

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

Case No: 2025/044654

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

08/07/2026
DATE

[REDACTED]
SIGNATURE

In the matter between:

ADAM WARREN RAMPF
(Identity Number: [...])

Applicant

and

GERARDO TRADING (PTY) LTD
(Registration Number: 2025/728224/07)
(Formerly GERARDO TRADING CC, with former
Close Corporation Registration Number: 2000/058226/23)

First Respondent

LESLEY ERNEST BREWITT
(Identity Number: [...])

Second Respondent

DG PHARMA DISTRIBUTORS (PTY) LTD
(Registration Number: 2022/819751/07)

Third Respondent

Heard on : 22 April 2026
Decided on : 08 July 2026
Coram : Tebeile AJ

JUDGMENT

TEBEILE AJ:

Introduction

[1] This is an opposed application in which the applicant seeks, primarily, an order for the repayment of R1 000 000.00 (One Million Rand) that he paid as an investment or working capital to the first respondent, a close corporation of which the second respondent is the sole member.

[2] The application also seeks an order declaring the second respondent personally liable in terms of section 64 of the Close Corporations Act 69 of 1984, and, in the alternative, an order against the third respondent based on unjust enrichment.

[3] The matter has a protracted procedural history. The applicant launched the application on 9 April 2025. The respondents filed a notice of intention to oppose on 22 April 2025. Their answering affidavit was due on 15 May 2025 but was only delivered on 13 June 2025 and which is about 21 court days late.

[4] Because of the lateness of the respondents' answering affidavit, the respondents simultaneously filed an application for condonation for the late delivery of their answering affidavit. The applicant opposes that condonation application. The main application was initially enrolled on the unopposed roll for 19 June 2025, but was removed by agreement, with the respondents tendering wasted costs. Thereafter, the applicant brought an application to compel the respondents to deliver their heads of argument. That application was granted by agreement on 13 October 2025, with a costs order in favour of the applicant. The respondents eventually delivered their heads of argument, and the matter was set down for hearing on the opposed roll.

The parties

[5] The applicant is Adam Warren Rampf, an adult male businessman residing in Cape Town.

[6] The first respondent is Gerardo Trading (Pty) Ltd with registration number 2025/728224/07), and formerly Gerardo Trading CC with former Close Corporation registration number 2000/058226/23. The first respondent was previously cited in this application as Gerardo Trading CC. It is engaged in the manufacture and supply of health and wellness products.

[7] The second respondent is Lesley Ernest Brewitt, an adult businessman and the sole member of the former Gerardo Trading CC.

[8] The third respondent is DG Pharma Distributors (Pty) Ltd with registration number 2022/819751/07. It is a private company of which the second respondent is a director.

Background facts

[9] The factual matrix giving rise to this dispute is largely undisputed, save for certain critical aspects to which I shall turn. The applicant had a consultancy relationship with the first respondent through his company, Venture South (Pty) Ltd (“VSS”). A written consultancy agreement, dated 1 September 2024, was concluded between VSS and the first respondent.¹

¹ See annexure “FA4”, pp 001-64 to 001-70 of Caselines.

[10] The applicant avers that during September and October 2024, he became aware that the first respondent was experiencing serious cash flow difficulties, which prevented it from fulfilling millions of rands worth of orders².

[11] On 7 and 8 November 2024, the applicant and the second respondent (acting on behalf of the first respondent) concluded an oral agreement in terms whereof the applicant would pay R1 000 000.00 to the first respondent as working capital. In return, the applicant would receive a 10% member's interest in the first respondent.³

[12] On 8 November 2024, the second respondent provided the applicant with bank account details into which the R1 000 000.00 was to be paid. Those bank details belonged to the third respondent, not the first respondent⁴. The applicant made the payment on the same day, as evidenced by the proof of payment.⁵ The second respondent acknowledged receipt with a message: "Cheers Mauritius here I come".⁶

[13] On 20 December 2024, the first respondent provided the applicant with its bank statement for November 2024⁷. The applicant noticed that his R1 000 000.00 had never been paid into the first respondent's account. He also became aware of further financial irregularities, including that the first respondent could not pay staff salaries and that customer payments were not reflecting in the first respondent's account.⁸

[14] In January 2025, the applicant decided that he no longer wished to be associated with the first respondent and sought the return of his investment. The parties agreed to

² See paras 13-14 of the founding affidavit, p 001-10 of Caselines.

³ See paras 15-16 of the founding affidavit, p 001-11 of Caselines.

⁴ Para 17 of the founding affidavit, p 001-11 of Caselines; See also annexure "FA5.1", pp 001-71 to 001-72 on Caselines.

⁵ Annexure "FA5.2", pp 001-73 to 001-74 of Caselines.

⁶ Annexure "FA5.1", p 001-72 of Caselines.

⁷ Annexure "FA6", pp 001-75 to 001-80 of Caselines.

⁸ See paras 19-22 of the founding affidavit, pp 001-12 to 001-13 of Caselines.

cancel the investment agreement. What followed was a protracted series of communications in which the second respondent, on behalf of the first respondent and in his personal capacity, repeatedly and unconditionally undertook to repay the R1 000 000.00.

[15] The correspondence is extensive and largely undisputed. It includes:

15.1. On 9 January 2025, the applicant sent a message to the second respondent, explaining his personal financial distress. The second respondent responded: “I will action today so that you are back to your original position and added income as well. I will never let you go backward. Not as long as I breath”.⁹

15.2. On 10 January 2025, Mr Thuso Sencho, the financial manager, emailed the applicant confirming that the second respondent had “organised the repayment of the investment”.¹⁰

15.3. On 15 January 2025, the second respondent confirmed that the repayment would be “R50k + R1mn”¹¹.

15.4. On 21 January 2025, the second respondent stated: “I am at the Bank now, I will call asap to rectify this situation”.¹²

⁹ See annexure “FA7.1”, pp 001-81 to 001-82 of Caselines; see also para 26 of the founding affidavit, p 001-14 of Caselines.

¹⁰ See annexure “FA7.2”, pp 001-83 to 001-84 of Caselines; see also para 27 of the founding affidavit, p 001-15 of Caselines.

¹¹ See annexure “FA7.3”, pp 001-85 to 001-86 of Caselines; see also paras 29-33 of the founding affidavit, pp 001-16 to 001-17 of Caselines.

¹² See annexure “FA7.4”, pp 001-87 to 001-88 of Caselines; see also para 38 of the founding affidavit, p 001-18 of Caselines.

- 15.5. On 23 January 2025, the second respondent promised: “I will transfer the balance owed to you this afternoon and I promise to confirm the exact date of the R1m payment to you no later than Midday tomorrow”.¹³
- 15.6. On 30 January 2025, the first respondent, through the second respondent, sent an email acknowledging: “I also acknowledge the R1 million for the investment in Gerardo, that however needs to be returned to you” and that “the critical element of the agreement between us, with respect to the investment, was that it would accrue you a 10% equity share in Gerardo”.¹⁴
- 15.7. On 5 February 2025, the first respondent and second respondent wrote to the applicant, stating: “Your money will remain yours, and Gerardo or DG have no intention of retaining it”.¹⁵
- 15.8. On 7 February 2025, the second respondent stated: “I have already arranged your payment”.¹⁶

[16] Despite these repeated undertakings, the respondents failed to repay the R1 000 000.00 to the applicant. A formal letter of demand was sent by the applicant’s attorneys on 13 February 2025.¹⁷ The respondents’ attorneys responded on 25 February 2025, raising for the first time issues relating to the consultancy agreement and a separate

¹³ See annexure “FA7.5”, pp 001-89 to 001-90 of Caselines; see also para 39 of the founding affidavit, p 001-18 of Caselines.

¹⁴ See annexure “FA7.8”, pp 001-95 to 001-96 of Caselines; see also para 48 of the founding affidavit, p 001-21 of Caselines.

¹⁵ See annexure “FA7.10”, pp 001-99 to 001-112 of Caselines; see also para 53 of the founding affidavit, p 001-23 of Caselines.

¹⁶ See annexure “FA7.11”, pp 001-125 to 001-127 of Caselines; see also para 55 of the founding affidavit, p 001-24 of Caselines.

¹⁷ See annexure “FA8”, pp 001-113 to 001-117 of Caselines.

entity, Global Commodity Traders (Pty) Ltd (“GCT”), in which the applicant had an interest.¹⁸

The respondents’ answering affidavit

[17] The second respondent deposed to the answering affidavit on behalf of all respondents. He admits that the first respondent was under business rescue until August 2024 and experienced cash flow difficulties¹⁹. He admits that the applicant paid R1 000 000.00 to be used as working capital for the first respondent.²⁰ He admits that the funds were deposited into the third respondent’s bank account, which he says was “merely used as a trading account”.²¹

[18] Crucially, the second respondent admits that the applicant approached him in January 2025 seeking the return of his money, that the agreements were terminated, and that he advised the applicant “that the money will be repaid to him”.²² However, he then introduces a new element: he claims that the repayment was “subject thereto that the first respondent be placed in the position it should be” – which he says required (a) the return of a vehicle used by GCT, (b) payment by GCT of R359 129.23, and (c) the first respondent being released from a lease agreement in East London.²³

[19] The second respondent further denies that there was any agreement regarding the 10% member’s interest, claiming that he had advised the applicant that “he was not of

¹⁸ See annexure “FA9”, pp 001-118 to 001-122 of Caselines.

¹⁹ Paras 7-9 of the answering affidavit, p 001-132 of Caselines.

²⁰ Para 34.9 of the answering affidavit, p 001-140 of Caselines.

²¹ Para 34.6 of the answering affidavit, p 001-139 of Caselines.

²² Paras 36.1-36.2 of the answering affidavit, p 001-141 of Caselines.

²³ Para 36.3 of the answering affidavit, p 001-141 of Caselines.

the view that 10% member's interest is worth R1 million".²⁴ He also contends that the applicant made various misrepresentations regarding the capabilities of GCT and that the applicant personally caused damages to the first respondent.

The condonation application

[20] Before addressing the merits, I must consider the respondents' application for condonation for the late filing of their answering affidavit. The answering affidavit was due on 15 May 2025 but was delivered on 13 June 2025, with a delay of 21 court days.

[21] The explanation proffered in the affidavit in support of the condonation application is, with respect, wholly unsatisfactory. The deponent states that consultation with the respondents' attorney could not take place between 24 and 28 April 2025 because of personal reasons.²⁵ He then states that a single public holiday caused a further delay. He claims that between 28 April and 2 May 2025, he was in Cape Town, which made consultation impossible – yet no explanation is given as to why consultations could not occur remotely, particularly in an era where electronic communication is abundant. Most glaringly, no explanation whatsoever is provided for the delays during the periods 5 to 9 May 2025 and 16 to 30 May 2025.

[22] The legal principles governing condonation are well-established. In *Brummer v Gorfil Brothers Investments (Pty) Ltd and Others*²⁶, the Constitutional Court held that the "interests of justice" is the overarching consideration. The court must consider all relevant factors, including the degree of non-compliance, the explanation therefore, the

²⁴ Para 34.3 of the answering affidavit, p 001-139 of Caselines.

²⁵ Para 8 of the founding affidavit for application for condonation, para 8, p 010-7)

²⁶ 2000 (2) SA 837 (CC).

prospects of success, the importance of the case, prejudice, and the avoidance of unnecessary delay in the administration of justice.²⁷

[23] In *Melane v Santam Insurance Co Ltd*²⁸, Holmes JA stated:

“In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, save of course that if there are no prospects of success there would be no point in granting condonation.”

[24] The applicant contends that the respondents’ prospects of success in the main application are poor. However, for purposes of condonation, I am persuaded that the respondents have at least an arguable defence, even if, ultimately, it may not succeed. The second respondent has raised issues concerning misrepresentations and suspensive conditions, which, while they may appear weak on the papers, cannot be characterized as entirely without merit.

[25] More significantly, the applicant has not demonstrated substantial prejudice beyond the inevitable delay in finalising the matter. The respondents have tendered the wasted costs occasioned by the removal of the matter from the unopposed roll. That tender has been made and, I assume, will be honoured.

[26] In all the circumstances, and bearing in mind that condonation should not be refused merely to punish a dilatory litigant where no substantial prejudice has been

²⁷ Id at para 3.

²⁸ 1962 (4) SA 531 (A) at 532C-D.

shown, I am inclined to grant condonation. The delay, while not trivial, is not inordinate. The explanation, though far from ideal, is just sufficient when considered together with the fact that the respondents have at least some prospect of advancing a defence. The interests of justice favour allowing the matter to be decided on its merits rather than on a technical point of procedure, especially given the importance of the issues between the parties.

[27] Accordingly, condonation is granted. The respondents are, however, ordered to pay the costs of the condonation application, given their inadequate explanation and the fact that the application was opposed.

The main application – disputes of fact

[28] The first question in the main application is whether the matter is capable of being decided on affidavit or whether there is a genuine and *bona fide* dispute of fact that requires referral to oral evidence or trial.

[29] In *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*²⁹, the Court held that where disputes of fact arise on the papers, a final order may be granted only if the facts averred by the applicant, together with the facts admitted by the respondent, justify such an order. If the respondent's version consists of bald or uncreditworthy denials, or is so far-fetched or clearly untenable, the court may reject it on the papers.

[30] In *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*³⁰ the Supreme Court of Appeal held:

²⁹ 1984 (3) SA 623 (A) at 634E-635C.

³⁰ 2008 (3) SA 371 (SCA).

“A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say ‘generally’ because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party”³¹.

[31] In this matter, the respondents have raised several factual disputes. They deny that there was an agreement regarding the 10% member’s interest. They contend that the repayment of the R1 000 000.00 was subject to suspensive conditions relating to GCT’s obligations. They allege that the applicant made material misrepresentations regarding the capabilities of GCT.

[32] However, in my view, the critical facts are largely common cause. And these are facts which are relevant for determination of the main dispute between the parties. It is undisputed that:

³¹ Id at para 13.

- 32.1. The applicant paid R1 000 000.00 to be used as working capital for the first respondent.³²
- 32.2. The money was paid into the third respondent's bank account at the second respondent's direction.³³
- 32.3. The investment agreement was terminated in January 2025.³⁴
- 32.4. The second respondent repeatedly and unequivocally undertook to repay the R1 000 000.00 to the applicant³⁵.

[33] The respondents' contention that the repayment was subject to suspensive conditions is, on the papers, a late invention. In none of the numerous WhatsApp messages and emails exchanged between January and February 2025, many of which are quoted verbatim in the founding affidavit, is there any mention of conditions relating to the return of a vehicle, payment by GCT, or the East London lease. The first time these conditions are raised is in the answering affidavit itself, and in the letter from the respondents' attorneys dated 25 February 2025 (annexure "FA9"). That is long after the numerous unconditional undertakings were given.

[34] As the applicant correctly submitted, the respondents do not dispute the correspondence, nor do they provide any basis to substantiate an interpretation different from that which the applicant has attributed to it.

³² Paras 34.1 and 34.9 of the answering affidavit.

³³ Paras 34.5 – 34.6 of the answering affidavit.

³⁴ Para 36.1 of the answering affidavit.

³⁵ Para 36.4 of the answering affidavit.

[35] In *National Director of Public Prosecutions v Zuma*³⁶ the Supreme Court of Appeal held that motion proceedings are designed to determine questions of law based on common cause facts.³⁷ Where a respondent's version consists of "bald denials" or is "so far-fetched or clearly untenable",³⁸ the court is justified in rejecting it on the papers.³⁹

[36] In this case, I am satisfied that the respondents' version regarding the alleged suspensive conditions is so clearly untenable and contradictory to the documentary evidence that it can be rejected without recourse to oral evidence. In my view, there is no genuine, bona fide dispute of fact that warrants a referral to trial.

The claim against the first respondent

[37] The applicant's primary claim is for repayment of R1 000 000.00 from the first respondent. The legal basis for this claim is restitution: the investment agreement having been cancelled by mutual consent, the parties must be restored to their pre-contractual positions.

[38] The law of restitution is clear: upon cancellation of a contract, each party is obliged to restore to the other what was received under the contract. In *Baker v Probert*⁴⁰, the Court held that rescission of a contract entitles the innocent party to be restored to the position he occupied before the contract was concluded. It is trite that

³⁶ 2009 (2) SA 279 (SCA).

³⁷ Id at para 26.

³⁸ Id.

³⁹ Id.

⁴⁰ 1985 (3) SA 429 (A).

the obligation to restore arises on cancellation of a contract as a matter of law and the claim for restitution is a contractual remedy.⁴¹

[39] In this case, the cancellation was by mutual agreement. The applicant transferred R1 000 000.00 to the first respondent, albeit via the third respondent's account. The first respondent received the benefit of that payment, as the second respondent admits that the funds were used to pay trade creditors of the first respondent⁴². Upon cancellation, the first respondent became obliged to return the R1 000 000.00 to the applicant.

[40] The repeated and unconditional undertakings by the second respondent, on behalf of the first respondent, to repay the R1 000 000.00 constitute acknowledgments of liability. In my view, the second respondent's unequivocal acknowledgment of indebtedness is sufficient to establish liability, absent proof of fraud or mistake.

[41] I therefore find that the first respondent is liable to repay the applicant the sum of R1 000 000.00, together with interest *a tempore morae*.

The claim against the second respondent in terms of section 64

[42] Section 64 of the Close Corporations Act⁴³ provides that a court may declare a member of a close corporation personally liable for the debts or liabilities of the corporation if the member was knowingly a party to the carrying on of the business of the corporation in a reckless or grossly negligent manner.

⁴¹ Id at 438J-439C and 446E.

⁴² Para 35.1 of the answering affidavit.

⁴³ Act 69 of 1984.

[43] The applicant seeks an order declaring the second respondent, as the sole member of the first respondent, jointly and severally liable with the first respondent for the repayment of the R1 000 000.00.

[44] In *Philotex (Pty) Ltd and Others v Snyman and Others*⁴⁴ the Supreme Court of Appeal held that:

“The test for recklessness is objective in so far as the defendant’s actions are measured against the standard of conduct of the notional reasonable person and it is subjective in so far as one has to postulate that notional being as belonging to the same group or class as the defendant, moving in the same spheres and having the same knowledge or means to knowledge”.⁴⁵

[45] Section 64 requires the court to consider whether the member knowingly allowed the business to be carried on in a reckless or grossly negligent manner. The conduct of the second respondent in this matter is, in my view, gross and plainly reckless. He accepted the applicant’s R1 000 000.00 for the specific purpose of providing working capital to the first respondent. Instead of depositing those funds into the first respondent’s account, he directed the payment to the third respondent’s account. When questioned, he provided repeated and unconditional undertakings to repay the money – undertakings he clearly had no intention of honouring. He then, months later, attempted to impose spurious conditions relating to separate business arrangements involving GCT, a company in which the applicant had an interest but which was not a party to the investment agreement.

⁴⁴ 1998 (2) SA 138 (SCA).

⁴⁵ See also *S v Van As* 1976 (2) SA 921 (A) at 928 C - E.

[46] This conduct, in my view, demonstrates a reckless disregard of the applicant's rights and of the first respondent's obligations. The second respondent, as the sole member, had complete control over the first respondent's affairs. He used the third respondent's account to receive funds intended for the first respondent, and he made promises of repayment that he failed to keep. When finally confronted with legal proceedings, he raised irrelevant issues in a transparent attempt to delay repayment.

[47] In *Crous v Wynberg Boys High School and Others*⁴⁶, the Supreme Court of Appeal held:

“The above analysis provides a useful context for the interpretation of s 65, in terms of which the impugned conduct is ‘gross abuse’ of the juristic personality of a close corporation. Similar to the other provisions, liability is linked to the conduct of a member or a person. This offers a harmonious and coherent reading of ss 2(3), 63, 64 and 65 of the Act. We therefore conclude that to impose liability in terms of s 65 on a member or any person, their conduct must amount to gross abuse of the juristic personality of a close corporation, or contributed thereto. It is not enough that they were members of the close corporation. Thus, the participation in the actual impugned conduct is required.

The high court seemingly accepted Mr Crous' uncontroverted evidence that he was not party to the gross abuse of the juristic personality of the close corporation. Despite this, it nevertheless imposed personal liability because it held that the mere membership of a close corporation is, without more, sufficient to impose liability on a member of a close corporation in terms of s 65. In this, the high court erred. As demonstrated above, s 65 does not apply only because of membership of a close corporation. It requires conduct which amounts to, or contributes to, the gross abuse of the juristic personality of the person against whom liability is sought.”⁴⁷

⁴⁶ (200/2024) [2025] ZASCA 107 (18 July 2025).

⁴⁷ Id at paras 19-20.

[48] In the present case, I am satisfied that the second respondent's conduct falls within the ambit of section 64. He knowingly participated in the carrying on of the first respondent's business in a manner that was reckless and grossly negligent, particularly in relation to the handling of the applicant's investment and the subsequent failure to repay it despite numerous undertakings.

[49] Crucially, the second respondent provided the applicant with bank account details into which the R1 000 000.00 was to be paid, and those bank details belonged to the third respondent, and not the first respondent. The applicant made the payment on the same day, as evidenced by the proof of payment. The second respondent acknowledged receipt with a message: "Cheers Mauritius here I come". On 20 December 2024, the first respondent provided the applicant with its bank statement for November 2024. The applicant noticed that his R1 000 000.00 had never been paid into the first respondent's account. The second respondent's conduct to provide banking details belonging to the third respondent falls within the ambit of reckless conduct and constitutes the gross abuse of the juristic personality of the person against whom liability is sought.

[50] Accordingly, the second respondent is declared jointly and severally liable with the first respondent for the repayment of R1 000 000.00 together with interest and costs.

The alternative claim against the third respondent

[51] In light of my findings above, it may not be necessary to determine the alternative claim against the third respondent based on unjust enrichment.

[52] However, such determination may help bring the parties' disputes to an end. Had I found against the applicant on the primary claims, the alternative claim would have had merit for the reasons to follow.

[53] It is common cause that the R1 000 000.00 was deposited into the third respondent's bank account. It is not in dispute that the agreement pertaining to the R1 000 000.00 did not involve the applicant and the third respondent.

[54] The third respondent received R1 000 000.00 from the applicant without any legal basis. There was no agreement between the applicant and the third respondent. The applicant did not consent to the payment of the R1 000 000.00 to the third respondent but merely made a payment to the banking details provided by the second respondent and did not know that the said banking details belonged to the third respondent. The third respondent was enriched at the expense of the applicant, and that enrichment was without legal cause.⁴⁸

Costs

[55] The applicant seeks costs on scale C, including the costs of counsel. Scale C is the highest scale, reserved for complex or important matters requiring the expertise of senior counsel or extensive preparation. In my view, this matter, while not exceptionally complex, involved significant documentary evidence and raised important issues concerning the application of section 64 of the Close Corporations Act. The respondents' dilatory conduct throughout the litigation – including the late filing of the answering affidavit, the failure to file heads of argument timeously (necessitating an

⁴⁸ See *McCarthy Retail Ltd v Short-distance Carriers CC* 2001 (3) SA 482 (SCA) at paras 8-12; *Kudu Granite Operations (Pty) Ltd v Caterna Ltd* 2003 (5) SA 193 (SCA) at paras 15-17 and 25.

application to compel), and the raising of spurious defences – justifies an adverse costs order on the higher scale other than the ordinary scale. However, not scale C.

[56] It is trite that a punitive costs order may be appropriate where a party's conduct is unreasonable or causes unnecessary delay. I am not satisfied that the respondents' conduct in this matter falls into that category. The respondents were within their right to oppose the application and their defence cannot be found to be unreasonable or completely without a merit. Hence, I am of the view that appropriate scale is scale B.

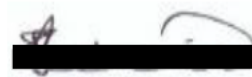
Order

[57] In the premises, I make the following order:

1. The respondents' application for condonation for the late filing of their answering affidavit is granted.
2. The respondents are ordered to pay the costs of the condonation application, jointly and severally, the one paying the other to be absolved, and such costs to be on scale B.
3. The first respondent is ordered to pay the applicant the sum of R1 000 000.00 (One Million Rand), together with interest *a tempore morae*.
4. The third respondent is jointly liable with the first respondent for the payment of R1 000 000.00 (One Million Rand) in paragraph 3 above, together with interest *a tempore morae*.
5. It is declared that, in terms of section 64 of the Close Corporations Act 69 of 1984, the second respondent is jointly and severally liable with the first

respondent for payment of the sum of R1 000 000.00 (One Million Rand) referred to in paragraph 3 above.

6. The respondents are ordered to pay the costs of the main application, jointly and severally, the one paying the other to be absolved, and such costs to be on scale B.



SHADRACK TEBEILE

Acting Judge of the High Court of South Africa

Gauteng Local Division, Johannesburg

For the Applicant:

Adv. J Scallan instructed by C & A
Friedlander Inc Attorneys.

For the Respondents:

Adv. S McTurk instructed by LM Du
Toit Attorneys Inc.