

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 19683/2020

(1)	REPORTABLE: NO YES
(2)	OF INTEREST TO OTHER JUDGES: NO/YES
(3)	REVISED: NO YES
	
17 SEPTEMBER 2025	SIGNATURE
DATE	

In the matter between:

ONLINE LENDING INNOVATIONS COMPANY (PTY) LTD

Applicant

and

JONATHAN BERNADOTTE MILLER

Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 17 September 2025.

JUDGMENT

Background

[1] This is an interlocutory application, in which the Applicant (the Plaintiff in the main application) seeks an order to compel the Respondent (Defendant in the main action) to comply with a notice issued in terms of rule 35(3) of the Uniform Rules of Court.¹

[2] In the main action, the Applicant seeks to hold the Respondent personally liable for a debt owed to the Applicant by a company, Forge Business On-Line (Pty) Ltd (Forge), of which the Respondent was a director.

[3] The Applicant contends that the Respondent caused Forge to transfer its entire business, alternatively its major assets, to Offerforge (Pty) Ltd (Offerforge), and/or an entity trading as "Cash Bag", or to Forge Media Investment (Pty) Ltd (FMI). This transfer, it is alleged, rendered Forge unable to pay its debt to the Applicant.

[4] The Applicant pleads that the Respondent's aforesaid conduct renders him personally liable for the debts of Forge pursuant to sections 20(9) and 22 of the Companies Act.²

[5] In the rule 35(3) notice, the Applicant requires that the Respondent make available for inspection the annual financial statements and management accounts of four companies: Offerforge, Cash Bag, FMI and Forge (the target companies). It is noted that the Respondent is the sole director of the target companies.

[6] The Respondent denies that the documents are relevant. He further contend that he should not be compelled to comply with the notice, on the ground that, he is not in

¹ Rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa, 1965, GN R48 GG 1060, 12 January 1965 (Uniform Rules of Court).

² 71 of 2008.

possession of the documents sought. He is a sole director of the target companies, which are not part of these proceedings.

[7] It is further common cause that Forge has been in voluntary liquidation since 18 August 2019.

[8] In summary, the applicant's case is that on or about May 2018, Forge transferred its entire business, or part of its business, to Offerforge for no consideration, alternatively, for consideration below the value of the business.

Applicable legal principles

[9] The provision of rule 35(3), which creates a mechanism for a party to compel further discovery, is as follows:³

"If any party believes that there are, in addition to documents or tape recordings disclosed as aforesaid, other documents (including copies thereof) or tape recordings which may be relevant to any matter in question in the possession of any party thereto, the former may give notice to the latter requiring him to make the same available for inspection in accordance with subrule (6), or to state on oath within ten days that such documents are not in his possession, in which event he shall state their whereabouts, if known to him."

[10] Rule 35 regulates discovery, inspection, and copying of documents, and also tape recordings by litigants in both trial actions or motion proceedings.⁴ It further sets out the procedure whereby they may ascertain which documents and tape recordings relevant in issue are in the opposing party's possession.⁵

³ Uniform Rules of Court n 1.

⁴ *Taskflow (Pty) Ltd v Aluxium (Pty) Ltd and Others* (2021/40976) [2024] ZAGPPHC 857 (26 August 2024) (*Taskflow*) at para 19.

⁵ *Id.*

[11] Under the rules of discovery, a requesting party is entitled to complete discovery on oath.⁶ Rule 35(3), in particular, creates a mechanism to supplement discovery already made where a party maintains it is insufficient, incomplete or otherwise inadequate.⁷

[12] A party seeking further discovery bears the onus of establishing facts which demonstrate a strong possibility, or reasonable grounds, that further relevant documents or tape recordings exist in the opposing party's possession.⁸

[13] The right to discovery, and specifically the entitlement to compel further discovery in rule 35(3), is not absolute.⁹

[14] The Court retains a discretion, having regard to recognised sources including the pleadings and the nature of the claim, to order compliance with the notice or decline it.¹⁰

[15] Where an application to compel discovery is tantamount to a "fishing expedition" or where ordering further discovery would not serve justice, the application will be declined.¹¹

[16] Rule 35(3) is not "... a tool to put a party in a position to draw the battle lines and establish the legal issues. Rather, it is a tool used to identify factual issues once legal issues are established".¹² Nor does it "... afford a litigant a license to fish in the hope of catching something useful".¹³

[17] The determinative test for the obligation to make discovery, as contemplated in rule 35, remains that of relevance.¹⁴

⁶ Id.

⁷ Id. *The MV Urgup: owners of the MV Urgup v Western Bulk Carriers (Australia) (Pty) Ltd* 1999 (3) SA 500 (C) (*The MV Urgup*) at 515D.

⁸ *Taskflow* n 4 at para 19. *Tractor & Excavator Spares (Pty) Ltd v Groenedijk* 1976 (4) SA 359 (W) at 361-62H.

⁹ *Taskflow* Id.

¹⁰ *Taskflow* Id. *Rains Ford v African Banking Corporation Ltd* 1912 CPD 729 at 738.

¹¹ *Taskflow* n 4 at para 21. *Continental Ore Construction v Highveld Steel & Vanadium Corporation Ltd* 1971 (4) SA 589 (W) (*Continental Ore Construction*) at 594A-B.

¹² *STT Sales (Pty) Ltd v Fourie* 2010 (6) SA 272 (GSJ) at para 16.

¹³ *The MV Urgup* n 7 at 515D.

¹⁴ *Taskflow* n 4 at para 23. *Continental Ore Construction* n 11 at 598E-F.

[18] A party required to make discovery in terms of rule 35(3) is obliged to discover only those documents relevant to a question in the action.¹⁵ In action proceedings, relevance is determined with reference to the pleadings,¹⁶ and a request for discovery can be resisted only on the grounds of irrelevance or privilege.¹⁷

Evaluation

[19] The central issue to be determined is whether the Respondent's refusal or resistance to comply with the rule 35(3) notice is, under the circumstances, justified.¹⁸

[20] I deem it apposite to deal frontally with the Respondent's submissions in resisting compliance with the rule 35(3) notice, to the following effect:

20.1 First, it is my view that the Applicant ought to have requested the documents from the relevant entities, and not personally from the Respondent.

20.2 It must be borne in mind that this Court cannot issue orders to parties who are not cited in these proceedings.

20.3 Second, the Respondent has already stated under oath that, strictly in his personal capacity, he does not have access to the documentation.

Order

[21] In the result, I make the following order:

1. The application is dismissed with costs, to be taxed on Scale B.

¹⁵ *Taskflow* n 4 at para 24.

¹⁶ *Taskflow* Id.

¹⁷ *Taskflow* Id.

¹⁸ *Copalcor Manufacturing (Pty) Ltd v GDC Hauliers (Pty) Ltd* 2000 (3) SA 181 (W) at para 22F-G.



D. MAKHOB A J
JUDGE OF THE HIGH COURT
PRETORIA

Date of Hearing: 27 August 2025

Judgment delivered: 17 September 2025

Appearances

For Applicant: Adv. H A van der Merwe

For Respondent: Adv. R Raubenheimer