

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 25-147868

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

9 February 2026

DATE

SIGNATURE

In the matter between:

OCEAN WIND DEVELOPMENTS (PTY) LTD

First Applicant

RESULTIT PROPERTY DEVELOPMENTS (PTY) LTD

Second Applicant

and

GEORGE PROKAS

Respondent

This judgment and the order incorporated herein is handed down electronically by circulation to the parties' legal representatives by e-mail and uploading to CourtOnline.

JUDGMENT

Moultrie AJ:

[1] The applicants seek orders that the respondent be found to be in contempt of an order issued by this court and committed to imprisonment for a period of 30 days

“or such period as the above Honourable Court deems just and equitable”.

Paragraph 1.1 of the order in question reads in relevant part as follows:

The first respondent¹... is interdicted and restrained from ... conducting himself in his interactions with any person, in a manner which is intended directly or indirectly to give rise to any consequences which would serve to jeopardise or undermine the success or progress of the development situated at [...], other than as part of legal proceedings for the legitimate pursuit of the respondents' rights.

[2] The question that arises for my determination is whether the most natural or plausible inference to be drawn² from the primary facts³ established by application of the rules applicable to motion proceedings⁴ is that the respondent has conducted himself “*in a manner intended directly or indirectly to give rise to any consequences which would serve to jeopardise or undermine the success or progress of the development*”, as proscribed by the order. The applicants allege that he did so during a telephone call with Ms M’Crystal, a candidate property practitioner in the employ of an estate agency engaged by the first applicant to market unsold units in the development referred to in the order.⁵

[3] It is common cause that the telephone call was placed by Ms M’Crystal using the “VOYS” mobile application after she received WhatsApp text messages from the respondent in which he identified himself by name and requested her to call him

¹ The respondent was the first respondent in the proceedings that resulted in the grant of the order. The second respondent was a company of which he is the sole director.

² *South British Insurance Co Ltd v Unicorn Shipping Lines (Pty) Ltd* 1976 (1) SA 708 (A) at 713E-H.

³ cf. *Rodrigues v Boababsky (Pty) Ltd* 2016 JDR 0981 (GJ) para 30.

⁴ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C.

⁵ The applicants did not press any reliance on paragraph 1.2 of the order, and the other conduct referred to in the founding papers. In my view, this was correct, none of the further conduct could be said have involved any wilful non-compliance with the order.

back.

[4] According to Ms M'Crystal, she returned the call "*believing this to be a genuine client enquiry*".⁶ She goes on to relate what transpired during the call as follows:

During the call, it became immediately clear that Mr. Prokas was not a genuine client. He claimed to be acting on behalf of one of my clients, [Mr] Jones, stating he was assisting with "due diligence" on the ... development and had obtained my details from Charlton.

He then began making various claims about the development – that it was subject to a major court case, that construction was not proceeding, and that the project was "not going ahead." He claimed that my client, [Mr] Jones, had contacted him directly while conducting due diligence on the project to inquire about a supposed court case involving the developer and the development. Mr Prokas further suggested that [the estate agency] and the developer were withholding information from clients and stated that he had already informed Mr Charlton Jones of this alleged information – which constitutes a false and defamatory misrepresentation and is damaging to both [the agency's] and the developer's reputation.

When I asked if he was an attorney representing Mr. ... Jones - as I was confused by his approach, particularly since Mr. Jones has never purchased any property through me – he admitted that he was not. I explained that I therefore could not understand why he was contacting me or what he expected from me in this context. He then claimed to be the original funder of the ... project and stated that he was suing "us" because the developer had breached a funding agreement by proceeding with another financier.

I clarified several times that I am just a sales agent, not involved in funding or development decisions, and therefore not in a position to provide the

⁶ The basis for this belief appears to have been the fact that M'Crystal also received a "lead notification from Prop Data assigned to George Prokas" and because she "had no prior knowledge of who he was or any dispute between the developer ... and this individual".

information he was requesting. I also explained that it would not be fair for him to expect me to be having this conversation, given my role and Lack of involvement in these matters.

He repeatedly stated that the ... development "was not going ahead" and that I was "wasting my time selling units" as I "would not be earning anything on it." He also implied that I was not being transparent with my clients and was "withholding information" about the project. Throughout the conversation, he spoke in a condescending tone, repeatedly referring to me as "my dear" and alluding to the fact that his wife had previously worked in real estate, suggesting that he "understands the work agents put in" and positioning himself as having superior knowledge of the industry.

Before ending the call, he said something along the lines of: "The developers have a restraining order against me and one of the orders is preventing me from contacting Reva Property, but oops – I guess I've broken all those rules."

[5] The respondent gives a different account of the telephone call:

I did not hide anything from her. I explained that I had been tasked by Mr Jones to speak to her and find out where things were with the development, and also whether they had been made aware of the legal proceedings against them. Ms. M'Crystal advised early on in our phone call that she could not take the conversation any further, and ended the call. ... I was not attempting to intimidate anybody. I was upfront about who I was, having given my name from the outset and explained why I was calling. ... I accepted that Ms. M'Crystal could not take the matter any further ...

I only made contact with Ms. M'Crystal because I was tasked to by Mr Jones. I always played open cards with who I was, and why I was phoning. I provided Ms. M'Crystal with a copy of the issued summons because she ought to have been made aware of it as she is affiliated with the company that is cited as the fourth defendant. ... my correspondence was addressed to Ms. M'Crystal only to bring to her attention the legal proceedings that had been instituted against her company as Mr Jones had advised that he had not been made aware of

the proceedings and asked me to make sure that the estate agents knew. ... I was simply enquiring if she was aware of the proceedings that had been launched, and then provided her with a copy. ... I have considered the version put forward by Ms. M'Crystal and where I disagree with the version she has put forward and what she has said was discussed, I do recognise that she felt harassed. I deny it was ever my intention to make her feel uncomfortable, I was simply following up with her, as asked by Mr Jones. I always let her know who I was, and why I was calling, and played open cards. ... If Ms. M'Crystal felt uncomfortable, then I am sorry, and this was not my intention.

I admit that I contacted Ms. M'Crystal, however, I deny the version put forward by the applicants. I did not put up a façade or a guise, I from the outset advised who I was, and why I was calling. As explained above, I had been mandated by Mr Jones to simply follow up with the estate agents as to whether or not they had been made aware of the legal proceedings that I had advanced. That is all.

[6] It is apparent that there is a material dispute of fact as to what precisely occurred during the call. On the one hand, if the established primary facts are that it transpired as the respondent alleges, I could not conclude that the applicants have discharged the onus resting upon them of establishing on a balance of probabilities that he conducted himself in the manner proscribed by the order.⁷ On the other hand, if the call transpired as Ms M'Crystal alleges, then it does seem to me that it would be proper to draw the inference that the respondent acted in breach of the court order, i.e. with the intent to jeopardise or undermine the success or progress of the development.

[7] Having carefully considered the matter, I am unable to conclude that Ms M'Crystal's version is the one to be accepted on the basis of the allegations pleaded

⁷ *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) at para 42; *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma* 2021 (5) SA 327 (CC) para 37.

in the papers placed before me.

[8] While I must confess to harbouring some doubt as to the truth of the respondent's version in view of the fact that it emerged during argument that annexure FA14 to the founding affidavit appears to indicate that the call lasted some twelve and a half minutes (which would be more consistent with Ms M'Crystal's version than that of the respondent), no pertinent allegation was made by the applicants that this was indeed the length of the call, and it would be inappropriate for me to take this into account in considering whether to reject the respondent's factual version.⁸ Furthermore, the manner in which Ms M'Crystal's evidence regarding the call was presented to the court is not entirely unproblematic. In particular, it is concerning that the founding affidavit (the content of which was confirmed by Ms M'Crystal in a confirmatory affidavit) expressly records her apparent unwillingness to further back up her allegations when it quotes her as stating that "*I do not wish to be drawn into any legal proceedings. It appears [the respondent] has a tendency to threaten or pursue legal action against multiple parties when things do not go his way, and I would prefer to remain entirely separate from any such disputes that do not concern me as a sales agent ...*".

[9] In summary, the critical dispute of primary fact as to what exactly transpired during the telephone call boils down to a simple "*she said / he said*" situation. Given that the respondent's version is not so inherently "*far-fetched or clearly untenable*" that it must be rejected out of hand under the *Plascon-Evans* rule, I am bound to

⁸ *Minister of Land Affairs and Agriculture and Others v D & F Wevell Trust and Others* 2008 (2) SA 184 (SCA) para 43: "*It is not proper for a party in motion proceedings to base an argument on passages in documents which have been annexed to the papers when the conclusions sought to be drawn from such passages have not been canvassed in the affidavits. The reason is manifest – the other party may well be prejudiced because evidence may have been available to it to refute the new case on the facts*".

accept it.⁹

[10] In the circumstances, the application must be dismissed. As to costs, I do not think that the application was so abusive as to justify a punitive costs order, or so complex as to justify the costs of counsel beyond scale “B”.

[11] I make the following order:

1. The application is dismissed.
2. The Applicants are ordered to pay the Respondent’s costs, including the costs of counsel on scale “B”.

RJ MOULTRIE
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicants: R Kriek instructed by VDM Attorneys: jason@vdm.law,
ann-suhet@vdm-law, michel@vdm.law, 011 394 1606

For the Respondent: A Whitaker instructed by Keith Suttcliffe & Associates:
keegan@ksalaw.co.za, 011 789 7667

⁹ In view of the conclusion that I reach on this issue, it is not necessary for me to enquire into the further question whether the respondent succeeded in establishing any reasonable doubt regarding the wilfulness of such breach.