IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION MAHIKENG

Not reportable

CASE NO: 3506/24

In the matter between:

PREVANCE BONDS (PTY) LTD	
(Registration Number: 1993/005402/07)	Applicant
and	
XYD PROPERTY GROUP (PTY) LTD	
(IN LIQUIDATION)	
(Registration Number: 2012/030594/07)	First Respondent
JOHANNES CHRISTIAAN SEYFFERT	
(Identity Number: 5[...])	Second Respondent
RINA SEYFFERT	
(Identity Number: 5[...])	Third Respondent

And in the Counterapplication between:

JOHANNES CHRISTIAAN SEYFFERT	First Applicant
RINA SEYFFERT	Second Applicant
JOHANNES CHRISTIAAN SEYFFERT N.O.	Third Applicant
RINA SEYFFERT N.O. *(In their capacities as trustees of the JC Seyffert Trust)*	Fourth Applicant

and

PREVANCE BONDS (PTY) LTD	First Respondent
THE JOINT PROVISIONAL LIQUIDATORS OF XYD PROPERTY GROUP	Second and Third Respondents
PREVANCE CAPITAL (PTY) LTD	Fourth Respondent

Coram: Reddy J

Heard: 16 October 2025

Delivered: Judgment was handed down electronically by circulation to the parties' legal representatives by email and released to SAFLII. The date and time for handing down of the judgment are deemed to be 16h00 on 16 February 2026.

Summary: Insolvency and Real Security – Application for interdict restraining collection of rental income and order to account to liquidators; Ranking of secured creditors – priority of first mortgage bond over second mortgage bond; *Concursus creditorum* – unlawfulness of individual creditor appropriating estate assets to the exclusion of liquidators; Rectification of deeds – Prescription of claim to challenge bond registration – application of *caveat subscriptor* regarding acknowledgement of prior security.

ORDER

---

1. The Main Application is granted.

   1.1. The Second and Third Respondents are interdicted and restrained from collecting any rental income derived from Units 5 to 13 of the Sectional Title Scheme known as Theresia Park.

   1.2. The Second and Third Respondents are ordered to account to the Third Respondent (the Liquidators) for all rental income collected from the said units from 1 June 2021 to date.

   1.3. The Second and Third Respondents are ordered to pay over to the Third Respondent (the Liquidators) all amounts identified in the accounting referred to in paragraph 1.2 above, together with interest *a tempore morae*.

2. The Counterapplication is dismissed.

3. The Second and Third Respondents (in the main application) and the First to Fourth Applicants (in the counterapplication) are ordered to pay the costs of the Main Application and the Counterapplication, jointly and severally, the one paying the other to be absolved. Such costs are to be taxed on the scale as between attorney and client.

JUDGMENT

REDDY J

Introduction

[1] What falls for consideration before this Court is a dispute between secured creditors regarding the proceeds and rental income of a property development known as Theresia Park in Potchefstroom.

[2] The applicant, Prevance Bonds (Pty) Ltd (Prevance), seeks to enforce its rights as the cessionary of a first covering mortgage bond. Prevance seeks interdictory relief restraining the second respondent (Johannes Christiaan Seyffert) and third respondent Mrs Rina Seyffert (collectively the Seyfferts), from collecting rental income from specific units in the development. Further, Prevance seeks an order directing them to account for rentals collected and pay such amounts to the liquidators of the first respondent, XYD Property Group (Pty) Ltd (in Liquidation, "XYD").

[3] The Seyfferts, together with the JC Seyffert Trust ("the Trust"), oppose the relief and have launched a counterapplication. In essence, they seek a declaratory order that they be deemed preferent creditors over Units 5 to 13 of

the development and that the first mortgage bond registered in favour of Prevance Capital (Pty) Ltd ("Prevance Capital") was erroneously registered over those units.

[4] XYD has been placed in liquidation. Consequently, the *concursus creditorum* has commenced.

Background

[5] During the period 2015 to 2017, Prevance Capital provided bridging finance to XYD for property development. As security for these loans, a first continuing mortgage bond was registered in August 2015 over Erf 3[...], Potchefstroom. This security was subsequently ceded to Prevance.

[6] The Seyfferts and the Trust were the owners of the land (portions of Erven 1[...] and 1[...]4) upon which part of the development was to take place. On 18 July 2015, they entered "Exchange Agreements" with XYD, in terms of which they exchanged their land for Units 5 to 13 in the proposed sectional title scheme.

[7] Crucially, in September 2015, a second covering mortgage bond was registered over the property in favour of the Seyfferts. The development proceeded, but XYD eventually went into liquidation. It is common cause that the Seyfferts have been collecting rental income from the disputed units. Prevance asserts that, as the holder of the first mortgage bond, it has a preferent claim to the proceeds of the property and that the Seyfferts' conduct prejudices its security. The Seyfferts claim that, based on the Exchange Agreements and alleged correspondence with Prevance Capital in August 2015, it was agreed that Units 5 to 13 would be free of the first bond's encumbrance.

The main application

[8] Prevance's case is founded on a real right conferred by the registered first mortgage bond. It is a fundamental principle of our law that a first mortgage bondholder ranks preferent to a second mortgage bondholder.[1]

[9] In *Klerck N.O. v van Zyl and Maritz,*[2] we were reminded that:

"A convenient starting point for the consideration of this issue is an analysis of the nature of the real right which is constituted by a mortgage bond. A mortgage bond may be defined as an instrument hypothecating landed property to secure a debt, existing or future. Lief NO v Dettmann 1964 (2) SA 252 (A) at 259B; Thienhaus NO v Metje & Ziegler Ltd and Another 1965 (3) SA 25 (A) at 31F. At 259E of the former case the following appears:

'The only real rights in favour of the mortgagee created by the registration of a bond are rights in respect of the mortgaged property, eg the right to restrain its alienation and a right to claim a preference in respect of its proceeds on insolvency of the mortgagor. The real rights, however, can only exist in respect of a debt, existing or future, and it follows that they cannot be divorced from the debt secured by them.'

At 264 and 265 it was said that a mortgage bond is an acknowledgment of debt and at the same time an instrument hypothecating landed property and that the object of a mortgage bond is not merely hypothecation, but the settlement of the terms of the obligation it secures. See, too, Thienhaus' case supra at 38.

It follows therefore that the real right created by a mortgage bond is accessory in nature and is dependent for its existence on the existence of the obligation which it secures. If there is no valid principal obligation for the mortgage bond to secure, there can be no valid mortgage

[1] *Lief NO v Dettmann* 1964 (2) SA 252 (A) at 264-265; *Thienhaus NO v Metje & Ziegler Ltd* 1965 (3) SA 25 (A).

[2] 1989 (4) SA 263 at 275

bond and no real right of security in the hands of the mortgagee. See, too, Kilburn v Estate Kilburn 1931 AD 501 where the following was said at 505 - 6:

'... (Y)ou cannot have a settlement of a security apart from the thing which is secured, be it a money debt or the performance of an act. The settlement of a security divorced from an obligation which it secures seems to me meaningless.... It is therefore clear that by our law there must be a legal or natural obligation to which the hypothecation is accessory. If there is no obligation whatever there can be no hypothecation giving rise to a substantive claim.

Now the Court below has found as a fact that there was no serious promise of £500 and no intention to pay the wife that sum, but that the whole intention of the spouses was that the wife should claim £500 if and when the husband became insolvent. There was therefore no obligation secured by this bond, and therefore in a concursus creditorum the appellant cannot claim on the bond.'

Reference may further be had to Thienhaus' case supra at 32 where, after stating, with reference to Kilburn's case supra, that it is clear that a mortgage bond as a deed of hypothecation must relate to some obligation, Williamson JA added: 'If on a concursus creditorum a mortgagee, or a pledgee fails to establish an enforceable claim which it was intended should be secured by the hypothecation, the bond, or the pledge, as the case may be, falls away.'

At 43 and 44, in the minority judgment of Wessels JA, the following passages appear:

'When the mortgagor causes a mortgage bond to be registered in favour of the mortgagee he does so to give effect to an antecedent agreement between them - which may be either in writing or verbal - in terms of which the former bound himself to grant to the latter, as security for a debt, a real right in the immovable property concerned.... It is of the essence of the real right which is constituted by the registration of a mortgage bond that it should be related to a debt, and the substantial reason why the antecedent agreement must of necessity refer to the debt which it is intended to secure is so that the nature and extent (ie the content) of the real right, which it is intended to constitute by the registration of a mortgage bond, may be exactly determined. It follows from this that the obligation resting upon the debtor is to effect the constitution of a real right in the immovable property concerned in favour of the creditor in accordance with the definition thereof in the agreement in question.' Although these last two passages appear in the minority judgment and in a context different from that which obtains in casu, reference to the principles set out therein is apposite in this judgment. Reference may finally be had to Wille Mortgage and Pledge 3rd ed at 4 and Lubbe on

'Mortgage' in Joubert (ed) Law of South Africa vol 17 para 398, and the authorities there cited."

[10] Prevance acknowledges that since XYD is in liquidation, it cannot claim the rental income directly for itself. Instead, it seeks an order that the collected rentals be paid to the liquidators to be dealt with in accordance with the laws of insolvency. This concession is legally sound. Once liquidation supervenes, the hand of the law is laid upon the estate, and no creditor may act individually to recover its claim to the detriment of the *concursus creditorum.*[3]This is a cornerstone of our insolvency law: upon liquidation or sequestration, all creditors' claims are to be considered collectively, preventing an individual creditor from obtaining preferential treatment. This can be attributed to three key factors: first, for equity and fairness; second, for orderly distribution; and third for the preservation of assets.

[11] In *Walker* [4] the immediate legal consequence of this order was expressed as follows:

"The effect of a winding-up order is to establish a concursus creditorum, and nothing can thereafter be allowed to be done by any of the creditors to alter the rights of the other creditors."

[12] Innes JA then continued[5]:

"The sequestration order crystallises the insolvent's position; the hand of the law is laid upon the estate, and at once the rights of the general body of creditors have to be taken into consideration. No transaction can thereafter be entered into with regard to estate matters by a

---

[3] *Walker v Syfret* NO 1911 AD 141
[4] At 166
[5] At 166

single creditor to the prejudice of the general body. The claim of each creditor must be dealt with as it existed at the issue of the order."

[13] The Seyfferts' collection of rental income, to the exclusion of the liquidators and the first bondholder, effectively appropriates an asset of the insolvent estate. Unless they can establish a superior title, their conduct is unlawful vis-à-vis the *concursus creditorum*.

The counterapplication

[14] The Seyfferts' counterapplication seeks to redress the security history of the property. They seek that this Court declare the first bond "erroneously registered" over Units 5 to 13 and to declare them preferent creditors. Their reliance is placed heavily on an exchange of correspondence in August 2015, which they argue constitutes a waiver by Prevance Capital of its security over Units 5 to 13. However, this contention is difficult to sustain and faces three insurmountable challenges.

[15] First, the registration of the second bond in favour of the Seyfferts is a clear acknowledgement of the *status quo.* It is illogical and bears mentioning that antecedent to the registration of a second bond, a first bond must have been registered. If the intention was for Seyffert to own these units free of the Prevance bond, the legal mechanisms employed (Exchange Agreements coupled with a second bond) were inconsistent with such an intention.

[16] Prevance initially raised the defence of prescription. The legal position regarding the rectification of a deed or contract examines the inquiry within the prism of the law of general application as it relates to rectification.

[17] Before turning to the merits of the rectification argument, several general principles require emphasis. Rectification of a written agreement is a remedy available where, through a common mistake, the written contract does not reflect the true intention of the contracting parties. It makes sense that a mistake is a *sine qua non* for rectification. In *Brits v Van Heerden* [6] the following was opined in this regard:

"… the mistake does not have to relate to the writing itself, but might relate to the consequences thereof. The mistake may be that of only one party; the mistake may be induced by misrepresentation or fraud. But there must be a mistake. In my view, the crux of the matter is that the mistake, be it a misunderstanding of fact or law or be it an incorrect drafting of the document, must have the effect of the written memorial not correctly reflecting the parties' true agreement."

[18] In *Weinerlein v Goch Buildings Ltd* [7], which dealt with a contract of sale of fixed property required to be in writing by law, De Villiers JA, posited that:

"Semper veritati errorem cedere oportet, says Faber in his Code, 4.16. def. 10, the mistake must yield to the truth. 'In contracts regard must be had rather to the truth of the matter (rei veritas) than to what has been written,' is laid down in C. 4.22. L. 1; and Gothofredus notes: 'for there may be mistakes in the writing.'

[19] In *Leyland (SA) (PTY) LTD v Rex Evans Motors (PTY) LTD* [8] the following was held regarding the rectification of a written agreement:

"A written agreement which fails to express accurately the true intention of the parties may be rectified so as to make it accord with the parties' common intention. If the party seeking rectification can prove an actual agreement anterior to or contemporaneous with the writing with which the written agreement, owing to a mutual mistake, fails to conform, the Court will rectify the erroneous instrument."

[6] 2001 (3) SA 257 (C) at 282 C
[7] 1925 AD 282 at 289
[8] 1980 (4) SA 271 (WLD) at 272F-G

[20] Our law is settled as regards the onus on the party claiming rectification to show, on a balance of probabilities, that the written agreement does not correctly express what the parties had intended[9]. It bears underscoring that the party seeking rectification bears a heavy onus to prove the common continuing intention of the parties by clear and convincing evidence. In *Propfokus 40 (Pty) Ltd v Wenhandel 4 (Pty) Ltd*[10]the precise moment that is crucial in this regard was expressed as follows:

"… the written document does not reflect the true intention of the parties – this requires that the common continuing intention of the parties, as it existed at the time when the agreement was reduced to writing be established."

[21] What follows next is the issue of whether a time bar is placed on when a rectification ought to be sought. Simply put, the question is whether a rectification lapses. In *Boundary Financing Ltd v Protea Holdings,*[11] the following was held in this regard:

'[12] The appellant, referring to *Primavera Construction SA v Government, North-West Province, and another* 2003 (3) SA 579 (B) at 599H-I as authority, submitted that the respondent's claim for rectification has in any event prescribed. In terms of s 10 of the Prescription Act 68 of 1969 read with s 11(d) of that Act, a debt other than the debts mentioned in ss 11(a) to (c) is extinguished by prescription after the lapse of a period of three years, save where an Act of Parliament provides otherwise.

[13] 'A debt' is not defined in the Prescription Act. Dealing with the meaning of the Afrikaans '`n skuld' Van Heerden AJA said in *Oertel en andere NNO v Direkteur van Plaaslike Bestuur en andere* 1983 (1) SA 354 (A) at 370B:

'Volgens die aanvaarde betekenis van die begrip slaan "`n skuld" op `n verpligting om iets te doen (hetsy by wyse van betaling of lewering van `n saak of dienste), of nie te doen nie. Dit

---

[9] *Soil Fumigation Services Lowveld CC v Chemfit Technical Products (Pty)* Ltd 2004 (6) SA 29 (SCA) at para [21]
Levin v Zoutendijk 1979 (3) SA 1145 (W) at 1147 H – 1148 A
[10] [2007] 3 All SA 18 (SCA) at 22 a
[11] 2009(3) SA 447 (SCA)

is die een pool van `n verbintenis wat in die reël `n vermoënsbestanddeel en –verpligting omvat . . ..'

A claim for rectification does not have as a correlative a debt within the ordinary meaning of the word. Rectification of an agreement does not alter the rights and obligations of the parties in terms of the agreement to be rectified: their rights and obligations are no different after rectification. Rectification therefore does not create a new contract; it merely serves to correct the written memorial of the agreement. It is a declaration of what the parties to the agreement to be rectified agreed. For this reason a defendant who contends that an agreement sued upon does not correctly reflect the agreement between the parties may raise that contention as a defence without the need to counterclaim for rectification of the agreement (see *Gralio (Pty) Ltd v D E Claassen (Pty) Ltd* 1980 (1) SA 816 (A) at 824A-C). Should a claim for rectification of a contract become prescribed after three years parties may become entitled to rights and subject to obligations wrongly recorded and never intended eg in the case of a debt secured by a mortgage bond which only prescribes after the lapse of a period of 30 years. That, in my view, is a result never intended by the Prescription Act. It follows that in so far as it may have been held in *Primavera* that prescription runs against a claim for rectification of a contract that decision is wrong.'

[22] In sum, the Supreme Court of Appeal posits that a claim for rectification does not have as a correlative a 'debt' within the ordinary meaning of the structure of the Prescription Act 68 of 1969. That being so, it is important to underscore the import of a rectification, which is to correct the written memorial of an agreement to reflect the parties' actual intent. A rectification does not serve as a platform for the creation of new rights and obligations. It follows that it does not prescribe after the lapse of three years. Inevitably, the Seyfferts' claim to rectify what they advance is an erroneous registration is not barred by the running of prescription.

[23] Notwithstanding a finding that the Seyfferts have not been *ipso facto* barred by prescription, the counterapplication still suffers from a more fundamental deficiency. The Seyfferts' allowed the first bond to be registered

against the property for nearly nine (9) years uninterrupted. It is unassailable that no challenge to it was made during this time. This prolonged silence, when considered conjunctively with the principle in our law of *caveat subscriptor* and the transparent nature of the Deeds Registry leads to inevitable legal consequences for the Seyfferts. A person who signs a contract is bound by the ordinary meaning and effect of the words appearing above their signature[12]. The Seyfferts' position is further weakened by three factors , (i) the collective facts create a higher evidentiary burden,(ii) the registration of second covering bond, serves to confirm the existence of the first; and (iii) the illogicality of registering a second covering bond while holding the position that the first bond should not exist over the disputed units.

[24] Third, regarding the claim to be "deemed preferent creditors", the Insolvency Act 24 of 1936 determines the ranking of claims. This Court cannot, by mere declaration, elevate a concurrent creditor (which the Seyfferts are regarding the transfer of units) or a second bondholder above a first bondholder, in the absence of a valid subordination agreement or cancellation of the first bond.[13] No such valid instrument has been placed before this Court. A purchaser who has not taken transfer only has a personal right, which is weak in insolvency. Moreover, a registered real right cannot be trumped by a prior personal right. The nub of the matter being that Seyfferts' conduct is irreconcilable with their contention that the first bond was erroneously registered.

[25] The line of reasoning that Prevance delayed in enforcing its rights does not amount to a waiver of those rights. Prevance avers that it is only asserting its

---

[12] *Burger v Central South African Railways* 1903 TS 571 at 578

[13] *Harris v Trustee of Buissinne* (1840) 2 Menz 105.

rights now to protect its security in the liquidation process.[14] The principles of waiver are well settled in our law.

[26] In the *Road Accident Fund v Mothupi*[15] the Supreme Court of Appeal provided abiding principles of waiver, it held:

[14] Against that factual background I turn to the plaintiff's various responses to the defendant's special plea of prescription. Since the court *a quo* found the waiver issue to be decisive of the whole matter I propose to commence at that point.
[15] INFERRED WAIVER:
Waiver is first and foremost a matter of intention. Whether it is the waiver of a right or a remedy, a privilege or power, an interest or benefit, and whether in unilateral or bilateral form, the starting point invariably is the will of the party said to have waived it. The right in question in the instant case is the statutory provision specifically accorded to the Fund to avert claims which are out of time.
"It is a well-established principle of our law that a statutory provision enacted for the special benefit of any individual or body may be waived by that individual or body, provided that no public interests are involved. It makes no difference that the provision is couched in peremptory terms."
(*SA Eagle Insurance Co Ltd v Bavuma* 1985 (3) SA 42 (A) 49G-H.)
[16] The test to determine intention to waive has been said to be objective (cf *Palmer v Poulter* 1983 (4) SA 11 (T) 20C-21A; *Multilateral Motor Vehicle Accidents Fund v Meyerowitz* 1995 (1) SA 23 (C) 26H-27G; *Bekazaku Properties (Pty) Ltd v Pam Golding Properties (Pty) Ltd* 1996 (2) SA 537 (C) 543A-544D). That means, first, that intention to waive, like intention generally, is adjudged by its outward manifestations (cf *Traub v Barclays National Bank Ltd* 1983 (3) SA 619 (A) 634H-635D; *Botha (now Griessel) and Another v Finanscredit (Pty) Ltd* 1989 (3) SA 773 (A) 792B-E); secondly, that mental reservations, not communicated, are of no legal consequence (*Mutual Life Insurance Co of New York v Ingle* 1910 TS 540, 550); and thirdly, that the outward manifestations of intention are adjudged from the perspective of the other party concerned, that is to say, from the perspective of the latter's notional *alter ego*, the reasonable person standing in his shoes.
[17] The third aspect has not yet been finally settled by this court, or so it would seem

---

[14] *Laws v Rutherfurd* 1924 AD 261.
[15] 2000(4) SA 38 SCA at paragraph 8.

(cf *Thomas v Henry and Another* 1985 (3) SA 889 (A) 896G-898C). What the one party now says he then intended and what his opposite number now says he then believed, may still be relevant (*Thomas v Henry and Another, supra,* 898A-C) although not necessarily conclusive. The knowledge and appreciation of the party alleged to have waived is furthermore an axiomatic aspect of waiver (*Martin v De Kock* 1948 (2) SA 719 (A) 732-733). With those two qualifications I propose, in this judgment, to apply the test of the notional *alter ego.* [18] The outward manifestations can consist of words; of some other form of conduct from which the intention to waive is inferred; or even of inaction or silence where a duty to act or speak exists. A complication may arise where a person's outward manifestations of intention are intrinsically contradictory, as for instance where one telefax indicates an intention to waive and another, perhaps as a result of a typographical error, does not. That problem does not arise in this case and consequently need not be discussed (cf *Mahabeer v Sharma NO and Another* 1985 (3) SA 729 (A) 737D-E). Nor is it necessary to consider some of the other problems relating to waiver which do not arise in this case, such as whether the manifestation of an intention to waive must of necessity be communicated to the other side, and, if so, whether by some means or another it must always be "accepted" or acted upon by the other party (cf *Traub v Barclays National Bank Ltd, supra,* 634H; *Botha (now Griessel) v Finanscredit (Pty) Ltd, supra,* 792B-E*; Segal and Another v Segil* 1992 (3) SA 136 (C) 144J-146J; 155B-156J; *Southern Witwatersrand Exploration Co Ltd v Bisichi Mining Plc and others* 1997 (3) All SA 691 (W) 700c-702d). [19] Because no one is presumed to waive his rights (cf *Ellis and Others v Laubscher* 1956 (4) SA 692 (A) 702E-F), one, the onus is on the party alleging it and, two, clear proof is required of an intention to do so (*Hepner v Roodepoort-Maraisburg Town Council* 1962 (4) SA 772 (A) 778D-9A; *Borstlap v Spangenberg en Andere* 1974 (3) SA 695 (A) 704F-H). The conduct from which waiver is inferred, so it has frequently been stated, must be unequivocal, that is to say, consistent with no other hypothesis.'

[27] In sum the consistent thread that runs through judicial precedent underscore that waiver requires a deliberate and unambiguous intention to relinquish a known right. This has not occurred.

<u>Deliberation</u>

[28] Prevance has established a clear right as the cessionary of the first mortgage bond. The validity of that bond stands. The Seyfferts' attempts to impugn the bond lacks sufficient evidentiary weight to overturn the registered real rights.

[29] The collection of rentals by the Seyfferts prejudices the insolvent estate and the secured creditors. Those funds belong to the estate of XYD (in liquidation).

[30] The counterapplication is procedurally and substantively defective. As alluded to, the claim for rectification has not prescribed. What the Seyfferts application suffers from is the failure to have provided adequate evidence to overturn the registered real rights held by Prevance. A close examination of the Seyfferts' own conduct goes against the grain of any contention that a waiver of security occurred.

Costs

[31] The general rule is that costs should follow the result. This general rule does not impugn the discretion of the court. It bears underscoring that the counterapplication was meritless. It would serve no basis to regurgitate the findings in this regard. What stands out is that this litigation has caused significant prejudice to the insolvent estate by inexorably delaying the distribution of assets to the body of creditors. It stands to reason that this Court would be justified in marking its displeasure with an appropriate punitive order as to costs.

Order

[32] In the result, the following order is made:

1. The Main Application is granted.

   1.1. The Second and Third Respondents are interdicted and restrained from collecting any rental income derived from Units 5 to 13 of the Sectional Title Scheme known as Theresia Park.

   1.2. The Second and Third Respondents are ordered to account to the Third Respondent (the Liquidators) for all rental income collected from the said units from 1 June 2021 to date.

   1.3. The Second and Third Respondents are ordered to pay over to the Third Respondent (the Liquidators) all amounts identified in the accounting referred to in paragraph 1.2 above, together with interest a tempore morae.

2. The Counterapplication is dismissed.

3. The Second and Third Respondents (in the main application) and the First to Fourth Applicants (in the counterapplication) are ordered to pay the costs of the Main Application and the Counterapplication, jointly and severally, the one paying the other to be absolved. Such costs are to be taxed on the scale as between attorney and client.

A REDDY

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Appearances:

For the applicants: Advocate L Hollander

Instructed by: Swartz Weil Van der Merwe Greenburg Inc.

C/O Maree and Maree Attorneys

Mahikeng

For second and third respondents: S Kroep

Instructed by: Jan Ellis Potchefstroom Inc.

C/O Loubser Ellis & Associates

Mahikeng