



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

CASE No: 12000/2024

In the matter between:

JANINE ARMER

Applicant

and

PIETER ROY NAUDÉ

Respondent

Heard: 21 November 2025

Judgment: 1 December 2025

Summary: Contempt of Court; joinder of necessity and effect on order of court; rescission of order granted by agreement; variation of an interim order of court.

ORDER

1. The respondent (Pieter Roy Naudé) is declared to be in contempt of paragraphs 2, 3 and 11.1 of the order of this court under the above case number handed down on 31 May 2024.
2. Should the respondent not comply with any aspect of this order, the applicant is given leave to set this matter down on notice, with amplified papers as required, for consideration of sanction for the respondent's contempt of the 31 May Order. By 'not comply' is not meant to 'be in contempt'. The simple fact of non-compliance will entitle the applicant to set the

matter down and move for an appropriate sanction. That decision will be in the hands of the court which hears such an application, should it materialise.

3. Pending the final determination of the action instituted in this Court under case number 16605/2024 ("the Action"), the applicant shall have the sole authority and discretion to manage and operate the following entities, including any immovable property owned by such entities, and any associated operational activities ("the Applicant Entities" and "the Applicant Properties"):
 - 3.1. ACP Metals (Pty) Ltd (Reg. No. 2023/582492/07);
 - 3.2. IPJA Investments (Pty) Ltd (Reg. No. 2017/320239/07);
 - 3.3. Forestriver (Pty) Ltd (Reg. No. 2019/617710/07);
 - 3.4. Mufasa Global Management Enterprises (Pty) Ltd (Reg. No. 2020/725235/07); and
 - 3.5. Little Dinkum (Pty) Ltd (Reg. No. 2020/706470/T07).
4. Pending the final determination of the Action, the Respondent shall have the sole authority and discretion to manage and operate the following entities, including any immovable property owned by such entities, and any associated operational activities ("the Respondent Entities" and "the Respondent Properties"):
 - 4.1. Hairbay (Pty) Ltd (Reg. No. 2016/421693/07);
 - 4.2. S-Cape Tourism (Pty) Ltd (Reg. No. 2022/648990/07); and
 - 4.3. MVPS Property CC (Reg. No. 1998/023488/23).
5. Pending the final determination of the Action, the applicant is interdicted and restrained from exercising any authority, power, or control in respect of the Respondent Entities and the respondent is interdicted and restrained from exercising any authority, power, or control in respect of the Applicant Entities, including (but not limited to) the following:
 - 5.1. Any signing powers at financial institutions.
 - 5.2. Access to or control over banking applications, bank accounts, credit card machines and any other payment method.
 - 5.3. Access to or control over any letting platforms, advertisements, websites and/or social media accounts.
 - 5.4. The appointment or dismissal of employees.
 - 5.5. Engagement with or control over financial service providers including, banking institutions, accountants and the South African Revenue Service (SARS).
6. The respondent is directed, within 7 (seven) days from the date of this order, to cause the following amounts in respect of the following properties to be paid into the bank accounts as indicated:
 - 6.1. Sundeck Lodge (owned by Forestriver (Pty) Ltd) in the amount of R157 024.04, into account number 0[...] with Standard Bank;
 - 6.2. Dam House (owned by Mufasa Global Management Enterprises (Pty) Ltd) in the amount of R201 101.80, into account number 4[...] with ABSA;
 - 6.3. Strand Guest House (owned by ACP Metals (Pty) Ltd) in the amount of R101 345.84, into account number 6[...] with First National Bank;
 - 6.4. Bedrock Guest Studios (owned by IPJA Investments (Pty) Ltd) in the amount of R85 018.13, into account number 1[...] with Nedbank; and
 - 6.5. Yacht View Lodge (owned by the Phillip Naude Eiendom Trust) in the amount of R142 082.73, into account number 1[...] with Standard Bank.

7. The respondent is directed to, immediately upon the granting of this order, provide the applicant with all log-in details for all letting platforms, both historic and current, in respect of the Applicant Properties and the business of letting them.
8. The respondent is directed to hand over to the applicant the keys to all the Applicant Properties and is interdicted and restrained from entering such properties or removing any contents therefrom, without the written consent of the applicant (email shall suffice).
9. Pending finalisation of the Action, the applicant is directed to provide the respondent with copies of the following documents ("the Documentation") in respect of the Applicant Properties and the Applicant Entities, for each month from and including December 2025, on or before the last day of the next month:
 - 9.1. All bank statements in respect of all bank accounts linked to or used for the purposes of receiving income and/or paying expenses, whether currently in use or opened in the future;
 - 9.2. All invoices and receipts issued for bookings, rentals (short and long term) or letting, whether through the letting platforms, letting agents or privately;
 - 9.3. Management accounts, which shall include at least an income statement (profit and loss account), a balance sheet, a summary of cash flow movements, an age analysis of trade creditors and trade debtors and income and expenditure schedules;
 - 9.4. Booking summaries from any and all letting platforms, letting agents or private listings for any and all listings whether currently in use or created in the future;
 - 9.5. Bond statement and rates/utilities.
10. Pending finalisation of the Action, the respondent is directed to provide the applicant with copies of the Documentation in respect of the Respondent Properties and the Respondent Entities, for each month from and including December 2025, on or before the last day of the next month.
11. The parties are each ordered and directed to provide each other, by 28 February 2026, with all bank account statements and financial account statements which are in their possession or control, in respect of each of the Applicant Properties or the Respondent Properties or the Applicant Entities or the Respondent Entities for the period from 31 May 2024 to 30 November 2025.
12. The parties are each ordered and directed to provide each other, by 28 February 2026, with a full accounting for all funds received, expended, and controlled by each of them in respect of the Applicant Properties or the Respondent Properties or the Applicant Entities or the Respondent Entities for the period from 31 May 2024 to 30 November 2025.
13. Each of the applicant and the respondent are authorised to contact Microsoft Corporation, the owner of OneDrive, and any other relevant service providers, to recover deleted or removed business records and data.
14. Pending final determination of the Action and subject to the ordinary, bona fide conduct of the Applicant Properties, the Respondent Properties, the Applicant Entities and the Respondent Entities:
 - 14.1. The parties shall not dispose of, encumber, or in any manner deal with any immovable properties or material assets held by the aforesaid entities, without:
 - 14.1.1. the prior written consent of both parties, acting personally or through their attorneys (email shall suffice); or, failing that
 - 14.1.2. the leave of this Court on application.

- 14.2. This shall not prevent expenditure in the ordinary course of the business of the aforesaid entities, including the payment of ordinary, legitimate operating expenses of the Applicant Properties, the Respondent Properties, the Applicant Entities and the Respondent Entities, such as rates, utilities, insurance, staff costs, routine maintenance, and similar expenditures necessary to preserve the value of the assets of such entities.
15. No obligation in this order is reciprocal on any other obligation.
16. The parties are each entitled to set this matter down on notice to the other, with amplified papers as required, for the variation of this order should the circumstances require.
17. The respondent shall pay the costs of this application, with scale C applying.

JUDGMENT

Handed down by email to the parties on 1 December 2025

Judgment handed down electronically by circulation to the parties' legal representatives by email and released to SAFLII.

KANTOR, AJ:

1. On 31 May 2024 an order was granted in the above matter by agreement between the parties in the following terms ("the 31 May Order"):
1. The forms, manner of service and time periods as prescribed by the Uniform Rules of Court are dispensed with in terms of Rule 6(12)(a) and this application is heard on an urgent basis.
 2. The respondent is interdicted and restrained from preventing the applicant access to the letting platforms which form part of the business entities that fall within the universal partnership, including, but not limited to: Booking.com; Nightsbridge; Airbnb; RoomsforAfrica; SafariNow; Travelground; SleepingOut; AfriStay; SA Venues; HomeAway; TravelIT; Agoda and Expedia. The respondent shall immediately furnish the applicant with the latest login details of the current letting platforms and shall not in future change any login details without the applicant's written consent or a court order.
 3. The respondent is directed to change the banking details in which the letting platforms make payment into, and shall not in future change such details without the applicant's written consent or a court order, for the following:
 - 3.1 the banking details for the Strand guesthouse (owned by ACP Metals (Pty) Ltd) is to be changed to First National Bank with account number: 6[...];

- 3.2 the banking details for the Bedrock guesthouse (owned by IPJA Investments (Pty) Ltd) is to be changed to Nedbank with account number: 1[...];
 - 3.3 the banking details for the Sundek guesthouse (owned by Forestriver (Pty) Ltd) is to be changed to Standard Bank with account number: 0[...];
 - 3.4 the banking details for the Damhouse guesthouse (owned by Mufasa Global Management Enterprises (Pty) Ltd) is to be changed to Absa with account number: 4[...]; and
 - 3.5 the banking details for the Yacht View guesthouse (owned by the Phillip Naude Trust) is to be changed to Standard Bank with account number: 1[...].
4. The respondent is directed to reinstate access to the applicant of all banking accounts, banking apps and platforms and Sage accounting software by providing her with the necessary username and password details and/or allowing her device to be linked to such banking apps and platforms.
5. The respondent is directed to restore access to the applicant of the business email at g[...], by providing her with the necessary username and password details and the respondent shall not in future change the business email login details without the applicant's written consent or a court order.
6. The respondent is directed to restore access to the applicant of the business OneDrive by providing her with the necessary username and password details and the respondent shall not in future change any login details without the applicant's written consent or a court order.
7. The respondent is directed to add the applicant back onto all WhatsApp groups necessary for her to operate the business entities that fall within the universal partnership and shall not in future remove the applicant from any such WhatsApp groups without her written consent or a court order.
8. The respondent shall advise all employees and staff, in writing and to which the applicant shall be copied in, that the applicant remains a business owner in the various entities and they are to continue to communicate with her and follow any instructions given by her.
9. Paragraphs 2 to 8, above, are to operate as an interim interdict pending the outcome of the action proceedings referred to below.
10. The applicant shall issue out action proceedings against the respondent by no later than 21 June 2024, in order to fully ventilate all issues relating to the dissolution of the universal partnership between parties.
11. Pending finalisation of the action to be instituted as envisaged by the applicant in paragraph 10, above:
 - 11.1 all payments made by/on behalf of all entities forming part of the alleged universal partnership will be made with the consent of both parties. If the parties cannot agree in respect of any payment and/or any other matter

pertaining to the conduct of the alleged partnership businesses, **Mr Bernard Shaw** (CA) of **Crowe HZK** Auditors of Techno Park will have the right to decide in his absolute discretion (without having to provide reasons) whether such payment may be made and/or conduct is authorised or not and the business will be liable for his remuneration in respect of the above;

11.2 the parties will exchange, through their respective legal representatives, all records, accounts, vouchers and documents pertaining to the alleged universal partnership and also confirm that both of them and their representatives will have access to all records, documents, accounts and vouchers of and/or pertaining to the alleged universal partnership which are in possession of third parties and also in possession of **DFI Accounting (Pty) Ltd** and **Carlton Martin**; and

11.3 the applicant will, as far as possible, restore all files and/or folders which she removed during the past 12 months from the business' *"one drive"* device.

2. The entities referred to in paragraph 3 of the 31 May Order will be referred to as "the Paragraph 3 Entities".
3. Although not recorded as such therein, the 31 May Order was taken by agreement between the parties, with the respondent being present in court on the day and having participated in the formulation of the order. For example, he insisted on clause 11 and the appointment of Mr Shaw.
4. There are three main issues in this matter:
 - 4.1. Whether the respondent is in contempt of the 31 May Order.
 - 4.2. Whether the 31 May Order is to be rescinded.
 - 4.3. Whether and, if so, to what extent and in what respects, the 31 May Order should be varied or replaced.
5. In accordance with paragraphs 9 and 11 of the 31 May Order, it was interim in nature, pending the determination of action proceedings to be instituted.
6. The anticipated action proceedings were instituted under case number 16650/2024 of this court and are pending ("the Action").

7. It is common cause that the mechanism in the 31 May Order has failed: the respondent says that “*this mechanism has manifestly failed*” and the applicant says that it “*has failed and simply will not work.*” Why it has failed is not common cause.
8. Being an interim order, the 31 May Order is subject to variation by this court in appropriate circumstances: Freedom Stationary (Pty) Ltd v Hassam 2019 (4) SA 459 (SCA) at 465A.
9. This matter involves various aspects, but at its core essence, besides the contempt issue, is whether the 31 May Order is to be varied or replaced and, if so, in what respects. Both parties seek relief in this respect, the applicant in the main application and the respondent in the counter application.
10. A core aspect of this matter is a short-term accommodation business. This business involves various property-owning entities, which together own thirteen immovable properties. The applicant is the sole director/shareholder of five of these companies. The respondent is the sole director of three of them. In addition to these, separate operating entities were used to run the short-term accommodation business.
11. The applicant and respondent were involved in a personal relationship for approximately nine years, during which they cohabited and had a child. The existence and extent of any business relationship between them in respect of the short-term accommodation business is in dispute and will be determined in the Action.

12. The applicant contends for a universal partnership. The respondent denies this and contends that the applicant was an employee who did not do much and lived a life of leisure. That is to be considered and determined in the Action.
13. The applicant is the sole shareholder and director of the following companies which own the following properties forming part of the short-term accommodation business: (1) ACP Metals (Pty) Ltd, which owns the Strand Guesthouse; (2) IPJA Investments (Pty) Ltd, which owns the Bedrock Guest Studios; (3) Forestriver (Pty) Ltd, which owns the Sundeck Lodge and (4) Mufasa Global Management Enterprises (Pty) Ltd, which owns Dam House.
14. Hairbay (Pty) Ltd ("Hairbay"), of which the respondent is the sole director, owns the Mansion Guest House (in Hartbeespoort) and various sectional units in 1 on Albert.
15. The operating entities include Little Dinkum (Pty) Ltd, of which the applicant is the sole shareholder and director, and S-Cape Tourism (Pty) Ltd and MVPS Property CC, of which the applicant is the director and member respectively.
16. Over time, disagreements arose between the parties regarding the handling of aspects such as business income flows and expenditure priorities.
17. An urgent application was launched by the applicant under the above case number in May 2024. As mentioned, the parties reached a settlement agreement, which was made an Order of Court on 31 May 2024, being the 31 May Order.
18. The applicant alleges that the respondent did not comply with the 31 May Order and instead implemented a parallel system for *inter alia* bookings, revenues

and banking of income, in breach of the 31 May Order, the effect of which was to exclude the applicant financially while leaving her exposed in her capacity as director, shareholder and surety of multiple entities.

19. The respondent contends that the applicant's incompetence resulted in the problems.

Joinder and the rescission application

20. The entities forming part of the short-term accommodation business, which is averred by the applicant to be part of the universal partnership claimed by her, have not been joined as parties to these proceedings.
21. The respondent contends this to be a '*material misjoinder*' which he avers is a fatal flaw in both the current application and the original order granted on 31 May 2024. I think that the respondent's case is one of '*non-joinder*' and I will proceed on that basis.
22. The point of departure is that if a party is required to be joined, the matter cannot proceed in the absence of notice (*Watson NO v Ngonyama and Another* 2021 (5) SA 559 (SCA)).
23. Failure to join can be cured in an informal manner if the party in question, as held in *In re BOE Trust Ltd* 2013 (3) SA 236 (SCA) at paragraph 20, "... was properly informed of the nature and purpose of the proceedings and unequivocally indicated that it would abide the decision of this court."

24. Transvaal Agricultural Union v Minister of Agriculture and Land Affairs 2005 (4) SA 212 (SCA) at paragraph 66 confirms that the tests to determine whether a party has a direct and substantial interest in the outcome of the litigation are:
- “The first was to consider whether the third party would have locus standi to claim relief concerning the same subject matter. The second was to examine whether a situation could arise in which, because the third party had not been joined, any order the court might make would not be res judicata against him, entitling him to approach the courts again concerning the same subject matter and possibly obtain an order irreconcilable with the order made in the first instance.”
25. Watson at paragraph 53 approved the above *dictum* and added that “*The consequences spelt out in the last part of that dictum is what the rules on obligatory joinder at common law sought to prevent.*”
26. The test for joinder of necessity is described in Gordon v Department of Health: KwaZulu-Natal 2008 (6) SA 522 (SCA) at paragraphs 7 to 11. A party must be joined if it has “*a direct and substantial interest*” in the subject matter that may be affected prejudicially by the court’s judgment, stating “*This has been found to mean that if the order or judgment sought cannot be sustained and carried into effect without necessarily prejudicing the interests’ of a party or parties not joined in the proceedings, then that party or parties have a legal interest in the matter and must be joined.*” A financial interest does not suffice. There must be a legal interest in the right that forms the subject-matter of litigation.
27. In Matjhabeng Local Municipality v Eskom Holdings Limited 2018 (1) SA 1 (CC) at paragraph 92 it was held that “*No court can make findings adverse to any person’s interests, without that person first being a party to the proceedings before it.*” In that matter the Constitutional Court found that persons could not be convicted for contempt without being parties (paragraph 103). In that matter

two officials were sought to be held in contempt of court without being cited as parties. It is axiomatic that they had a legal interest in those proceedings and that relief.

28. The respondent submitted that when orders purport to regulate corporate affairs, the corporate entity has the most direct and substantial interest possible. For this proposition he relied on Neves v Neves N.O. [2021] ZAMPMBHC 2 (8 April 2021) at paragraph 12, in which it was held as follows: *“Any court order directing that the registration of transfer is to be reversed will necessarily affect or involve the Registrar. As such, the Deeds Office should be part of these proceedings ... The non-joinder of the Registrar is therefore fatal to this application and the point in limine is upheld.”* Again, as in Matjhabeng, this is quite obvious. However, it is not authority for the respondent’s proposition. The only relevance it can have to this matter is for the general principles as to joinder.
29. What I consider to be of some moment on this issue is that each of the corporate entities in question have as their sole directors one of the two parties to this matter and as a result are acutely aware thereof. The respondent delivered an extensive answering affidavit of 130 pages (excluding annexures). Despite this, those corporate entities have not sought or communicated a desire to be joined (which is different to a party other than those entities raising non-joinder for the first time in an answering affidavit without saying that the relevant entities wish to be joined). I believe the consideration in BOE at paragraph 20 to be of some guidance: *“Eventually each of the charitable organisations was properly informed of the nature and purpose of the*

proceedings and unequivocally indicated that it would abide the decision of this court.” The directors of all of the corporate entities, namely the applicant and the respondent, are both parties to this application and both of them seek relief in this application in regard to all of those entities. The corporate entities know of the nature and purpose of the proceedings through the parties being their sole respective directors. Their attitude, manifested through the applicable parties (as the directors thereof) to this application themselves both seeking relief in regard to the control of all of them (in the respondent’s case) and some of them (in the applicant’s case) without their joinder, in my view effectively amounts to a decision to abide. Bearing in mind that both parties are doing this, to suggest otherwise in regard to the other party only (as the respondent does) would be somewhat opportunistic, artificial and perhaps even hypocritical. The court is not here to play games.

30. Parallel to the above aspect, is the question as to whether non-joinder must result in the court not dealing with the matter until the non-joinder is cured, as held in *Khumalo v Wilkins* 1972 (4) SA 470 (N) at 475A. Other cases have held that the court takes a practical and common sense approach to the matter: *Marais v Pongola Sugar Milling* 1961 (2) SA 698 (N) at 702F, *Wholesale Provision Supplies CC v Exim International CC* 1995 (1) SA 150 (T) at 158 and *Bester NO v Mirror Trading International* 2024 (1) SA 112 (WCC) at paragraph 22-25.

31. In *Bester*, this court held, relying on *Wholesale Provision Supplies*:

“[In] *Economic Freedom Fighters and others v Speaker of the National Assembly and others* [2016] 1 All SA 520 (WCC), the court considered earlier authorities and explained, in summary, that when considering the necessity of joinder, it must be done within the

context of the case and more particularly with reference to what the nature and effect of the relief sought or that may be granted, is.

[23] The rationale for joinder is that all substantially and directly interested parties may be heard before the order is given, which is a matter of fairness.

[24] Flexibility based on pragmatic grounds was remarked upon as follows in the matter of Wholesale Provision Supplies CC v Exim International CC and Another 1995 (1) SA 150 (T):

“the rule which seeks to avoid orders which might affect third parties in proceedings between other parties is not simply a mechanical or technical rule which must ritualistically be applied, regardless of the circumstances of the case.”

...

[27] ... it would simply not have been pragmatic to join all known members/investors of MTI. In the circumstances I am of the view that the applicants should not be non-suited as a result of non-joinder.”

32. I am bound by Bester unless I consider it to be clearly wrongly decided, which I do not. On the contrary, I consider its approach to be appropriate and correct. I am mindful of the fact that it and other cases involved a situation of a great number of interested parties and whether it was pragmatic for them to be joined, which does not apply on the facts of this matter. That being said, I do not think that the intention was to limit the application of the principle to such types of situations. Rather, I consider the principle to have been intended to be general in nature, taking into account wording such as *‘it must be done within the context of the case and more particularly with reference to what the nature and effect of the relief sought or that may be granted, is’* and that non-joinder should not be applied *‘regardless of the circumstances of the case’*.

33. There appear to be some compelling factors in the circumstances of this case:

(1) The sole director of each of the corporate entities is one or the other of the parties. (2) They have filed very voluminous papers running to almost 1000

pages (of which the answering affidavit, excluding annexures, runs to 130 pages). (3) It was not suggested, both in the papers and in written and oral argument, that anything else material could or would be raised by the corporate entities. (4) With each of them having one of the parties as their sole director, each of those corporate entities would perforce adopt the same approach as their applicable sole director has done. (5) Bearing in mind these factors and the facts of the matter considered in this judgment, I think that this case is a good example in which the practical common-sense approach would apply to hear the matter even if there may have been a non-joinder.

34. As a result, even were the joinder to have been necessary, the circumstances of the matter do not require the joinder of the applicable entities.
35. Although unnecessary in the light of the above, I will briefly deal with whether joinder was necessary.
36. The respondent contends that the “... *relief sought by the Applicant would directly affect the rights and assets of these companies. For example, the Applicant seeks exclusive control over all immovable property owned by such entities and any associated operational activities.*” What the applicant seeks control over is certain companies, to the exclusion of the respondent (the respondent seeks the converse in respect of all of the entities). The companies themselves have control over their *immovable property and any associated operational activities*. This argument therefore does not avail the respondent.
37. The respondent also contends that the “... *the practical effect of the relief sought is to determine rights in respect of assets that belong to the companies, not to the Respondent personally.*” I do not think that any rights in respect of

assets are being determined. The companies retain control over their assets and the relief does not “... *determine rights in respect of assets that belong to the companies.*”

38. The respondent also contends that the “... *the substantive relief [the applicant] seeks affects the rights and property of separate legal entities that are not parties to the proceedings.*” I do not think that any rights and property of the applicable companies are being affected in a legal sense. Those companies retain control over their assets.

39. In my view, therefore, the non-joinder point fails.

Rescission

40. The 31 May 2024 order was taken by agreement between the parties while the respondent was in court. He had insisted on certain changes to the proposed order which were incorporated, particularly in paragraph 11 thereof in relation to Mr Shaw.

41. The respondent seeks rescission of the 31 May 2024 order on various grounds.

42. First, the non-joinder point dealt with above. As indicated, in my view that point is not well taken.

43. Second, the failure of the shared control mechanism provided for in the 31 May order. This failure is common cause: the respondent says that “*this mechanism has manifestly failed*” and the applicant says that it “*has failed and simply will not work.*” However, it is not a ground for rescission in terms of Rule 42 or the common law. Be that as it may, this is somewhat academic, because the 31

May order was an interim order which can be varied by the court in certain circumstances (Freedom Stationary (Pty) Ltd v Hassam 2019 (4) SA 459 (SCA) at 465A) and its failure is potentially such a circumstance. Indeed, both parties rely thereon to contend that the 31 May Order should be varied/replaced. That is dealt with below.

44. Third, '*the preservation of assets pending final determination*'. By this I think is meant the final determination of the Action. This, too, is not a ground for rescission in terms of Rule 42 or the common law. Be that as it may, this is somewhat academic for the same reasons mentioned in the above paragraph.
45. There are other reasons, dealt with below, why I am of the view that the rescission application should not succeed.
46. Rescission can be sought in terms of Rule 42 of the Uniform Rules (erroneously granted orders), Rule 31(2)(b) (default judgments on good cause) and common law rescission.
47. Uniform Rule 42 provides:

Variation and rescission of orders

- (1) The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary:
 - (a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;
 - (b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;
 - (c) an order or judgment granted as the result of a mistake common to the parties.
- (2) Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.
- (3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed."

48. Rule 42(1)(a) rescission applies when an order was “*erroneously sought or erroneously granted in the absence of any party affected thereby.*” As held in Lodhi 2 Properties Investments CC v Bondev (Pty) Ltd 2007 (6) SA 87 (SCA) at paragraph 25, “... a judgment to which a party is procedurally entitled cannot be considered to have been granted erroneously by reason of facts of which the Judge who granted the judgment, as he was entitled to do, was unaware ...” The phrase ‘*erroneously granted*’ therefore relates to the procedure followed to obtain the judgment (see also Freedom Stationary (Pty) Ltd v Hassam 2019 (4) SA 459 (SCA) at 465GH). Questions of direct and substantial (legal) interests required for non-joinder, a substantive aspect, therefore play no role.
49. Rule 42(1)(c) allows for the rescission of an order where there is a mistake common to the parties. The respondent contends that there was a fundamental mistake common to both parties in that they agreed to an order which was bad in law and unenforceable against the actual parties it concerned as these parties were not before the court or party to the order.
50. A further problem is that Rule 42(3) provides that “*The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed.*” If one adopts the strict technical approach of the respondent, notice of the rescission application was not given to the corporate entities. Accordingly, if the non-joinder point is good, then the corporate entities have an interest in the rescission application in terms of Rule 42 which must then fail because it cannot be granted without them having received notice of the application for

rescission; while if the non-joinder point is not good then the rescission application must fail because there is no basis for it in law. Either way, the rescission application in terms of Rule 42 fails. The respondent contended that 'party' in Rule 42(3) is confined to parties actually cited in the litigation. If that is so, then 'party' in Rule 42(1)(a) is also so limited which means that Rule 42(1)(a) itself cannot be invoked which means that the respondent has no case in terms thereof.

51. In Zuma v Secretary of the Judicial Commission of Inquiry (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021) at paragraph 53, the Court held that:

"It should be pointed out that once an applicant has met the requirements for rescission, a court is merely endowed with a discretion to rescind its order. The precise wording of rule 42, after all, postulates that a court "may", not "must", rescind or vary its order – the rule is merely an "empowering section and does not compel the court" to set aside or rescind anything. This discretion must be exercised judicially."

52. In my view, for the reasons mentioned, I believe that the appropriate approach is to exercise that discretion against rescission, in the event that there was a non-joinder.
53. The respondent also relies on the following dictum from Smith and Another v Sheriff Cape Town North [2023] ZAWCHC 309 (albeit in the context of Rule 31 and with reference to Rossitter and Others v Nedbank Limited (96/2014) [2015] ZASCA 196 (1 December 2015)) that "*Generally a judgment is erroneously granted if there existed at the time of its issue a fact which the Court was unaware of, which would have precluded the granting of the judgment and which would have induced the Court, if aware of it, not to grant the judgment.*"

The court could only have been well aware that parties to the application were limited to the applicant and the respondent, while the corporate entities were not – a cursory scan of the 31 May Order, which refers specifically and by name to many of them, shows this. The respondent also relied on Lodhi 2 Properties Investments CC v Bondev Developments (Pty) Ltd 2007 (6) SA 87 (SCA) at paragraph 24, to the effect that “... *if notice of proceedings to a party was required but was lacking and judgment was given against that party, such judgment would have been erroneously granted.*” No judgment was given against any other party besides the respondent. This is therefore of no assistance.

54. The respondent contends that material non-joinder vitiates court orders, relying on Mafilika v Elundini Local Municipality [2025] ZASCA 142 in which it was held at paragraph 11: “*If an order or judgment cannot be sustained without necessarily prejudicing the interest of third parties that have not been joined, then those third parties have a legal interest in the matter and must be joined.*” That merely restates the well-known principle. It is not authority for court orders to be vitiated due to non-joinder (other than on appeal, as in Matjhabeng).
55. The respondent relied on Bunton v Coetzee [2014] ZAGPPHC 553 at paragraphs 17 to 20, at which it was found that the court cannot hear a matter where there is a lack of *locus standi*. The original parties cannot, even through agreement, confer standing on non-parties or affect rights of persons not before the court. The court held that “1. *Locus standi is fundamental to due process without it the proceedings are invalidated*” and “2. *Locus standi is a matter of law and cannot be conferred by consent or by the condonation of the court.*”

56. The respondent contended: “*Naturally, the same principle must be applicable to parties not before the court at all, who are, in law, separate legal persons to those actually before the Court.*” In my view, this contention is wrong in law (BOE).
57. The common-law grounds for rescission are narrow. Rescission lies for fraud on the Court, *justus error* going to the root of the judgment, or truly “new” evidence. The respondent alleges none of these. His grievance is that the 31 May Order is vitiated for non-joinder. For the reason set out above, I am of the view that this does not avail him.
58. The application for rescission of the 31 May Order therefore fails.

Contempt of Court

59. The 31 May Order was taken by agreement, with the respondent having been present at Court on the day when it was agreed and legally represented at all times.
60. The applicant contends that:
- 60.1. The respondent did not comply with the 31 May Order and instead implemented a parallel system for *inter alia* bookings, revenues and bank accounts, in breach of the 31 May Order, the effect of which was to exclude the applicant financially while leaving her exposed in her capacity as director, shareholder and surety of multiple entities.
- 60.2. The conduct of the respondent, is not merely a technical or inadvertent failure to comply with the 31 May Order, but a calculated and sustained

attack on the authority of, and a sign of complete disregard for, this court. This conduct amounts to a cynical strategy to financially cripple the applicant and dissipate the assets of the universal partnership before the main action can be finally determined.

60.3. The respondent's strategy is to ensure that by the time the main action is heard, there will be nothing left of the universal partnership to divide, and the Applicant will be too financially broken to continue the fight.

60.4. The respondent's actions, when considered holistically, demonstrate a wilful disrespect for the rule of law and the legal system.

61. The respondent contends that:

61.1. The applicant has failed to establish the elements of contempt beyond reasonable doubt. This is a conclusion which takes the matter no further.

61.2. The 31 May Order was entered into under duress and is fundamentally unworkable. Even were the duress to be true, this and the order being unworkable do not detract from the fact that there was an order in place and takes the matter no further. In any event, as illustrated below, the duress alleged was from a third party and the requirements to rely thereon have not been established.

61.3. The applicant herself is in material breach of the order. This takes the matter no further because the question is whether the respondent was in contempt, discussed further below.

61.4. The Respondent's conduct, properly understood, was lawful, justified, and taken in good faith. This is relevant and is considered in some detail below.

61.5. There are genuine factual disputes that raise more than reasonable doubt as to wilfulness and *mala fides*. This is relevant and is considered in some detail below.

62. In my view, the contempt case depends in the main on the issues in 61.4 and 61.5 above.

Legal principles

63. Section 165(5) of the Constitution of 1996 provides that an order or decision issued by a Court binds all persons to whom and organs of state to which it applies.

64. In Matjhabeng Local Municipality v Eskom Holdings Limited and Others 2018 (1) SA (CC) at paragraph 48 it was held:

“To ensure that courts’ authority is effective, section 165(5) makes orders of court binding on “all persons to whom and organs of state to which it applies”. The purpose of a finding of contempt is to protect the fount of justice by preventing unlawful disdain for judicial authority. Discernibly, continual non-compliance with court orders imperils judicial authority.”

65. Civil contempt is a valuable mechanism for securing compliance with Court orders (Fakie NO v CCII Systems (Pty) Ltd 2006 (4) SA 326 (SCA) at paragraph 42). Where the primary objective for contempt proceedings is to force compliance with the court’s order, usually the period of imprisonment is

suspended pending the compliance by the contemnor with the court order. Punishment is thus used for coercive purposes.

66. An order of a court stands until set aside by a court of competent jurisdiction. Until that is done, the court order must be obeyed even if it may be wrong: “... *all orders of court, whether correctly or incorrectly granted, have to be obeyed unless they are properly set aside.*” (Secretary, Judicial Commission v Zuma 2021 (5) SA 327 (CC) at 352G). There is a presumption that the judgment is correct.

67. In Zuma at paragraph 61 it was held:

“Finally, I hasten to point out that “contempt of Court is not an issue inter partes [between the parties]; it is an issue between the Court and the party who has not complied with a mandatory order of Court” ... the overall damage caused to society by conduct that poses the risk of rendering the Judiciary ineffective and eventually powerless is at the very heart of why our law forbids such conduct.”

68. Fakie at paragraph 42 explains as follows:

“To sum up:

- 1 The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and pa in the form of a motion court application adapted to constitutional requirements.
- 2 The respondent in such proceedings is not an ‘accused person’, but is entitled to analogous protections as are appropriate to motion proceedings.
- 3 In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and mala fides) beyond reasonable doubt.
- 4 But once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.
- 5 A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities.”

69. The 31 May Order and respondent's knowledge thereof are common cause. What is in issue is (1) whether there has been non-compliance by the respondent with the 31 May Order (2) which was wilful and in bad faith.
70. Applying *Fakie*, if non-compliance is established, the respondent bears the evidential burden in relation to wilfulness and mala fides: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and *mala fide*, contempt will have been established beyond reasonable doubt.
71. Whether there has been non-compliance by the respondent with any particular paragraphs of the 31 May Order will now be considered.

Paragraphs 2 and 3 of the 31 May Order

72. The applicant contends that the respondent's conduct is in direct breach of, *inter alia*, paragraph 2 and 3 of the 31 May Order. Paragraph 2 interdicts the respondent from "... preventing the Applicant access to the letting platforms ...". Paragraph 3 directs that platform payments in respect of the Paragraph 3 Guesthouses are to be made into specified accounts and that the respondent "... shall not in future change such details without the Applicant's written consent or a Court order...".
73. The respondent opened a new account on Booking.com and listed properties under that account, using different addresses and names. For example, "*The Strand Guesthouse*", located at 3[...] D[...] Street, Strand, is advertised at his instance as "*Phala Guesthouse*" with an address of 3[...] L[...] Street, Cape Town. The properties and the images used are the same.

74. The respondent's new listings on Booking.com for the Paragraph 3 Guesthouses were linked to his own bank accounts, not those required by the 31 May Order. The respondent changed the login details to the original Booking.com platform in April 2025.
75. This is in non-compliance with paragraph 2 of the 31 May Order.
76. In my view, paragraph 3 of the 31 May Order is clear in its terms: income from the letting platforms for the Paragraph 3 Guesthouses must be paid into the five bank accounts specified therein.
77. The respondent utilised an ABSA credit card machine for payments by guesthouse clients. The payments went to the respondent's S-Cape Tourism account at ABSA. The funds were not paid into the accounts stipulated in the 31 May Order. This is in breach of paragraph 3 of the 31 May Order.
78. Similarly, guesthouse income paid via electronic funds transfers (EFTs) was paid into the respondent's bank accounts. The respondent provided guests with invoices on a 'Bedrock Guest Studios' letterhead. The bank details provided were not those as required by the 31 May Order, but rather his own bank account and in one instance those of his ex-girlfriend (this latter instance he said was an error, but is immaterial). The respondent confirmed that the purpose was for this income to be paid into his accounts. That is in non-compliance with paragraph 3 of the 31 May Order.
79. The payment of the funds contrary to the 31 May Order was substantial:

- 79.1. Between 1 April and 30 June 2024, R192 399.66 of Strand Guesthouse and Bedrock income was paid into the account for the 1 on Albert properties run by the respondent.
- 79.2. Between 1 July 2024 and February 2025, R676 608.62 of Strand Guesthouse and Bedrock income was paid into the ABSA S-Cape Tourism account controlled by the respondent.
- 79.3. MVPS Property CC ("MVPS") is a close corporation of which the respondent is the sole member. It has a bank account with First National Bank ("FNB") which was historically dormant, but began to receive large payments after the 31 May Order was made. The FNB statements for this account show, for example, receipts of R81 110.00 in October 2024, R127 947.07 in January 2025, R152 393.57 in March 2025 and R165 996.16 in April 2025.
- 79.4. Between April 2024 and June 2025, R1 154 718.28 in income was not paid into the accounts required by the 31 May 2024 Order and was instead paid into the S-Cape Tourism ABSA account controlled by the respondent using the ABSA credit card machine mentioned above.
- 79.5. The respondent made use of a Yoco payment machine linked to his Capitec bank account for guests to pay R307 060.80 in the period from May 2024 to June 2025, but the banking details linked to this machine were not those required by the 31 May Order.
80. The applicant produced a schedule which summarised the payment of income of the Paragraph 3 Guesthouses from February 2024 to June 2025 which was

not made into the bank accounts required by the 31 May Order, but rather into accounts controlled by the respondent. The total amount not paid into the bank accounts required by the 31 May Order according to this schedule was R2 589 707.68 as at the end of June 2025. In the applicant's heads of argument and in oral argument, it was stated that this had increased to R3 165 409.95, without demur from the respondent.

81. Further factors relevant to a consideration and evaluation of this diversion of income in the context, and for the purpose, of contempt proceedings include:

81.1. The respondent's own bank statements contain numerous transaction narrations referencing "*Booking.com*", "*Accommodation*", and specific guesthouse names like "*Bedrock*" and "*Sundeck*", indicating that the funds were from income earned which was required to be paid into the bank accounts specified in the 31 May Order.

81.2. Funds began flowing into a historically dormant account only after the 31 May Order was granted and the new letting platforms had been created by the respondent.

81.3. The respondent did not identify any other legitimate source of income that could explain this sudden and substantial influx of funds.

81.4. The use of new ABSA point-of-sale card machines at the physical guesthouse locations provided a mechanism for the diversion of income from the bank accounts required by the 31 May Order.

81.5. During April 2025, the respondent changed the login details for the original Booking.com platform and has not provided the new details to

the applicant. Since he changed these details, the applicant has not been receiving notifications of income for the Paragraph 3 Guesthouses.

82. The non-compliance with the 31 May Order, including payment of the funds contrary thereto, was substantial and brought to the attention of the respondent on numerous occasions in writing, but it persisted nonetheless. For example, on 27 September 2024, the applicant's attorney sent an email to the respondent's then attorneys setting out in detail various contraventions of the 31 May Order as follows:

"Dear Alana

My instructions are to reply as follows:

Diversion of funds using ABSA credit card machines: Between April and July 2024 a total of R192.399.66 was diverted away from Strand and Bedrock into the account for the Woodstock properties (registered to your client). This is income that would historically have been used to cover the fixed expenses of the relevant properties, including the bonds (**Letter to Bernard dated 24 July 2024 and further email dated 19 August 2024**). There has been no response from you.

Unauthorised payments: In our email dated **26 June 2024** we set out numerous unauthorised payments made by your client (including R500.000 of the SARS refund monies in May 2024 and more than R109.010 between 01 and 11 June 2024). In our letter dated **15 July 2024** (paragraph 11.6) we again highlighted various unauthorized payments made by your client from the Forest River Standard Bank account. On **13 September 2024** we sent another email to Bernard attaching a schedule of unauthorized payments made by your client from the Forest River account (R28 526.00) and from the Philip Naude Trust account (R20 031.25). There has been no response from you.

Trackers: With reference to the tracker on the 2 vehicles. If the vehicles is used exclusively for business purposes and it is company policy to have trackers on the vehicles and for insurance purposes. I would approve that the debit orders for the trackers must be applied for on the business that is utilising the vehicles (**email from Bernard dated 01 August 2024 in reply to our letter dated 24 July 2024**). These tracking devices have still not been reinstated.

Fines: With reference to the fines below: You are 100% correct, they will not disappear and must be paid ASAP (**email from Bernard dated 31 July 2024, responding to our letter dated 24 July 2024.**) These have still not been paid.

MTN Wi-Fi 1onAlbert: I will definitely advise that the debit order must run from the bank account of the company that is utilizing the facility and approve the move of the

debit order (**email from Bernard dated 26 July 2024 in reply to our letter dated 24 July 2024.**) This has still not been done.

Operational Salaries: Your client unilaterally increased his “operational salary” by R50.000 per month in April 2024 to R186.954.19 and at the same time ceased paying my client’s “operational salary” in the amount of approximately R121.573.34 (**our letters dated 15 July 2024 and 16 August 2024 and follow up email dated 17 September 2024**). There has been no response from you.

Our email to Bernard dated 17 September 2024 (see also our letter dated 24 July 2024): I am instructed that as a result of Mr Naude making unauthorised payments from the Forest River account, the bond was again not paid and is in arrears in the amount of R49 814.02. I am further instructed that the Mufasa arrear bond instalments have still not been paid, despite numerous demands that the arrears be paid. The amount owing is R53.275.88. To avoid foreclosure by the bond holder banks, these arrears must be paid immediately.

Replies from Bernard dated 17 September 2024:

As agreed in the meeting with all the parties, all bond payments need to be settled with immediate effect, because it forms part of the list of assets and liabilities of the partnership. As agreed in the meeting with all the parties, he needs to transfer the money either directly into the bonds to settle the outstanding bonds or transfer the money to an central account from which it can be settled with immediate effect via EFT by Ms Armer.

Our reply to you dated 17 September 2024:

Dear Alana

Please can you ensure that your client complies with the below immediately and provides us with proof of payment.

Your reply to dated 20 September 2024: is that my client must use funds received from a booking on 19 September 2024 (which your client directed Mucha to have deposited into my client’s account) to cover arrears on the Mufasa bond. Historical debts caused by your client’s unlawful hijacking of the business forming part of the universal partnership are to be paid from the income your client diverted, not from new income that should be being used to pay current expenses.

Maintenance for I[...]: Your client continues to refuse to pay any maintenance for I[...] despite our request dated 23 April 2024 at paragraph 13, our letter dated 25 July 2024 to which you replied on 7 August 2024 saying that your clients authorized payment of I[...]’s expenses “using funds from the various business accounts”. Our client was forced to make payment of I[...]’s dentistry from the Sundeck account.

VAT refund: Despite numerous requests your client has failed and/or refused to provide us with details of what became of these funds in the amount 1.5 million Rand (**our letter dated 11 June 2024 and further email dated 26 June 2024.**) There has been no response from you.

The effect of the above is as follows:

Benefits to your client:

Redirected funds (known)	R192,399.66
Unauthorised payments	R500,000.00
	R28,526.00

	R20,031.25
Increased "operational salary" (6 months at R186,954.19)	R1,121,725.14
TOTAL	R1,862,682.05
<u>Loss to your client:</u>	
Loss of "operational salary" (6 months at R121,573.34)	R729,440.04
Unpaid Forest River bond	R49 814.02
Unpaid Mufasa bond	R53,275.88
TOTAL	R832,529.94"

83. The respondent created new separate listings on Booking.com to which the Applicant was not given access. The income from the Paragraph 3 Guesthouses was not paid into the bank accounts required thereby.
84. By creating new listings and not complying with the payment requirements in paragraph 3 of the 31 May Order, the respondent breached that order. I am therefore of the view that breach of the 31 May Order has been established in this respect.
85. The applicant submitted that the respondent's breaches are neither isolated examples nor insubstantial, but rather that the respondent engaged in a large-scale and systematic diversion of funds in breach of the 31 May Order. I tend to agree. As mentioned, the extent of the respondent's breach is very substantial, with over R2.5 million in funds, as at the end of June 2025, not paid into the bank accounts as required by the 31 May Order. In heads of argument and in oral argument, it was stated by the applicant that this had increased to R3 165 409.95, without demur from the respondent.
86. The interpretation of an order of court is explained in South African Broadcasting Corporation v National Director of Public Prosecutions and Others 2007 (1) SA 523 (CC):

"The starting point is to determine the manifest purpose of the order. In interpreting a judgment or order, the court's intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents. As in the case of a document, the judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention."

87. In my view, paragraph 3 of the 31 May Order could not be clearer. It decrees, in unequivocal terms, that income from the letting platforms for the Paragraph 3 Guesthouses must be paid into the five specified bank accounts. The non-compliance with this aspect of the 31 May Order was prodigious. The respondent's new listings on Booking.com for the Paragraph 3 Guesthouses were linked to his own bank accounts, not those required by the 31 May Order. When the respondent changed the login details to the original Booking.com platform in April 2025, he also changed the linked banking details to accounts under his sole control.
88. Conduct to this extent in non-compliance with the 31 May Order of which the respondent was aware, had agreed to and had been reminded of on a number of occasions can only, in my view, result in the inference that it was wilful and in bad faith. This is considered further below.

Paragraph 11.1 of the 31 May Order

89. Paragraph 11.1 of the 31 May Order, requires that "all payments made by/on behalf of all entities forming part of the alleged universal partnership will be made with the consent of both parties. If the parties cannot agree in respect of any payment and/or any other matter pertaining to the conduct of the alleged partnership businesses, **Mr Bernard Shaw** (CA) of **Crowe HZK** Auditors of Techno Park will have the right to decide in his absolute discretion

(without having to provide reasons) whether such payment may be made and/or conduct is authorised or not ...”

90. On 26 June 2024, the applicant’s attorney communicated to the respondent’s attorney that the respondent had made numerous unauthorised payments between 1 and 11 June 2024, totalling just under R140 000.00. The correspondence also highlighted that the respondent was refusing to make funds available for bond instalment debit order payments for the property-owning entities of which the applicant is the sole shareholder and director while those for the entities of which he is the sole director were paid and that he was refusing access to bank accounts in breach of paragraph 4.
91. This was followed by further correspondence detailing unauthorised withdrawals from the Forest River Standard Bank account (R28 526.00) and the Philip Naude Trust account (R20 031.25 and R66 900.00).
92. The respondent contends that these funds were used to cover “*operational expenses*”. This is an admission of the conduct. As with paragraph 3 thereof, paragraph 11.1 of the 31 May Order could not be clearer, decreeing in unequivocal terms that all payments had to be by consent or, failing that, on the directive of Mr Shaw.
93. In October 2024, the respondent purchased a new Amarok motor vehicle, committing the business to a new monthly instalment of R19 666.46, without the applicant’s knowledge or consent, in circumstances where the business already had three available vehicles. This was done while bond instalment payments were not being made.

94. A refund of approximately R1.5 million received from SARS was paid into the Hairbay Standard Bank account. Despite numerous requests, the respondent has not provided any details of what became of these funds.
95. I am therefore of the view that non-compliance with the 31 May Order has been established in these respects.
96. The respondent insisted on the mechanism in paragraph 11.1 and the appointment of Mr Shaw.
97. On 15 July 2024, Mr Shaw expressly refused to approve an expense of R81 750.00 for an advertising signboard requested by the respondent for one of the properties. Despite this, the respondent made a payment of R6 500.00 for the sign on 22 December 2024 and it was erected at his instance.
98. On 17 September 2024, Mr Shaw issued a directive that *“all bond payments need to be settled with immediate effect”* to avoid foreclosure, as entities were in arrears, such as Forest River in the amount of R49 814.02 and Mufasa in the amount of R53 275.88. To date, the respondent has not complied with this directive. This places the immovable properties at risk of foreclosure. The banks have handed over bonds to their legal departments and the properties are at risk of foreclosure.
99. The respondent has ignored other directives from Mr Shaw, including to reinstate vehicle trackers (directive on 1 August 2024), pay outstanding traffic fines (directive on 31 July 2024) and move the MTN Wi-Fi debit order for 1 on Albert from the applicant’s personal account (directive on 26 July 2024).

100. I am therefore of the view that non-compliance with the 31 May Order has been established in these respects.

101. The respondent's non-compliance with the 31 May Order has been ongoing despite protest. He has not rebutted the presumption of wilfulness and bad faith. On the contrary, I consider that the facts establish these elements.

102. Conduct to this extent in non-compliance with the 31 May Order of which the respondent was aware, had agreed to and had been reminded of on a number of occasions can only, in my view, result in the inference that it was wilful and in bad faith. I conclude that the presumption in this regard has not been rebutted.

Paragraphs 5, 6, and 11.2

103. The respondent complied with paragraphs 5 and 6 of the 31 May Order by restoring the applicant's access to the original email and OneDrive accounts.

104. The applicant contends that: (1) The respondent immediately rendered this compliance meaningless by migrating all live business operations to a new, secret email address (m[...]) and a new, secret Dropbox account, to which the applicant has no access. (2) This is a deliberate act of informational warfare, breaching the spirit of clauses 5 and 6, and the letter of clause 11.2. (3) The intention is to keep the applicant in the dark and render her powerless to monitor his actions or manage the companies for which she is legally responsible. (4) The applicant also contends that the respondent deleted the information on the OneDrive. There is, however, a dispute of fact in this regard which cannot be resolved on the papers.

105. Be the above contentions as they may, they only come into play if non-compliance with the provisions of the 31 May Order is established. However, unlike paragraph 2 of the 31 May Order which refers in general to the letting platforms, paragraphs 5 and 6 refer to access to a specific email address and a specific One Drive, which was provided. Accordingly, I do not find that this is in non-compliance with the 31 May Order.

Further aspects and conclusion on contempt

106. The respondent contends that the applicant breached the 31 May Order and for that reason he cannot be held in contempt of court. No authority was presented in favour of this contention. On basic principles, if a party has obligations in terms of an order of court with which he/she does not comply, then he/she is liable for contempt (provided the requisites are proved). If another party also does not comply, the same applies to that person. But it does not follow that the first party's breach and contempt (if established) are purged thereby. No authority to this effect was cited and nor did I find any. In my view, therefore, this defence does not avail the respondent.

107. The respondent says that he agreed to the 31 May Order under duress. The duress being that his own attorney told him that if he did not do so he was going to be arrested and criminally charged. While a party can rely on duress exerted by a third party, in order to do so it must be proved that the other party to the agreement knew of or procured the duress. In Malilang v MV Houda Pearl 1986 (2) SA 714 (A), a case involving duress, the following was referred to with approval at 731D: "*Where one party seeks to avoid a contract on the ground of undue influence by a third person, it must appear that the other party*

to the transaction knew of the facts constituting the undue influence, or at least that he entrusted another party with the task of procuring the contract, and that party exercised undue influence.” This was not attempted in the papers. This defence therefore cannot avail the respondent.

108. The respondent's main defence was that his conduct was 'lawful, justified and taken in good faith' because it was (1) necessary to protect legitimate business interests and prevent business collapse, (2) justified responses to the applicant's own breaches of the order, (3) involved lawful business decisions taken in good faith and (4) involved actions taken outside the scope and ambit of the 31 May Order.

109. The respondent submits that his actions, when properly understood and viewed in context, demonstrate reasonable business decisions made in response to the applicant's mismanagement and in protection of legitimate business interests, and not any disrespect for the rule of law.

110. He contends that all payments made were either necessary operational expenses to prevent business collapse, payments relating to entities not covered by the order, emergency measures to preserve assets or actions taken in good faith interpretation of the requirements of the 31 May Order. He contends further that the necessity for intervention arose because the applicant's mismanagement created cash flow crises, her neglect of maintenance led to properties deteriorating under her control, basic business functions were not being performed, and she refused to engage constructively in joint decision-making.

111. This, however, in my view, cannot pass muster on the facts of the matter, including those considered in detail in the above two sections: (1) The bonds on the properties owned by the entities of which the applicant is the sole shareholder and director were not paid while the bonds on the properties owned by the entities of which the respondent is the sole director or trustee were paid: no explanation for this transparently convenient divide was attempted. (2) The respondent caused R741 448 to be paid to himself in respect of a loan which he claimed was owed to him by Hairbay. (3) The systematic diversion of income. (4) The payments in breach of paragraph 11.1 of the 31 May Order. All of the above being despite the regular written protest of the applicant.

112. In similar vein, the SARS refund of R1.5 million to Hairbay was spent at the respondent's instance as he saw fit without any recourse to the applicant (including payment of the above R741 448 to himself).

113. The respondent avers that his expenditure was applied entirely for legitimate business purposes which, properly interpreted, was in compliance with the 31 May Order. I have dealt with the relevant provisions of the 31 May Order and, in my view, they cannot reasonably bear the meaning contended for by the respondent.

114. A determination by the respondent as to what he considers "*legitimate*" or prioritised expenditure does not allow him to circumvent the terms of the 31 May Order.

115. For example, paragraph 11.1 of the 31 May Order reads as follows (in part):
"all payments made by/on behalf of all entities forming part of the alleged universal

partnership will be made with the consent of both parties. If the parties cannot agree in respect of any payment and/or any other matter pertaining to the conduct of the alleged partnership businesses, **Mr Bernard Shaw** (CA) of **Crowe HZK** Auditors of Techno Park will have the right to decide in his absolute discretion (without having to provide reasons) whether such payment may be made ...”

116. This provision is unambiguous that payments must be by consent or failing that, as directed by Mr Shaw. It is common cause that for many payments neither consent, nor a directive from Mr Shaw, was even sought. On the contrary, at times clear directives from Mr Shaw (such as in regard to signage, mentioned above) were ignored by the respondent. This was in the context of regular protest from the applicant.
117. Mr Shaw gave a directive that the bonds are to be paid which the respondent ignored, but only insofar as the properties owned by companies of which the applicant is the sole shareholder and director are concerned. The respondent claims that he was faced with competing demands for limited funds and had to make difficult choices to prevent the total collapse of the business and for this reason ignored the directive from Mr Shaw.
118. What I think belies this claim, is that this ignoring of the directive was very self-servingly selective: it only applied insofar as the properties owned by the entities of which the applicant is the sole director and shareholder are concerned while he caused the bond instalments in respect of the properties owned by the entities of which he is the director to be paid. He also saw fit to pay himself R741 448 in part repayment of a loan which he asserted against Hairbay.

119. Similarly, the diversion of over R3.1 million in revenue income from the bank accounts expressly specified in paragraph 3 of the Order belies his assertion of legitimate conduct not in breach of the 31 May Order.

120. The respondent contends that the 31 May Order is a nullity because of non-joinder. This aspect has already been dealt with and disposes of this question. There is authority that where an order is granted by a court which it lacks the jurisdiction to grant, it is a nullity and cannot ground contempt: The Master v Motala 2012 (3) SA 325 (SCA) at paragraph 17, at which it was held that where a court usurps a power which it does not have but in law resided in the Master (ie acts without jurisdiction), the order is a nullity. This is a question of jurisdiction which does not apply in the instant matter. In the instant matter there is no question of a lack of jurisdiction or of an order being sought to find a person in contempt of court when that person is not cited as a party. Motala was subjected to critical scrutiny in Department of Transport v Tasima (Pty) Ltd 2017 (2) SA 622 (CC) at paragraphs 188 to 197 and held to be confined to cases where a court acts without jurisdiction and not to be authority that any invalid court order can simply be ignored. On the contrary, Tasima confirmed that all orders, including those incorrectly granted, must be obeyed until set aside because they concern the dignity, repute and authority of the court. This includes even where it is found that the court order is null and void, as held in Tasima at paragraph 186 (see also Zuma at paragraph 59):

“This is because the legal consequence that flows from non-compliance with a court order is contempt. The “essence” of contempt “lies in violating the dignity, repute or authority of the court.” By disobeying multiple orders issued by the High Court, the Department and the Corporation repeatedly violated that Court’s dignity, repute and authority and the dignity, repute and authority of the Judiciary in general. That the underlying order may have been invalid does not erase the injury. Therefore, while a court may, in the correct circumstances, find an underlying court order null and void

and set it aside, this finding does not undermine the principle that damage is done to courts and the rule of law when an order is disobeyed. A conclusion that an order is invalid does not prevent a court from redressing the injury wrought by disobeying that order, and deterring future litigants from doing the same, by holding the disobedient party in contempt.”

121. In my view, the respondent’s conduct was in non-compliance with the 31 May Order, his justification for this bears no relation to the terms thereof and was continued in the face of repeated protest from the applicant. It is therefore concluded that he has not rebutted the presumption of wilfulness and bad faith. Indeed, in my view, the facts establish these elements. Accordingly, I find the respondent to be in contempt of paragraphs 2, 3 and 11.1 of the 31 May Order.

122. As to sanction, it is common cause that the 31 May Order should be replaced or varied and a new regime be ordered to be in place. I therefore think that the question of sanction should be dealt with as follows: should the respondent not comply with any aspect of the order granted in this judgment, the applicant is given leave to set this matter down, with duly amplified papers as required, for consideration of sanction for the respondent’s contempt of the 31 May Order. By ‘not comply’ I do not mean ‘be in contempt’. The simple fact of non-compliance will entitle the applicant to set the matter down and move for an appropriate sanction in respect of the findings in this judgment of contempt of the 31 May Order. That decision will be in the hands of the court which hears such an application, should it materialise.

The order to be granted in place of the 31 May Order

123. Being an interim order, the 31 May Order is subject to variation by this court in certain circumstances: Freedom Stationary (Pty) Ltd v Hassam 2019 (4) SA 459 (SCA) at 465A.
124. It is common cause that a new mechanism is needed because the mechanism in the 31 May Order has failed: the respondent says that “*this mechanism has manifestly failed*” and the applicant says that it “*has failed and simply will not work.*”
125. Both parties apply for a replacement mechanism (in the main application and the counter application, respectively). They agree that they cannot work together.
126. The respondent applies for the full spectrum of the properties and entities to be placed under his sole control pending the determination of the Action. The relevant relief sought by him is as follows:

“2. PRIMARY RELIEF – RESCISSION OF ORIGINAL ORDER

- 2.1 That the order granted by this Honourable Court on 31 May 2024 under the above case number (“the first court order”) is rescinded in its entirety, save as provided for herein.
- 2.2 That the Counter-Applicant is granted full and exclusive control over all business operations, entities, and assets that were established, funded, and operated by him, including but not limited to:
 - 2.2.1 All property-owning companies and their assets;
 - 2.2.2 All operating companies and their business operations;
 - 2.2.3 All booking platforms, letting systems, and revenue streams;
 - 2.2.4 All bank accounts, financial systems, and payment processing facilities;
 - 2.2.5 All business records, documentation, and operational systems.
- 2.3 That, save by order of this Honourable Court or the prior written consent of the Counter-Applicant, none of the properties owned by ACP Metals (Pty) Ltd, IPJA Investments (Pty) Ltd, Forestriver (Pty) Ltd, the Phillip Naude Trust and Mufasa Global Management Enterprises (Pty) Ltd be sold, pending the outcome of the action instituted by the Applicant against the Counter-Applicant.

3 FINANCIAL AND OPERATIONAL RELIEF

- 3.1 That the Applicant is directed to provide the Counter-Applicant with immediate and full access to all bank accounts, financial records, and operational systems of all business entities involved in the hospitality and property letting business.
- 3.2 That the Applicant is restrained and interdicted from making any financial decisions, payments, or transactions on behalf of any of the business entities without the prior written consent of the Counter-Applicant.
- 3.3 That the Applicant is directed to account fully for all funds received, expended, and controlled by her during the period from 31 May 2024 to the date of this order.
- 3.4 That the Applicant is directed to return all misappropriated funds to the respective bank accounts from which they were taken, with interest at the prescribed rate.

4 MAINTENANCE PROVISION

- 4.1 That, in the event that the relief prayed for above in prayers 2 and 3 is granted in the Counter-Applicant's favour, the Counter-Applicant is to pay maintenance for the parties' minor child, I[...], in the amount of R10,000.00 (Ten Thousand Rand) per month, payable on or before the first day of each month to a bank account nominated in writing by the Applicant.
- 4.2 That the aforesaid maintenance amount may be varied by Court Order upon proper application supported by appropriate financial disclosure and justification.

5 RESTORATION OF BUSINESS RECORDS

- 5.1 That the Applicant is directed to restore all business information and documentation that was removed or deleted from the Counter-Applicant's business systems, including but not limited to the "Janine Admin Folder" and all associated financial and operational records.
- 5.2 That the Counter-Applicant is authorised to contact Microsoft Corporation, the owner of OneDrive, and any other relevant service providers, to recover deleted or removed business records and data.

6 ALTERNATIVELY OR IN ADDITION TO PRAYERS 2 AND 3 – AUDIT AND INVESTIGATION RELIEF

- 6.1 That a full forensic audit of all business entities under the control of the Applicant, their financial records, transactions, and operations is ordered to be conducted by two independent auditors to be appointed by each of the parties within 10 (ten) court days of this order.
- 6.2 That both parties are directed to provide their full cooperation to the appointed auditors, including the provision of all documents, records, passwords, and access required to conduct the audit.
- 6.3 That the audit must be completed within 6 (six) months of the appointment of the auditors.
- 6.4 That the costs of the audit are to be borne equally by both parties, pending the outcome and recommendations of the audit.

7 INTERIM RELIEF PENDING FINALISATION

- 7.1 That pending the finalisation of this matter and the completion of the forensic audit, the Counter-Applicant is granted interim control over all business operations to prevent further financial deterioration and potential insolvency of the business entities.
- 7.2 That the Applicant is interdicted and restrained from disposing of, encumbering, or dealing with any assets of ACP Metals (Pty) Ltd, IPJA Investments (Pty) Ltd, Forestriver (Pty) Ltd, the Phillip Naude Trust and Mufasa Global Management Enterprises (Pty) Ltd without the prior written consent of the Counter-Applicant or an order of this Honourable Court.”

127. The applicant seeks a separation of the properties and entities, with the corporate entities of which she is the sole director and shareholder being under her control and the remainder being under the respondent’s control. The relevant relief sought by her is as follows:

- “4 That pending the final determination of the action instituted in this Court under case number 16605/2024 ("the universal partnership action"):
 - 4.1 The Applicant shall have the sole right, authority, and discretion to manage and operate the entities hereunder, including any immovable property owned by such entities, and any associated operational activities (“the Applicant’s Businesses”):
 - 4.1.1 ACP Metals (Pty) Ltd (Reg. No. 2023/582492/07);
 - 4.1.2 IPJA Investments (Pty) Ltd (Reg. No. 2017/320239/07);
 - 4.1.3 Forestriver (Pty) Ltd (Reg. No. 2019/617710/07);
 - 4.1.4 Mufasa Global Management Enterprises (Pty) Ltd (Reg. No. 2020/725235/07); and
 - 4.1.5 Little Dinkum (Pty) Ltd (Reg. No. 2020/706470/T07).
- 5 That pending the final determination of the action instituted in this Court under case number 16605/2024 ("the universal partnership action"):
 - 5.1 The Respondent shall have the sole right, authority, and discretion to manage and operate the entities listed hereunder, including any immovable property owned by such entities, and any associated operational activities (“the Respondent’s Businesses”):
 - 5.1.1 Hairbay (Pty) Ltd (Reg. No. 2016/421693/07);
 - 5.1.2 S-Cape Tourism (Pty) Ltd (Reg. No. 2022/648990/07); and
 - 5.1.3 MVPS Property CC (Reg. No. 1998/023488/23).
- 6 That both parties are interdicted and restrained from exercising any authority, power, or control in respect of the other party’s Businesses, including (but not limited to) the following:
 - 6.1 Any signing powers at financial institutions.
 - 6.2 Access to or control over banking applications, bank accounts, credit card machines and any other payment method.

- 6.3 Access to or control over any letting platforms, advertisements, websites and/or social media accounts.
- 6.4 The appointment or dismissal of employees.
- 6.5 Engagement with or control over financial service providers including, banking institutions, accountants and the South African Revenue Service (SARS).
- 7 That the powers stated in paragraph 6 above shall vest exclusively in the Applicant in respect of the Applicant's Businesses and in the Respondent in respect of the Respondent's Businesses.
- 8 That the Respondent is directed, within 7 (seven) days from the date of this order, to pay all outstanding arrear mortgage bond instalments, municipal accounts and other outstanding amounts into the relevant bank account of each such entity as set out in clauses 3.1 to 3.5 of the first court order in respect of the following properties and in the amounts set out below:
 - 8.1 Sundeck Lodge (owned by Forestriver (Pty) Ltd) in the amount of R157,024.04;
 - 8.2 Dam House (owned by Mufasa Global Management Enterprises (Pty) Ltd) in the amount of R201,101.80;
 - 8.3 Strand Guest House (owned by ACP Metals (Pty) Ltd) in the amount of R101,345.84;
 - 8.4 Bedrock Guest Studios (owned by IPJA Investments (Pty) Ltd) in the amount of R85,018.13; and
 - 8.5 Yacht View Lodge (owned by the Phillip Naude Eiendomme Trust) in the amount of R142,082.73.
- 9 That the Respondent is directed to immediately upon the granting of this order, provide the applicant with all log in details for all letting platforms, both historic and newly created by him, together with all documentation relating to the applicant's businesses and the Phillip Naude Eiendomme Trust since April 2024, including but not limited to all documentation he deleted from the One Drive folder, all documentation stored in his Drop Box account and all management accounts, income and expenditure statements and the like in respect of the applicant's businesses and the Phillip Naude Eiendomme Trust.
- 10 That the Respondent is directed to hand over the keys to all properties owned by the applicant's businesses and the Phillip Naude Eiendomme Trust and is interdicted and restrained from entering such properties or removing any contents therefrom with immediate effect."

128. The applicant alleges that the respondent did not comply with the 31 May Order and instead implemented an alternative, parallel system for bookings, revenues, staffing, and records, the effect of which was to exclude the applicant

financially while leaving her exposed in her capacity as director, shareholder and surety of multiple entities. I have already found this to be the case.

129. The respondent contends that the applicant's incompetence resulted in the problems. He says that she had never been any more than an employee who did not have the competence and experience to run the business. This dispute cannot be resolved in this application, although the respondent's version does appear to be at odds with some material facts, such as the applicant being a shareholder and director, the applicant having undertaken liability as a surety for R10.5 million in respect of loans secured by bonds over the properties and an extremely lengthy WhatsApp sent by the respondent to the applicant on 15 March 2024 in which he said inter alia (in Afrikaans, the translation is mine): *"Your insight into the business like to take control over the business's finances. Not to follow my stupid instruction in this time to give the bank details to other people ... Yes you are naturally my universal wife."*
130. Be this as it may, I believe that the facts dealt with in this judgment show that the respondent diverted substantial funds, created competing listings for properties, did not pay the bonds and acted in serial contravention of the 31 May Order despite repeated protest in writing.
131. In my view, the facts of this matter militate against putting the full spectrum of properties and entities under the respondent's sole control.
132. Subject to the content of the sub-paragraphs of this paragraph, the relief sought by the applicant by and large makes sense to me in the context of the facts of this matter (which includes that she is the sole registered shareholder and director of the entities she seeks to control):

132.1. The relief sought in paragraph 9 of the Notice of Motion is to be limited to the letting platforms in respect of the properties referred to in paragraph 4 thereof because the One Drive issue remains unresolved and the PNE Trust is not one of the entities referred to in paragraph 4 of the Notice of Motion.

132.2. The relief sought in paragraphs 2.3, 3.1, 3.3, 5.2 and 7 of the counter application, with some variations, appears to make sense and will be incorporated in the order.

132.3. I raised with counsel for both of the parties whether a reporting mechanism should be in place pending the determination of the Action. They agreed that it should. I requested them to provide the parties' respective versions thereof. They did so. Certain aspects thereof will be included in the order in this matter.

133. The formulation proposed by the applicant is:

"Pending finalisation of the action proceedings, the parties are directed to provide each other with the following documents for each and every entity / business / trust / company and/or closed corporation owned by, registered to or under his/her control in terms of this order ("the entities") on or before the last day of each month commencing on 31 December 2025:

1. Full run of bank statements on all bank accounts linked to or used for the purposes of receiving income and/or paying expenses of the entities, whether currently in use or opened in the future, including but not limited to those reflected in Annexures "A" and "B" attached hereto;
2. All invoices issued for bookings, rentals (short and long term) or letting of the entities, whether through the letting platforms, letting agents or privately;
3. Management accounts for each entity;
4. Income and expenditure schedules for each entity, together with corresponding bank statements, invoices, receipts, payment/till slips, etc.;
5. Booking summaries from any and all letting platforms, letting agents or private listings for any and all listings whether currently in use or created in the future;
6. Bond statement and rates/utilities account for each entity and/or property owned by such entity.

134. The formulation proposed by the respondent is part of an overall draft order.

The applicable portion is as follows:

- “8. Pending final determination of the action:
 - 8.1 The party in control of the day-to-day financial administration of the Business Structures (or such person as may be agreed in writing between the parties) shall cause **monthly management accounts** to be prepared for each of the Business Structures.
 - 8.2 Such management accounts shall, as a minimum, include:
 - 8.2.1 an income statement (profit and loss);
 - 8.2.2 a balance sheet;
 - 8.2.3 a summary of cash flow movements;
 - 8.2.4 an age analysis of trade creditors and trade debtors; and
 - 8.2.5 copies of all bank statements for the relevant month for all bank accounts held by or on behalf of the Business Structures.
- 9 The monthly management accounts and supporting bank statements shall be delivered to the other party's attorneys of record by no later than 15 (fifteen) days after the end of each calendar month, commencing with the month in which this order is granted.
- 10 The financial information and documents provided in terms of this order:
 - 10.1 Shall be treated as **confidential** and used solely for the purposes of the Audit, the action, and any related settlement negotiations; and
 - 10.2 May not be disclosed to third parties save for the parties' legal representatives, the Auditor, their professional advisers, and any expert witnesses (all of whom shall be bound to preserve confidentiality).
- 11 Pending final determination of the action and subject to the ordinary, bona fide conduct of business:
 - 11.1 The parties are interdicted and restrained from disposing of, encumbering, or in any manner dealing with any immovable properties or material assets held by the Business Structures, other than in the ordinary course of business and for fair value, without:
 - 11.1.1 The prior written consent of both parties, acting through their attorneys; or
 - 11.1.2 Leave of this Court on application.
 - 11.2 Nothing in this order shall prevent the payment of ordinary, legitimate operating expenses of the Business Structures, including rates, utilities, insurance, staff costs, routine maintenance, and similar expenditures necessary to preserve the value of the businesses and assets.”

135. Certain aspects of the above formulations are included in the order below.

136. Finally, the respondent did formally contest urgency, but this was not pressed with any conviction in argument, unsurprisingly because both parties sought urgent relief. The application was launched in August 2025 and was postponed to a date in November 2025 allocated by the Judge President, when it was

heard with a full set of voluminous papers having been filed. I am satisfied that the application was heard with the appropriate degree of urgency. I do not consider it necessary to burden this already lengthy judgment with any further exposition on this aspect.

Costs and order

137. On consideration, my view is that the following combination of the relief sought by the parties, as contained in the order granted below, would be appropriate.

138. The applicant has been substantially successful in the contempt application, the rescission application and the application for the variation/replacement of the 31 May Order and is entitled to her costs. As the matter had a degree of legal and factual complexity. Scale C shall apply.

139. In the premise, it is ordered as follows:

1. The respondent (Pieter Roy Naudé) is declared to be in contempt of paragraphs 2, 3 and 11.1 of the order of this court under the above case number handed down on 31 May 2024.
2. Should the respondent not comply with any aspect of this order, the applicant is given leave to set this matter down on notice, with amplified papers as required, for consideration of sanction for the respondent's contempt of the 31 May Order. By 'not comply' is not meant to 'be in contempt'. The simple fact of non-compliance will entitle the applicant to set the matter down and move for an appropriate sanction. That decision will be in the hands of the court which hears such an application, should it materialise.
3. Pending the final determination of the action instituted in this Court under case number 16605/2024 ("the Action"), the applicant shall have the sole authority and discretion to manage and operate the following entities, including any immovable property owned by such entities, and any associated operational activities ("the Applicant Entities" and "the Applicant Properties"):
 - 3.1. ACP Metals (Pty) Ltd (Reg. No. 2023/582492/07);
 - 3.2. IPJA Investments (Pty) Ltd (Reg. No. 2017/320239/07);
 - 3.3. Forestriver (Pty) Ltd (Reg. No. 2019/617710/07);

- 3.4. Mufasa Global Management Enterprises (Pty) Ltd (Reg. No. 2020/725235/07);
and
- 3.5. Little Dinkum (Pty) Ltd (Reg. No. 2020/706470/T07).
4. Pending the final determination of the Action, the Respondent shall have the sole authority and discretion to manage and operate the following entities, including any immovable property owned by such entities, and any associated operational activities (“the Respondent Entities” and “the Respondent Properties”):
 - 4.1. Hairbay (Pty) Ltd (Reg. No. 2016/421693/07);
 - 4.2. S-Cape Tourism (Pty) Ltd (Reg. No. 2022/648990/07); and
 - 4.3. MVPS Property CC (Reg. No. 1998/023488/23).
5. Pending the final determination of the Action, the applicant is interdicted and restrained from exercising any authority, power, or control in respect of the Respondent Entities and the respondent is interdicted and restrained from exercising any authority, power, or control in respect of the Applicant Entities, including (but not limited to) the following:
 - 5.1. Any signing powers at financial institutions.
 - 5.2. Access to or control over banking applications, bank accounts, credit card machines and any other payment method.
 - 5.3. Access to or control over any letting platforms, advertisements, websites and/or social media accounts.
 - 5.4. The appointment or dismissal of employees.
 - 5.5. Engagement with or control over financial service providers including, banking institutions, accountants and the South African Revenue Service (SARS).
6. The respondent is directed, within 7 (seven) days from the date of this order, to cause the following amounts in respect of the following properties to be paid into the bank accounts as indicated:
 - 6.1. Sundeck Lodge (owned by Forestriver (Pty) Ltd) in the amount of R157 024.04, into account number 0[...] with Standard Bank;
 - 6.2. Dam House (owned by Mufasa Global Management Enterprises (Pty) Ltd) in the amount of R201 101.80, into account number 4[...] with ABSA;
 - 6.3. Strand Guest House (owned by ACP Metals (Pty) Ltd) in the amount of R101 345.84, into account number 6[...] with First National Bank;
 - 6.4. Bedrock Guest Studios (owned by IPJA Investments (Pty) Ltd) in the amount of R85 018.13, into account number 1[...] with Nedbank; and
 - 6.5. Yacht View Lodge (owned by the Phillip Naude Eiendomme Trust) in the amount of R142 082.73, into account number 1[...] with Standard Bank.
7. The respondent is directed to, immediately upon the granting of this order, provide the applicant with all log-in details for all letting platforms, both historic and current, in respect of the Applicant Properties and the business of letting them.
8. The respondent is directed to hand over to the applicant the keys to all the Applicant Properties and is interdicted and restrained from entering such properties or removing any contents therefrom, without the written consent of the applicant (email shall suffice).
9. Pending finalisation of the Action, the applicant is directed to provide the respondent with copies of the following documents (“the Documentation”) in respect of the

Applicant Properties and the Applicant Entities, for each month from and including December 2025, on or before the last day of the next month:

- 9.1. All bank statements in respect of all bank accounts linked to or used for the purposes of receiving income and/or paying expenses, whether currently in use or opened in the future;
 - 9.2. All invoices and receipts issued for bookings, rentals (short and long term) or letting, whether through the letting platforms, letting agents or privately;
 - 9.3. Management accounts, which shall include at least an income statement (profit and loss account), a balance sheet, a summary of cash flow movements, an age analysis of trade creditors and trade debtors and income and expenditure schedules;
 - 9.4. Booking summaries from any and all letting platforms, letting agents or private listings for any and all listings whether currently in use or created in the future;
 - 9.5. Bond statement and rates/utilities.
10. Pending finalisation of the Action, the respondent is directed to provide the applicant with copies of the Documentation in respect of the Respondent Properties and the Respondent Entities, for each month from and including December 2025, on or before the last day of the next month.
 11. The parties are each ordered and directed to provide each other, by 28 February 2026, with all bank account statements and financial account statements which are in their possession or control, in respect of each of the Applicant Properties or the Respondent Properties or the Applicant Entities or the Respondent Entities for the period from 31 May 2024 to 30 November 2025.
 12. The parties are each ordered and directed to provide each other, by 28 February 2026, with a full accounting for all funds received, expended, and controlled by each of them in respect of the Applicant Properties or the Respondent Properties or the Applicant Entities or the Respondent Entities for the period from 31 May 2024 to 30 November 2025.
 13. Each of the applicant and the respondent are authorised to contact Microsoft Corporation, the owner of OneDrive, and any other relevant service providers, to recover deleted or removed business records and data.
 14. Pending final determination of the Action and subject to the ordinary, bona fide conduct of the Applicant Properties, the Respondent Properties, the Applicant Entities and the Respondent Entities:
 - 14.1. The parties shall not dispose of, encumber, or in any manner deal with any immovable properties or material assets held by the aforesaid entities, without:
 - 14.1.1. the prior written consent of both parties, acting personally or through their attorneys (email shall suffice); or, failing that
 - 14.1.2. the leave of this Court on application.
 - 14.2. This shall not prevent expenditure in the ordinary course of the business of the aforesaid entities, including the payment of ordinary, legitimate operating expenses of the Applicant Properties, the Respondent Properties, the Applicant Entities and the Respondent Entities, such as rates, utilities, insurance, staff costs, routine maintenance, and similar expenditures necessary to preserve the value of the assets of such entities.

15. No obligation in this order is reciprocal on any other obligation.
16. The parties are each entitled to set this matter down on notice to the other, with amplified papers as required, for the variation of this order should the circumstances require.
17. The respondent shall pay the costs of this application, with scale C applying.

A Kantor

Acting Judge of the High Court

Appearances:

For the Applicant: **Adv S Clarence**
sian@rsabar.com
Karen Botha Attorneys

For the Respondent: Mr Tim Dunn

TJC Dunn Attorneys

