

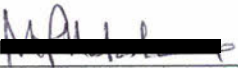
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 189237/2025

- (1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: YES



31 October 2025

In the matter between

CHRISTOS HAJIMARKOS

Applicant

And

COSTA HAJIMARKOS

1st Respondent

GEORGE HAJIMARKOS

2nd Respondent

JUDGMENT

Mdalana-Mayisela J

Introduction

[1] This is an urgent application for interim relief, pending the institution of action proceedings, in which the applicant seeks to prevent the alleged misappropriation of partnership assets by the respondents and secure his financial oversight and administrative role within the family business, specifically, access to all bank accounts and records.

[2] The respondents have raised several points in *limine*, among them that the application lacks the requisite agency and should be struck from the roll; they further contend that the application suffers from non-joinder of indispensable parties, that the applicant lacks locus standi, and that no cause of action has been disclosed.

[3] The applicant and respondents are brothers. They have been in business together since 1994, operating a group of Spa supermarkets and Top liquor stores. The business was initially run as a partnership but later incorporated into a corporate structure, Markos Retail Holdings (Pty) Ltd, "*Markos Holdings*", and its operating subsidiaries. The applicant, a qualified accountant, has historically managed the business's financial affairs. Due to his involvement with the competitor, he resigned from the board of directors. And his shares in Markos Holdings are held by the second respondent as his nominee, a fact confirmed by a Declaration of Trust and a Special Power of Attorney.

[4] The relationship between the brothers deteriorated in 2023. A previous urgent application in March 2024 was settled by a settlement agreement that, inter alia, limited monthly drawings for each partner to R500,000 and granted the applicant full and unfettered access to all business bank accounts. The applicant alleges that the respondents have breached this agreement by drawing excessive amounts and denying him full access.

ANALYSIS

Urgency

[5] Rule 6(12) of the Uniform Rules of Court permits a departure from the ordinary time frames where an applicant cannot obtain substantial redress in due course. The test is not whether the matter is important to the applicant, but whether, if the matter were to follow the normal course, the applicant would be denied adequate redress. The applicant must make out a case justifying the departure from the day and time periods provided in Rules 4 and 6(5) and satisfy the Court in the founding affidavit that the circumstances of the case are such that he will not be afforded substantial redress at a hearing if the matter is heard in due course and placed on the normal roll.¹

[6] The respondents argued strenuously that the urgency is self-created. They presented a detailed timeline alleging that the applicant knew or should have known of the impugned conduct for many months, and in some instances for over a year, before launching this application. They point to his online access to bank accounts and his delay in acting upon information provided by the internal auditor in August 2025.

[7] The applicant's case on urgency rests on a series of events in late August and September 2025: the discovery of allegedly fictitious sugar transaction used to pay the second respondent's mistress; the denial of access to the partnership's internal auditor; and the respondents' refusal to provide undertakings regarding their future conduct and the treatment of the proceeds from a pending sale of four stores to the Spa group.

[8] I find that the application is urgent. My reasons are as follows:

[8.1] The nature of the relief sought: the applicant seeks an interim interdict. Its very purpose is to preserve the status quo and prevent irreparable harm *pendente lite*.² The urgency of the application flows from the requirement of a "well-grounded apprehension of irreparable harm" that would occur if the matter were to proceed in the ordinary course.³ A delay of a few months in

¹ Luna Meubelvervaardigers (Edms) Bpk v Makin (t/a Makin's Furniture Manufacturers) 177 (4) 135 (W) at 137F.

² J.L v D.J (2024/088101) [2024] ZAGPJHC 1210 (15 October 2024).

³ Setlogelo v Setlogelo 1914 AD 221.

bringing such an application, while relevant, is not necessarily fatal if the harm is ongoing and future-oriented.

[8.2] The allegations of ongoing misconduct; the core of the applicant's case is not merely past misconduct but a reasonable apprehension of continuing misappropriation. The discovery of a new, significant fictitious transaction in August 2025 and the subsequent exclusion of the internal auditor in September 2025 are pivotal. They suggest an ongoing pattern of conduct that threatens to deplete partnership assets. An interdict to stop this is, by its nature, urgent.

[8.3] The impending Spa group transaction: the sale of four Spa shops for over R160 million creates a unique and imminent risk. If the applicant's allegations are true, there is a tangible risk that the respondents who control the business could misappropriate these substantial proceeds. The respondents' refusal to provide clear undertakings regarding these funds heightens this apprehension. Waiting for the ordinary roll could result in these funds being dispersed beyond easy recall.

[8.4] Tax non-compliance: the applicant alleges he is unable to perform his duty to file returns, which will result in the accrual of penalties and interest from SARS. This constitutes continuing financial harm to the business that escalates with time.

[8.5] Delay and engagement: the applicant's attorneys engaged in correspondence from 3 September to 10 October 2025 in an attempt to resolve the dispute. By doing so, the applicant acted reasonably and prudently in pursuing its rights and trying to resolve the matter.⁴ This period of engagement, while contributing to the overall timeline, cannot be considered dilatory against the applicant.⁵ Litigation is a last resort. The important issue is

⁴ Quick Drink Co (Pty) Ltd and Another v Medicines Control Council and Others 2015 (5) SA 358 (GP).

⁵ Nelson Mandela Metropolitan Municipality v Greyvenouw CC 2004 (2) SA 81 (SE) at 94C-D.

whether, despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course.⁶

[9] While the respondents' timeline raises questions about the applicant's diligence, it does not, on balance, navigate the agency created by the recent events and the nature of the relief sought. The potential for irreparable harm to the partnership assets and the business's tax compliance is sufficiently demonstrated. The application is therefore enrolled as urgent.

POINTS IN LIMINE

Non-joinder

[10] The respondents argue that the application is fatally defective because Markos Holdings and its operating subsidiaries have not been joined as parties. They contend that the relief sought- financial oversight, access to accounts, and spending limits directly affects these separate juristic entities and usurps the powers of their boards of directors.

[11] The principle of separate corporate personality is foundational. The Court has no general discretion to disregard a company's separate legal personality. This could be done only as a last resort, where justice would not otherwise be served and where no alternative remedy is available to the complainant. Conduct such as fraud, dishonesty, improper conduct, or concealment of the true state of affairs may constitute sufficient grounds for piercing the corporate veil.⁷ In this case, the applicant's claim is not founded on his rights as a shareholder or director of these companies, but on his rights as a partner in the underlying quasi-partnership. He has argued that the corporate structure is a mere vehicle for the partnership.

[12] In a case such as this, where the essence of the dispute is the relationship between the partners behind the corporate veil, and where the relief is interim and designed to preserve the assets of that underlying partnership, it is not

⁶ East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others [2011] ZAGPJHC 196 at para 8.

⁷ Amlin (SA) Pty Ltd v Van Kooij 2008 (2) SA 558 (C).

strictly necessary to join every operating company. The dispute is fundamentally *inter se* the partners. The order, if granted, would bind the respondents in their capacities as the controlling minds of those companies to allow the applicant certain oversight functions. The companies themselves, while affected, are not indispensable parties to this interlocutory dispute between their ultimate beneficial owners. They are not parties to the settlement agreement that the applicant seeks to enforce compliance with. This point *in limine* cannot be sustained.

Locus standi and cause of action

[13] The respondents argued that the applicant, being neither a registered shareholder nor a director, has no legal standing to seek the relief claimed. They rely on *Smyth v Investec Bank Ltd*⁸ which confirms that a beneficial owner's rights are personal against the nominee, not against the company.

[14] This argument, while technically sound in a pure company law context, misses the mark in a quasi-partnership context. Our courts have consistently recognized that where a company is in substance a partnership, the strict legalities of corporate personality may be relaxed to give effect to the underlying fiduciary duties and legitimate expectations of the members. In *Bellairs v Hodnett and Another*,⁹ the Appellate Division held,

"We think that the analogy of a partnership to the relationship of Bellairs and Hodnett and the company is an apposite and true one. That they chose the form of a company to give effect to and carry out that relationship does not affect the existence, nature, or extent of any fiduciary duty resting upon Bellairs that is relevant to the present dispute. Since principles of equity underlie a fiduciary duty, we think that the substance of their relationship and not the form in which it was cast must be looked at in order to ascertain its existence, nature, and extent. Hence, the fact that the Company was a separate, legal persona is not of great importance in considering the present problem. For if Bellairs did not at the time owe his co-shareholder and copartner any fiduciary duty of the kind contended for, he did not owe it to the Company either."

⁸ (674/2016) [2017] ZASCA 147 (26 October 2017)

⁹ 1978 (1) SA 1109 (A).

[15] *Locus standi* is not a technical concept with rigidly defined boundaries, nor must it be narrowly construed. To determine whether the interest of a litigant qualifies as a direct interest depends upon the facts of each case, and no fixed or generally applicable rules can be laid down for all cases.¹⁰

[16] The following evidence strongly supports the existence of a quasi-partnership.

[16.1] The business began as a family partnership and retains that character.

[16.2] The brothers have always conducted themselves as partners, with a clear understanding of their respective roles.

[16.3] The respondents' own attorneys, in correspondence prior to this application, repeatedly referred to the "partnership" and its assets, a concession they now belatedly and opportunistically seek to retract.

[16.4] The second respondent holds the applicant's shares in a fiduciary capacity as his nominee, giving rise to a clear fiduciary duty.

[17] I find that the *locus standi* of an applicant, as a partner in a quasi-partnership, to apply for an interdict is directly related to the interest he has in the subject matter of the interdict.

[18] In a quasi-partnership, a partner is required to perform the partnership business honestly and carefully and to account to the other partners. Included in this duty is the duty of utmost good faith (*uberrima fides*).¹¹ In this case, it includes the right to access information and accounts, as well as the right to prevent other partners from misappropriating partnership assets. The applicant's cause of action is grounded in this fiduciary duty, the terms of the undisputed settlement agreement, which is binding on the respondents, and the common law rights of a partner.

¹⁰ The Law and Practice of Interdicts, CB Prest SC, 1993; *Jacobs en 'n ander v Waks en andere* 1992 (1) SA 521 (A).

¹¹ *Wegner v Surgeson* 1910 TPD 571.

[19] Consequently, I find that the applicant has demonstrated his legal standing and seeks relief to protect his interests in the quasi-partnership. The points *in limine* of non-joinder, lack of locus standi, and no cause of action are intertwined and are accordingly dismissed.

THE INTERIM INTERDICT

[20] The requirements for an interim interdict are well established: [a] a *prima facie* right; [b] a reasonable apprehension of irreparable harm; [c] the balance of convenience favoring the applicant; and [d] the absence of an alternative remedy¹².

Prima facie right

[21] In an application for interim relief, an applicant is not required to establish a right to relief on a balance of probabilities. It is sufficient to show that such a right is *prima facie* established, though open to some doubt. In a *locus classicus*, *Webster v Mitchell*¹³, the court explained what this means:

"In the grant of a temporary interdict, apart from prejudice involved, the first question for the Court in my view is whether, if interim protection is given, the applicant could ever obtain the rights he seeks to protect. Prima facie that has to be shown. The use of the phrase "prima facie established though open to some doubt" indicates, I think, that more is required than merely to look at the allegations of the applicant, but something short of a weighing up of the probabilities of conflicting versions is required. The proper manner of approach I consider is to take the facts as set out by the applicant, together with any facts set out by the respondent, which the applicant cannot dispute, and to consider whether having regard to the inherent probabilities, the applicant could on those facts obtain final relief at a trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown on the case of the applicant he could not succeed in obtaining temporary relief, for his right, prima facie established, may only be open to "some doubt". But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right protected in the meanwhile, subject of course to their respective prejudice in the grant or refusal of interim relief. Although the grant of a temporary interdict interferes with a right which is apparently

¹² Reckitt & Colman SA (Pty) Ltd v SC Johnson & Son (SA) Pty Ltd [1995] 1 All SA 414 (T) 417-418; 1995 (1) SA 725 (T) 729I-730G; LF Boshoff Investments (Pty) Ltd 1969 (2) SA 256 (C) at 267B-E.

¹³ 1948 (1) SA 1186 (W) 1189-1190.

possessed by the respondent, the position of the respondent is protected because, although the applicant sets up a case which *prima facie* establishes that the respondent has not the right apparently exercised by him, the test whether or not the temporary relief is to be granted is the harm which will be done. And in a proper case it might well be that no relief would be granted to the applicant except on conditions which would compensate the respondent for interference with his right, should the applicant fail to show at the trial that he was entitled to interfere."

[22] Having applied the aforesaid principle to the facts of this matter, and for the reasons set out above, I am satisfied that the applicant has established a *prima facie* right, though it is open to some doubt. His case is that he is a partner in a quasi-partnership and a beneficiary under a trust and settlement agreement. The respondents' own prior concessions, the trust deed, and the settlement agreement provide a credible foundation to this right, which includes the right to financial oversight and the right to prevent the misappropriation of partnership funds.

Reasonable apprehension of harm

[23] The test for whether an applicant has established a reasonable apprehension of harm is whether a reasonable man would, on presentation of the facts, entertain an apprehension of injury. The applicant does not have to prove on a balance of probabilities that harm will follow from the pleaded facts, but rather that it is reasonable to apprehend injury faced with such facts.¹⁴ The applicant has provided evidence of substantial drawings by the respondents, even on his revised figures of R10.6 million and R15.2 million over 18 months, payments for personal expenses (solar, carpets, medical bills), and a highly suspicious transaction involving a sugar shipment that was paid for but never delivered to a company connected to the second respondent's mistress. The exclusion of the internal auditor and their refusal to provide undertakings regarding the substantial sale proceeds cement this apprehension. A reasonable person in the applicant's position would undoubtedly fear continuing financial harm.

¹⁴ Free State Gold Areas Ltd v Merriespruit GM Co Ltd 1961 (2) SA 505 (W) at 518.

Balance of convenience

[24] The Court must weigh the prejudice the applicant will suffer if the interim interdict is not granted against the prejudice to the respondents. If there is a greater possible prejudice to the respondents, an interim interdict will be refused; if, though there is prejudice to the respondents, that prejudice is less than that of the applicant, the interdict will be granted, subject, if they can be imposed, to conditions which will protect the respondents.¹⁵ In this case, this requirement weighs heavily in the applicant's favor. The relief he seeks is largely preservative and supervisory. It does not grant him operational control of the stores. It seeks to prevent further drawings beyond the agreed limit, prevent the use of business accounts for personal expenses, and ensure the transparency required under the settlement agreement.

[25] The prejudice to the applicant if the interdict is refused is potentially immense: continued asset depletion and an inability to ensure tax compliance. The prejudice to the respondents if the interdict is granted is minimal. They retain full managerial control and are merely required to adhere to their prior agreements and to the basic principles of partnership fiduciary duty. The balance of convenience clearly favors the granting of the interdict.

Alternative remedy

[26] The final requirement for the grant of an interim interdict is the absence of another adequate remedy to the applicant. The court will not, in general, grant an interdict when the applicant can obtain adequate redress by an award of damages. But where an injury may be capable of pecuniary evaluation and compensation, the court will generally grant an interdict if the respondent is a man of straw, or the injury is a continuing violation of the applicant's rights.¹⁶ A claim for damages for past misappropriation is an alternative remedy, but it is not an adequate remedy for ongoing and future

¹⁵ Webster v Mitchell supra at 1192-3; Hillman Brothers (West Rand) (Pty) Ltd v Van der Heuwel 1937 WLD 41 at 44 and 46.

¹⁶ Lubbe v Die Administrateur, Oranje-Vrystaat 1968 (1) SA 111 (O); Mandela v Falati 1995 (1) SA 251 (W) at 260D-E; Wynberg Municipality v Dreyer 1920 AD 439.

harm. Once partnership funds are dissipated, a claim for damages may be worthless if the funds cannot be recovered. In this case, the most effective remedy to stop the misappropriation of assets is an interdict.

CONCLUSION

[27] In conclusion, the application is urgent. The points in *limine* are dismissed. The applicant has met the requirements for an interim interdict.

[28] The order will be structured to give effect to the settlement agreement and to preserve the partnership assets pending the final determination of the parties' rights. The applicant's access to financial information will be for oversight and tax compliance, not for day-to-day operational management.

ORDER

[29] Accordingly, the following order is made.

1. The applicant's non-compliance with the ordinary rules of court relating to time and service is condoned, and the matter is heard as one of urgency.

2. Pending the final determination of the motion or action or arbitration proceedings for the dissolution of the partnership and ancillary relief, to be instituted by the applicant against the respondents within 30 court days of this order:

2.1 The respondents are interdicted and restrained from drawing, directly or indirectly, any amount in excess of R500,000 per month per person from the business accounts of the Spa and Top stores operated by Markos Retail Holdings (Pty) Ltd and subsidiary companies (Green Gambit Investments (Pty) Ltd, Markos Brothers Primrose (Pty) Ltd, Markos Brothers (Pty) Ltd, Markos Square (Pty) Ltd, and Markos Westwood (Pty) Ltd, without the applicant's consent.

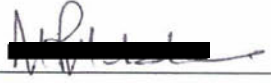
2.2 The respondents are interdicted and restrained from causing the said business accounts to be used for the payment of their personal or family expenses, including but not limited to personal legal fees, household expenses, and assets for private residences.

2.3 The respondents are directed to provide the applicant, within 5 days of this order, with full and unfettered online (including accounting software) and physical access to all bank accounts, books of accounts, and accounting records (including petty cash reconciliations and cash out reports) of the said business.

2.4 The respondents are directed not to unreasonably withhold their consent for the timeous submission of all tax returns by the applicant and to provide all necessary information for this purpose.

2.5 The respondents are interdicted and restrained from preventing the applicant and his internal audit team from accessing the premises of any of the Spar stores operated by their subsidiaries.

3. The respondents are ordered to pay the costs of this application, including the costs of two counsel, jointly and severally, the one paying the other to be absorbed, on Scale C.


MMP Mdalana-Mayisela
Judge of the High Court
Gauteng Division

Digitally delivered by uploading to Caselines and emailing to the parties.

Date of hearing: 28 October 2025

Date of delivery: 31 October 2025

Appearances:

For the applicant:

Adv AR Bhana SC

Adv LM Spiller

Instructed by:

Bowman Gilfillan Inc

For the respondents:

Adv JL Myburgh

Instructed by:

Fluxmans Inc