard might have been relevant in the context of a claim for breach of contract by Nico, but it does not damage his evidence in respect of the central issue for determination as put up in the particulars of claim, which was whether Mrs Meyer had been misled into signing the agreements.

61. It was in any event clear from the evidence that Abrahams & Kiewitz obtained the further valuations in relation to the properties for transfer duty purposes and not, as Mrs Meyer argued, as "sweetheart valuations" obtained after the fact to cover Nico in the implementation of his fraudulent scheme.
62. On the totality of the evidence, Mrs Meyer's version that she was induced by Nico's fraudulent conduct to sign the agreement of sale and the confirmatory affidavit, is highly improbable. She concluded the agreements and signed the affidavit knowingly and voluntarily to give effect to the agreement with Nico regarding the restructuring of their affairs. She did this to persuade Nico and Sheila not to emigrate to New Zealand.
63. Much emphasis was placed on Mrs Meyer behalf on the fact that Nico had not paid the purchase price of the house to Mrs Meyer on registration of transfer, but paid it off in monthly payments of R20 000.00, which increased annually with R1 000.00. The issue was relied upon to support Mrs Meyer's case that Nico had swindled the sale of the house into his trust's name, and that it was not a *bona fide* transaction.
64. Nico, however, referred to the reason for the sale of the house, namely to assist him and his family given that they would not pursue the beckoning New Zealand offer, and further to ensure that Mrs Meyer would have a dependable monthly income from which to live. He testified that these payments were calculated by De Villiers on the basis of Mrs Meyer's life expectancy and an interest rate of 6%, with the total amount payable over a period of 10 years. He said that the payment of the purchase price in instalments was discussed

and agreed to between him and Mrs Meyer.

65. Nico explained that Mrs Meyer did not want him to cause a mortgage bond to be registered over the property. She preferred that Nico should rather owe the balance of the purchase price to her, instead of to a bank: “As ek oorsponklik daardie huis op ‘n verband geneem het en die geld oorbetaal het dan sou sy daai geld tot haar beskikking gehad het. Sy het verkies dat ek nie ‘n lening by die bank aangaan nie. Dat ek daai geld van die huis vir haar maandeliks betaal. Sy het dit in haar gedagtes gebruik as om van te lewe ...” [“If I originally took that house on a mortgage bond and paid over the money them she would have had that money at her disposal. She preferred that I did not take out a loan at the bank. That I pay that money to her monthly. She used it in her thoughts to live off ...”]
66. I have mentioned earlier that Mrs Meyer’s counsel argued that the instalment agreement to which Nico referred conflicted with the express provisions of the agreement of sale. He tried to elicit a concession from Nico that the latter had known that he would not be able to pay the purchase price against registration of transfer, and that this constituted a misrepresentation. Nico denied that this was the case.
67. It is trite that strong evidence is required to prove fraud.¹³ A consideration of the evidence indicates that, whatever Nico’s intention was (there was no reason to reject Nico’s evidence in this respect), it could not have been a fraud on Mrs Meyer. She knew that she had sold the house to Nico’s trust, and from their discussions about the possibility of registering a bond over the property, she knew that Nico himself did not have the funds to pay the purchase price in full on registration of transfer. She received the monthly instalments, which were paid from the Rhemco Trust, and never complained about the fact that the Courtrai Trust (the purchaser of the house) had not complied with its payment obligations under the agreement of sale.

¹³

See *Nedperm Bank Ltd v Verbri Projects* CC 1993 (3) SA 214 (W) at 220B.

68. Counsel's objection to Nico's evidence on the basis of the parol evidence rule does not take matters any further. Mrs Meyer claims in delict on the basis that the transactions had been induced by Nico's (and De Villiers's) fraudulent misrepresentations to the effect that the sales were in her best interests. She is claiming in delict, and Nico does not rely on the oral agreement to pay in instalments to overcome a contractual claim based on the written agreement. I do not have to decide the issue of whether the oral agreement can stand alongside the written one.
69. When all is said and done, the evidence – both in relation to what was said and Mrs Meyer's demeanour in the witness box – shows that she knew what she was doing in selling the properties to Nico. On her own version there were discussions between them about Nico's plan to emigrate. He and Mrs Meyer, at her suggestion, came up with an alternative plan which would allow him to remain in South Africa. That was the reason for the sale of the properties. These proceedings arose thereafter, from Mrs Meyer's remorse about sidestepping her other sons. I got the impression that she was conflicted, feeling pressurized to bring these proceedings to remain in her sons' good books after the reconciliation in December 2019.
70. Whatever the motive was for the institution of the proceedings, I do not think that Mrs Meyer has discharged the burden of proving fraudulent misrepresentation on Nico's side on a balance of probabilities.

Have Mrs Meyer's claims for the retransfer of the properties prescribed?

71. I have considered the merits of Mrs Meyer's claim for retransfer of the properties, and have found them wanting. Nico did, however, also raise a special plea of prescription, which needs determination.
72. Nico pleaded that the claims to cancellation of the respective agreements, retransfer of the properties, or restitution constitute debts as contemplated in sections 10 to 12 of the Prescription Act 68 of 1969. The prescription period in respect of these debts is three years in terms of section 11 of the

Prescription Act.

73. Mrs Meyer's claims in relation to the house therefore fell due¹⁴ during October 2015 (registration of transfer took place on 23 October 2015), and her claims in respect of the flats fell due during November 2015, registration of transfer having taken place on 16 November 2015. This action was instituted in December 2020. It follows, so Nico argues, that all of these claims have long since prescribed.
74. I have indicated earlier in this judgment that Mrs Meyer's evidence to the effect that she did not know what the documents were that she had to sign, and that she only obtained knowledge of the defendant's fraudulent misrepresentations during November 2019, does not ring true. Mrs Meyer in fact conceded in cross-examination that she knew that she had signed agreements of sale in relation to each of the properties. Even if her allegations in this regard were true, however, I agree with Nico that her claims have prescribed, for the reasons that follow.
75. The term "debt" is usually employed to describe the correlative of a right or claim to do some performance, in other words, as the duty side of an obligation which implies a debtor-creditor relationship arising from contract, delict, enrichment, or other restitutionary duty. It is preferable in the context of prescription to speak of a "right of action" ("*vorderingsreg*") as correlative to a "debt" ("*skuld*"), instead of a "cause of action".¹⁵ The meaning that has been given to the word "debt" since the 1968 Prescription Act came in force has been in accordance with the definition in the *New Shorter Oxford English*

¹⁴ Prescription Act, section 12:

- "(1) Subject to the provisions of subsections (2), (3), and (4), prescription shall commence to run as soon as the debt is due.
- (2) If the debtor wilfully prevents the creditor from coming to know of the existence of the debt, prescription shall not commence to run until the creditor becomes aware of the existence of the debt.
- (3) A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care."

¹⁵ *Sentrachem v Prinsloo* 1997 (2) SA 1 (A) at 15C-H.

Dictionary,¹⁶ namely "1. Something owed or due: something (as money, goods or service) which one person is under an obligation to pay or render to another. 2. A liability or obligation to pay or render something; the condition of being so obligated". The correlative of a debt in this sense is a right of action vested in the creditor in which the payment of money, or the delivery of goods, or the rendering of services is claimed.

76. A creditor does not have to have sufficient knowledge of all the relevant facts in order finally to prove his claim for prescription to run: *"Artikel 12(3) vereis immers nie dat 'n skuldeiser oor voldoende kennis moet beskik om sy vordering finaal te bewys alvorens verjaring teen hom begin loop nie. ... Al wat vereis word, is dat die skuldeiser kennis moet dra van die wesenlike feite waaruit sy eis ontstaan"* [*"Section 12(3) does after all not require that a creditor should have sufficient knowledge finally to prove his case before prescription starts running against him ... All that is required is that the creditor has knowledge of the material facts from which his claim arises"*].¹⁷
77. The position was summarised as follows in *City of Cape Town v Cell C Limited and others*¹⁸

"[53] It has been held that a debt is due when the entire set of facts which the creditor must prove in order to succeed with his or her claim against the debtor is in place or, in other words, when everything has happened which would entitle the creditor to institute action and to pursue his or her claim. This does not include the legal conclusions which a litigant seeks to draw from the facts.

[54] Prescription would start running against a party when there is either knowledge or awareness of the facts from which the debt arises as well as the identity of the debtor. A party would be deemed to have knowledge of these facts if he/she could have acquired it by exercising reasonable care.

[55] Whether or not it could be said that a party failed to exercise reasonable

¹⁶ *Makate v Vodacom* 2016 (4) SA 121 (CC) paras 187-188. Emphasis supplied.

¹⁷ *Absa Bank Bpk v Janse van Rensburg* 2002 (3) SA 701 (SCA) para 14. My translation.

¹⁸ [2025] ZAWCHC 246 (10 June 2025) paras 53-56. Emphasis supplied.

care would depend on a number of factors and consideration of all the circumstances relevant to the claimant's conduct.

[56] The inquiry into whether a claimant may be deemed to have acquired the requisite knowledge and whether he/she exercised reasonable care is an objective, and not a subjective inquiry. Therefore, the claimant's conduct is tested by weighing it against the steps which a reasonable person in his or her position would have taken to acquire knowledge the requisite minimum facts to enable him/her to institute his/her claim timeously."

78. Mrs Meyer's claims for the transfer of the house and the flats are based on her pleaded cancellation of the agreements of sale in her particulars of claim dated December 2020. The cancellation, in turn, rests of the alleged fraudulent misrepresentation of De Villiers and Nico. In general, a delictual debt becomes due when the delict has been committed.¹⁹ Are Mrs Meyer's claims for the retransfer of the properties in this context a debt as contemplated in the Prescription Act, which would have prescribed after the effluxion of three years since the debt had become due?
79. The case of *Leketi v Tladi N.O. and others*,²⁰ to which Nico's counsel referred, is instructive in this regard. The appellant claimed the recovery of immovable property from his grandfather's deceased estate, which the appellant claimed had belonged to his father. The appellant alleged that his grandfather had fraudulently caused the property to be transferred and registered in his own name by representing to the Registrar of Deeds that he was the only male heir of the appellant's father, and thus entitled to the property upon intestate devolution according to custom. The first respondent was the executor of the deceased estate, and the second and third respondents were the beneficiaries of the estate. The fraud by the appellant's grandfather took place in June 1969. The appellant's summons was only served on the respondents in 2004. The appellant attained majority on 7 April 1981, and the running of prescription had been delayed until 7 April 1981 in terms of section 13 of the

¹⁹ See *Nedcor Bank Bpk v Reqering van die Republiek van Suid-Afrika* 2001 (1) SA 987 (SCA) para 4.

²⁰ [2010] 3 All SA 497 (SCA).

Prescription Act. The first respondent contended that, as the summons was served more than three years after 7 April 1981, the appellant's claim had prescribed.

80. The SCA held²¹ that for the purpose of considering the special plea of prescription raised by the respondents, in the context of the provisions of the Prescription Act, the appellant was a creditor. Any obligation on the estate to restore the property to its rightful owner was a debt as described in section 11(d)²² of the Prescription Act. The appellant replicated that he could not have instituted action earlier because until 6 August 2003 he had no knowledge of "*the identity of the defendants and the facts from which the debt arose*".²³
81. The SCA held²⁴ that the real question for decision in the appeal was whether, on a consideration of the available evidence in totality, it could be said that the appellant could not have acquired knowledge of the fraud on the part of his grandfather in June 1969 "*by exercising reasonable care*", as required in the proviso to section 12(3) of the Prescription Act. The SCA concluded that the appellant's failure to institute action timeously was not due to his lack of or inability to obtain knowledge, but rather to his dilatoriness.²⁵ The appeal was dismissed.
82. Another instructive decision from the SCA is *Ethekwini Municipality v Mounthaven (Pty) Ltd.*²⁶ The issue was whether a claim by the appellant for the retransfer of a vacant immovable property from the respondent constituted a debt as contemplated in the Prescription Act. The appellant had sold the property to the respondent in 1985 (transfer took place in 1986) subject to the condition that, should the respondent have failed to erect buildings on the property to the value of not less than R100 000.00 after the expiry of three

²¹ *Leketi v Tladi supra* para 8.

²² Prescription Act, section 11(d): "*11. The periods of prescription of debts shall be the following: ... (d) save where an Act of Parliament provides otherwise, three years in respect of any other debt.*"

²³ With reference to the proviso in section 12(3) of the Prescription Act.

²⁴ *Leketi v Tladi NO supra* para 10.

²⁵ At para 18.

²⁶ 2018 (1) SA 384 (SCA).

years from the date of the sale, ownership of the property would revert to the appellant, who would be entitled to demand re-transfer thereof against payment of the purchase price.

83. The respondent failed to develop the property within the stipulated period, and the appellant thus launched an application invoking the reversionary clause and claiming retransfer of the property. This was done only in 2014. The respondent took the point that the claim constituted a debt as contemplated in the Prescription Act, and that it had prescribed. The SCA upheld this contention on the basis that the reversionary clause constituted a personal right and not a limited real right in respect of the property. The appellant's right to claim retransfer required the respondent to do something in favour of the appellant. It therefore constituted a debt which prescribed after the effluxion of the three-year period.²⁷
84. In considering an application for leave to appeal, the Constitutional Court²⁸ confirmed that a claim to transfer immovable property in the name of another is a claim to perform an obligation to deliver goods in the form of immovable property. It is a "*debt*" in the dictionary sense accepted in *Makate v Vodacom*. Leave to appeal was refused *inter alia* on this basis.
85. These principles apply to Mrs Meyer's claims.
86. As indicated earlier, Mrs Meyer's version is that she accompanied her son, Marius, to consult with attorney Anvil van Wyk, on 31 March 2016. During this consultation, and as confirmed in his memorandum which was referred to in the course of the evidence led at the trial, Mr van Wyk pointed out various discrepancies in respect of both transactions. He also expressed the view at the time that Mrs Meyer had not known what she was doing when she signed the agreements of sale. During her evidence in chief, Mrs Meyer testified that she was shocked when Mr van Wyk said that the transactions amounted to fraud: "*Al wat ek onthou want dit het vir my geruk en dit is dat Anvil gesê het*

²⁷ *Ethekwini Municipality v Mounthaven supra* paras 15-16.

²⁸ *Ethekwini Municipality v Mounthaven (Pty) Ltd* 2019 (4) SA 394 (CC) para 8.

dis 'n bedrogsaak" ["All I remember because it shook me and that is that Anvil said it was a case of fraud"].

87. In Mr van Wyk's memorandum, which was dated 1 April 2016, he advised Marius and Mrs Meyer that: *"My advies is dat alvorens daar tot enige ooreenkomste geraak word, die twee transaksies behoorlik ondersoek word ten einde vas te stel op welke grondslag dit gebeur het dat, onder andere, eiendomme tussen verbonde persone teen minder as markwaarde hande verwissel het, sodat die belasting en ander implikasies vasgestel kan word"* ["My advice prior to coming to any agreements is that the two transactions must be properly investigated to ascertain how it happened that, amongst others, properties between related persons were alienated at less than market value, to establish the tax and other implications"].
88. Mrs Meyer testified that she had not received a copy of this memorandum at the time. She had, nevertheless, been present at the consultation with Mr van Wyk, and clearly had understood what Mr van Wyk was saying, given her reaction of shock.
89. Marius, notably, conceded during cross-examination that he had been aware of Mrs Meyer's intention to sell the properties to Nico before the transactions were concluded and implemented. Marius was not happy with the situation. His relationship with Mrs Meyer subsequently deteriorated, because she refused to follow his advice not to sell the properties to Nico. Marius would no doubt have expressed the reasons for his dissatisfaction of the state of affairs to Mrs Meyer at the time. Marius further testified that a letter of demand subsequently sent by Mr van Wyk to Abrahams Kiewitz Attorneys on 18 April 2016 had been sent on his instructions. He explained that the letter was sent because *"Ek wou die proses aan die gang kry om die transaksies om te keer, om dit nietig te verklaar, om my ma te beskerm want sy het al haar bates verloor"* ["I wanted to start the process of stopping the transactions, to declare them void, to protect my mother because she had lost all her assets"].
90. Mrs Meyer's son Anton testified that, after the consultation with Mr van Wyk,

Marius requested him to consult an advocate at the Cape Bar on his behalf. Anton complied with this request, and took his brother Henk with him to consult. The advocate advised them that Mrs Meyer would have to institute court proceedings to reverse the transactions. Anton decided not to follow this advice, because he felt that Mrs Meyer would not have survived the ordeal of a court case. Anton nevertheless knew at that stage that grounds existed upon which both transactions could be set aside. Marius and Anton however both subsequently decided to "*walk away*" from the matter. The internal family relations were unhealthy.

91. On Anton's and Marius's evidence, all that Mrs Meyer needed to do was to enquire from any of her sons Marius, Henk or Anton what the outcome was of Mr Van Wyk's advice to Marius, as set out in the memorandum. She could also have asked Mr van Wyk about the matter, given what he had told her during her consultation with him. Given how heavily the burden of the situation rested on her shoulders according to her evidence, it is inexplicable that she did not do this in the "*exercise of reasonable care*" as contemplated in section 12(3) of the Prescription Act.
92. In the interlocutory application, Mrs Meyer alleged that when she received the schedule of intended payments for the house from Nico it led her "*to the suspicion that Nico defrauded, not only me, but the fiscus*". Nico testified that although he could not recall exactly when this schedule was drawn up by him and handed to Mrs Meyer, it must have occurred before the instalment payments in respect of the sale of the house commenced in March 2016. On this version, Mrs Meyer already had serious suspicions at least in respect of the sale of the house when she accompanied Marius to the consultation with Mr van Wyk on 31 March 2016.
93. I agree with the submission by Nico's counsel that on a consideration of the totality of the evidence, Mrs Meyer knew or ought reasonably to have known by April 2016 that she was entitled to challenge the validity of the transactions. If she had exercised reasonable care, she would in any event

during that time have acquired the minimum facts²⁹ necessary to institute a claim for the re-transfer of the properties, more than three years before the institution of the action in December 2020.

94. Mrs Meyer's claims for the retransfer of the properties have accordingly prescribed.

Mrs Meyer's claim for the setting aside of the winding-up and dissolution of AJM Ondernemings (previously "Rotsvas")

95. This claim was not pursued with any vigour.
96. Mrs Meyer pleaded in the particulars of claim that she, as shareholder and director of AJM Ondernemings (the new name for Rotsvas), seeks the setting aside of its winding-up and subsequent dissolution. No grounds for this relief are disclosed in the particulars of claim, and Mrs Meyer did not make out a case for it in her evidence.
97. The highwater mark of her evidence in respect of this claim is that Nico had told her at some stage ("*op 'n stadium*") that the banking account of Rotsvas had to be closed. When she asked why this should be done, Nico replied that the company was insolvent. Whilst it is improbable that Mrs Meyer would have been satisfied with this curt explanation at the time (her relationship with Nico was still very close), the fact remains that she had signed the special resolution to place Rotsvas (or AJM) under voluntary liquidation in terms of sections 349 and 351 of the Companies Act, 1973. There is no evidence upon which this resolution could or should be set aside.

The claim for the rendering of an account

98. Mrs Meyer claims, in the alternative, that Nico should render an account to her, particularly in relation to the sale of the properties. In the particulars of

²⁹ See *Fluxmans Inc. v Levenson* 2017 (2) SA 520 (SCA) para 42.

claim she alleges that Nico and/or De Villiers, "*by virtue of the relationships and/or the agreement*", are obliged to render a full account of the "*transactions*".

99. The present matter is however not one in which the rendering of an account can be claimed. The object of a claim for an account and debatement thereof is to enable the plaintiff to establish whether the defendant is indebted to the plaintiff. In order to succeed with a claim for the rendering of an account, a plaintiff must allege and prove a fiduciary relationship between the parties which obliges the person in a fiduciary position to provide an account, or a contractual obligation to render an account, or a statutory duty to render an account.³⁰
100. On the evidence neither a contractual obligation nor a statutory duty to render an account in respect of the transactions has been shown. Nico testified that he had assisted his mother because he loved her, not because of any fiduciary duty resting on him. Mrs Meyer's counsel conducted his cross-examination of Nico and Sheila primarily on the basis of a duty to disclose information in respect of the transactions recorded on the bank statements of Rotsvas, but no claim for the rendering of an account in respect of those transactions (in particular various payments between Rotsvas and Nico's family members) is set out in the particulars of claim.
101. It appeared from the evidence that Nico in any event did not manage or conduct transactions on the banking account of Rotsvas. This was done by Sheila, on Mrs Meyer's instructions. There was some to-ing and fro-ing about whether Mrs Meyer had in fact given instructions – Sheila said she (Mrs Meyer) did, and Mrs Meyer's counsel suggested that this was untrue because those instructions, insofar as they had been in writing, had not been discovered. Be that as it may, no case is pleaded against Sheila (who is not a party to the action) for the rendering of an account, and no case was made out to the effect that Sheila was effectively Nico's alter ego.

³⁰ *Brown and others v Yebba CC t/a Remax Tricolor* 2009 (1) SA 519 (D); *Absa Bank v Janse van Rensburg supra* paras 14-16.

102. The alternative claim therefore falls to be dismissed.

Conclusion

103. I accordingly find, for the reasons set out above, that Mrs Meyer has not discharged the burden resting upon her to prove her claims. Her claims for the retransfer of the properties have, in any event, prescribed.

Costs

104. There is no reason why costs should not follow the event. The parties were represented by senior counsel who appeared without juniors. In the exercise of my discretion under Rule 67A, I regard the issues raised in the matter as sufficiently complex to warrant counsel's fees taxed on Scale C in relation to fees incurred from 12 April 2024 onwards.

Order

105. In the circumstances, the plaintiff's claims are dismissed, with costs, including counsel's fees taxed on Scale C.

P. S. VAN ZYL

Acting Judge of the High Court

Appearances:

For the plaintiff:

Mr P. A. Myburgh SC, instructed by
Dunsters Attorneys Inc.

For the first and second defendants:

Mr P. Vivier SC, instructed by Fourie

Basson Veldtman Attorneys