



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

Not Reportable

Case no: 2025-091919

In the matter between:

DAVID MARK

FIRST APPLICANT

GLENCOVE PROPERTIES PROPRIETARY LIMITED

SECOND APPLICANT

and

GRAHAM DAVID MANCHIP

FIRST RESPONDENT

MONTY STANLEY HACKER

SECOND RESPONDENT

LUCILLE LAUMANN

THIRD RESPONDENT

HEALTH AND RACQUET CLUB PROPERTY

PARTICIPATION PROPRIETARY LIMITED

FOURTH RESPONDENT

Coram: JONKER AJ

Heard: 1 September 2026

Delivered: 2 September 2026

Summary: Company law and civil procedure; Uniform rule 7(1); dispute as to authority of attorney to represent company; validity of board resolution authorising company to oppose application in which three of its five directors are cited as respondents; whether those directors had a personal financial interest as defined in s 1 of the Companies Act 71 of 2008; interest neither direct nor of a financial nature; s 75(5) not engaged; authority of attorney established; application dismissed.

ORDER

1. The application is dismissed.
 2. The applicants are directed, jointly and severally, the one paying the other to be absolved, to pay the fourth respondent's costs, including the costs of counsel on scale B.
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JUDGMENT

Jonker AJ:

Introduction

[1] This is an interlocutory application in which the applicants dispute the authority of Hooker Inc to act as attorneys of record for the fourth respondent in the main application under the same case number.

[2] The dispute is narrow. It is whether a resolution of the board of the fourth respondent, by which the fourth respondent resolved to oppose the main application and to appoint Hooker Inc to represent it, was validly adopted. The applicants say it was not, because three of the five directors had a personal financial interest in the matter and the procedural safeguards in s 75(5) of the Companies Act 71 of 2008 (the Act) were not observed. If the resolution is invalid, the applicants say, so is the power of attorney given pursuant to it, and Hooker Inc may not act.

[3] Nothing in this judgment touches the merits of the main application.

The facts

[4] In the main application the applicants seek orders declaring the first to third respondents delinquent directors, alternatively placing them on probation, interdicting them from making certain communications to shareholders of the fourth respondent, and directing them to issue corrective statements. The first to third respondents are directors of the fourth respondent, to which I shall refer as the company.

[5] No relief is sought against the company in the main application. It is cited as an interested party. That much is common cause.

[6] The company nonetheless delivered a notice of intention to oppose the main application. That notice was delivered by Hooker Inc, which also acts for the first to third respondents. All four respondents are accordingly represented by the same firm.

[7] On 16 July 2025 the applicants delivered a notice in terms of rule 7(1) disputing Hooker Inc's authority to represent the company and calling for delivery of a power of attorney and the resolutions authorising it to act.

[8] A meeting of the board of the company was held on 17 July 2025. The company has five directors: Ms Sandra Beekhuizen, Mr Hitandra Lala, and the first to third respondents.

[9] On 8 August 2025 Hooker Inc responded to the rule 7(1) notice, attaching a resolution of the company and a special power of attorney signed by Ms Beekhuizen. I shall refer to that resolution as the impugned resolution.

[10] *Ex facie* the impugned resolution, and it is common cause that this is what it records, the first to third respondents disclosed at the meeting that an application had been brought against them and elected to recuse themselves from voting. The board then resolved that the company oppose the main application in its entirety, that Hooker Inc be appointed to represent it, and that Ms Beekhuizen be authorised to sign a power of attorney to that effect. The resolution makes no mention of legal costs, of any indemnity, or of the advancement of any expenses to any director.

[11] The resolution as delivered recorded that the meeting had been held in terms of s 74 of the Act. Section 74 provides for decisions taken by written consent of a majority of directors in place of a meeting.

[12] On 22 August 2025 the applicants delivered a notice in terms of rules 30 and 30A advancing two grounds of complaint. The first was that, the meeting having been said to have been held under s 74, a resolution supported by only two of five directors was not supported by a majority. The second was that, if a meeting had in fact been held, the first to third respondents had a personal financial interest in the matter and had not complied with s 75(5).

[13] The cause of complaint not having been removed, the applicants launched this application on 30 September 2025. The company delivered a notice of opposition on 8 October 2025.

[14] On 30 and 31 October 2025 the board adopted a further resolution correcting that reference, on the footing that the reference to s 74 had been a typographical error, so as to record that the meeting had been held in terms of s 73. That correcting resolution is attached to the answering affidavit which was deposed to by Ms Beekhuizen on 31 October 2025. A replying affidavit was delivered on 14 November 2025.

[15] The notice of motion seeks: a declarator that Hooker Inc was not validly authorised to represent the company in terms of the impugned resolution and the power of attorney; an interdict restraining Hooker Inc from representing the company until validly authorised; and costs against the first to third respondents and any other person opposing the application, on the attorney and client scale, jointly and severally.

[16] Two developments narrowed matters considerably.

[17] First, in his heads of argument, Mr Dorning, representing the applicants, did not persist in the first ground raised in the rule 30A notice. He was right not to do so. The company's answer is that the meeting was held under s 73 and that the reference to s 74 was an error, since corrected. That explanation is not implausible and, on the papers, it must be accepted.

[18] Second, when I raised the prayers with him, Mr Dorning properly accepted that the declarator in prayer 1 is unnecessary, because rule 7(1) itself prescribes the consequence if the court is not satisfied that an attorney is authorised; that the interdict in prayer 2 adds nothing, and in any event seeks final relief against a firm which is not a party before me; and that no case has been made out for

costs on the attorney and client scale. He persisted in seeking costs, but on the party and party scale, and against all four respondents.

Issues to be determined

[19] What remains for decision is therefore whether, for the purposes of rule 7(1), I am satisfied that Hooker Inc is authorised to represent the company, and the question of costs.

[20] Mr Dorning advanced his case on two expressly independent legs. He put it this way: if he did not succeed in persuading me on the first, there was still the second.

[21] The first leg is factual. It is that the company is in fact paying, or defraying, the legal costs of the first to third respondents in the main application, and that a personal financial interest arises from that fact.

[22] The second leg is one of construction. It is that a personal financial interest appears *ex facie* the impugned resolution itself, whatever the position may be as to who is in fact paying.

[23] The two legs call for different approaches. The first falls to be decided on the principles governing disputes of fact in motion proceedings. The second does not: the terms of the resolution are common cause, and whether those terms disclose a personal financial interest is a question of interpretation. I deal with each in turn.

The applicable legal principles

[24] Rule 7(1) provides that, subject to the rule, a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within ten days after it has come to the notice of a party that such person is so acting,

or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter that person may no longer act unless the court is satisfied that they are authorised so to act.

[25] The enquiry under the rule is directed at the authority of the attorney, and not at the authority of the deponent to an affidavit.¹ The rule does not prescribe the manner in which authority is to be proved, and a power of attorney is not the only acceptable proof.

[26] Section 75(5) of the Act obliges a director who has a personal financial interest in respect of a matter to be considered at a meeting of the board, or who knows that a related person has such an interest, to disclose the interest and its general nature before the matter is considered, to disclose any material information relating to the matter known to the director, to leave the meeting immediately after making that disclosure, and not to take part in the consideration of the matter. Section 75(7) provides that a decision of the board is valid despite any personal financial interest of a director only if it was approved following disclosure in the manner contemplated in s 75(5), or, despite having been approved without such disclosure, it has subsequently been ratified by ordinary resolution of the shareholders following disclosure, or has been declared valid by a court.

[27] The obligations in s 75(5) are triggered only by a personal financial interest. That expression is defined in s 1 of the Act as a direct material interest of a financial, monetary or economic nature, or to which a monetary value may be attributed, but excluding any interest held by a person in a unit trust or collective investment scheme unless that person has direct control over the investment decisions of that fund or investment. Two elements of the definition

¹ *Ganes v Telecom Namibia Ltd* [2003] ZASCA 123; 2004 (3) SA 615 (SCA) para 19, approving *Eskom v Soweto City Council* 1992 (2) SA 703 (W) at 705C-J. See too *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA) paras 14-15.

matter here. The interest must be direct, and it must be of a financial, monetary or economic nature.

[28] Section 78(4)(a) of the Act permits a company, except to the extent that its memorandum of incorporation provides otherwise, to advance expenses to a director to defend litigation in any proceedings arising out of the director's service to the company. Clause 34.1.1 of the company's memorandum of incorporation is to the same effect. It is common cause that the company has the power to advance such expenses. This is admitted by the applicants.

[29] The applicants seek final relief. The governing principle is that stated in *Plascon-Evans*², that final relief may be granted only on the facts averred by the applicant which are admitted by the respondent, together with the facts alleged by the respondent, unless the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting it merely on the papers.³

[30] The resolution is to be interpreted according to ordinary principles, as articulated in *Endumeni*.⁴ Language, context and purpose are considered together. The nature and extent of an alleged personal financial interest falls to be approached on a common sense basis and on the facts of the particular matter as confirmed in *Mthimunye-Bakoro*.⁵

Application of the principles

² *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C.

³ *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA) para 26.

⁴ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18.

⁵ *Mthimunye-Bakoro v Petroleum Oil and Gas Corporation of South Africa (SOC) Ltd* [2015] ZAWCHC 113; 2015 (6) SA 338 (WCC) para 61.

The first leg: whether it is established that the company is funding the defence

[31] The starting point must be the case the applicants make in their founding affidavit. In paragraph 14 the first applicant says:

‘I suspect that the reason that the company has opposed the main application is so that the company may pay the executive directors’ legal fees and costs of the main application. Put differently, the company’s resources are being used to fund the executive directors’ defence in terms of the main application.’

[32] Mr Dorning submitted that the first sentence is an averment of suspicion and the second an averment of fact. I do not read it that way. The second sentence begins with the words ‘Put differently’. It is a restatement of the suspicion in the first sentence, not a separate allegation of fact. Had the applicants wished to allege as a fact that the company was funding the defence, they were required to say so and to say on what basis. They did not.

[33] That reading is reinforced in the replying affidavit. In paragraph 13 the applicant says that it is ‘apparent’ that the company is in fact funding the executive directors’ legal expenses. If that had been the founding case, there would have been no occasion to advance it afresh in reply. An applicant must make out its case in the founding affidavit. The elevation of a suspicion into an assertion of fact for the first time in reply is impermissible and it must be disregarded.

[34] The company’s answer must be read against that pleading. In the answering affidavit Ms Beekhuizen denies that there is any truth to the suspicion expressed in the founding affidavit. She does not stop there. She sets out the company’s reasons for opposing the main application: that the main application is

unreasonable, alternatively frivolous, and that the relief sought against the first to third respondents is not in the best interests of the company because, if granted, the company would be deprived of the services of directors whom the board considers to be of value to it.

[35] Mr Dorning criticised the reasons as thin, and said that they introduce no facts beyond the assertion that the directors are a valuable asset. There is force in the criticism. But thinness is not implausibility. The company is a shareholder-owned entity whose board takes the view that the removal of three of its five directors would be against its interests. That is an ordinary and unremarkable position for a board to adopt, whether or not it is ultimately correct.

[36] Mr Dorning's strongest point on this leg was directed not at paragraph 25 but at paragraph 27, where Ms Beekhuizen says:

‘I deny that the advancement by the Company of expenses to the respondent directors to defend the main application constitutes an abuse of the Company's funds and that the Companies Act prevents such situations.’

[37] The submission was that this denies a characterisation rather than a state of affairs, and that the company has, throughout paragraphs 8 to 11, 26, 27 and 29 of the answering affidavit, defended the lawfulness of an advancement of expenses without ever saying that no such advancement is occurring. Reliance was placed on the decision in *Wightman*⁶ for the proposition that a respondent who has knowledge of the facts must engage with them and may not shelter behind a bare denial.

[38] The submission is not without merit, and it deserves to be dealt with. Paragraph 27 is, on any view, awkwardly drafted. But it must be read in context, and its context is paragraph 15 of the founding affidavit, to which it is a direct

⁶ *Wightman t/a JW Construction v Headfour (Pty) Ltd* [2008] ZASCA 6; 2008 (3) SA 371 (SCA) para 13.

answer. Here it is asserted that the funding of the directors' defence 'is an abuse of the company's funds'. The assertion is answered on its own terms. Ms Beekhuizen adopts the applicants' premise for the purpose of meeting the allegation of abuse. That is a familiar form of pleading and it does not, without more, amount to an admission of the premise.

[39] *Wightman* does not carry the applicants further. The obligation on a respondent to engage seriously with allegations is an obligation to engage with allegations of fact that have been made. The applicants alleged a suspicion, and they alleged that the funding of a defence would be an abuse. The company denied the suspicion, gave its reasons for opposing, and denied that any advancement of expenses would be unlawful or an abuse. Where an applicant pleads a suspicion, a respondent cannot be criticised for answering the suspicion rather than a fact that has not been alleged.

[40] The applicants elected to rest their factual case on inference drawn from the common representation of all four respondents by one firm. That inference does not bear the weight placed on it. That a single firm acts for co-respondents whose interests are aligned is commonplace and, of itself, says nothing about who is paying that firm.

[41] In argument, and in response to an enquiry from the court, Mr Dorning also relied on correspondence annexed to the replying affidavit in which the second respondent refers to a special shareholders' meeting 'about to be convened'. It was submitted that the convening of such a meeting supports the inference that the company appreciated that the impugned resolution required ratification. I am unable to draw that inference. The correspondence does not refer to the impugned resolution. It refers, in intemperate terms of which the author might on reflection not be proud, to a shareholder's expression of opinion. The correspondence post-dates this application, and the company has had no opportunity to answer it.

[42] It follows that the applicants have not established the fact upon which the first leg depends. The company's denial and the reasons it advances are not so far-fetched or untenable that I am entitled to reject them on the papers. The first leg fails.

[43] That, however, does not dispose of the application. The principles governing disputed facts on motion resolve the first leg alone. They say nothing about the second, which depends on no disputed fact. I turn to it.

The second leg: whether a personal financial interest appears ex facie the resolution

[44] The terms of the impugned resolution are common cause. The question is whether, on those terms, the first to third respondents had a direct material interest of a financial, monetary or economic nature in the matter considered at the meeting.

[45] The matter considered at the meeting was whether the company should oppose the main application, on what terms, and by whom it should be represented. The resolution records the recusal of the three interested directors from voting. It resolves that the company oppose. It appoints attorneys. It authorises the signature of a power of attorney. It says nothing about costs, nothing about indemnity, and nothing about the advancement of expenses to any director.

[46] Mr Dorning submitted that I should look through the terms of the resolution to its practical effect. The practical effect, he said, is that the company commits its resources to opposing an application in which the first to third respondents are cited; that Hooker Inc will do work which serves the defence of the first to third respondents; and that the first to third respondents therefore obtain an economic

benefit at the company's expense. He relied on *Dimension Data*⁷, and on *Atlas Park*⁸, where Spilg J emphasised that compliance with s 75 is not a tick-box exercise but is directed at protecting sound corporate governance.

[47] I accept, without hesitation, that s 75 cannot be circumvented by the manner in which a resolution is drafted. A board cannot avoid the section by omitting from a resolution the very benefit which the resolution is designed to confer. *Dimension Data* is authority for that proposition. If the impugned resolution had in substance conferred an indemnity on the first to third respondents, it would not have mattered that the word indemnity appeared nowhere in it.

[48] But that is not this case, and the reason is the one which Mr Robbertze identified. If the object had been to confer a benefit on the first to third respondents in respect of their legal costs, the board had an express power to do exactly that. Section 78(4)(a) of the Act and clause 34.1.1 of the memorandum of incorporation permit the company to advance expenses to a director to defend litigation arising out of the director's service to the company. That power exists. It was not exercised. No resolution advancing expenses to any director has been put up, and none is alleged to exist.

[49] The applicants offered no explanation for why a board wishing to fund the defence of three of its directors would forgo an express power conferred for precisely that purpose and instead attempt to achieve the same object by indirection, through a resolution which does not mention the object at all. In the absence of such an explanation, the more natural reading of the resolution is the one it bears on its face: a decision by the company to participate in litigation which it considers, rightly or wrongly, to affect its interests.

⁷ *Dimension Data Facilities (Pty) Ltd v Identity Property Co (Pty) Ltd* [2024] ZAGPJHC 1209; 2025 (2) SA 459 (GJ).

⁸ *Atlas Park Holdings (Pty) Ltd v Tailifts South Africa (Pty) Ltd* [2022] ZAGPJHC 109; 2022 (5) SA 127 (GJ) para 7.

[50] There is a further difficulty with the applicants' construction, and it is one of principle. The definition of personal financial interest requires the interest to be direct. The benefit which the applicants identify is the practical advantage that accrues to a litigant from having an aligned co-litigant in the field. That advantage is real, but it is consequential upon the company's decision to litigate, not a benefit conferred by it. Every co-respondent obtains it.

[51] If the applicants were right, the consequence would be that no board could resolve to oppose litigation in which any of its directors was also cited, however plainly the opposition served the company's own interests, without those directors first leaving the meeting, and without the resolution being exposed to invalidity unless ratified by shareholders or declared valid by a court. A construction which produces that result should not be adopted unless the language compels it. It does not.

[52] I therefore find that the impugned resolution does not, on its own terms, disclose a direct material interest of a financial, monetary or economic nature on the part of the first to third respondents. Section 75(5) was not engaged.

The common law conflict

[53] The company concedes, and it is recorded in the resolution itself, that the first to third respondents had a conflict of interest and recused themselves from voting on that account. Mr Robbertze submitted that the interest was not a financial one, but an interest of the kind long recognised at common law, namely that a director in the position of the first to third respondents could not be seen to bring an independent and impartial mind to bear on whether the company should oppose an application brought against him.

[54] That characterisation seems to me to be correct, and it explains the recusal without supporting the applicants' case. Section 75 is a partial codification. It regulates personal financial interests. It does not displace the

common law duty of a director not to place himself in a position in which his personal interest conflicts with his duty to the company.⁹ That the common law survives alongside the section is confirmed by s 77(2)(a) of the Act, which renders a director liable, in accordance with the principles of the common law relating to breach of a fiduciary duty, for any loss sustained by the company as a consequence of a breach of s 75. The applicants did not plead a case founded on the common law. Their case was a s 75 case and nothing else. It would not be open to me to grant relief on a basis which the company was never called upon to meet. I say nothing about whether such a case, if it had been pleaded, would have succeeded, or about what its consequences for the validity of the resolution would have been.

Compliance with section 75(5)

[55] In the light of my finding that s 75 was not engaged, it is unnecessary to decide whether its requirements were met. I record, however, that had I found otherwise, the company would have faced real difficulty.

[56] Section 75(5) requires disclosure, the giving of material information, departure from the meeting, and abstention from the consideration of the matter. The impugned resolution records only that the interested directors recused themselves from voting. Nowhere does the company say that the three directors left the meeting or that they took no part in the deliberation.

[57] That silence would have been telling, because the omission was squarely alleged. Paragraph 9.3 of the rule 30A notice and paragraph 24 of the founding affidavit each alleged non-compliance with each of the requirements, including the requirement to leave the meeting.

⁹ *Grancy Property Ltd and Another v Gihwala and Others* [2024] ZASCA 144; 2025 (2) SA 76 (SCA) paras 190 to 191, quoting with approval *Robinson v Randfontein Estates Gold Mining Co Ltd* 1921 AD 168 at 177.

The relief

[58] Both grounds having failed, there is no basis on which to hold that the impugned resolution was invalid. The power of attorney signed by Ms Beekhuizen pursuant to it is likewise unimpeached.

[59] I am accordingly satisfied, for the purposes of rule 7(1), that Hooker Inc is authorised to act on behalf of the fourth respondent in the main application. It follows that the application must be dismissed.

Costs

[60] Costs follow the result. The fourth respondent has succeeded and is entitled to its costs.

[61] The fourth respondent sought costs on scale C in terms of rule 67A(3). I am not persuaded that scale C is appropriate. This was a discrete interlocutory application concerning the authority of an attorney. One of the two grounds originally raised was abandoned in the heads of argument. What remained was a single question of construction argued in a morning. It was not complex and the value of the relief at stake does not warrant the highest scale. Costs on scale B are appropriate.

Order

[62] In the result I make the following order:

1. The application is dismissed.

2. The applicants are directed, jointly and severally, the one paying the other to be absolved, to pay the fourth respondent's costs, including the costs of counsel on scale B.

EM JONKER
ACTING JUDGE OF THE HIGH COURT

Appearances:

For the applicants: Mr J Dorning, instructed by MJD Law Incorporated c/o
MacGregor Erasmus Attorneys, Cape Town.

For the fourth respondent: Mr Robbertze, instructed by Hooker Inc c/o Gillespie
Attorneys, Cape Town.