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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2023-011921

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

In the matter between:

S[...] D[...] C[...]

Applicant

and

A[...] J[...] C[...]

First Respondent

A[...] J[...] C[...] N.O.

Second Respondent

G[...] N[...] C[...] N.O.

Third Respondent

S[...] D[...] C[...]N.O.

Fourth Respondent

**THE MASTER OF THE HIGH COURT,
NORTH GAUTENG**

Fifth Respondent

JUDGMENT

DJ Smit, AJ

Introduction

- [1] This is an opposed application for a further and better reply to the applicant's (*Ms C[...]*) notices calling for further and better discovery under Rule 35(3) and Rule 35(6). The case came before me in the opposed Family Court.
- [2] A proper understanding of the discovery dispute requires some background.

Background

- [3] Ms C[...] was married to the first respondent (*Mr C[...]*) on 2 February 1991. The marriage was out of community of property, but with the accrual system. Two major daughters were born from the marriage.
- [4] Mr C[...] is the sole director of D C[...] & Co (Pty) Ltd, a company that specialises in the sale of luxury watches and other jewellery. Mr C [...], together with the third respondent and Ms C [...], are the trustees of a family trust named after Mr C [...] (*the Trust*). The Trust holds all the shares in the jewellery company but does not trade itself. Its beneficiaries are the C [...]s and their major daughters.
- [5] The marriage has broken down and Ms C [...] seeks a divorce. Insofar as is relevant to the discovery dispute, Ms C [...] seeks an order for half of the net accrual; spousal maintenance until death or remarriage; and an order in respect of maintenance of the major daughters. It seems that in the divorce trial there will be major disputes about at least the following:
- a. Whether the Trust is a sham, and particular about the significance of an agreement the C [...]s signed in which Mr C [...] allegedly admitted that the Trust was his *alter ego* and that the Trust assets were effectively owned, possessed and controlled by him. (Although I make no finding on this, it seems that Mr C [...] does not deny the agreement or what it says, but only whether it is binding on the Trust.)

- b. The value of the jewellery company and hence the value of the shares held by the Trust.

[6] Given what Ms C[...] pleads regarding the Trust, she also seeks orders in the divorce action according to which the value of the Trust's assets forms part of Mr C[...]’s estate. That is why the Trust and the Master (who takes no part in these proceedings) are cited in the divorce and the discovery dispute.

[7] Whatever the underlying merits of the dispute in regard to the Trust, Mr C[...] and the Trust make common cause in at least the discovery dispute. Accordingly, in the rest of this judgment, I refer to them as “the respondents” unless it is necessary to distinguish between respondents.

[8] It appears that the respondents have been less than forthcoming in relation to discovery:

- a. Summons in the divorce action was issued on 10 February 2023.
- b. The respondents had to be forced to make discovery through an application to compel. They delivered a discovery affidavit on 25 April 2024, and Mr C[...] then delivered a financial disclosure form.
- c. On 26 June 2024, Ms C[...]served a notice in terms of Rule 35(3) and (6) (*first notice*).
- d. On 30 August 2024, Ms C[...]served a further notice in terms of Rule 35(3) and (6) (*second notice*).
- e. The first and the second notices were apparently not responded to, with the result that Ms C[...]had to bring another application to compel, which this court granted on 11 November 2024.
- f. The respondents delivered a supplementary discovery affidavit. It is common cause that certain – but by no means all – the documents requested were discovered.
- g. The respondents, having been compelled to do so by the order of 11 November 2024, responded on oath to the first and the second notice

on 31 January 2025. It gave brief explanations for the items not discovered.

- h. On 13 February 2025, Ms Carrington's attorney sent a letter to the respondents' attorney, which attached an annexure. I will refer to this annexure as "SC7" since that is how it was referred to in the application to compel serving before me. The letter recorded Ms C[...]s view that the respondents' discovery was incomplete. "SC7" recorded some 77 items (some with subitems) in respect of which the discovery was allegedly deficient, as well as (in brief) the contentions of the respondents in refusing discovery as well as the contentions of Ms C[...] in response.
- i. The respondents did not respond to the letter and Ms C[...] launched this application on 21 February 2025.

Discussion

[9] While the respondents appear to have been (much) less than cooperative, Ms C[...]s discovery requests are on their face extremely broad (as well as, in relation to certain items, not appropriately motivated). As is often the case in divorce matters, this application displays all the hallmarks of an immovable object meeting an irresistible force.

[10] As a result:

- a. I do not intend to deal with the dispute based on the respondents' main defence to this application, namely that it was incompetent for Ms C[...]s attorney simply to attach "SC7" to his founding affidavit in this application, with the case for discovery made out in the annex rather than in the affidavit itself. I note that, even if arguably competent, this way of proceeding has made it very difficult for the court sensibly to deal with the matter. I do not consider it to have prejudiced the respondents, however: they had an opportunity to respond on oath to the discovery notices (by way of their affidavit of 31 January 2025) and one would assume that their responses would not have changed by the time they had to file an answering affidavit in this application. I also note that "SC7" sets out the

ambit of the dispute on each item. I note further that the respondents have had a further opportunity after argument to expand on their answers to the requests, which answers I have taken into account in what follows.

- b. Ms C[...]’s way of proceeding has had the effect of limiting her to extremely cursory submissions on each item which are, in some cases, insufficient to make out a case for discovery. This is, as it were, an own goal that illustrates the undesirability of her approach.
- c. Further, as in all discovery disputes, the Court has a discretion as to whether to compel discovery or inspection.¹ The interests of justice will be best served by the parties getting on with discharging their discovery obligations and proceeding to trial.
- d. It is impractical to deal with each of the 77 requested items in detail below. I have studied the parties’ affidavits, “SC7”, their heads of argument and their further submissions which followed oral argument. I have also noted the concessions made by both parties after oral argument. I simply record my findings on each contested item in brief below.
- e. I will order that the costs in this application are to be costs in the divorce. This is justified by the fact that neither party has been the clear winner in this tussle, as appears below.

[11] I turn to my findings on each item. In regard to items 1 to 67, they relate to the first notice. In regard to the items that follow on that, they relate to the second notice. Where Ms C[...] indicated, in or after oral argument, that she does not persist with the request, I do not deal with the item in question.

Findings on each item

[12] Item 1: Mr C[...] has stated under oath that there are no further bank accounts in his possession. Interpreted in context, that means that there are no bank statements other than those already discovered or subpoenaed. The court will

¹ *Continental Ore Construction v Highveld Steel & Vanadium Corporation Ltd* 1971 (4) SA 589 (W) at 564H-595E.

not go behind the respondents' oath unless Ms C[...] has made out a case that they must be mistaken.² No order will be made in regard to item 1.

- [13] Items 2 & 3: Ms C[...]’s complaint in regard to these items is that the respondents have not stated under oath, as required, what the whereabouts are of these documents, if known. The respondents take the view that they are not required by Rule 35(3) to state the whereabouts of the documents if they state that the documents are not in their possession. In this, they are mistaken. Rule 35(3) clearly requires a party who states that a document is not in their possession to state its whereabouts, if known. The respondents will be ordered to furnish a further and better reply, this time consistent with Rules 35(3) and (6).
- [14] Items 4 and 5: After argument, the respondents tendered what it considers to be the outstanding documents in regard to these items. I will make no order on them. Ms C[...] may approach the court again, on duly supplemented papers, should she consider that the discovery remains defective.
- [15] Items 6, 8, 13, 17, 40, 44, 62 and 63; Items 1, 2, 3, 8 and 9 of the second notice: The respondents’ answers are *prima facie* sufficient and conclusive. If Ms C[...] is able to provide evidence that the answers are mistaken or lay another basis for their relevance, she may approach the court again, on duly supplemented papers which sets out the necessary evidence in an affidavit.
- [16] Items 14, 42, 43; Item 5 of second notice: The respondents promised answers to these items and will be ordered to furnish them.
- [17] Item 20.1: Ms C[...] has sought registration forms for all vehicles owned by Mr C[...] or the Company over a specific period. Mr C[...]’s answer is evasive, and he will be ordered to furnish a further and better reply, this time consistent with Rules 35(3) and (6).
- [18] Item 20.3: Ms C[...] has sought credit agreements in relation to all vehicles purchased by the Company over a specific period. This request is overbroad and unmotivated.

² Id at 597E-598G.

- [19] Items 25 to 28: Ms C[...] has sought copies of minutes and resolutions of directors' meetings and shareholders' meetings in respect of "the entities" from inception of those entities to date. This request is problematic in at least three respects: First, insofar as the Trust is defined as an "entity", trusts do not hold directors' or shareholders' meetings. Second, no basis has been laid for the relevance of these documents for any other "entities". Third, at least *prima facie*, requesting such minutes and resolutions from inception appears overbroad. No order will be made in this regard. Of course, as in all other instance where an order is refused, Ms C[...] may approach the court again on duly supplemented papers should she be able to cure these defects.
- [20] Item 31: Ms C[...] has sought a wide array of documents regarding travel undertaken by Mr C[...] – on his own or with a third party – from January 2018 to date. It seems to me that, on its face, this request is relevant to Mr C[...]’s financial means. An order will be made in this regard.
- [21] Items 34, 36, 45 & 46: Ms C[...] has sought documents reflecting details of profit share/dividends/awards/distributions/payments declared or made by the entities (as defined) for the period (as defined) or for specific periods specified in each item. It seems to me that, considering the case sought to be made out by Ms C[...] on the nature of the Trust, these requests are relevant to Mr C[...]’s financial means and are framed with sufficient specificity for the respondents to know what is sought. Although essentially the same request has inelegantly been framed five times, an order will be made in this regard.
- [22] Items 37-39: After argument, the respondents tendered inspection of these documents at the relevant auditors' offices. An order will be made in this regard. The respondents contend that Ms C[...] should be liable for the auditors' fees to facilitate the inspection. The court cannot, at this stage, make an order in regard to the auditors' costs: insofar as the respondents incur disbursements to the auditors, these would presumably be costs in the divorce action which a different court has to determine.
- [23] Item 51: Ms C[...] has sought copies of all correspondence between the Trust and the auditors of the Trust from inception to date. While the respondents

contend that the request is overbroad, not sufficiently specific and does not motivate for its relevance, these documents seem on their face to be relevant to the cause of action Ms C[...] seeks to make out regarding the Trust. The respondents will be ordered to furnish a further and better reply, this time consistent with Rules 35(3) and (6).

[24] Item 55: Ms C[...] has sought copies of proof of all amounts paid by the entities (as defined), to Mr C[...] pursuant to any expense claim submitted by Mr C[...] to the entity during the period (as defined). While the respondents contend that the request is overbroad, not sufficiently specific and does not motivate for its relevance, these documents seem on their face to be relevant to the cause of action Ms C[...] seeks to make out regarding the Trust. The respondents will be ordered to furnish a further and better reply, this time consistent with Rules 35(3) and (6).

[25] Item 56: Ms C[...] has sought copies of documentation reflecting details of all bonuses declared by the entities (as defined) and received by any person including Mr C[...] and a particular third party during the period (as defined). While the respondents contend that the request is overbroad, not sufficiently specific and does not motivate for its relevance, these documents seem on their face to be relevant to the cause of action Ms C[...] seeks to make out regarding the Trust as well as to Mr C[...]’s financial means and the reasons for the divorce. The respondents will be ordered to furnish a further and better reply, this time consistent with Rules 35(3) and (6).

[26] Item 65: Ms C[...] has sought copies of documents reflecting proof of all amounts paid by the company on legal fees with Attorneys Wright Rose Innes during the period (as defined) including but not limited to documentation reflecting payment of each amount, the amount paid and the date of payment. The respondents contend that the request is overbroad, not sufficiently specific and does not motivate for its relevance. Under normal circumstances, the respondents’ explanation that these documents are not relevant would have been final (in accordance with the principles regard the oath of a deponent to a discovery affidavit) as well as, on its face, plausible. In these circumstances, however, Ms C[...] had made out a case for their relevance in the first notice.

She annexed emails to that notice that showed that Mr C[...] had said to her (on the face of the emails) that he and his brother – an attorney at Wright Rose Innes (the third respondent in his capacity as trustee) – had “*concocted invoices for R300,000 to get money out of the business*”, part of which was used to fund a ski trip. In this light, these documents seem on their face to be relevant to the cause of action Ms C[...] seeks to make out regarding the Trust. The respondents will be ordered to furnish a further and better reply, this time consistent with Rules 35(3) and (6).

[27] In the order, I will not specify whether Mr C[...] (in his personal capacity) or the Trust (whether by way of Mr C[...] in his representative capacity or in another way), must comply with the order. I will simply refer to “the respondents”. The party who needs to comply with the order is the party in respect of whom the particular discovery request was made.

Order

[28] I make the following order:

- a. The respondents are directed to provide responses that comply with the provisions of Rule 35(3) and Rule 35(6) in respect of items 2, 3, 14, 20.1, 31, 34, 36, 42, 43, 45, 46, 51, 55, 56 and 65 of the Notice in terms of Rule 35(3) and (6) dated 26 June 2024.
- b. The respondents are directed to provide a response that complies with the provisions of Rule 35(3) and Rule 35(6) in respect of item 5 of the Notice in terms of Rule 35(3) and (6) dated 30 August 2024.
- c. The respondents are directed to deliver the responses referred to in paragraphs (a) and (b) above within ten days of the grant of this order.
- d. The respondents are directed to make available for the inspection of the applicant, her legal representatives and her expert witness(es) at the offices of the auditors of D C[...] & Co (Pty) Ltd, within ten days of the grant of this order, those documents referred to in items 37, 38 and 39 of the Notice in terms of Rule 35 (3) and (6) dated 26 June 2024.

- e. The costs of this application will be costs in the divorce action.

DJ SMIT
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of hearing: 26 March 2026

Date of judgment: 8 June 2026

For the Applicant:

G Greenstein (attorney) instructed by
Greenstein Attorneys

For the First to Third Respondents:

C Read instructed by Warrener De
Agrela & Associates