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

Case No: 2026-014767

In the matter between:

ANEL LATEGAN	First Applicant
LATEGANMULLER GROUP (PTY) LTD	Second Applicant

and

JOHANNES JACOBUS THERON N.O.	First Respondent
DANIESE ELAINE STEYN N.O.	Second Respondent
MASTER OF THE HIGH COURT OF SOUTH AFRICA (Western Cape Division)	Third Respondent
HONOURABLE MAGISTRATE MAARS (Magistrates' Court, Bellville)	Fourth Respondent
PHIA VAN DER SPUY	Fifth Respondent
CAP CHARTERED ACCOUNTANTS INC	Sixth Respondent
TIAAN LATEGAN	Seventh Respondent

Reportable / Not reportable

Coram: Anderssen AJ

Heard: 11 March 2026

Delivered: Electronically on 16 March 2026

Summary: Subpoenae – set aside – abuse of court process – ambit too wide – most documents not relevant to s 415 insolvency enquiry – single person to provide documents in more than one capacity without distinguishing between roles

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ORDER

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1. The following three *subpoenae duces tecum* issued by the fourth respondent on 2 December 2025 in terms of the provisions of section 414(2)(b) of the Companies Act 61 of 1973, in her capacity as the appointed commissioner and agent for the third respondent in terms of section 39 of the Insolvency Act 24 of 1936 (read with section 339 of the aforenamed Companies Act) are set aside:

   1.1 the subpoena directed at the first applicant (annexure AL29 to the founding affidavit);

   1.2 the subpoena directed at the sixth respondent (annexure AL31 to the founding affidavit); and

   1.3 the subpoena directed at the seventh respondent (annexure AL30 to the founding affidavit).

2. The first, second and fifth respondents shall pay the costs of the application, with Scale C applying to counsel's fees, the one paying, the other being absolved *pro tanto.*

JUDGMENT

INTRODUCTION

[1] This is an application in which the first and second applicants seek the setting aside of three subpoenae *duces tecum* that were issued on 2 December 2025 by the fourth respondent acting as the duly appointed agent of the third respondent for purposes of an enquiry into the affairs of Lategan Trading (Pty) Ltd (in liquidation) in terms of the provisions of section 415 of the 1973 Companies Act ("*the enquiry*"). The subpoenae were addressed to the first applicant, the sixth respondent and the seventh respondent.

[2] The subpoenae were issued on the request of an attorney acting for the joint liquidators (the first and second respondents) as well as the fifth respondent ("*Van der Spuy*"). The subpoenae required that the documents listed therein be delivered to the attorney's office – as opposed to the Bellville Magistrates' Court where the enquiry will be held – by no later than 6 February 2026.

[3] The applicants launched an urgent application on 26 January 2026, set down for hearing on 5 February 2026, seeking the setting aside of the three subpoenae. They did so as they aver that the documents are not relevant to the enquiry, that the documents contain privileged tax information, and were requested for an ulterior purpose as part of an agenda to extort money from the applicants and the seventh respondent as well as trusts linked to the first applicant, which constitutes an abuse of process.

[4] The matter was heard in the fast lane and postponed for hearing to 11 March 2026. The subpoenae were set aside on a provisional basis pending the final adjudication of this matter. The only person opposing the application is Van der Spuy, the first and second respondents ("*the liquidators*") as well as the sixth respondent ("*CAP*") having filed notices to abide. Van der Spuy appeared in person at the hearing.

<u>THE RELEVANT FACTS AS PER THE FOUNDING AFFIDAVIT</u>

[5] The first applicant is the wife of the seventh respondent ("*Lategan*") who was the sole director of Lategan Trading (the latter traded as a residential and small works construction concern). They are married out of community of property and Lategan is an unrehabilitated insolvent. The first applicant is a director and shareholder of half the shares issued in the second applicant ("*LMG*"). The other shareholder ("*Mrs Muller*") is the second director. LMG is a creditor of Lategan Trading, as it had overpaid Lategan Trading on projects, but it has not submitted a claim to the liquidators.

[6] Before Lategan Trading was placed in liquidation, a dispute between it and Van der Spuy went to arbitration. Lategan, as director, had cancelled a contract with Van der Spuy after she refused payment of an invoice. By the time the award was made, the company was already in liquidation. The award went against Lategan Trading as the arbitrator found that Van der Spuy had over-paid. He also awarded her penalties, *mora* interest and reimbursement of her contribution to the arbitrator's fees. His award noted that, consequent upon his finding that the cancellation of the contract was wrongful, Van der Spuy may have been entitled to pursue damages. Van der Spuy has allegedly seized upon this and formulated an artificial,

inflated and vexatious damages claim exceeding R3,4 million, which she has not directed against the liquidators but is pursuing against LMG, the first applicant ("*Mrs Lategan*"), and various trusts allegedly associated with Mrs Lategan, through application of improper pressure.

[7] The liquidators' second meeting report made it clear that Lategan Trading constitutes a contribution estate and all the proven concurrent creditors (such as Van der Spuy) will be liable to contribute towards the costs of liquidation. Van der Spuy has allegedly, for this reason, embarked upon a course of action aimed at improperly extorting money from third parties, including the applicants. She does so by seeking financial disclosure of irrelevant and privileged documents. The liquidators are effectively participating in, and thereby aiding and abetting, her improper conduct. To combat assertions, by Van der Spuy, of improper conduct, LMG instructed CAP to prepare an independent report of factual findings relating to transactions between Lategan Trading and LMG using the bank statements of both entities.

[8] A Mr Wessel Muller ("*Muller*") approached Lategan during 2019 with a business opportunity. Muller was involved in identifying and acquiring land and packaging development opportunities and was looking for a construction company with a proven track-record to become involved in these development projects. Muller and Lategan agreed that Lategan Trading would undertake construction work for development companies associated with Muller. LMG was activated in 2022 using an existing shelf company owned by Lategan. When LMG was activated Lategan resigned as he was the director of Lategan Trading and it was considered

appropriate to maintain separation between the two entities. LMG was structured as a family business. LMG secured three projects and appointed Lategan Trading as subcontractor. Two projects were completed successfully. The third one could not be completed by Lategan Trading due to its financial difficulties.

THE RELEVANT FACTS AVERRED BY THE FIFTH RESPONDENT

[9] Van der Spuy denies acting improperly, averring that the Lategan couple are friends with the Mullers (which includes the second shareholder and director of LMG), and that, as a chartered accountant trained in forensic analysis of financial documents, she must follow a trail in order to prove or disprove her hypothesis. She avers that, as a creditor, she has a right to interrogate parties and to demand documents which have a bearing on the enquiry. She filed two lengthy answering affidavits – in the supplementary affidavit expanding on her answers in the main answering affidavit – as well as a third brief affidavit with lengthy annexures. The affidavits were prepared by Van der Spuy, acting in person as her attorney had withdrawn.

[10] Her opposition to the relief sought has been summarised in a table in her first answering affidavit. Therein she explains, with reference to the documents sought, why she seeks the delivery of the documents. I do not expand on the averments contained in the three answering affidavits. Her motivation is summarised below:

[10.1] She seeks Mrs Lategan's personal bank statements as she believes that LMG is Lategan's new venture and that his wife is acting as his front.

[10.2] Mrs Lategan’s personal tax returns and assessments are required as the organogram provided by LMG shows that Lategan is now the Head of Development at LMG even thought he avers he is not receiving a salary. She bases her belief on large, varying payments made by LMG to Mrs Lategan, which she believes (given the dynamics of the parties) to be income actually earned by Lategan Trading. Lategan’s word alone cannot be trusted as his evidence at the enquiry was full of contradictions. SARS is the most objective and effective source of information.

[10.3] With regards the four trusts listed in the subpoena and the documents sought in that regard, she avers that when Lategan was confronted about a R16 500 payment to Destinata (a company specialising in property investment and trust services) he alleged that no trust was ever registered, which evidence was untruthful. As such this raised ‘red flags’ and she fears that assets of Lategan Trading may have been funnelled to these trusts.

[10.4] She seeks the information concerning LMG as she believes it would be remiss of her not to corroborate all information as unlawful actions are prejudicial to creditors. She believes it is highly unlikely that Mrs Lategan and Mrs Muller are actually the directors of LMG. It is more likely, in her view, that Lategan is the director given his background. She seeks documents to show what their true roles are in the company. The appointment of Mrs Lategan and Mrs Muller places the parties in a position to redirect assets to other entities. And she wants to know whether funds are being shifted to the Lategan family through companies and trusts.

[10.5] She wants to establish whether there are any amounts receivable from LMG by Lategan Trading – as Lategan has shown himself to be untruthful, it would be remiss of her not to require that his explanations be verified. Tax returns are the final output documents to corroborate his evidence. She noticed large transactions to and from LMG and Lategan Trading in bank statements and wishes to establish the nature of the transactions and whether any may constitute loans as Lategan Trading may have a loan claim against LMG. This because Lategan was dishonest – she wants to inspect the general ledgers, trial balances and the annual financial statements to verify the information. This is particularly required as she learned that LMG intends to amend its annual financial statements and to resubmit to SARS.

[10.6] She does not accept the CAP report as it only summarises a selected set of transactions between Lategan Trading and LMG. She disputes that the CAP report supports a finding that Lategan Trading is indebted to LMG. CAP only had access to limited information. She wants to cross-check their sources for existence, completeness and accuracy. She noted that there were several large transactions to and from LMG and Lategan Trading noted on their bank statements. She wants CAP to furnish documents to determine how it concluded that LMG is a creditor in Lategan

Trading.

[10.7] She has identified suspicious transactions on the bank statements of Lategan Trading and believes that substantial payments were made to a person or entities connected to the Lategan family as the payments were made after LMG was established. The payments are referenced "Absa Bond" or "From Loan Acc." If there was no legitimate reason for these payments, then these payments constitute loans recoverable by Lategan Trading. She also flagged a payment to "WSS Property" which she believes to be an entity related to Muller.

[10.8] She believes that Lategan has channelled to Mrs Lategan payments received by Lategan Trading (an asset in its estate) for the use of the Lategan-family and that these amounts can, if proven to be an asset, be recovered by the liquidators. Mrs Lategan's tax returns will establish the nature of the payments made to her.

THE RELEVANT STATUTORY FRAMEWORK AND LEGAL PRINCIPLES

[11] A subpoena, such as the subpoenae issued by the fourth respondent ("*the magistrate*"), may be set aside by the Court on review in terms of section 151 of the Insolvency Act, which is made applicable under section 339 of the 1973 Companies Act. Section 151 reads as follows:

Subject to the provisions of section 57 any person aggrieved by any decision, ruling, order or taxation of the Master or by a decision, ruling or order of an officer presiding at a meeting of creditors may bring it under review by the Court and to *that end may apply to the Court by motion, after notice to the Master or to the presiding officer, as the case may be, and to any person whose interests are affected: Provided that if all or most of the creditors are affected, notice to the trustee shall be deemed to be notice to all such creditors; and provided further that the Court shall not re-open any duly confirmed trustee's account otherwise than as is provided in section 112.*

[12] It is generally accepted that section 151 provides for a review in the very widest sense. It has been characterised as being of the third type of review identified by Innes CJ in ***Johannesburg Consolidated Investment Co v Johannesburg Town Council***,[1] being a proceeding in which the Court may enter upon and decide the matter *de novo*, exercising not only the powers of a court of review in the legal sense, but also having the functions of a court of appeal, with the additional privilege of being able, after setting aside the decision arrived at by the tribunal or functionary concerned, to deal with the whole matter upon fresh evidence as if it were the decision-maker of first instance. A review in terms of section 151 therefore affords scope for the Court to enter into the merits of the impugned decision in a way that would not be permissible in conventional administrative law review.[2]

[13] Section 414(2) of the 1973 Companies Act reads as follows:

The Master or officer who is to preside or presides at any meeting of creditors, may subpoena any person-

(a) who is known or on reasonable grounds believed to be or to have been in possession of any property which belongs or belonged to the company or to be indebted to the company, or who in the opinion of the Master or such other officer may be able to give material information concerning the company or its affairs, in respect of any time before or after the commencement of the winding-up, to appear at such meeting, including any such meeting which has been adjourned, for the purpose of being interrogated; or

[1] 1903 TS 111.
[2] See ***Gilbey Distillers & Vintners*** (***Pty***) ***Ltd and Others v Morris NO and Another*** 1991 (1) SA 648 (A) 655G-J, and ***Cooper NO and Others v South African Mutual Life Assurance Society and Others*** 2001 (1) SA 967 (SCA) at para [11].

(b) who is known or on reasonable grounds believed to have in his possession or custody or under his control any book or document containing any such information as is referred to in paragraph (a), to produce that book or document or an extract therefrom at any such meeting or adjourned meeting.

[14] The provisions contained in section 414(2) have been considered by the Supreme Court of Appeal in the ***Cooper***-matter.[3] It held that it is for the Master to form the opinion as to whether the proposed witness may be able to give information regarding the company and that such information has to be 'material'. It also endorsed the threshold test formulated in ***Ex parte Brivik***[4] as follows:

"The Court orders the inquiry at its own discretion on information brought before it by any interested person. Normally it is the liquidator who would apply, but if the liquidator fails to apply there is no objection to entertaining an application by a creditor or contributory who has given notice to the liquidator to enable him to put his views before the Court. The Court is careful to see that the inquisitorial powers of the section are not used for purposes of vexation or oppression …, but an applicant is not required to make out a prima facie case that there has been misfeasance or actionable conduct of any kind. It is sufficient if the Court is satisfied that there is fair ground for suspicion…, and that the person proposed to be examined can probably give information about what is suspected."

[15] It is trite that the process of interrogation under the Companies Act is not only available to liquidators, but is also available to creditors.[5] This is so even if the creditor is hostile to the witness.[6]

[16] The powers of the Master are, however, limited and may not be used for purposes of a fishing expedition. Before exercising its powers, the Master must consider whether there is a valid complaint based on a reasonable suspicion.[7] The Supreme Court of Appeal has highlighted[8] the

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[3] *Supra* at para [11] and [13].
[4] 1950 (3) SA 790 (W) at 791E-H.
[5] ***Standard Bank of South Africa v Master of the High Court and Others*** 1998 (3) SA 108 (SCA).
[6] ***Kebble v Gainsford NO and Others*** 2010 (1) SA 561 (GSJ).
[7] ***Woodlands Dairy (Pty) Ltd and Another v Competition Commission*** [2011] 3 All SA 192 (SCA) at para [20].

infringement of rights of liberty and privacy through the issuing of these subpoenae:

[8] … as Berman J pointed out in Foot v The Master.

"Now to oblige a person, not an officer or director of a company in the course of being wound-up, to appear at a public enquiry held to enquire into the business and affairs of that company is a serious matter, not one lightly resorted to. It is an obligation, the performance of which is demanded under threat of imprisonment if not carried out, it is an invasion of an individual's privacy which is countenanced only under specific conditions and specific circumstances. It requires a person to 'bare his soul' in public, and a person who is authorised to require the attendance of such a person for the purposes of interrogation must of necessity invoke this authority and exercise this power circumspectly, after due and proper consideration as to the need for such interrogation, the aim, ambit and purpose thereof and to ensure that the person concerned is not called for the examination on matters extraneous to the enquiry. That person, in this case the master, in considering whether to require the attendance of a particular person at an enquiry in terms of s 415 of the Act, must apply his mind to what may lawfully and relevantly be required of a proposed "interrogee" by way of oral evidence and delivery of books and records and other documentation. He (the master) is not the tool or agent of the liquidator, obliged to carry out the latter's instructions; the master may take advice and may consult the liquidator, but calling for the attendance of a person at an enquiry under s 415 of the Act, he is his own man, performing a duty and exercising a right imposed and granted him by statute and he is required to bring an independent mind on the need for an enquiry and for an interrogation to be conducted thereat and as to the manner in which this is to be carried out."

[17] This aspect was also considered by the Constitutional Court,[9] which held that the inquisitorial and potentially oppressive nature of insolvency enquiries are justified only when used within their statutory purpose (investigating the company's affairs for the creditors' benefit).

[18] A witness who may be a potential witness in future litigation against the company cannot refuse to produce documents that are relevant to the enquiry.[10] The purpose of the enquiry is to reconstruct the company's

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[8] In ***Mantis Investment Holdings (Pty) Ltd v Eastern Cape Development Corporation & Others*** 2018 (4) SA 439 (SCA).

[9] ***Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others*** 1996 (1) SA 984 (CC).

[10] ***Roering and Another NNO v Mahlangu and Others*** [2016] 3 All SA 466 (SCA). See also ***Gumede v Subel NO*** 2006 (3) SA 498 (SCA) in which it was held that a subpoena may not be set aside if the documents sought are relevant to the company's affairs.

financial affairs and thus the scope of permissible questioning and document production extends beyond the company's own officers. Our courts have repeatedly emphasised the importance of the general duty resting on all members of society to give whatever evidence they are capable of giving, coupled with the concomitant right of litigants to command such assistance.[11]

[19] When the Court, however, finds that an attempt has been made to use for ulterior purposes machinery devised for the better administration of justice, it is the duty of the Court to prevent such abuse. What does constitute an abuse of the process of the Court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of 'abuse of process'. It can be said in general terms, however, that an abuse of process takes place where the procedures permitted by legislation to facilitate the pursuit of the truth are used for a purpose extraneous to that objective.[12] As held in the ***Beinash***-case:

> *Ordinarily, a litigant is of course entitled to obtain the production of any document relevant to his or her case in the pursuit of the truth, unless the disclosure of the document is protected by law. The process of a subpoena is designed precisely to protect that right. The ends of justice would be prejudiced if that right was impeded. For this reason the Court must be cautious in exercising its power to set aside a subpoena on the grounds that it constitutes an abuse of process. It is a power which will be exercised in rare cases, but once it is clear that the subpoena in issue in any particular matter constitutes an abuse of the process, the Court will not hesitate to say so and to protect both the Court and the parties affected thereby from such abuse.*

[20] The issues of relevance and abuse are closely intertwined, but not the

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[11] ***Meyers v Marcus and Another*** [2004] 2 All SA 438 (C); 2004 (5) SA 315 (C) at [30].
[12] ***Beinash v Wixley*** 1997 (3) SA 721 (SCA) at 734G – 735A.

same:[13]

In my respectful view, this dictum is not authority for the proposition that, where a witness is able to be of some assistance to the court, he or she is invariably also compellable as a witness. As the above extract from the judgment in Beinash v Wixley clearly shows, a subpoena may amount to an abuse of the process of the court notwithstanding the fact that the subpoenaed witness may be able to give relevant evidence or produce relevant documents. To put it differently, the issues of relevance and abuse of the process, though possibly inter-related, are separate and distinct. Thus, a subpoena issued in respect of a witness unable to give relevant evidence or to produce relevant documents will ordinarily amount to an abuse of the process of the court. However, the converse is not necessarily true: the evidence sought to be obtained may be relevant and yet amount to an abuse of the process. This will be so, inter alia, where the subpoena is issued for an improper purpose.

THE STARTING POINT: THE APPLICATION OF THE THRESHOLD TEST

[21] The Court must be satisfied that there is fair ground for the suspicion that the person proposed to be examined can probably give information about what is suspected. Put differently, the Court must consider whether there is a valid complaint based on a reasonable suspicion, and whether the proposed witness may be able to give material information regarding the company in liquidation.

[22] According to Van der Spuy she is justified in seeking disclosure of the documents as listed in the subpoenae as she has already uncovered material irregularities, including unexplained payments to insiders, the diversion of the net proceeds from the sale of a company property, the post-liquidation transfer of the remaining balance in the company's bank account to its director, the director's failure to keep company records and the existence of related-party transactions. Broadly summarised, the essence of her complaint is three-fold:

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[13] ***Meyers***-case at para [35].

[22.1] Firstly, Van der Spuy highlighted the close relationship between Mrs Lategan, Lategan, LMG and Lategan Trading. She suspects that LMG is but an extension of, or front for, Lategan.

[22.2] Secondly, it appeared from questions posed to her by the Court that Van der Spuy's suspicions centre around the last project undertaken between LMG and Lategan Trading. This concerned an agreement entered into between LMG and Four Zuider Paarl Investments (Pty) Ltd concerning the building of four residences. She believes that monies due to Lategan Trading were retained by or diverted to LMG.

[22.3] Thirdly, she suspects that monies had been paid out of the Lategan Trading accounts to third party accounts (not identified) without just cause (what she describes as a 'nexus') and that the money should be repaid to Lategan Trading as it is an asset belonging to it.

[23] With regards to the first complaint, Van der Spuy has not set out any grounds in any of her answering affidavits as to why the incorporation of LMG, the use of this company, and/or any act by or on behalf of this company, constitutes an unconscionable abuse of the juristic personality of this company as a separate entity in terms of section 20(9) of the 2008 Companies Act.[14]

[24] In ***Ex parte Gore NO and Others NNO (in their capacities as the liquidators of 41 companies comprising King Financial Holdings Ltd***

[14] Section 20(9) of the Act gives the courts a general statutory discretion to pierce the corporate veil.

(in liquidation) and its subsidiaries)[15] this Court handed down a judgment on section 20(9). The issue in ***Gore*** was whether the court should pierce the corporate veil in a group of companies. The applicants were the liquidators of 41 companies that had formed part of a group of companies, referred to as 'the King Group'. The affairs of the King Group had been conducted in a manner that did not maintain any distinguishable corporate identity between the various companies in the group. By way of example, invested funds were 'allocated' by the management of the King Group into whichever company it saw fit, without any meticulously kept accounting record. Funds solicited from investors were transferred at will by the controllers of the holding company between the various companies in the group, with no regard to the individual identity of the companies concerned. The court found that the disregard by the King brothers of the separate corporate personalities of the companies in the King Group was so extensive as to impel the conclusion that the group was in fact a 'sham' (at para 15).

[25] It is evident from this case that the closeness of the relationship between LMG and Lategan Trading or LMG and/or Lategan and/or Mrs Lategan is not, in and of itself, sufficient to show an unconscionable abuse of the juristic personality of this company (LMG). Lategan's employment at LMG, with or without pay, similarly cannot lead to the reasonable suspicion that LMG is Lategan's new venture, that his wife is acting as his front and that LMG is 'a sham'.

[26] As to the second complaint, according to Mrs Lategan the project was the

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[15] [2013] 2 All SA 437 (WCC).

third and last one arising from a joint venture between the two companies where LMG appointed Lategan Trading as subcontractor. Van der Spuy (relying on a conversation with an undisclosed person who had apparently had some participation in this project) avers that the building project was materially completed by the time Lategan Trading was placed in liquidation and that the costs of the project had been paid. Her submission was that Lategan completed the project under the auspices of LMG and that the final payment made by Four Zuider Paarl Investments (approximately R2,7 million) and any retention monies paid thereafter, should have been paid to Lategan Trading. Her suspicion is strengthened as, she says, the R2,7 million was paid from LMG to Mrs Lategan. This against the backdrop of payments exceeding R15 million that had been paid by LMG to Lategan Trading in the fourteen months prior to the liquidation.

[27] Although much of this information was provided from the bar, the following can be verified from the documents placed before me:

[27.1] LMG had entered into an agreement with Four Zuider Paarl Investments to erect four houses on four different erven.

[27.2] LMG had appointed Lategan Trading to do the actual construction.

[27.3] Lategan signed the building agreement with Four Zuider Paarl Investments as duly authorised representative of LMG.

[28] What is relevant in the present context, to my mind, is the relationship between LMG and Lategan Trading. It seems to me that there is a sufficient basis for a reasonable suspicion that LMG may be able to give material information regarding the agreement involving Four Zuider Paarl

Investments, LMG and Lategan Trading. Any information relating to this transaction would most certainly be relevant to the investigation of the affairs of Lategan Trading. Mrs Lategan, as a director of LMG, would be able to answer questions and provide information regarding this transaction. This does not mean, however, that the third respondent, and the fourth respondent acting as its authorised agent, are entitled to all the documents sought in the subpoenae *duces tecum*. The third respondent, and by extension the fourth respondent, must exercise their power circumspectly, after due and proper consideration as to the need for such interrogation, the aim, ambit and purpose thereof and to ensure that the person concerned is not called for the examination on matters extraneous to the enquiry.

[29] As regards the third complaint, and the suspicious transactions on the bank statements of Lategan Trading, referenced "Absa Bond" or "From Loan Acc", once again there is no evidence, other than a suspicion which Van der Spuy holds, that the money was diverted to Lategan, Mrs Lategan or LMG. There are remedies available to the liquidators in terms of the provisions of the Insolvency Act, such as section 26 (dispositions without value), section 29 (voidable preferences), section 30 (undue preference to creditors) and section 31 (collusive dealings) to recover such funds. Whether there is a basis to do so, can be established in the enquiry, even with a dearth of documents, without extracting the documents sought by Van der Spuy from third parties. Van der Spuy has not recorded in her answering affidavits how the evidence at the enquiry regarding these transactions can be linked to the documents sought to be discovered through the subpoenae from Mrs Lategan, the four trusts, LMG, CAP and

Lategan.

THE THREE SUBPOENAE

[30] I now turn to the three subpoenae and the documents / information sought therein.

The subpoena addressed to the first applicant

[31] The subpoena covers wide ground, ranging from her personal bank statement for the period 1 February 2023 to 2 December 2025 (Lategan Trading was liquidated during October 2023), to her personal tax returns and assessments for the tax years of 2023, 2024 and 2025, as well as documents relating to four trusts (three of which were registered in 2024 with one being registered in 2022) and LMG. It appears from the subpoena that Mrs Lategan was asked to produce documents in her personal capacity, as well as in (presumably) her capacity as a trustee of the four named trusts (although she was not identified as a trustee) and in her capacity as a director of LMG (although she was not addressed in this capacity). The subpoena did not clearly indicate the different capacities, such as, but not limited to, Mrs Lategan's name, occupation, and role in respect of the parties mentioned in the subpoena, to ensure that she understands her obligations in each capacity.

[32] Mrs Lategan is being required to produce her personal bank account statements, her personal tax returns and her personal tax assessments. The documents sought can be of no relevance to the singular complaint – regarding the agreement involving Four Zuider Paarl Investments, LMG and Lategan Trading – in respect of which I am persuaded that there is a

fair ground for suspicion that LMG may lawfully and relevantly be required to provide information relevant to investigating the affairs of the company in liquidation.

[33] She is furthermore, required to produce documents relating to four trusts (three of whom were registered after the date of liquidation), including documents that may not exist, such as an affidavit by the trust's accounting firm confirming that no financial statements were ever prepared for the trusts. No letters of authority were provided and it is not clear from the papers that she is even a trustee of one or more of the trusts. Once again, the documents sought (trust deed, list of assets, financial statements, tax returns and tax assessments) can be of no relevance to the single valid complaint. Irrelevant matter are documents, which do not apply to the matter in hand or which do not contribute one way or another to a decision of such matter.

[34] Once again I have grave difficulty in understanding what the possible relevance could be – to the single valid complaint – of the documents sought in respect of LGM. The subpoena calls for *inter alia* CIPC beneficial ownership certificates, sale of share agreements with four personae, a copy of Mrs Lategan's curriculum vitae, director remuneration agreements, LMG's bank account statements from 19 January 2024 to 28 February 2025, VAT returns for three years, trial balances, general ledgers, financial statements, tax returns, and tax assessments. The period largely spans three tax years (2023, 2024 and 2025). In addition it seeks delivery of non-existent documents, such as "*an explanation why you were made director," "details of your contribution to the group as director*," "*proof to whom the*

following payments were made," and "*explain and provide proof*." The few documents that may be relevant (loan accounts between the two companies, and an income account relating to the project) disappear in the copious demand for irrelevant documents.

The subpoena addressed to the seventh respondent

[35] Lategan was also requested to provide his personal bank account statements, information in respect of one trust (registered in 2022), proof to whom certain payments were made from the Lategan Trading account, explanations about transaction relating to Lategan Trading, and a plethora of documents relating to LMG (resolutions, loan agreements, employment contracts, and loan schedules). The latter documents-request was not limited to any time period. In addition, the subpoena is silent on the different capacities, such as, but not limited to, Lategan's name, occupation, and role in respect of the parties mentioned in the subpoena, to ensure that he understands his obligations in each capacity. Lategan is not a director of LMG or an employee. It was not alleged that he is a trustee of the trust. In addition, the subpoena seeks delivery of non-existent documents – asking for 'proof' and 'explanations.' The possible relevance – to the single valid complaint – of the documents sought in respect of Lategan personally, the trust and LGM escapes me.

The subpoena addressed to the sixth respondent

[36] In this subpoena CAP was requested to provide the loan schedule account between Lategan Trading and LMG from January 2022 to date, the LMG VAT returns from 1 November 22 to 28 February 2025, LMG trial balances

for the 2023, 2024 and 2025 tax years, and LMG general ledger accounts for the same tax year in respect of loan accounts with Lategan Trading, Lategan or Mrs Lategan, or "*any other person or legal entity associated with Tiaan Lategan or Anel Lategan or any of their family members or other connected people/entities or in any other way held on their behalf.*" The list continues: SARS VAT and tax accounts, financial statements, tax returns, tax assessments, trial balances, and "*(general ledger) accounts showing any payments made or amount accrued to, for or on behalf of Tiaan Lategan and Anel Lategan, including salaries, other remuneration, loans, and all and any other payments/accruals.*"

[37] Once again the documents sought are widely framed, spanning three tax years, and are largely irrelevant to the one valid complaint.

Conclusion

[38] I have noted above that Mrs Lategan, Lategan, and possibly CAP, may have additional documents in their possession that may be of some assistance in the enquiry investigation the affairs of Lategan Trading. These documents would relate to the third joint venture project between LMG and Lategan Trading involving Four Zuider Paarl Investments. The CAP report contains CAP's factual findings relating to all transactions between Lategan Trading and LMG, from the latter's incorporation until the date of liquidation of Lategan Trading, as captured from the bank statements of these entities. I should also record that documents reflecting the commercial dealings between Lategan Trading and LMG have already been handed to the liquidators (and were received by Van der Spuy). These documents include:

- LMG's share register
- LMG organogram
- Building contracts in respect of all three projects
- LMG bank statements from 19 April 2022 to 19 January 2024

[39] Although it appears on the face of it as if some of the documents sought in the subpoenae relate to the Four Zuider Paarl Investments project, I have compared the documents sought in the subpoenae against the single valid complaint I have accepted and determined that the bulk of the documents sought are not relevant to this complaint. It is evident from the ***Meyers***-case[16] that, even if some of the documents sought are relevant, the subpoenae may nevertheless be set aside if the court, in the exercise of its discretion, is satisfied that it amounts to an abuse of the process.

ARE THE SUBPOENAE AN ABUSE OF PROCESS?

[40] It seems from the answering affidavits, and the submissions made by Van der Spuy during the hearing, that she is suspicious of the closeness of the relationship between Lategan, Mrs Lategan, Lategan Trading and LMG. She considers LMG to be the front for Lategan. It is clear that most (if not all) of the documents sought arises from this belief. In an effort to prove or disprove this suspicion, she has embarked on a fishing expedition, casting her net wide. I say this for the following reasons:

[40.1] The first is the generality and wide ambit of some of the demands contained in the subpoena. The language used, as quoted above, is of the widest possible amplitude including within its sweep every

[16] *Supra* at para [50] and [51].

conceivable document of whatever kind, however remote or tenuous its connection may be to the investigation of the affairs of the company in liquidation.

[40.2] The period for the documents required also span a significant period – usually three tax years – and encompasses periods of time both before the commencement of the third project and after the completion of the same project.

[40.3] Not the slightest basis is suggested in her answering affidavits to support the belief that any of these documents exist at all or that, if they do, they can be of any assistance in the determination of a relevant issue in the insolvency enquiry.

[40.4] It is evident from the wording employed in the subpoenae that there is an expectation that documents should be created specifically for the purposes of the enquiry.

[40.5] The wording in the subpoenae, particularly in respect of Mrs Lategan and Lategan, furthermore suggests that oral evidence must be led in that 'explanations' must be provided or 'proof' must be produced. No document is sought in respect of the evidence sought – the draftsperson of annexure A to the subpoenae simply ignore the requirement that the subpoenae documents must 'specify' the document or thing, which the witness concerned is required to produce.

[40.6] The subpoenae to Mrs Lategan and Lategan also seeks the production of documents in an indiscriminate fashion with no attention being paid by the draftsperson of Annexure A to each subpoena regarding the capacity in which these documents are sought.

[41] I am not persuaded that the attempted enforcement of the impugned subpoenae by Van der Spuy constituted a *bona fide* exercise of the rights of the Master, through the fourth respondent, to call upon the first and second applicants, as well as the sixth and seventh respondents, to produce relevant documents. In my view these subpoenae constitute an abuse of the machinery provided by the Insolvency Act to assist the Master in obtaining properly specified documentation relevant to investigating the company's affairs. The impugned subpoenae have the effect of harassing the first and second applicants as well as the sixth and seventh respondent.

[42] I must thus conclude that, although there may be a few documents relevant to the one valid complaint, the subpoenae constitute an abuse of the process and must be set aside.

Costs

[43] The ordinarily rule is that the successful party is entitled to its costs. Mr De Vries has urged me to find that the subpoenae were neither issued nor intended to be used for any legitimate purpose contemplated by the Insolvency Act and that the issuing and enforcement of the subpoenae were pursued for an ulterior purpose and with *mala fide* intent. As such the applicants are seeking a punitive cost order. I am unable to do so. Van der

Spuy is a qualified chartered accountant who, by training and vocation is experienced in the forensic analysis of financial documents. As she explained, to the lay person her enquiries could subjectively be experienced as invasive or harassing of nature, but, in order to perform her due diligence, she has to follow a train in order either to prove or to disprove what she believes the position to be.

[44] She is a creditor, and her request for the production of documents should have been closely scrutinised by the first to fourth respondents. It is after all, the person who is authorised to require the attendance of another (the third party) for the purposes of interrogation who is invoking this authority and who must exercise this power circumspectly, after due and proper consideration as to the need for such interrogation, the aim, ambit and purpose thereof to ensure that the third party is not called for the examination on matters extraneous to the enquiry.

[45] It is clear to me that the first to fourth respondents did not (properly) consider whether there is a valid complaint based on a reasonable suspicion. The inquisitorial and potentially oppressive nature of insolvency enquiries are justified only when used within their statutory purpose (investigating the company's affairs for the creditors' benefit).

[46] In the alternative, Mr De Vries sought an order compelling the first, second and fifth respondents to pay the applicants' costs on a party and party scale with Scale C applying to counsel's fees, the one paying, the other being absolved *pro tanto*. I am prepared to grant this order. The first, second and fifth respondents were afforded an opportunity on 21 January 2026, before the application was launched, to withdraw the subpoenae

and warned about the cost implications of not doing so. They did not avail themselves of this opportunity.

[47] The order is recorded above.

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ANDERSSEN J S

Acting Judge of the High Court

Appearances:

For the applicant: Adv J D de Vries
Instructed by BDP Attorneys Inc

For the fifth respondent: In person