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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: D6693/2024

In the matter between:

MALCOLM MATTHEW	First Applicant
MOHOMED NAEEM ABDUR RAHEEM MALEK	Second Applicant
MOHAMED SIDDIQUE HASSIM	Third Applicant
MALCOM MATTHEW N.O.	Fourth Applicant
VANISHA MOODLEY N.O.	Fifth Applicant
THEESEN MOODLEY N.O.	Sixth Applicant
MOHAMED NAEEM ABDUR RAHIM MALEK N.O.	Seventh Applicant
FIRDOS BANO MALEK N.O.	Eighth Applicant
MAOHOMED ABDOOL KADER ESSACK N.O.	Ninth Applicant
MOHAMED SIDDIQUE HASSIM N.O.	Tenth Applicant
HASSIM SULIMAN HASSIM N.O.	Eleventh Applicant
MOHAMED HANIF ASLAM HASSIM N.O.	Twelfth Applicant

HASSEN ESSA N.O.	Thirteenth Applicant
MOHAMED HANIF ASLAM HASSIM N.O.	Fourteenth Applicant
GOOLAM HOUSEN SULLIMAN HASSIM N.O.	Fifteenth Applicant

and

AFRICA IMAGING (PTY) LTD	First Respondent
LEON YASEEN PERUMAL	Second Respondent
SHAUKAT ALI MOOSA	Third Respondent
MOHAMEDZUBEIR MOOSA	Fourth Respondent
OMAR FAROUK ABBA TAYOB ESSACK	Fifth Respondent
MARBLE FALLS INVESTMENTS (PTY) LTD	Sixth Respondent
LEON YASEEN PERUMAL N.O.	Seventh Respondent
FARHANA ALLY PERUMAL N.O.	Eighth Respondent
KAMINI PILLAY N.O.	Ninth Respondent
DRS PERUMAL AND PARTNERS RADIOLOGIST INC.	Tenth Respondent
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Eleventh Respondent

This judgment is deemed to be handed down electronically on 13 January 2026 by circulation to the parties' representatives via email.

ORDER

1. The appointment of the fifth respondent as a director of Africa Imaging (Pty) Ltd is declared to be invalid and is set aside.
2. Pending the final determination of an action, which shall be instituted by the applicants within 30 days of the date of this Order:
 - i) The sixth respondent is interdicted and restrained from alienating or in any way interfering with or taking possession of the radiology and other medical equipment or any other movable property owned by the first respondent, located at the premises of Ahmed Al Kadi Private Hospital, 4[...] J[...] S[...] Highway, Mayville, Durban and which is allegedly the subject of the Notarial Bond between the first and sixth respondent, save as it may expressly be authorised to do so by a prior Court Order.
 - ii) The respondents are interdicted and restrained from in any way implementing, giving effect to or acting in accordance with the resolution taken at the meeting of the First Respondent on 21 June 2023 authorising the sixth respondent to take possession of the movable property owned by the respondent, located at the premises of Ahmed Al Kadi Private Hospital, 4[...] J[...] S[...] Highway, Mayville, Durban, and which is the subject of the Notarial Bond between the first and sixth respondent.

iii) The second, sixth and tenth respondents are interdicted and restrained from in any way implementing, giving effect to or acting in accordance with the alleged agreement entered into between them on or about 31 May 2024, which agreement is annexure "M 1" to the sixth respondent's answering affidavit.

3. Should the applicants not institute the said action in this Court timeously, the interdict set out in this order shall immediately lapse and be of no further force or effect.

4. The costs of the application, including all reserved costs, are reserved determination by the court hearing the action to be instituted by the applicants.

5. Alternatively, and should the applicants fail timeously to institute the action, the costs contemplated in paragraph 3 above shall be paid by the applicants, jointly and severally the one paying the other to be absolved, on Scale C and including the costs consequent upon the employment of Senior Counsel.

JUDGMENT

SHAPIRO AJ

Introduction

[1] Africa Imaging (Pty) Ltd (“the company”) has five directors and six shareholders.

The first three applicants are directors, as are the second and third respondents¹.

The fourth to fifteenth applicants represent the Fig Leaf Trust, the NM Trust, the Hassim Trust and the MS Hassim Family Trust, which are shareholders of the company collectively owning 30.5% of the shareholding. The sixth respondent (“Marble Falls”) owns 25% of the shareholding and the seventh to ninth respondents (representing the Lee and Farhana Perumal Family Trust) own 44.5% of the shareholding.

[2] Relations between the applicants, on the one side, and Perumal and Marble Falls on the other, have broken down to the extent that the Perumal Family Trust and Marble Falls resolved to remove the first applicant (“Matthew”) as a director. In turn, Matthew and the other applicants contend that Perumal and Marble Falls are colluding to prejudice the interests of the company and to benefit themselves and are relying on invalid and unlawful resolutions and an invalid Notarial Bond to do so.

[3] These disputes led to the application that served before me, where the applicants seek the following relief:

¹ The first applicant shall be referred to as “Matthew” and the second respondent as “Perumal”. Perumal was appointed as a director on 8 May 2015, Matthew, Malek and Hassim were appointed on 6 December 2016 and Moosa was appointed on 24 February 2023.

- [3.1] Interdicting the respondents from implementing or acting in accordance with resolution taken at a meeting of the company's shareholders on 13 May 2024 for the removal of Mr Matthew as a director of the company and the appointment of the fifth respondent as his replacement, together with a consequential interdict against the CIPC;
- [3.2] Interdicting the respondents from concluding any settlement agreement in relation to pending litigation between the company and Drs Perumal and Partners Radiologists Incorporated ("the radiology practice") in the absence of prior compliance with section 115 of the Companies Act 71 of 2008;
- [3.3] Interdicting the first to tenth respondents from harassing or pressuring or attempting to pressure the applicants into agreeing to the conclusion of a settlement agreement in respect of the action described above;
- [3.4] Interdicting Marble Falls from alienating or interfering or taking possession of radiology and other medical equipment and other movable property owned by the company and which is the subject of the Notarial Bond between the company and Marble Falls unless authorised to do so by a prior Court Order;

[3.5] Interdicting the respondents from implementing or acting in accordance with resolution taken at a meeting of the Board of the company on 21 June 2023 authorising Marble Falls to take possession of the movable property;

[3.6] Interdicting Perumal, Marble Falls and the radiology practice from implementing or acting in accordance with an agreement of settlement concluded between them on or about 31 May 2024; and

[3.7] Interdicting the relevant respondents from harassing or intimidating the first to third applicants, or attempting to do so.

[4] These interdicts are styled as "interim relief pending the final outcome of an action" which is to be instituted by the applicants "within 30 days of the granting of this order".

[5] The application was instituted as an urgent application on 12 June 2024, to be heard on 9 July 2024

The incorporation of the company and the events of April 2017

[6] The company was incorporated in 2015 and was intended to serve as the entity in which valuable radiological equipment would be owned, that would then be hired by the radiology practice in which Perumal was the leading radiologist.

[7] The radiology practice intended to carry on business at Ahmed Al-Kadi Hospital in Durban, which was in the process of construction. Originally intended to open in January 2017², it ultimately opened on 3 April 2017³.

[8] The company originally sought funding from Standard Bank, which apparently was prepared to advance R40 million. However, this did not progress.

[9] On 7 April 2017, the shareholders concluded a written shareholders agreement. Clause 2.4 of that agreement recorded that the “following entities are currently the registered owners” of the shareholding in the company, which included Marble Falls' 25% shareholding. Clauses 2.1 and 2.2 recorded that the company owned the radiology equipment, furniture and the like located at the radiology premises and that it had leased the equipment to the radiology practice in terms of the lease agreement that was annexed as “SH 2”. Although there is a dispute about which annexures were attached to the Equipment Lease Agreement, clause 1 stated that the company leased to the radiology practice the equipment listed on Annexure ‘A’ “which has been funded by “the company” in the contribution amounts reflected on Annexure ‘B 1’ and ‘B 2’ hereto”.

² This is recorded in a quotation issued in August 2016 to the radiology practice by Siemens Healthcare (Pty) Ltd, who the vendor of the radiological equipment.

³ According to its website, <https://ahmedalkadi.com/about-us/>.

[10] In terms of clause 2.7, Perumal, Fig Leaf, Marble Falls and NM Trust would “at all times appoint one Director each” to the Board and Hassim and MS Hassim collectively would appoint one Director and, for voting purposes, would be considered as one shareholder.

[11] Following clause 27 of the lease, a table of annexures was included which described annexure ‘A’ as ‘leased equipment’, annexure ‘B 1’ as “proof of contribution of Company - R 12 M” and annexure ‘B 2’ as “proof of contribution of the company - R 17 M”.

[12] Annexure ‘A’ is a quotation from Siemens Healthcare Pty Ltd dated 5 August 2016 and the (disputed) annexures ‘B 1’ and ‘B 2’ are both headed “Contribution by Marble Falls Investments (Pty) Ltd to the company” for respectively “Funding of equipment and working capital” in the sum of R28 million and “mezzanine funding” in “an amount of R17 million (with the profit calculated at 12%), which will be repayable” in terms of a schedule that commenced on 1 April 2017 and terminated on 1 February 2018, with ten monthly payments of R1.7 million and a final instalment of R2.04 million (the 12% profit amount) on 1 February 2018.

[13] On the same day, 7 April 2017, the Board of the company resolved unanimously “that the company approves and agrees to a notarial bond over

certain equipment supplied by Siemens Healthcare... and installed at the radiology practice... in favour of Marble Falls Investments (Pty) Ltd”.

[14] Three days later and on 10 April 2017, Marble Falls received two inbound deposits of R23.6 million from “Mohamedy Omar Paruk - Agency A” and R12 million described as being from “Marble Falls Investments (Pty)”.

[15] I pause to mention that Marble Falls had paid an amount of R 500,000 to the company on 30 March 2017.

[16] In any event, Marble Falls deposited R35.6 million in the company’s bank account on 10 April 2017 (and paid a further amount of R500,000 on 26 April 2017).

[17] The company paid the full amount of R35.6 million to Siemens Healthcare on the same day, 10 April 2017. Thus, and according to Marble Falls' bank statements, it paid amounts totalling R36.6 million to the company between 30 March and 26 April 2017.

The registration of the Notarial Bond

[18] The Notarial Bond was registered on 18 October 2017, having been signed on 27 September 2017.

[19] The Notarial Bond recorded that the company was “truly and lawfully indebted and held and firmly bound to and in favour of Marble Falls... in the sum of R45 million (hereinafter referred to as “the capital”) howsoever arising from whatever causes” and also declaring to bind in terms of section 1(1) of the Security by Means of Movable Property Act 57 of 1993, the movable property of the company as set out in Annexure ‘A’ to the Bond which contained, *inter alia*, the equipment purchased from Siemens Healthcare. The company further recorded that interest on all amounts secured in terms of the bond would be reckoned at the rate of 9% per annum reckoned from 1 April 2017, calculated and payable monthly in arrears.

Payments by the company from December 2017 to July 2019

[20] On 7 and 8 December 2017, the company paid amounts totalling R3.3 million to Marble Falls, and received transfers from it of R328,370.60 and R250,000. An amount of R328,370.80 was paid by the company on 14 December to lom lom (Pty) Ltd.

[21] On 25 July 2019, the company paid R1.5 million to Marble Falls.

Marble Falls' demand to the company and its response

[22] On 15 June 2023, attorneys then acting for Marble Falls transmitted a demand to the company for payment of the amount of R78,225,179.78, which was calculated on an opening balance from April 2017 of R45 million, to which interest had been applied at 9% per annum.

[23] Payment was demanded within three days, or Marble Falls recorded its intention to take possession of the assets secured by the Notarial Bond.

[24] The response of the Board was to call an urgent meeting of directors. In the Notice of Meeting dated 19 June 2023, a draft resolution was proposed that “the company concedes the terms of the demand, and accordingly authorises the mortgagee (Marble Falls) to take possession of the movable assets located at the radiology practice... in accordance with the terms of the special bond, which constitutes a deemed pledge in favour of the mortgagee”.

[25] A second draft resolution was proposed that the company institute action against the radiology practice in respect of the arrear amounts due by it to the company arising out of the lease⁴ of the radiological equipment and authorising, if necessary, the institution of liquidation proceedings against the radiology practice.

[26] A meeting of the Board of Directors of the company was called for 21 June 2023. Perumal was travelling overseas, but (according to Matthew) gave Matthew his proxy.

⁴ which had been cancelled by the company on or about 9 June 2023

[27] At the Board Meeting, the proposed resolutions were adopted by a simple majority, being supported by the second and third applicants and the third respondent, with Mr Matthew and Mr Perumal (by proxy) voting against the resolutions.

[28] During August 2023, Matthew and Perumal exchanged emails where Matthew confirmed that Marble Falls had paid the company and not Siemens Healthcare when the equipment was purchased.

[29] Approximately three months later, and during September 2023, the company then instituted an action against the radiology practice and Perumal in his personal capacity for payment of the sum of R110,550,008.00 in respect of the arrear rentals due for the radiological equipment.

The events of early 2024

[30] During the early months of 2024, there were discussions within the Board about the company potentially settling the action against the radiology practice.

[31] An offer of R30 million from the radiology practice was considered by the Board but failed for reasons that are not germane to the application.

[32] However, it would seem that the failure of the settlement proposal was at least a trigger for what happened next.

The requisitioned shareholders meeting of 13 May 2024

[33] On 23 April 2024, Marble Falls requisitioned a shareholders' meeting in terms of section 61(3) of the Companies Act 71 of 2008.

[34] The stated purpose of the meeting was to propose a resolution in terms of section 71 of the Companies Act that Mr Matthew be removed as a director of the company because "his continued tenure in office as a director" was inconsistent and incompatible with the best interests of the company and because Marble Falls had lost confidence and trust in him.

[35] Upon receipt of the demand, the company's attorneys notified the remaining shareholders that a shareholders meeting would take place on 13 May 2024 for the purpose described above.

[36] More than the 10 business days' notice of the meeting required in terms of section 62(1)(b) of the Companies Act was therefore given.

[37] Mr Matthew, together with his attorney and the second and third applicants attended the meeting, as did Perumal and the third respondent, representing

Marble Falls.

[38] At the commencement of the debate about the Matthew's removal his attorney, Mr Hassan, stated that meeting was invalid and that any resolution taken to remove Mr Matthew likewise would be invalid and subject to challenge. At that, he and the first three applicants left the meeting.

[39] In their absence, the Perumal Family Trust and Marble Falls proposed two resolutions, namely that:

[39.1] Mr Matthew removed as a director of the company; and

[39.2] the fifth respondent be appointed as a director in his place.

[40] Those resolutions were approved by the remaining shareholders, who collectively owned 69.5 percent of the shareholding in the company.

[41] The company's attempt to update the company records to reflect the removal of Mr Matthew and the appointment of the fifth respondent were challenged by Mr Matthew's attorneys and the CIPC reversed the removal of Mr Matthew and the appointment of the fifth respondent. Factually, that is where matters have remained to date.

The settlement between the radiology practice and Marble Falls on 31 May 2024

[42] On 31 May 2024, Marble Falls, the radiology practice and Dr Perumal concluded a written Settlement Agreement.

[43] The agreement recorded the demand made by Marble Falls the previous June and that Marble Falls and the radiology practice had engaged in lengthy negotiations to resolve the dispute and to ensure that the radiology equipment, upon which the radiology practice depended, would not be removed by Marble Falls.

[44] The radiology practice and Dr Perumal agreed to pay the amount of R30 million in settlement, of which R14,906,000.00 had already been paid and the balance was to be paid in monthly instalments of R406,000.00.

[45] It was further agreed that upon payment of the full settlement amount, ownership in the equipment would pass unconditionally to the radiology practice and the notarial bond would be cancelled.

[46] The applicants challenge this settlement because they contend that it prejudices them and the company and results in the company's property being sold unlawfully and without its consent by Marble Falls to the radiology practice.

Was the shareholders meeting of 13 May 2024, or the resolutions taken at it, invalid?

[47] The applicants contend that the shareholders meeting on 13 May 2024 was procedurally invalid for the following reasons:

[47.1] despite the Notice of the meeting, recording that it was “by order of the Board”, no such resolution was passed by the board;

[47.2] the Removal Resolution contravened both section 65(3) of the Act because only one shareholder proposed the meeting and section 65(4) because the proposed resolution was not accompanied by sufficient information or explanatory material.

[48] The applicants argue that the resolution removing Matthew as a director was substantively invalid because it was contrived in pursuance of a scheme in which Perumal and Marble Falls sought to advance their own interests to the prejudice of the company and the minority shareholders and constituted oppressive and prejudicial conduct prohibited by section 163 of the Act.

[49] It was argued that Perumal's interests were inherently conflicted because he was a trustee of the largest shareholder in the company whilst he and the radiology practice, of which he is the sole shareholder, were being sued by the

company.

Section 61(3) of the Companies Act

[50] In terms of section 61(3) of the Companies Act, the Board of the company was obliged to call a shareholders meeting “if one or more written and signed demands for such a meeting” were delivered, and if the demand described the specific purpose for which the meeting was proposed and was supported by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

[51] Section 61(3) does not grant the Board any discretion if it is confronted with a compliant demand. It must convene the meeting. This is not a circumstance where a majority of the Board could vote against the calling of the meeting, and given the express terms of the section, I do not see that a formal vote is even required. Directors do not even have the discretion whether to put proposed resolutions to a vote by written consent in the absence of a meeting, as they are entitled to consider in terms of section 65(2).

[52] The Board's function then is administrative, limited to arranging the date for the meeting and ensuring that timeous notice is given.

[53] I accept that the Board of the company did not meet before the requisitioned

meeting was convened, nor were the directors requested to vote on a resolution in that regard. However, I do not consider that a meeting was required when a compliant, section 61(3) demand was received.

[54] The purpose behind section 61(3) is to endow shareholders with a right to demand a meeting to a specific purpose if they dispose of more than 10% of the shareholding. This scenario is different to, for example, section 61(1) where a Board has a discretion about whether to call a meeting. Section 61(2)(c)(i) and (3) make it peremptory, placing the power in the hands of the shareholders and not the directors, consistent with their right to have a voice in the administration of the company. That right cannot be denied or delayed by either activity or inactivity by the Board, which is obliged to ensure that the shareholders' meeting is convened.

[55] To then require that the Board formally meet to resolve to call the meeting, and to visit the sanction of invalidity upon the meeting if this does not occur would, in my view, be impermissibly to elevate form over substance⁵. The purpose of the section was achieved – the meeting was called, with more than adequate notice, and it has not been suggested that any shareholder was prejudiced by the way the meeting was called.

[56] The demand received from the Marble Falls described the specific purpose for which the meeting was proposed, being the removal of Matthew as a director

⁵ See *Airports Company South Africa SOC Ltd v Imperial Group Ltd and Others* 2020 (4) SA 17 (SCA) at paras [17] and [18]

and his replacement with the fifth respondent. The “explanation” for the demand was that Matthew's “continued tenure in office as director is inconsistent and incompatible with the best interests of the Company” and that as a consequence, Marble Falls “has lost confidence and trust in him”. There was therefore compliance with section 61(3)(a).

[57] There is nothing in section 61(3) that requires a demand for a meeting to be made by at least two shareholders. The threshold is the percentage shareholding and not the number of shareholders. Therefore, as a 25% shareholder, Marble Falls was entitled to demand that a meeting be called.

[58] Once the meeting had been demanded, it had to be called, and this is what occurred.

Sections 65(3) and (4)

[59] The matter proposed to be considered at the shareholders’ meeting was the removal of Matthew and his replacement by the fifth respondent. The resolution that was required if the purpose of the meeting was to be achieved was proposed by both the Perumal Family Trust and Marble Falls at the meeting and was passed with the requisite majority.

[60] It seems to me again to be an impermissible elevation of form over substance in these circumstances to require that the draft resolution be proposed

by two shareholders prior to the meeting to be valid.

[61] As I read section 65(3), any two shareholders may require a proposed resolution to be put at a requisitioned shareholders meeting – but this would be in addition to any proposed resolution underpinning a demand for the meeting in the first place. I do not interpret section 65(3) to require that any resolution at a requisitioned meeting must be proposed by two shareholders because, for example, if one shareholder, owning 10% of the shareholding requisitioned a meeting, he or she would then be unable to propose a resolution at the meeting called as of right, unless another shareholder agreed. This seems to me to render the provisions of section 61(3) to be somewhat nugatory, and I cannot accept that this is what Legislature intended.

[62] In any event, the proposed resolution was proposed by two shareholders – and, again, no prejudice has been established from that being done at the meeting as opposed to before it. Mr Matthew knew what he was confronting at the meeting, which is why he attended together with his attorney. He understood what was being considered and what the effect of a majority vote in favour would mean – which is why a challenge was threatened if the meeting persisted.

[63] In terms of section 61(5) a shareholder is entitled to apply to court for an order setting aside a demand made in terms of section 61(3) on the grounds that the demand was, *inter alia*, vexatious. The applicants did not approach court and

instead attended the meeting, whilst legally represented.

[64] Section 65(4) does require a proposed resolution to be expressed with sufficient clarity and specificity and to be accompanied by sufficient information or explanatory material to enable a shareholder to determine whether to participate in the meeting and to seek to influence the outcome of the vote. Section 65(5) grants a shareholder the right to apply to court for an order restraining the company from putting the proposed resolution to a vote until the requirements of section 65(4) are satisfied. However, once a resolution has been approved, section 65(6) prohibits a person from challenging or impugning the resolution on the grounds that it did not satisfy section 65(4).

[65] The applicants did not seek to challenge the proposed resolution in terms of section 65 (4) or (5) prior to its approval and are now barred from doing so.

[66] It follows that the applicants' challenge to the validity of the shareholders' meeting and the manner in which the draft resolutions were put must fail.

The removal of a director by shareholders in terms of section 71(1)

[67] The circumstances in which shareholders may remove a director from office in terms of section 71(1) of the Companies Act were recently clarified in *Weir*⁶.

⁶ *Weir v Wiehahn Formwork Solutions (Pty) Ltd and Others* 2025 (4) SA 637 (C) at paras [31], [60] and [63]

[68] The Court reaffirmed that shareholders are not required to give reasons for the intended removal of a director prior to the meeting called in terms of section 71, as long as the director facing removal is given due notice and is afforded a reasonable opportunity to make a presentation to the meeting before the proposed removal resolution is put to a vote.

[69] The Court held that, in the case of shareholders, a vote to remove a director is a proprietary right of shareholding which may be exercised by the shareholder at will and in his or her own interests and that the shareholders' power of removal need not be reasonable or based on good or sufficient cause as it is a proprietary right bound up in the shareholding. Section 71(1) was not intended to restrict shareholders' rights to remove directors and even an agreement between any shareholders and a director entrenching that director can be overridden by an ordinary resolution for his or her removal.

[70] I respectfully align myself with Madam Justice Holderness' reasoning.

[71] The applicants lay stress on the submission that Mr Matthew's removal was for an improper purpose, and to advance an illicit scheme.

[72] Section 71(1) does not contain any requirement that shareholders act in good faith, and as Holderness J found, they do not need to act reasonably. The ability of shareholders to remove a director by simple majority is therefore less

onerous and less conditional that the requirements on directors to remove a fellow director under section 71(3) – in that case, the Legislature imposed requirements that are more stringent and obliged directors to act in good faith and consistent with their fiduciary obligations to the company⁷.

[73] Therefore, it is not relevant whether the Perumal Family Trust and Marble Falls' reasons for seeking to remove Matthew were proper, reasonable or based on good cause. If the majority shareholders have lost confidence in a director, they are entitled as of right to remove him. This is what the Perumal Family Trust and Marble Falls resolved to do.

[74] Mr Matthew was given an opportunity to make submissions as to why he should not be removed and, whilst legally represented, elected not to avail himself of this opportunity, but instead to leave the meeting. Whilst he was entitled to do so, there was then nothing to the contrary to place before the shareholders before the resolution has put to a vote.

[75] In my view, the resolution by the shareholders to remove Matthew as a director is valid and no grounds exist for it to be set aside.

[76] There can therefore be no grounds to grant an interim interdict suspending the operation of that resolution, pending the institution of an action for as yet unidentified relief.

⁷ *Weir*, at paras [28] to [33]

[77] The same cannot be said for the resolution appointing the fifth respondent as a director of the company in place of Matthew.

[78] Clause 2.7 of the Shareholders Agreement granted Fig Leaf Trust the right to appoint a director to the Board of the company. The removal of Matthew as a director cannot serve to amend the provisions of the Shareholders Agreement or to nullify its terms.

[79] In this regard, the applicants' contention that the rights of the Fig Leaf Trust were infringed are sound and the Trust retains its right to appoint a director to the Board in the place of Matthew.

[80] It follows that the resolution appointing the fifth respondent as a director of the company was *ultra vires* and invalid and it should therefore be set aside instead of simply suspended pending the determination of an action in due course.

[81] Mr Gajoo SC, who appeared on behalf of Marble Falls, argued that there was no need for me to make any order in this regard as the Board and shareholders should be left to deal with this matter themselves.

[82] I disagree: given the conflict within the Board and shareholders, it would be inappropriate for this court to recognise the invalidity of the resolution and then to

leave the self-same shareholders to resolve the matter amongst themselves. This would be injurious to the management of the company and its affairs. It would also almost inevitably lead to more litigation.

[83] Neither Mr Gajoo SC nor Mr Choudree (who appeared for, *inter alia*, Perumal and the Perumal Family Trust) could point me to any provision of the Shareholders Agreement or the Companies Act that permitted the majority shareholders to appoint the fifth respondent and I can see no purpose in leaving this issue undetermined.

[84] An order will therefore issue setting the appointment of the fifth respondent aside.

Was the notarial bond a simulated transaction?

[85] The applicants contend that the Notarial Bond was introduced in the latter part of 2017, and its purpose was “simply to act as a device to prevent any lien or preferential claim by creditors over the radiology equipment owned by [the company]. There was and is no loan account in [the company] showing that there was or is any loan payable... Furthermore, the Notarial Bond was never intended to be used to support or secure any indebtedness allegedly owed to Marble Falls for their share buy-in and/or any contribution made to the venture”.

[86] The applicants allege that R25 million of the amounts paid to the company by Marble Falls was in respect of the purchase price of its 25% shareholding in the company and was not a loan.

[87] According to the applicants, it was not Marble Falls who advanced the loan funding to the company but instead was one Paruk who advanced R23,600,000.

[88] This alleged debtor-creditor relationship is described by the applicants in their replying affidavit to Marble Falls' answering affidavit as follows:

"the starting point which evidences this contention is the very bank statement upon which Marble Falls relies on as proof that it paid R35,600,000 to [the company] for the radiology equipment. This statement clearly shows that the source of R23,600,000 of the R 35,600,000 paid to [the company] was MOP, not Marble Falls. Accordingly, the majority contributed to the amount paid to [the company] upon which Marble Falls now alleges indebtedness due to it, was MOP. The only loan that was repayable by the company was the loan payable to MOP".

[89] The second respondent initially adopted the same view, certainly as expressed in correspondence sent on his behalf by his attorney to Marble Falls' attorney in June 2023.

[90] Perhaps unsurprisingly, the second respondent now endorses the position of Marble Falls that the Notarial Bond was not a simulated transaction and was

legitimately approved and registered to secure the indebtedness owed to it by the company.

[91] This issue is fundamental to a determination of the application. If I find *prima facie* (even if open to some doubt) that the Notarial Bond was a sham or was a simulated transaction and that there was no indebtedness due to Marble Falls, neither Marble Falls or Perumal would have any right to interfere with the company's ownership of the radiological equipment and Marble Falls would have no right to sell it. Conversely, if I conclude that the Notarial Bond was legitimate, registered to secure an existing indebtedness and that granted rights to Marble Falls, which it then exercised with the acquiescence of the company (more on that below), then Marble Falls would be entitled to deal with the assets as it has sought to do in the Settlement Agreement concluded with Dr Perumal - as long as the *parati executi* principle does not apply.

[92] The parties accept that there is a dispute of fact in this regard but differ on the approach that I should take in resolving that dispute at this stage of the proceedings.

The approach to disputes of fact when interim relief is sought

[93] The approach that I must take in determining whether the applicants are entitled to interim relief in the face of disputes of fact was set out in *Reckitt &*

*Colman SA (Pty) Ltd v S C Johnson & Son (SA) (Pty) Ltd*⁸ as follows:

“...the Court's approach in determining whether the applicant's right is *prima facie* established, though open to some doubt, is to take the facts set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant should (not could) on those facts, obtain final relief at the trial of the main action. The facts set out in contradiction by the respondent should then be considered and if serious doubt is thrown upon the case of the applicant it cannot succeed...

[94] In *Beecham Group Ltd v B-M Group (Pty) Ltd (supra)* the Court said with regard to the various factors which must be considered:

'I consider that both the question of the applicant's prospects of success in the action and the question whether he would be adequately compensated by an award of damages at the trial are factors which should be taken into account as part of a general discretion to be exercised by the Court in considering whether to grant or refuse a temporary interdict. Those two elements should not be considered separately or in isolation, but as part of the discretionary function of the Court which includes a consideration of the balance of convenience and the respective prejudice which would be suffered by each party as a result of the grant or the refusal of a temporary interdict.'

[95] Therefore, the approach is different to the traditional *Plascon-Evans*⁹ test,

⁸ 1995 (1) SA 725 (T) at 730B-F

but it nevertheless requires me to exercise a discretion about whether to grant interim relief. There are two steps: first, I must be satisfied that the applicants should (not could) obtain final relief at trial¹⁰ based on the facts advanced and that they cannot dispute, and there I must consider the inherent probabilities in the case. I must then consider the respondents' versions and whether those versions cast serious doubt on the applicants' case. If they do, interim relief cannot be granted.

The approach in determining whether a transaction is simulated

[96] All the parties referred me to the decision of the Appellate Division in *Zandberg v Van Zyl*¹¹ where the Court recognised that parties "not infrequently" endeavour to conceal the real character of a transaction intended not to express but to disguise its true nature and, in those circumstances, a court can only decide rights under such an agreement by giving effect to what the transaction really is and not what in form it purports to be.

[97] The Court went on to quote the maximum "*plus valet quod agitur quam quod simulate concipitur*" (what is actually done in a transaction is more important than what is simulated or appears to have been done) and then held that:

"the words of the rule indicate its limitations. The Court must be satisfied that there is a real

⁹ As restated in *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) at para [26]

¹⁰ A higher threshold, connoting a probability or expectation that the applicants will succeed as opposed to a possibility that they will do so.

¹¹ 1910 AD 302 at 309

intention, definitely ascertainable, which differs from the simulated intention. For if the parties in fact mean that a contract shall have effect in accordance with its tenor, the circumstances that the same object might have been attained in another way will not necessarily make the arrangement other than it purports to be. The enquiry, therefore, is in each case one of fact, for the right solution of which no general rule can be laid down.”

[98] In *Ruskin*¹², the Appellate Division held that the burden of proof on the question of whether a contract is fictitious rests squarely on the party that asserts it, and that if a contract is not what it seems to be, it is for that party to prove it. The Court quoted *Zandberg*¹³ with approval that “firstly, however, we must assume that the nature of the transaction is what it purports to be, and the onus is upon him, who asserts that it is something different to prove that fact”.

[99] The Supreme Court of Appeal held in *Roshcon*¹⁴ that a court faced with contention that a transaction is simulated must examine the transaction as a whole, including all surrounding circumstances, any unusual features of the transaction and the manner in which the parties intend to implement it, before determining in any particular case whether a transaction is simulated.

[100] Wallis JA made the following comment in his judgment in *Roshcon*¹⁵:

“Whether a particular transaction is a simulated transaction is therefore a question of its genuineness. If it is genuine the court will give effect to it and, if not, the court will give

¹² *Ruskin NO v Thiergen* 1962 (3) SA 737 (A) 746 D-G

¹³ at pg 314

¹⁴ *Roshcon (Pty) Ltd v Anchor Auto Body Builders CC* 2014 (4) SA 319 (SCA) at para [37]

¹⁵ *Roshcon*, at para [27]

effect to the underlying transaction that it conceals. And whether it is genuine will depend on a consideration of all the facts and circumstances surrounding the transaction”.

[101] The respondents referred me to the judgement in *Rock Foundation*¹⁶ where the Court held as follows:

“[55]... A simulated transaction is a dishonest transaction in terms of which the parties intend a legal effect which is different to the terms that the agreement expresses (*‘Consideration 1’*), which the parties dress up in a guise (*‘Consideration 2’*) and which is created for the purpose of deceiving (by concealing) the real transaction (*‘Consideration 3’*). A party claiming simulation must satisfy the court that there is a real intention, definitely ascertainable, which differs from the simulated intention. The court must be satisfied (*‘Consideration 4’*) that there is some unexpressed agreement or tacit understanding between the parties that is not borne out by the terms of the agreement or some secret understanding between them. If this were not so, it could not find that the ostensible agreement is a pretense...

[56] As part of the inquiry, the Court must determine whether the real nature and implementation of the contracts are consistent with their ostensible form.”

[102] In the recent judgement of *Uys v National Credit Regulator*¹⁷, the Supreme Court of Appeal held as follows:

“[28] ... for the court to determine the relevant tension of the parties and whether an agreement are simulated, it must first be satisfied, on the available and admissible

¹⁶ *Rock Foundation Properties CC and Another v Dosvelt Properties (PTY) Ltd and Another* (20/28515) [2022] ZAGPJHC 1018 (21 December 2022) at paras [55] and [56]

¹⁷ *Uys NO and Others v National Credit Regulator and Another* (869/2023) [2025] ZASCA 34; [2025] 3 All SA 71 (SCA) (1 April 2025) at paras [28] and [29]

evidence, that there was some unexpressed or tacit agreement between the parties, which was not reflected in the agreement.

[29] An important corollary of these principles is that if the Court concludes, on the available and admissible evidence, that one of the parties genuinely intended to conclude a contract of type "X" and did not intend to disguise it as a contract of type "Y" then there can be no finding of simulation".

The facts that cannot be disputed by the applicants

[103] The following facts cannot be disputed by the applicants as it pertains to the Notarial Bond and the events surrounding it – and are also the principal facts upon which the respondents rely in arguing that the registration of the Notarial Bond was genuine and to secure a valid indebtedness:

[103.1] On 5 August 2016, Siemens Healthcare provided a quote to the radiology practice for the sale and purchase of the radiological equipment in an amount of R32,701,500.00 excluding VAT which was accepted by Perumal in August 2016 “subject to bank approval”.

[103.2] The quotation records that the Ahmed Al-Kadi Hospital was scheduled to open in January 2017¹⁸.

¹⁸ According to its website, <https://ahmedalkadi.com/about-us/>, the hospital opened on 3 April 2017.

[103.3] During 2016, Standard Bank was prepared to advance funds to the company of approximately R40 million.

[103.4] Marble Falls was introduced to the company and its guiding minds late in 2016.

[103.5] As at 4 March 2017, the company had no funds to its credit in its banking account.

[103.6] The shareholders agreement, concluded on 7 April 2017, reflected the existing registered shareholders and their percentage shareholding.

[103.7] The agreement referred to the Equipment Agreement of Lease, which formed part of the shareholders agreement, and which was signed on the same day.

[103.8] The company was defined in the Lease as “the Lessor”.

[103.9] The Lease contemplated the leasing of the radiological equipment to the radiology practice, which equipment was expressed to have been funded by the company “in the contribution amounts reflected on Annexure B1 and B2 hereto”¹⁹.

[103.10] Just above the first line for signature and below clause 27 of the Lease, it was recorded that “the following annexures form part of this agreement of lease”, which inter alia included Annexures “B1” (described as “Proof of contribution of Company – R12m”) and B2 (described as “Proof of contribution of the Company – R17m”).

[103.11] On 7 April 2017, the directors of the company resolved unanimously “that the company approves and agrees to a notarial bond over certain equipment supplied by Siemens Healthcare...in favour of Marble Falls Investments (Pty) Ltd”

[103.12] On 10 April 2017, Marble Falls advanced R35,6 million to the company – having received a deposit of R23,6 million on the same day from “Mahomedy Omar Paruk – Agency A”.

[103.13] On 20 September 2017, the company granted a Power of Attorney to one Marissa Maharaj, authorizing her to appear before a Notary Public, Ms Reshma

¹⁹ Annexures B1 and B2 were therefore drafted for a specific purpose, which was expressed.

Sewsunker, in order for a Notarial General Bond to be registered in favour of Marble Falls.

[103.14] On 16 October 2017, the Notarial Bond was registered for R45 million and the company undertook to pay that amount to Marble Falls as well as a further sum of R4.5 million towards securing the due payment of the capital sum as well as binding the company's identified movable assets (including the radiological equipment) in terms of section 1(1) of the Security by Means of Movable Property Act 57 of 1993.

[103.15] On 7 and 8 December 2017, the company paid R2 million and R1.3 million to Marble Falls.

[103.16] On 25 July 2019, the company paid R1.5 million to Marble Falls.

[103.17] On 21 June 2023, and in response to a demand from Marble Falls for payment of R78,225,179.78 under the Bond, the Board of the company resolved both to "concede the terms of the demand" and authorise Marble Falls to take possession of the radiological equipment and to institute legal proceedings against the radiology practice to recover all amounts due in terms of the lease and, if merited, to institute an application for the winding up of the radiology practice.

[103.18] Matthew, the second and third applicants and the third respondent were present at the meeting, and the second respondent was overseas but gave Matthew his proxy to vote against the resolutions (as did Matthew).

[103.19] On 14 September 2023, the company instituted action against the radiology practice, claiming payment of R110,550,008.00 in respect of arrear rentals for the radiological equipment.

[103.20] On 31 July 2024, and in response to allegations in Marble Falls' answering affidavit in this application, the applicants delivered an amended Notice of Motion challenging the resolution taken by the Board on 21 June 2023 insofar as it relates to the concession to Marble Falls' demand.

[104] The applicants admit that a substantial loan indebtedness does exist in respect of which the company is the debtor – however they allege that the creditor is Paruk, not Marble Falls.

[105] These facts also constitute admissible and available evidence.

The facts advanced by the applicants

[106] The applicants argue that the following countervailing allegations of fact support their claim that the Notarial Bond is (at least *prima facie*) simulated and/or invalid, and that Marble Falls is not a creditor of the company:

[106.1] Unlike the other shareholder representatives, Marble Falls was unknown to the company or its other shareholders until late 2016, and there is no explanation from it about how it was “given” a 25% shareholding in the company.

[106.2] As the second respondent’s attorney stated on his behalf, Marble Falls paid R25 million for the shareholding – the amount was not a loan.

[106.3] The resolution authorizing the Notarial Bond was signed by the directors of the company but not by the shareholders, whose consent was required in terms of the shareholders’ agreement.

[106.4] Annexure B1 to the Equipment Lease agreement was described as being a contribution by the company of R12 million and yet the annexure reflected that Marble Falls had or was about to advance R28 million to the company – without any indication of how or when the R28 million was to be repaid, if it was a loan.

[106.5] It was agreed by all parties, including Marble Falls, that the Notarial Bond was a simulated transaction calculated to protect the radiological equipment and other movable assets of the company from potential execution or a lien at the hands of third-party creditors.

[106.6] The payments made by the company to Marble Falls in 2018 and 2019 were not authorised but were made by the same director appointed by Marble Falls.

[106.7] On any version, there were no payments made after 2019 and yet Marble Falls took no steps to enforce its rights until June 2023.

[106.8] Marble Falls was prepared to settle for payment of R30 million in May 2024 and yet demanded almost double that in June 2023 and then did nothing to enforce its rights for almost a year.

[106.9] Marble Falls was never reflected in the company's books of account as a creditor²⁰.

²⁰ This is undisputed on the papers.

[106.10] Marble Falls' initial claim was based on a starting amount of R45 million, when this amount was never advanced to the company and the payments on which it relies were never reflected as payments.

[106.11] Marble Falls now relies on a reduced claim amount of R59,807,758 against the company and yet was willing to compromise its claim for payment of R30 million.

[106.12] Marble Falls does not appear to have enforced its rights against Perumal or the radiology practice who do not appear to have made any of the monthly payments due to Marble Falls under the May 2024 settlement agreement that they concluded.

[106.13] Annexures B1 and B2 to the Lease were not part of the original lease and were later replacements of two pages signed in blank by the shareholders.

[106.14] Mr Michael Irving, a handwriting expert, has opined that annexures B1 and B2 to the Lease are a potential fraud.

The inherent probabilities

[107] Viewed in a vacuum, the facts advanced by the respondents, and which

cannot be disputed by the applicants seem to be compelling pointers to the Notarial Bond being a legitimate transaction in respect of a significant indebtedness owed by the company to Marble Falls.

[108] Certainly, if the applicants were seeking final relief on motion, they would not have established a clear right to an interdict on the evidence before me, after application of the *Plascon-Evans* rule.

[109] I am bound at this stage to look at the surrounding circumstances as well as the documents to determine the inherent probability of the applicants' version, and whether they should be successful at trial in obtaining presumably a declarator that the Notarial Bond is invalid and that it be set aside.

[110] As all counsel who appeared before me accepted, an order such as that would be the death knell of Marble Falls' attempts to settle any dispute with the radiology practice as it would then have no rights to the company's property. It would also impact the validity and enforceability of the June 2023 Board Resolution of the company.

[111] The application papers exceed 1000 pages and yet there remain concerning gaps in the narrative that the relevant parties have not attempted to resolve.

[112] It makes sense that Dr Perumal would assume a majority shareholding in the company, given his position in the radiology practice. That a small shareholding would be given to Mr Matthew, the practice manager, also makes sense, as does the awarding of minority shareholdings to individuals who helped the radiology practice defend its rights in litigation against the hospital.

[113] Marble Falls was introduced as a funder of some kind and yet asks me to accept that it was not only given a 25% shareholding in the company but then also independently became its hugest creditor, advancing nearly R40 million plus interest in the absence of any loan documentation or clarity on how that amount²¹ was to be repaid.

[114] Having done so, it then took no steps to enforce its rights until June 2023, even in respect of the apparently scheduled repayments of the R17 million loan contemplated in Annexure B2 to the Lease.

[115] I do accept that the challenge to the quantum of any indebtedness to Marble Force does not in itself affect the validity of the Notarial Bond, but this dispute does raise questions about why the amount in the bond was so high when the parties already knew what the cost of the equipment was going to be. I have yet to be provided with any explanation about the contradiction between the description of

²¹ At the very least the capital amount, as the Bond itself does refer to the payment of interest.

Annexure B1 in the Equipment Lease and its ultimate content²².

[116] Given how the individual directors have taken opposing sides on issues at different times in this dispute and have advanced positions that are good for them at the time, it is not beyond the realm of possibility that the Notarial Bond was in fact simulated to protect the company against creditors. Whilst I take an exceptionally dim view of this conduct, it cannot be excluded, given the chronology of events and the strange way in which the parties chose to regulate their affairs.

[117] Marble Falls' lack of enforcement of its alleged rights is a powerful pointer to it also knowing that it was a shareholder who purchased a shareholding and not a creditor.

[118] At a formal level, I also cannot ignore that the shareholders did not authorise the registration of the Notarial Bond and, were I to accept that the directors' resolution doing so was sufficient, I would then be accepting that individual trustees could act without authority and unilaterally when binding their Trusts - something that is contrary to settled law. None of the respondents alleged that the shareholders had approved the registration of the Bond.

[119] Whilst it ultimately may be determined that this is an exercise in formalism,

²² I do not agree with the applicants that Mr Irving found annexures B1 and B2 to the Lease to be fraudulent. He opines that the signature set on Annexure B2 suggests that the initials were placed on the document after the table (which at least now includes repayment terms of the R17 million) was inserted. Of course, the failure of Marble Falls to enforce its stated right to repayment is also curious and lends some credence to the applicants' version.

the lack of proper compliance is also a pointer to the Bond being a piece of insurance for the company against outsiders and not a legitimate instrument of security in the hands of Marble Falls.

[120] It is clear that something happened to change the relationship between the parties from cooperation to conflict.

[121] There is no explanation about why the lease with the radiology practice was suddenly cancelled in June 2023 when no rental payments appear have to have been made since the commencement of the lease in 2017.

[122] It seems to me though that the trigger for Marble Falls' actions in June 2023 was the cancellation of the lease. I can determine no other reason why Marble Falls would suddenly flare into action and demand payment of a massive amount of money within three days.

[123] What makes the chronology of events even stranger is that Mr Moosa, Marble Falls' nominee director²³ not only then voted in favour of a concession by the company to the demand (where there almost certainly was a conflict of interest) but then also to the institution of litigation against the radiology practice for R110 million.

[124] Mr Matthew and Dr Perumal voted against the resolutions and then Dr

²³ The third respondent

Perumal, on his own version, spent time negotiating with Marble Falls in respect of the radiology equipment, offering to purchase it for R30 million when, according to his attorney and on his instructions, the indebtedness was no more than R7.5 million.

[125] Linked to this, and after so precipitously demanding payment of over R70 million, Marble Falls took no steps to vindicate its rights before ostensibly settling with Dr Perumal for less than half of its original demand.

[126] It is passing strange that neither the company nor any of its shareholders saw fit to challenge the June 2023 Board resolution conceding Marble Falls' claim until the applicants delivered their replying affidavit in this application.

[127] This begs the same question raised by the respondents in argument: if the Notarial Bond was indeed simulated, why did none of the shareholders or directors seek to advance this case at the time?

[128] However compelling a point that may be, I also cannot ignore that there is no record of any indebtedness to Marble Falls in the company's books of account²⁴, which points in the opposite direction and towards a conclusion that the funds advanced by Marble Falls were in its capacity as shareholder and not creditor. In this regard, it must be said that Marble Falls would have had both great incentive and more than sufficient opportunity to ensure that it was reflected as a

²⁴ Or, certainly, none disclosed on the papers

creditor in the company's books of account and its failure to do so at least suggests that there was no indebtedness to record.

[129] In the same vein, why did the company take no steps to enforce its rights against the radiology practice arising out of the Equipment Lease from April 2017 to June 2023? This has not been explained, and neither has Perumal's rather stunning about-face between June 2023 and May 2024, swinging from challenging Marble Falls and its claims to being its enthusiastic partisan.

[130] Whilst this may well be no more than commercial pragmatism, there is a lack of candour that is concerning, which does not render it impossible that the original discussions about the Notarial Bond are as the applicants allege – even if it casts them in a less than flattering light.

[131] In summary, the court has not been told the whole story and the issue then is whether the applicants' right to relief is open to some doubt on the facts taken together with the inherent probabilities, or whether serious doubt has been cast by the respondents.

[132] It seems to me that "serious doubt" demands a substantial challenge by the respondents that is both real and credible before a court will decline to grant an interim interdict in favour of the applicants.

[133] For the reasons that I have set out above, and whilst I harbour some doubts about the applicants' version, I do not consider that the respondents have cast such doubt on that version that I should decline to grant an interim interdict. It may well be that the respondents ultimately are successful, but at this stage of the proceedings, the gaps in the narrative and the unanswered questions lead me to conclude that they have not cast serious doubt on the applicants' version.

[134] Marble Falls' conduct is not consistent with the ostensible form of the loan transaction or its apparent terms, and it seems to me, at least *prima facie*, that the real nature and implementation (or lack thereof) of the contract does indicate an unexpressed understanding between the parties that the arrangement was a simulation to protect the company's assets from potential attachment.

[135] In this regard, the existence of the Board resolution authorising the registration of the Bond and the Bond itself do not assist the respondents: if a written document is a necessary precondition of the success of a simulated transaction, its existence cannot *per se* then be proof that the transaction is genuine.

[136] In my view, the applicants have therefore established *prima facie* and on the available and admissible evidence taken together with the inherent probabilities that the Notarial Bond was a simulated transaction, and, in those circumstances, the most appropriate course of action is to grant interim relief so

that these matters can properly be determined at trial with the benefit of examination and cross-examination.

[137] As the equipment remains in the possession of the radiology practice, where it has always been and where Marble Falls was content to leave it, the balance of convenience favours the granting of the interim interdict, and I am satisfied that the applicants do not have an adequate alternative remedy available to them to protect their interests or the underlying value of their shareholding (being the equipment).

[138] At an interim stage, any such interdict must extend to the agreement concluded between Perumal, the radiology practice and Marble Falls.

[139] Whilst that agreement does not cite or include the applicants or the company, it relates directly to Marble Falls' right to dispose of the radiology equipment and, if payment is ever received, to the transfer of its alleged rights to Perumal and the radiology practice. These issues cannot be determined until the fundamental and underlying challenge to the validity of the Notarial Bond has been determined.

The Applicants' locus standi

[140] The respondents have argued that the applicants do not have legal

standing to challenge the settlement between Marble Falls and Perumal and the radiology practice and that any claim in respect of the radiological equipment would rest with the company.

[141] I agree that the company would have a right to institute proceedings to recover its property and that, in those circumstances, the applicants would be non-suited absent proper compliance with section 165 of the Companies Act.

[142] However, that is not the end of the enquiry. The value of the equipment at issue impacts the value of the company and the value of the shareholding.

[143] If, by a private arrangement between the majority shareholders, the value of the shareholding has been negatively impacted, I accept that the minority shareholders would retain a right to seek interdictory relief in defence of their own interests.

[144] Further, and more fundamentally, if the shareholders did not approve the registration of the Notarial Bond, they are entitled to enforce their rights under the shareholders agreement which, in this case, would require that the status quo be maintained pending the final determination of the action.

[145] In my view, the fourth to fifteenth applicants have legal standing to seek interdictory relief in respect of the Notarial Bond and all the steps and

consequences that flow from it.

Interdicting settlement of the action between the company and the radiology practice

[146] The applicants argue that the removal of Mr Matthew as a director was part of the scheme to ensure Board approval of the settlement of the action between the company and the radiology practice for R30 million.

[147] It is common cause that, after the settlement process in respect of the action failed, there has not been a further attempt by the remaining directors and shareholders to impel the settlement of the pending action.

[148] The second and third applicants remain on the Board as two out of the remaining four directors and, in light of my findings, the Fig Leaf Trust is entitled to nominate a director to serve in Mr Matthew's place.

[149] In the absence of any evidence that there were further attempts to obtain the settlement of the action, it does not appear that any fear of this occurring in the future is reasonable. Any potential invasion of rights remains in the past²⁵.

[150] Further, and with the appropriate composition on the Board, the applicants are possessed of a satisfactory alternative remedy - they can vote against any proposed resolution to settle the action if they are so inclined and they would constitute a majority of the board when doing so.

[151] I therefore decline to grant the interdict sought in this regard.

Harassment

[152] Mr Matthews is no longer an employee of the radiology practice, having been dismissed, or a director of the company.

[153] I cannot express a view on whether his dismissal from the radiology practice was fair or unfair, as this is a matter currently pending before the CCMA.

²⁵ *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA) at para [20]

[154] I am not persuaded that the applicants have established, even *prima facie*, that they were harassed by any of the respondents and the facts upon which the applicants rely are, in my view, nebulous.

[155] Whilst it may be that the remaining shareholders attempted to place pressure on the applicants to agree with their point of view about settling the action, the papers do not disclose conduct that is so egregious that it would constitute harassment. Further, the papers do not disclose any ongoing attempts by any of the respondents to act in the manner alleged, and I conclude that the applicants have not established a reasonable apprehension of harm.

[156] Finally, I do not agree with the applicants' argument that this court should grant interdicts against harassment as a court of first instance. The Protection from Harassment Act 17 of 2011 provides an efficient and speedy process for the granting of protection orders in circumstances of harassment that are effective also because a Warrant of Arrest is authorised when a protection order is granted²⁶. An interdict that carries with it a threat of a potential contempt order in the fullness of time seems to be to be symbolic and not the sort of meaningful protection against the kind of behaviour that the Harassment Act prohibits.

²⁶ Such an order is a more than satisfactory, alternative remedy – in fact, it is a better one.

[157] Further, that Act defines a “court” to mean “any magistrate's court”. The Legislature intended these applications to be dealt with by a specialist court, and I do not consider that it would be appropriate for this Court then to exercise its discretion to entertain an application for an order against alleged harassment – especially not at this remove of time.

[158] The application for an interdict against the alleged harassment by the respondents therefore must fail.

The action to be instituted

[159] This application was instituted in June 2024 and the interim interdicts sought were expressed to be pending the determination of an action to be instituted within 30 days of the date of the Order being granted.

[160] There is force in the submissions made on behalf of the respondents that the action should have been instituted by now, but I cannot conclude that the failure to have done so demonstrates an intention by the applicants to obtain effectively final interdictory relief and that they do not intend to institute the action.

[161] The interdicts that I propose to grant are interim and it is necessary that the action be instituted by the applicants without delay.

[162] To ensure that this occurs, I will direct that the interim interdicts to be granted will lapse if the action is not instituted within 30 days of the date of this Order.

[163] For the sake of clarity, the interdicts will lapse immediately if the action is not instituted, and there will be no need for the respondents either to place the applicants on terms or to approach this court for further relief.

Costs

[164] All the parties have sought costs in their favour on Scale C and the applicants and Marble Falls have sought the costs of Senior Counsel and two counsel, where employed.

[165] I have no difficulty either with the Scale sought or the employment of two counsel or Senior Counsel in a case as complex as this one but given the conclusions to which I have come it would not be appropriate to make a costs order at this stage.

[166] All the parties have achieved a measure of success, and it is appropriate that the costs of the application be reserved for determination by the court hearing the action.

[167] However, and if the action is not instituted timeously and this Order lapses, it would then be appropriate for the applicants to pay the costs of the application on the scale set out above as the interdicts would in effect have been sought as final relief and I have found that I would not have granted final interdicts on the facts before me.

Orders granted

[168] I grant the following orders:

1. The appointment of the fifth respondent as a director of Africa Imaging (Pty) Ltd is declared to be invalid and is set aside.
2. Pending the final determination of an action, which shall be instituted by the applicants within 30 days of the date of this Order:

- i) The sixth respondent is interdicted and restrained from alienating or in any way interfering with or taking possession of the radiology and other medical equipment or any other movable property owned by the first respondent, located at the premises of Ahmed Al Kadi Private Hospital, 4[...] J[...] S[...] Highway, Mayville, Durban and which is allegedly the subject of the Notarial Bond between the first and sixth respondent, save as it may expressly be authorised to do so by a prior Court Order.
- ii) The respondents are interdicted and restrained from in any way implementing, giving effect to or acting in accordance with the resolution taken at the meeting of the First Respondent on 21 June 2023 authorising the sixth respondent to take possession of the movable property owned by the respondent, located at the premises of Ahmed Al Kadi Private Hospital, 4[...] J[...] S[...] Highway, Mayville, Durban, and which is the subject of the Notarial Bond between the first and sixth respondent.
- iii) The second, sixth and tenth respondents are interdicted and restrained from in any way implementing, giving effect to or acting in accordance with the alleged agreement entered into between them on or about 31 May 2024, which agreement is annexure "M 1" to the sixth respondent's answering affidavit.

3. Should the applicants not institute the said action in this Court timeously, the interdict set out in this order shall immediately lapse and be of no further force or effect.
4. The costs of the application, including all reserved costs, are reserved determination by the court hearing the action to be instituted by the applicants.
5. Alternatively, and should the applicants fail timeously to institute the action, the costs contemplated in paragraph 3 above shall be paid by the applicants, jointly and severally the one paying the other to be absolved, on Scale C and including the costs consequent upon the employment of Senior Counsel.

SHAPIRO AJ

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Date Delivered : 13 January 2026

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