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

Case number: 11348/2019

In the matter between:

ROCHELLE LUPACCHINI N.O.

Applicant

In her capacity as the duly appointed executrix in
the estate of the late Christine Lesley Contrradie,
Master's reference 004908/2025

and

THAT COLLECTIVE (PTY) LTD
LAVINA SUZETTE BELL-ROBERTS
BRENDON JOHN BELL-ROBERTS
BYRON LYNDON SMITH

First respondent
Second respondent
Third respondent
Fourth respondent

In re:

CHRISTINE LESLEY CONRADIE

Applicant

and

THAT COLLECTIVE (PTY) LTD
BYRON LYNDON SMITH

First respondent
Second respondent

Coram: Van Zyl, AJ
Heard on: 3 November 2025, final submissions made on 13 November 2025
Judgment: : 24 March 2026

Summary: Contempt of court – no order to be granted against deregistered company – orders granted against director and *de facto* director of company – sufficient factual or legal basis to hold them in contempt despite absence of formal joinder application

ORDER

1. The late delivery of the applicant's replying affidavit is condoned.
2. The application is dismissed as against the first respondent.
3. The second and third respondents are found to be in contempt of the court order dated 18 February 2020, granted under case number 11348/2019.
4. The second and third respondents are each sentenced to payment of a fine of R15 000,00 (fifteen thousand rand), alternatively, to 1 (one) month's imprisonment, which sentence is suspended for a period of 24 months on condition that the second and third respondents ensure compliance with the first respondent's obligations under the court order dated 18 February 2020 within this period.
5. In the event of the second and third respondents failing to comply with the provisions of paragraph 4, the applicant shall be entitled to apply on the same papers, duly amplified if necessary and on notice to the second and third respondents, for an order uplifting the suspension of the sentence

and for enforcement of the fine, alternatively, for a warrant of arrest to be issued for such respondents' committal.

6. The fourth respondent is found to be in contempt of the court order dated 17 August 2019, granted under case number 11348/2019.
7. The fourth respondent is sentenced to payment of a fine of R15 000,00 (fifteen thousand rand), alternatively, to 1 (one) month's imprisonment, which sentence is suspended for a period of 24 months on condition that the fourth respondent comply with his obligations under the court order dated 17 August 2019 within this period.
8. In the event of the fourth respondent failing to comply with the provisions of paragraph 7, the applicant shall be entitled to apply on the same papers, duly amplified if necessary and on notice to the fourth respondent, for an order uplifting the suspension of the sentence and for enforcement of the fine, alternatively, for a warrant of arrest to be issued for such respondent's committal.
9. The second and third respondents, on the one hand, and the fourth respondent, on the other, shall jointly and severally pay the applicant's costs incurred in this application, including the costs of the proceedings on 24 March 2025, on the scale as between attorney and client.

JUDGMENT

VAN ZYL, AJ:

Introduction

1. The applicant¹ seeks an order declaring the respondents to be in contempt of court. As things go, there are quirks to the application.
2. Only the second and third respondents oppose the application. The applicant was given leave² to serve a copy of the application on the fourth respondent by way of substituted service in the form of email and WhatsApp. Despite service as authorised, the fourth respondent has not opposed the application.
3. The applicant has sought condonation of the late delivery of her replying affidavit. The grant of condonation was not opposed, and the applicant has set out a reasonable explanation for the delay, which was occasioned by the death of the original applicant and the substitution of the executor of her estate as applicant. Condonation is accordingly granted.
4. In *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma*,³ the Constitutional Court held that:

“As set out by the Supreme Court of Appeal in Fakie, and approved by this court in Pheko II, it is trite that an applicant who alleges contempt of court must establish that (a) an order was granted against the alleged contemnor; (b) the alleged contemnor was served with the order or had knowledge of it; and (c) the alleged contemnor failed to comply with the order. Once these elements are established, wilfulness and mala fides are presumed and the respondent bears an evidentiary burden to establish a reasonable doubt. Should the respondent fail to discharge this burden, contempt will have been established.”

5. Whether these requirements have been satisfied in the present case is discussed below.

The orders upon which this application relies

¹ The original applicant, Mrs Conradie, has passed away since the institution of the application, and her estate is represented by the duly appointed executrix.

² By way of an order granted on 24 March 2025.

³ 2021 (5) SA 327 (CC) para 37.

6. On 17 August 2019 an order (“the 2019 order”)⁴ was granted against the fourth respondent, in terms of which he was directed to furnish the applicant⁵ with a final and complete mobile application known as the Bumbledings educational game (including various specified components thereof), which the fourth respondent had been commissioned to develop for the applicant, through the first respondent. The applicant and the first respondent, represented by the third respondent, had concluded a written agreement in this respect in November 2017.
7. The components to be furnished by the fourth respondent under the 2019 order included:
 - 7.1 Software and programs used in and to develop the application.
 - 7.2 The signed APKs and source codes of the application.
 - 7.3 All audio, graphics, and voice audio and confirmation of the HTML.
 - 7.4 Code for the website designed and/or developed by the first respondent and/or the fourth respondent in relation to the application.
 - 7.5 The application's unity file in TXT format.
 - 7.6 All security certificates, licences, and keys relevant to the application.
 - 7.7 Transfer of the domain hyperlink [https://b\[...\]](https://b[...]) to the applicant's host at [h\[...\]](h[...]).

⁴ The Honourable Justice Savage presiding.

⁵ Mrs Conradie, the original applicant, was a teacher by profession who came up with the idea for the game.

- 7.8 Transfer of any and all translated versions of the application in respect of which the following are included:
- 7.8.1 Software and programs used in and to develop the various translated versions of the application.
 - 7.8.2 The signed APKs and source codes of the various translated versions of the application.
- 7.9 The unity file, in TXT format, of the various translated versions of the application.
- 7.10 All security certificates, licences, and keys relevant to the various translated versions of the application.
8. The order had been sought against the both the first and the fourth respondents but, because the first respondent opposed the application, the matter as between the applicant and the first respondent was referred to the opposed motion roll for argument. The fourth respondent had failed to oppose, and the 2019 order was thus granted against him by default.
9. On 18 February 2020,⁶ following argument of the opposed application, an order in similar terms was granted against the first respondent (“the 2020 order”). The order was granted against the first respondent company, and directed the company *inter alia* to furnish the applicant with the final and complete version of the Bumbledings application which the first respondent had contracted to design and provide to the applicant.
10. The applicant now applies to hold the first to third respondents in contempt of the 2020 order. The applicant alleges that the first respondent has failed to

⁶ The Honourable Justice Slingers presiding. Judgment was in fact delivered on 30 March 2020 but the order on record is dated 18 February 2020, which was the date of the hearing. There was no confusion between the parties as to the existence of the order upon which the applicant relies, and I therefore continue to refer to the order – as the parties do – as the 18 February 2020 order.

comply with the 2020 order, and the fourth respondent failed to comply with the 2019 order. She cites the second and third respondents in this contempt application, despite the fact that neither of them was party to the proceedings which led to the grant of the orders, and further despite the fact that no formal application for their joinder to the proceedings was brought. It is common cause that they never consented to their joinder. The applicant cites the second and third respondents on the basis that they were the directors of the first respondent when the 2020 order was granted, and on the basis that they were responsible - through the first respondent - to ensure compliance with the 2020 order.

11. That all of the components listed in the orders have not been provided appears from expert evidence proffered by the applicant, which stands undisputed on the papers. Although the fourth respondent did provide the applicant with some items, those were defective in various ways, and the applicant is still not in possession of a final and usable programme, even though a fully functional programme does exist, having been launched for sale in the Google Play Store by the first respondent itself.
12. What, then, is the position of each of the respondents in these proceedings?

The fourth respondent's position

13. The fourth respondent has again not opposed the application. It is clear from the papers that he has knowledge of the 2019 order, and the applicant has been in email communication with him over the past years since the grant of the order regarding his attempts at compliance.
14. There is no explanation for his non-compliance with the terms thereof, and no evidence to dislodge the presumption of wilfulness and *mala fides*. The relief sought stands to be granted against him.

The first respondent has been deregistered

15. A hurdle in the applicant's part is the fact that the first respondent does not exist anymore. It is clear from the company information attached to both the founding and answering affidavits in these proceedings that the first respondent was finally deregistered during January 2024, prior to the institution of this contempt application. The deregistration occurred because the required annual statements had not been filed.
16. It is by now trite that once a company is deregistered, it loses its legal status as of the date of its removal from the companies register. Section 83(1) of the Companies Act 71 of 2008 provides that (save for an exception irrelevant to these proceedings) a company "*is dissolved as of the date its name is removed from the companies register ..*". Its removal has the result that it can no longer operate in its own name, and it does not have the legal and contractual capacity to enter into any binding transactions because it is no longer recognized as a juristic person.⁷
17. Likewise, claims by creditors of a deregistered company for debts owed to them will no longer be enforceable against the company because the deregistered company does not have legal personality. That essentially means that such deregistered company can no longer litigate or be litigated against, and all the assets within the company (in the case where there were still assets held within the company at the time of its deregistration) are declared *bona vacantia*, that is, forfeited to the State.
18. As the court held in *Absa Bank Ltd v Companies and Intellectual Property Commission of South Africa and others*:⁸ " ... *nothing done by the company and no action taken against the company during the period of dissolution is of any effect*".
19. The applicant has not applied for the reinstatement of the first respondent's registration in accordance with the relevant provisions of section 82 of the

⁷ *Technologies Acceptances Receivables Pty (Ltd) and another v Thavalerie Travel CC and another* [2025] ZAGPJHC 573 (10 June 2025) footnote 2.

⁸ 2013 (4) SA 194 (WCC) para 61.

Companies Act, or for an order declaring its dissolution void under section 83 of the Companies Act.⁹ In these circumstances, the applicant cannot obtain relief against the first respondent.

The second and third respondents' position

20. The second hurdles facing the applicant entails the roles of the second and third respondents in the saga set out in the papers.
21. As indicated, the second and third respondents were not party to the proceedings resulting in either the 2019 or the 2020 order, and no other order was made against either of them. The applicant did not seek formally to join these respondents to this application – they were merely cited. In the ordinary course, the issue by the applicant of her contempt application under the same case number as the main application which gave rise to the order would mean that the joinder of the second and third respondents for the purposes of enforcing the order was procedurally necessary.
22. The applicant says that she cited the second and third respondent because, in terms of section 83(2) of the Companies Act, the removal of a company's name from the companies register *"does not affect the liability of any former director or shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the register"*.
23. In *Specitrim (Pty) Ltd and others v City of Johannesburg Metropolitan Municipality and another*¹⁰ one of the respondents raised an objection of non-joinder in a contempt application. The court held as follows:

"In casu, there is nothing on the papers which indicates that before the service of the Contempt Application upon the Second Respondent, Brink, he was served with the Order personally, or that he was informed in his personal capacity, of the case he

⁹ See the discussion in *Absa Bank Ltd supra* paras 36-37; and 43-53.
¹⁰ 2024 JDR 3967 (GJ) para 38. My emphasis.

was to face. These facts ... show, in my view, that the objection of non-joinder by the Respondents is not a purely idle or technical one taken simply to cause delays but rather from a legitimate concern regarding the rights of the Second Respondent, Brink. I find therefore, that the point in limine has merit and is thus upheld."

24. In *Le Hanie and others v Glasson and others*¹¹ the Supreme Court of Appeal (SCA), also in the context of a contempt application, held as follows:

"[34] It bears repeating that the court order was granted against the HOA and not the appellants herein, who are the individual directors of the HOA. None of the appellants were cited in the main application. The respondents erroneously assumed that, as directors of the HOA, against whom the court order had been granted, they could simply visit contempt upon the appellants.

[35] The high court failed to appreciate the distinction between the appellants and the HOA, as it was constituted in 2015. By conflating the HOA with the individual directors in seeking the contempt order, the respondents and the high court failed to consider the position of the appellants who were not in office in 2015. or at the time the court order was granted.

*[36] Other than Ms Le Hanie, who, like the other directors, was not in office at the time the court order was granted, the other appellants are not employed by the HOA and are not involved in the day-to-day activities of the Estate. As was held in *City of Tshwane Metropolitan Municipality v Beukes*, a court will not hold a party responsible for the execution of a court order where that party was not cited in the proceedings, or against whom the order was not granted, unless there is a factual or legal basis to do so. There was no such basis in the present case.*

*[37] In *Meadow Glen Home Owners Association v City of Tshwane City Metropolitan Municipality*, this Court held that:*

'...there is no basis in our law for orders for contempt of court to be made against officials of public bodies, nominated or deployed for that purpose, who are not themselves personally responsible for the wilful default in complying with a court order that lies at the heart of contempt proceedings.'

...

However, it must be clear beyond reasonable doubt that the official in question is the person who has wilfully and with knowledge of the court order failed to comply with its terms. Contempt of court is too serious a matter for it to be visited on officials, particularly lesser officials, for breaches of court orders by public bodies for which they are not personally responsible'.

[38] This principle must apply equally to directors of an HOA, more particularly where the court order was against the HOA and not the directors individually."

25. The matter does not end there. The SCA in *Le Hanie*¹² discussed the principles underlying contempt of court, and emphasized that a court must be satisfied beyond a reasonable doubt of a respondent's contemptuous conduct:

"[30] In Matjhabeng, the Constitutional Court summed up the position in regard to the standard of proof required, as follows:

'Summing up, on a reading of Fakie, Pheko II, and Burchell, I am of the view that the standard of proof must be applied in accordance with the purpose sought to be achieved, differently put, the consequences of the various remedies. As I understand it, the maintenance of a distinction does have a practical significance: the civil contempt remedies of committal or a fine have material consequences on an individual's freedom and security of the person. However, it is necessary in some instances because disregard of a court order not only deprives the other party of the benefit of the order but also impairs the effective administration of justice. There, the criminal standard of proof – beyond reasonable doubt – applies always. A fitting example of this is Fakie. On the other hand, there are civil contempt remedies – for example, declaratory relief, mandamus, or a structural interdict – that do not have the consequence of depriving an individual of their right to freedom and security of the person. A fitting example of this is Burchell. Here, and I stress, the civil standard of proof – a balance of probabilities – applies.'

[31] In dealing with the requirement of a deliberate and mala fide non-compliance with an order, to found a contempt order, Cameron JA, in Fakie, stated that:

'The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed "deliberately and mala fide". A deliberate disregard is not enough, since the non-complier may

¹² *Le Hanie supra* paras 30-31. My emphasis.

genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith)."

26. Apart from the joinder issue, therefore, the question arises whether a sufficient factual or legal basis has been shown to hold the second and third respondents in contempt, as the applicant attempts to do. Material and wilful non-compliance with the 2020 order must be shown:¹³

"[15] A material failure to comply with the order has to be shown. In Consolidated Fish Distributors (Pty) Ltd v Zive 1968 (2) SA 517 (C) at 522 this was applied:

" ... applicant for an attachment had to show a wilful and material failure to comply with the reasonable construction of the order. The requirement of materiality is hardly ever mentioned in the cases, however, probably for the reason that in 99 per cent of these cases the whole order was disobeyed, which is obviously a 'material' non-compliance. It is reasonable to suggest that where most of the order has been complied with and the non-compliance is in respect of some minor matter only, the Court would take the substantial compliance into account, and would not commit for the minor non-compliance."

...

[17] In order for a person to be found guilty of contempt of court, the disobedience must not only be wilful, but also mala fide. See Clement v Clement 1961 (3) SA 861 (T) at 866A."

27. As to the objection to being brought to court to face the contempt application, I think that the second and third respondents' position in the present matter is different from those of the respondents in *Specitrim* and *Le Hanie*. In *Specitrim* the court was not satisfied that the municipal manager had any knowledge of the application and the relief being claimed against him. It was on that basis that the objection to the joinder was upheld. In *Le Hanie*, Ms Le Hanie, like the other directors, was not in office at the time the court order was granted, and the other appellants were not employed by or involved in

¹³ *Khepeng and another v Maseko and another* [2023] ZAFSHC 78 (13 March 2023) paras 15 and 17.

the day-to -day affairs of the relevant organisation.

28. In the present matter, the second and third respondents, who are married to each other, were at all relevant times the first respondent's life-blood. They were the force behind the opposition to the grant of the 2020 order against the first respondent. They instructed attorneys on the first respondent's behalf for the purposes of the litigation. The third respondent was the deponent to the first respondent's answering affidavit, describing himself as the first respondent's director.
29. The grant of the 2020 order is not in dispute, and it is clear on a consideration of the papers as a whole that the second and third respondents had knowledge of the order and of its provisions. In fact, although they contend that the order had never formally been served upon them, they do not deny having knowledge thereof – they cannot, because they proceed to set out in their answering affidavit the measures they have taken to ensure compliance with its terms. (A copy of the court order was, incidentally, attached to a warrant of execution that was served on the third respondent personally prior to the institution of this contempt application.)
30. The third respondent was copied in to all of the applicant's email communications with the fourth respondent over the years. After the grant of the 2020 order, the applicant's attorney was in contact with the second respondent for purposes of taxation of the costs of the main application. The second respondent communicated with her costs consultant and the applicant correspondent attorneys to accept an offer in relation to costs, pursuant to which an allocatur was made.
31. The second and third respondents' involvement in this matter cannot come as any surprise to them. They were personally cited in this application, which was duly served upon them. They were afforded the opportunity of advancing reasons why they should not be held in contempt of court, and they have made use of that opportunity. In the premises, I do not regard the absence of a formal joinder application in relation to them as fatal to the

applicant's case against them.¹⁴

32. Is there a factual or legal basis upon which to hold the second and third respondents (or, the second or third respondents) in contempt?
33. The respondents rely on section 77 of the Companies Act, which deals with the "*Liability of directors and prescribed officers*". Section 77(7) provides as follows:

"(7) *In relation to the proceedings to recover any loss, damages or costs for which a person is or may be held liable in terms of this section-*

- (a) *the Prescription Act, 1969 ... does not apply;*
- (b) *subject to paragraph (c), such proceedings may not be commenced more than three years after the act or omission that gave rise to that liability; and*
- (c) *the court may, on good cause shown, extend the period referred to in paragraph (b) regardless of whether-*
 - (i) *such period has expired or not; or*
 - (ii) *the act or omission that resulted in the loss, damages or costs contemplated in this section, occurred prior to the promulgation of the Companies Second Amendment Act, 2024"*

34. This application was brought more than three years after the grant of the 2020 order.

35. In terms of section 77(9) of the Companies Act:

"(9) *In any proceedings against a director, other than for wilful misconduct or wilful breach of trust, the court may relieve the director, either wholly or partly, from any liability set out in this section, on any terms the court*

¹⁴ See *Wagg and another v City of Johannesburg Metropolitan Municipality and another (Application for Leave to Appeal)* [2025] ZAGPJHC 199 (28 February 2025) paras 14-37. After discussing various authorities the Court concludes: "[35] *The authorities referred to and relied upon by the respondents do not support the contention that in the present instance, a formal joinder in terms of Rule 10 had to be effected and that the failure to have done so should have been fatal to the contempt applications.*"

considers just if it appears to the court that-

- (a) the director is or may be liable, but has acted honestly and reasonably; or*
- (b) having regard to all the circumstances of the case, including those connected with the appointment of the director, it would be fair to excuse the director.”*

36. Section 77 aims to regulate a director’s liability towards the company itself in the context of the instances set out in the section, and not towards third parties such as the applicant. The section codifies the common-law liabilities of directors, including alternate directors, prescribed officers, audit committee members, and board committee members, and consolidates other sections of the Companies Act that hold directors and prescribed officers personally liable for company losses.¹⁵ As such, the respondents’ reliance on section 77 is misplaced in the present context.
37. The applicant relies on section 83 of the Companies Act. As indicated, section 83(2) provides that deregistration “*does not affect the liability of any former director or shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the register*”.
38. Section 83(3) in turn provides that any liability contemplated in section 83(2) continues and may be enforced as if the company had not been removed from the register. Whether or not the second and third respondents allowed the company to be deregistered by design, they remain responsible to ensure that the court order be complied with.
39. The first respondent – prior to its deregistration – could only function through its directors. It is common cause between the parties that the second respondent was at all relevant times reflected in the relevant CIPC records as the first respondent’s director, while the third respondent was not. It appears,

¹⁵ See the discussion on section 77 of the Companies Act in Delport (ed.) *Henochsberg on the Companies Act 71 of 2008* (LexisNexis, looseleaf).

however, that the third respondent has since the inception of the first respondent's involvement with the applicant undertaken the role of director. For example, in email messages to the applicant the second respondent indicated that the applicant had to deal with the third respondent, "*as he is the director*" of the first respondent. The third respondent in turn indicated that all communications should be addressed to him. The third respondent deposed to the first respondent's answering affidavit in the main application, describing himself as its director. It was the third respondent who appeared at the taxation of the costs order against the first respondent in the main application.

40. A *de facto* director is a person who claims to act and purports to act as a director without having been so appointed either validly or at all. On the particular facts of this matter the third respondent was a *de facto* director. Apart from being held out as the first respondent's director, he in fact participated in the running of the business of the first respondent on an equal footing with the second respondent, and not in a subordinate role.¹⁶ This is not surprising because it appears that the second and third respondents were the only persons involved in managing the first respondent's business. Without them the first respondent would exist in name only, and would not have been able to conduct its business, including the conclusion of the agreement with the applicant.
41. In these circumstances, the third respondent, together with the second respondent, was liable to ensure the first respondent's compliance with the 2020 order, and there is a sufficient "*factual or legal basis*" (in the words of *Le Hanie*) upon which to hold them in contempt should the presumption in relation to wilfulness and *mala fides* remain intact in relation to the first respondent's failure to comply with the 2020 order.
42. In their answering papers the second and third respondents advance reasons for their contention that they have acted reasonably in relation to the first respondent's obligations under the 2020 order. They explain that it was the

¹⁶ See Hassim *et al Contemporary Company Law* (2ed, Juta) at p 408.

fourth respondent who was in a position to comply with the 2020 order, as he did the work, which had been subcontracted to him. The first respondent complied with the order insofar as it was capable to do so - it did not have all of the components listed in the court order in its possession, but handed over what it did have. The second and third respondent did not interfere with the execution of the fourth respondent's work, and they are not in a position to remedy his non-compliance with the 2020 order.

43. The applicant nevertheless argues that the second and third respondents do not set out the steps they have taken to ensure the first respondent's compliance with the 2020 order. Rather, they lay the burden of complying entirely at the fourth respondent's door. There is merit in the applicant's submission. Although the respondents' version, namely that the first respondent was not in possession of the complete and functional programme at the time when the main application was brought, is borne out by the evidence that appears from the main application, one must not lose sight of fact that the 2020 order was not one merely compelling the first respondent to obtain the full programme from the fourth respondent and handing it over to the applicant.
44. On the contrary, the basis upon which the 2020 order was granted was that the first respondent itself had failed to fulfil its obligations under the agreement that it had concluded with the applicant. In the judgment granting the 2020 order, the court expressly held that, despite subcontracting the work to the fourth respondent, the first respondent remained liable to the applicant for delivery of such work. Such files as had been handed over by the first respondent to the applicant did, by the first respondent's own admission, not serve to fulfil its contractual obligations towards the applicant.¹⁷ This is despite the fact that the applicant had performed her obligations under the agreement, and had in fact overpaid the first respondent. What the 2020 order thus entailed was the delivery by the first respondent to the applicant of a complete and functional programme irrespective of where the components

¹⁷ Unreported judgment (per Slingsers J) paras10 and 27.

therefor came from. The first respondent could do so by way of co-operation from the fourth respondent or, if it encountered no co-operation, by sourcing the components itself. What it could not do was sit back and wait for the fourth respondent to perform under the 2019 order, and hold such performance out as fulfilment of the first respondent's obligations under the 2020 order.

45. The second and third respondents should not be allowed to rely on the deregistration of the first respondent to escape the latter's liabilities towards the applicant under the 2020 order. There is, incidentally, no explanation in the answering papers as to why the first respondent's deregistration was allowed to occur despite its continued non-compliance with the terms of the 2020 order. One forms the impression that the second and third respondents allowed the first respondent to slip away so as to avoid having to fulfil its obligations.
46. Therefore, even accepting the second and third respondents' version on the basis of *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*,¹⁸ such version does not address the real issue, namely the first respondent's fulfilment of its own obligations towards the applicant as directed under the 2020 order. The answering affidavit is conspicuously silent in this respect (instead, simply deflecting the liability onto the fourth respondent), and does not serve to displace the presumption of wilfulness and *mala fides* that exists in the context of this application.
47. In the premises, I am satisfied that the applicant has shown beyond a reasonable doubt that the second and third respondents have wilfully disregarded the 2020 order, and that they were *mala fide* in doing so.

Conclusion and costs

¹⁸ 1984 (3) SA 623 (A) at 634G-635C. The applicant seeks final relief on motion.

48. It follows that the relief sought should be granted against the second, third, and fourth respondents.
49. There is no reason for costs not to follow the event. A costs order on the scale as between attorney and client is extraordinary and usually reserved for cases where the court finds that the circumstances warrant it showing its displeasure with the conduct of a litigant.¹⁹ Given the nonchalance displayed by the respondents towards their obligations under the respective orders, such a costs order is apposite in the present matter.
50. In terms of the order granted in March 2025 authorising substituted service and postponing the application for hearing on the opposed motion roll, the costs of that appearance (effectively of all costs incurred in relation to Part A of the notice of motion) would be costs in the cause.

Order

51. In the premises it is ordered as follows:

10. The late delivery of the applicant's replying affidavit is condoned.

11. The application is dismissed as against the first respondent.

12. The second and third respondents are found to be in contempt of the court order dated 18 February 2020, granted under case number 11348/2019.

13. The second and third respondents are each sentenced to payment of a fine of R15 000,00 (fifteen thousand rand), alternatively, to 1 (one) month's imprisonment, which sentence is suspended for a period of 24 months on condition that the second and third respondents ensure compliance with the first respondent's obligations under the court order

¹⁹ *Tjiroze v Appeal Board of the Financial Services* [2020] ZACC 18 (21 July 2020) para 27.

dated 18 February 2020 within this period.

14. In the event of the second and third respondents failing to comply with the provisions of paragraph 4, the applicant shall be entitled to apply on the same papers, duly amplified if necessary and on notice to the second and third respondents, for an order uplifting the suspension of the sentence and for enforcement of the fine, alternatively, for a warrant of arrest to be issued for such respondents' committal.
 15. The fourth respondent is found to be in contempt of the court order dated 17 August 2019, granted under case number 11348/2019.
 16. The fourth respondent is sentenced to payment of a fine of R15 000,00 (fifteen thousand rand), alternatively, to 1 (one) month's imprisonment, which sentence is suspended for a period of 24 months on condition that the fourth respondent comply with his obligations under the court order dated 17 August 2019 within this period.
 17. In the event of the fourth respondent failing to comply with the provisions of paragraph 7, the applicant shall be entitled to apply on the same papers, duly amplified if necessary and on notice to the fourth respondent, for an order uplifting the suspension of the sentence and for enforcement of the fine, alternatively, for a warrant of arrest to be issued for such respondent's committal.
 18. The second and third respondents, on the one hand, and the fourth respondent, on the other, shall jointly and severally pay the applicant's costs incurred in this application, including the costs of the proceedings on 24 March 2025, on the scale as between attorney and client.
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P. S. VAN ZYL

Acting Judge of the High Court

Appearances:

For the applicant:

Mr A. Sander

Instructed by:

Muller Gonsior Inc. Attorneys

For the second and third respondents:

Mr J-H Gous

Instructed by:

CDC Law Inc. Attorneys

No appearance for the fourth respondent