"TCD1"

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

CASE NUMBER: _____

In the *ex parte* in camera application for an *anton piller* order between: -

THANDI CAROLINE DHLAMINI	APPLICANT
and	
SCHUMANN, VAN DEN HEEVER & SLABBERT INCORPORATED	FIRST RESPONDENT
JAKKIE SUPRA	SECOND RESPONDENT
IZAK BOSMAN	THIRD RESPONDENT
AZELLE KLEINEN	FOURTH RESPONDENT
JACOBUS JOHANNES SLABBERT	FIFTH RESPONDENT
THE LEGAL PRACTICE COUNCIL	SIXTH RESPONDENT
THE ROAD ACCIDENT FUND	SEVENTH RESPONDENT
ALL PERSONS WITH CLAIMS AGAINST THE 7TH RESPONDENT PROSECUTED TO FINALITY BY THE 1ST RESPONDENT WITHIN THE 5 (FIVE) YEARS PRECEDING THIS APPLICATION	EIGHTH RESPONDENT

SUPPORTING AFFIDAVIT: WILLIAM RICHARD CRICHTON

I the undersigned,

WILLIAM RICHARD CRICHTON

hereby state under oath:

1. I am a major male. I am the whistle-blower/source referred to in this application. It is not safe for me to divulge my residential address given the nature of my part in this application. I am presently employed as a candidate legal practitioner at **Enderstein Van de Merwe Inc** situated at **First Floor, Bradford Corner, 2 Bradford Road, Bedfordview**.

2. Between November 2017 and October 2019, I was formerly in the employ of the first respondent as a candidate attorney in its RAF litigation department, and as such I have intimate knowledge

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of the inner workings, policies, procedures and operations of that part of the first respondent's practise. The facts contained herein are therefore within my own personal knowledge except where the context clearly indicates otherwise and both true and correct.

3. I have read and confirm the contents, insofar as they pertain to me, of:

   3.1. the applicant's founding affidavit; and

   3.2. the supporting affidavits of Mamolefe Annah Mogale, Podile Anastacia Mokoena, Sanah Nomuiselo Mlambo and Mongezi Xakama.

4. I confirm that I bear no grudge or malice towards the first respondent, and certainly none that would cause me to fabricate any of the evidence with which I have furnished the journalist and the applicant herein.

5. In any event, I respectfully submit that the volume and detail of the evidence I have obtained would have been exceedingly difficult, if not impossible to fabricate and I respectfully pray that the abundance of verificatory detail which I have provided, and will provide hereunder, offset any qualms about my own *bona fides* and credibility, as well as that of the evidence which follows hereunder.

6. I believe the legal profession to be an honourable profession and should the High Court ultimately see fit to admit me as a legal practitioner I will be joining a profession with its reputation still intact. I had many restless nights after coming to the conclusion that the firm was not, at best, operating ethically and decided that I could not turn a blind eye to its wrongdoing. Furthermore, I realised from what I had seen, that if the rot in the firm came to light, then I would bear the mark of Cain simply because of my previous association with it.

7. It was then that I did some research on the internet and came across a number of articles written by a journalist in which he was severally critical of personal injury lawyers who had ripped off hapless road accident victims. I then emailed the journalist, whereafter we had a meeting to which he brought a costs consultant.

8. I have read the founding affidavit of the applicant, as well as the supporting affidavit of Ms Mamolefe Annah Mogale and I confirm the contents thereof, insofar as same pertain to me.

9. I specifically confirm that I am the source of the documents, being:

   9.1. Annexures "**TCD7**" to "**TCD9**" to the applicant's founding affidavit; and

   9.2. Annexures "**MAM1**" and "**MAM2**" to Ms Mogale's supporting affidavit; and

   9.3. Annexures "**SNM1**" and "**SNM2**" to Ms Mlambo's supporting affidavit; and

   9.4. Annexures "**MX1**" and "**MX2**" to Mr Xakama's supporting affidavit.

10. The documents are true and genuine copies of the first respondent's records, which I was able to uplift before leaving. Due to the sheer scale of the first respondent's operation I was not able to uplift all the requisite documents, but only what would illustrate the first respondent's *modus operandi.*

FIRST RESPONDENT'S PATTERN AND GENERAL *MODUS OPERANDI*

11. In addition to what has been said by the applicant, I confirm that the first respondent – and specifically the second respondent (to whom I refer for the sake of brevity as "Supra"), being the director responsible for the first respondent's RAF Department – handled virtually every claim against the seventh respondent that came through the firm in the same way, which I detail hereinbelow.

12. While certain details differed, there was a basic formula or recipe which, to put it mildly, did not prioritise the interests of the client but rather sought to maximise the firm's profits through the expedient settlement of claims, fraudulent inflation of the firm's bills of costs, and failure to account properly to clients, while retaining substantial portions of clients' awards as well as the entirety of the taxed bills of costs – which were never applied to clients benefit.

13. It would be fair to say that this rather unsophisticated scheme relied, as the basic common denominator, on the ignorance of clients as to their rights and the first respondent's

responsibilities under the Legal Practice Act 28 of 2014 and the Contingency Fees Act 66 of 1997. In fact, on at least one occasion, when the firm's bills of costs (including the correspondent attorney's bill which was fabricated) exceeded the client's award, I heard Supra say, "I love these stupid black people".

Step 1: Touting of clients

14. Although I was not involved in the pre-litigation stages of the matters, I know that the firm made use of "runners" who would sell files to the firm for a commission of between R10 000.00 and R50 000.00. These payments were usually funded out of a third bank account, called "Business Savings" – I will deal with this account in more detail below.

15. The firm was however often slow to pay these runners and I knew of at least one case where a runner – a police reservist named Severin Crawford – actually sued the first respondent, incredibly, for "professional services rendered".

Step 2: Pre-litigation stages

16. Although not directly involved in the pre-litigation stages, I know that the clients were brought to the firm's offices where they would sign a slew of documents and consultations would be arranged with various experts through a firm called "FundaMedical".

17. Because I was not directly involved, I cannot confirm whether the clients actually consulted with the medical experts which are reflected on FundaMedical's invoices.

18. I can however confirm that this initial consultation was the only one that anyone from the first respondent's offices actually attended. In this regard, the multiple "consultations" with clients, counsel and expert witnesses which invariably appear on the bills of costs never happened.

Step 3: Settlement

19. The primary drive was to settle the clients' claims as expediently as possible (rather than to obtain the best possible settlement for them). The reason for this was that the true source of

profit for the first respondent was the costs orders for which they would tax inflated bills of costs.

20. This settlement often happened on the steps of court, on the basis of an actuarial report which would often arrive late, since a trial date would already have been applied for.

21. The client who would not have been seen since the initial consultation some years before would be present, and Supra would explain to them – using handwritten notes – the settlement figure and that they would then expect to receive 75% of the figure disclosed therein.

22. The settlement would be sought and usually obtained quite speedily without going to trial, nor considering the clients' concerns or wishes. During my tenure at the first respondent's practise, no matter was ever taken to trial.

23. The settlement, which of course provided for costs, was made an order of court and at this point the client's relationship with the firm essentially ended, but for the final payment to client of their award less 25% (and often more than 25%).

24. A payment was then made to the client after the money was received from the seventh respondent in respect of the settlement amount of the client's claim.

Step 4: Bills of costs drafted

25. Drafting the bills of costs – for both the first respondent and the correspondent attorney – would commence as soon as the settlement was concluded and made an order of court.

26. Once the claim for costs and disbursements was completed (by agreement, since taxation was assiduously avoided), and the costs paid by the seventh respondent – by a second payment to the first respondent – these monies were simply retained. The client would never see any of it, notwithstanding the 25% deduction from the client's award.

27. The bills of costs were the real profit dynamo of the RAF department of the first respondent, and this was where the real focus began. There were several mechanisms used to inflate these bills of costs, which I detail hereunder.

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i) Fictitious attendances and disbursements

Consultations:

28. As I have mentioned above, the only consultation which anyone from the first respondent's offices actually attended was the very first one, which was done to sign the fee mandate and other documents. Thereafter, the client was merely sent to consult with various expert witnesses.

29. Notwithstanding this, when the bills of costs was drafted, multiple entries were inserted – fabricated – for consultations that never happened, in each and every file, primarily for Supra.

30. If a proper investigation was conducted it would no doubt show, as a result of the sheer volume of files and numbers of consultations invented, that Supra was often in two or even three places at once, or that he must have been working 35 hour days, 8 days a week to have had the capacity to carry out all of these attendances.

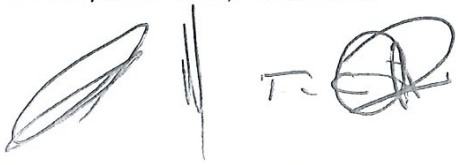
Telephone calls, letters and emails:

31. Fictitious telephone calls, letters and emails were also added into the bills of costs – sometimes exceeding the actual numbers by a factor of ten, but usually aimed to amount to roughly 40 – 60 items each, which was the range which flew below the radar of scrutiny by a costs consultant.

32. These attendances were also batched in bulk, rather than individually itemised (which is the correct practice) to make them more difficult to scrutinise and easier to fabricate. The numbers were also slightly inflated further, to give the cost consultant an easy "win" by taxing off ten or fifteen un-itemised attendances without having to inspect the relevant file.

33. The intention was obviously to find an agreement with the costs consultant and avoid an opposed taxation which might have resulted in the first respondent having to produce file notes for all of these attendances.

34. Both the unreasonably high numbers of consultations, as well as telephone calls, emails and



letters are illustrated in the first respondent's main bill of costs, which is annexed to the applicant's founding affidavit as Annexure "**TCD8**".

ii) <u>The correspondent attorney's invoice</u>

35. The correspondent attorney's bill of costs was also a fabrication. The correspondent was expressly instructed as a "postbox address" and nothing more. Their invoice to us was typically in the region of R1 500.00 (one thousand five hundred Rand), but the correspondent's bill we would draft would typically amount to R35 000.00 (Thirty-Five Thousand Rand).

36. The reason for this was to allow bills for additional items like copies, perusal of documents, and attendances at court to file documents, apply for trial dates, index and paginate court files, and set down matters – which would not have been permissible on the main bill of costs.

37. In reality, the correspondent carried out none of this work and did not invoice the first respondent in this amount. The monies collected under the correspondent's bills of costs accrued entirely to the first respondent.

38. Value Added Tax ("VAT") would also be added to the correspondent's invoice, while the correspondent is not even VAT registered, which also accrued to the first respondent.

39. These facts are illustrated with reference to:

39.1. the correspondent's bill of costs which is annexed to the applicant's founding affidavit as Annexure "**TCD9**"; and

39.2. the "Matter Transactions ledger, which is annexed to the applicant's founding affidavit as Annexure "**TCD7**" particularly to the entry:

2018/11/08	Payment to client	Swanepoel Attorneys	R1 370.00 (Dr);

39.3. It is also clear that no VAT formed part of that payment to Swanepoel Attorneys (who were the usual service address attorneys in matters in the Gauteng Local Division).

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iii) Counsel's invoice

40. Counsel's invoices were also periodically inflated – on Supra's instruction, which was carried out by the firm's usual counsel on brief for the purposes of:

40.1. aligning with the consultations "attended" on the first respondent's bills of costs; and

40.2. having something to present to the client in the event that he or she noticed that something was amiss and enquired as to why the deduction from his or her award was so large.

Step 5: Fee allocations of monies received

41. As I mentioned above, after receipt of monies from the RAF in respect of the bills of costs, none of this was ever applied to the benefit of the clients - which it should have been, given that a fee retention of at least twenty-five percent had already been deducted from the client's award. I am advised that as a matter of law that recovered costs belong to the client.

42. Rather, this money was then transferred, as "fees", either to the first respondent's:

42.1. Business Account; alternatively

42.2. "Business Savings Account".

43. As to the Matter Transaction ledger:

43.1. the reference "Fees – Litigation" would signify a transfer from the Trust Account to the Business Account; and

43.2. the reference "Fees – General / Written off" would signify a transfer from the Trust Account to the "Business Savings Account".

44. In the Annexure "**TCD7**" – the matter transactions ledger for the applicant's file – the following amounts were transferred to the "Business Savings Account":

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44.1. R115 000.00 on 29/1/2019; and

44.2. R 34 500.00 on 30/1/2019 (both including VAT).

45. This "Business Savings Account" was a third, unaudited banking account used by the first respondent to fund its RAF practice. This is to say, that monies in this account were used to:

45.1. pay runner's when buying new matters;

45.2. pay the fees of expert witnesses in all RAF claims;

45.3. pay travel expenses of employees; and

45.4. pay other sundry expenses of the firm.

46. The money in this account consisted entirely of:

46.1. monies that rightfully belonged to clients and should have been paid over to them; alternatively

46.2. monies that were fraudulently overcharged to the third respondent in bills of costs that were fraudulently inflated through the various means disclosed above.

DEPONENT: W.R. CRICHTON

THUS SIGNED AND SWORN TO BEFORE ME AT Bedfordview ON THIS 17th DAY OF March 2020 BY THE DEPONENT WHO HAS ACKNOWLEDGED THAT (1) HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, (2) THAT HE HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH, AND (3) THAT HE CONSIDERS THE OATH TO BE BINDING ON HIS CONSCIENCE. I CERTIFY THAT THE PROVISIONS OF THE REGULATIONS OF GOVERNMENT NOTICE R3619 OF 21 JULY 1972, AS AMENDED BY GOVERNMENT NOTICE NO 1648 DATED 18 AUGUST 1977, HAVE BEEN DULY COMPLIED WITH.

COMMISSIONER OF OATHS

COMMISSIONER OF OATHS / KOMMISSARIS VAN EDE
JAN BRAND WESSEL ROBERTSON
ENDERSTEIN VAN DER MERWE INC
1st Floor, Bradford Corner
2 Bradford Road
Bedford Gardens, Bedford View
PRACTISING ATTORNEY /PRAKTISERENDE PROKUREUR
REPUBLIC OF SOUTH AFRICA / REPUBLIEK VAN SUID-AFRIKA

F.C.

FULL NAMES: _____

PHYSICAL ADDRESS: _____

RANK AND NO: _____

OFFICE STAMP:

COMMISSIONER OF OATHS / KOMMISSARIS VAN EDE
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