IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: CCT

In the matter between:

Unified Common Law Grand Jury of Southern Africa **Applicants**

and

REPUBLIC OF SOUTH AFRICA

Chief Justice: **Mogoeng Mogoeng**

Deputy Chief Justice: **Moseneke**

Justice: **Nkabinde; Jafta; Cameron; Froneman; van der Westhuizen; Zondo; Khampepe; Skweyiya;**

Acting Justice: **Majiedt**

Respondents

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Respondents

NOTICE OF MOTION – Urgent Application for Tribunal Commission

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BE PLEASED TO TAKE NOTICE we, the people, hereinafter the abovementioned Applicants wish an urgent application to the above Honourable Court for an order in the following terms:

1 THAT CONDONATION for filing be granted to the Applicants. We, the Applicants are lay people in this matter, so we humbly wish for condonation where ever it is necessary.

2 Granting the Applicants leave to appeal against the whole of all judgments annexed hereto. We refer to **Annexures 1-15** (pages 101-134). Be pleased to take notice that there is more to follow.

3 That the Honourable Court grants an order for the establishment of and convening of an Independent Impartial Tribunal and Commission of Inquiry, hereinafter Tribunal Commission, as a matter of urgency and in the public interest.

4 That the Tribunal Commission be appointed in a procedurally fair manner as decided on and agreed upon by all interested parties as to the promotion of administrative justice.

5 That any hereto annexed Writs, Notices, Orders, Warrants, etc. challenging the same rule of law, be held in abeyance on the grounds of fraud until this matter has been heard in a Tribunal.

6 That judgment of all hereto annexed cases be rescinded and or set aside pending the final outcome of the Tribunal Commission.

7 That this Honourable Court grant an order for the matter to be heard on the 1st of May 2014 as a matter of urgency.

8 Granting the Applicants leave to adduce and present additional evidence once the Tribunal Commission be convened as to the promotion of administrative justice and the Bill of Rights 32, 33 and 39.

9 Directing that the costs of this application be costs in the appeal.

10 That all appeals succeed;

11 In the alternative to our wish and prayer to the above, and in the event that judgment is not rescinded immediately, that execution of the judgments annexed hereto be rescinded pending final outcome of this matter.

12 Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the accompanying affidavit of the Applicant, together with Annexures thereto will be used in support of this application.

TAKE NOTICE FURTHER THAT that additional cases will be added as there are growing numbers of people under threat and duress, including a growing

national awareness of the global crisis which needs to be addressed as a matter of urgency as all matters are related, challenging the same rule of law.

TAKE FURTHER NOTICE THAT within ten days of the lodging of this application, such Respondent who wishes to respond to or oppose this application must do so in writing in terms of Rule 19(4) of the Rules of the Constitutional Court.

TAKE NOTICE FURTHER THAT the Applicants have appointed the address c/o DENISE SCHONFELDT, UNIT E1 MIKRO INDUSTRIAL PARK, 17 HAMMER STREET, STRYDOM PARK, JOHANNESBURG, as the address at which they will accept notice and services of all process in these proceedings.

DATE AT **Braamfontein** ON THIS 3rd DAY OF February **2014**.

Respectfully,

Brother Thomas

Administrator: UZA

C/O
DENISE SCHONFELDT
UNIT E1 MIKRO INDUSTRIAL PARK
17 HAMMER STREET
STRYDOM PARK
JOHANNESBURG
MOBILE NUMBER: 079 750 0971

TO; THE REGISTRAR OF THE ABOVE
HONOURABLE CONSITUTIONAL COURT
11 KOTZE STREET
CONSTITUTION HILL
BRAAMFONTEIN
2017
JOHANNESBURG

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Acting Justice: **Majiedt**

Respondents

FOUNDING AFFIDAVIT in support of Tribunal Commission

I, the undersigned,

Brother-Thomas:Carlsson-Rudman

do hereby make oath and say that:

1. I am a people, oathed as Investigative Administrator of the Unified Common Law Grand Jury of Southern Africa by decree and am one of the Applicants in this matter.
2. The facts deposed to hereunder be both true and correct and are within the ambit of my private knowledge, save where the contrary appears from the context thereof, in which event I verily believe them to be both true and correct.

CONDONATION AND URGENCY

3. We are lay people and have never before had dealings with procedural law, however we do know right from wrong and we are under threat and duress. Moreover we do not have the means to obtain formal legal representation.

4. Accordingly, and in so far as it may be necessary, we pray that the above Honourable Court condone our non-compliance with the Uniform Rules of Court.

INTRODUCTION

The purpose of this application

5. This is an application for review before an Independent Impartial Tribunal and Commission of Inquiry by Public Hearing, hereinafter Tribunal Commission, as per Rule 7, 8, 9, 13, 25, 32, 33, 38 and 39 of

the Bill of Rights, amongst other matters challenging the same rule of law, to settle all commercial claims made against Applicants by various Agents of the REPUBLIC OF SOUTH AFRICA, hereinafter Agents, that are unlawful, unconstitutional, irrational and procedurally unfair, accordingly invalid.

EXPOSITION OF FACTS

Commercial Transactions

12. Various orders, writs and judgments were granted against the Applicants by various courts of the REPUBLIC OF SOUTH AFRICA. We refer to **Annexure 1 - 15** (pages 101 to 134).

13. The aforementioned have been enforced by Agents of the REPUBLIC OF SOUTH AFRICA, hereinafter Agents, even though substantive evidence was provided and objections were lodged and or raised by the Applicants when Agents fail to consider or provide alternative lawful remedies.

8. Growing numbers of the people are investigating and discovering further evidence regarding the current, growing, socio-economic crisis.

9. The Applicants have what we deem to be sufficient evidence of breach of trust, contract and violation of our constitutional rights as per Rule 7, 8, 9, 13, 25, 32, 33, 38 and 39 of the Bill of Rights.

GOOD CAUSE FOR INDEPENDENT IMPARTIAL TRIBUNAL

14. New information is continually being presented globally which leads us to believe that the Agents are misleading the Applicants in the original offers of contract and subsequent offers as well as denying remedy of settlement other than the use of promissory notes.

15. Regarding the payment system of South Africa, we wish to prove beyond a reasonable doubt before an Independent Impartial Tribunal acting as a Commission of Inquiry, hereinafter Tribunal Commission, that there are different forms of currency and settlement for settlement of commercial institutions, whereby Agents are obligated to adhere to under various national and international laws.

16. An understanding of what constitutes the basis for money and how Agents extend credit is necessary to show, *prima facie*, that Agents operate contrary to public trusts, law of contract and misrepresentation of facts to the extent that it is *contra bonos mores*. We refer to **ANNEXURE A** (pages 18 to 43).

17. At contract law, these eight elements are essential to the creation of a contract:

    17.1. Acceptance;

    17.2. Intention;

17.3. Sufficient and equal consideration;

17.4. Mental and lawful capacity to contract;

17.5. Legality of purpose;

17.6. Offer;

17.7. Gave genuine consent (knowingly, willingly and voluntarily); and

17.8. Certainty of terms and conditions by full disclosure.

18. Contractual Law defines a contract as a document signed by two parties and full disclosure is a pre-requisite in order for it to be lawful and binding on both parties. When we have requested the original in order to verify that there is a legally binding contract, the Agents fail to meet the basic requirements. ALL COMMERCE IS LAW, ALL LAW IS CONTRACT. NO CONTRACT, NO LAW.

19. We have asked various Agents on numerous occasions to answer a few questions regarding these alleged ‘contracts’. We have been asking Agents to answer certain questions before we engage further. We have the right to ask questions and to have them answered as constitutionally mandated. Only a Tribunal Commission could satisfy this pre-requisite as Agents act in all cases as if above the rule of law. Find attached **ANNEXURE B** (pages 44 – 46).

20. It is clear to the Applicants and people that the courts do not act impartially. Find attached affidavit as example **EXHIBIT 1a** (page 135 - 138).

21. Internationally, the REPUBLIC OF SOUTH AFRICA and Managers of the registered company are listed as such on the U.S. SECURITIES AND EXCHANGE COMMISSION, where the governing law is New York. Agents are therefore governed by the INTERNATIONAL SECURITIES ACT of 1933, Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes (Geneva, 1930) The League of Nations, the UNIFORM COMMERCIAL CODE. These laws apply to all transnational companies. Find attached **ANNEXURE C** (pages 47 – 67).

22. Furthermore, the system of rules and customs and usages generally recognized and adopted by traders as the law for the regulation of commercial transactions and the resolution of their controversies is known as LAW MERCHANT. The law merchant is codified in the Uniform Commercial Code (UCC), a body of common law that governs mercantile transactions.

23. Securities Intermediaries of REPUBLIC OF SOUTH AFRIA AS EVIDENCED BY **Annexure C** (pages 47 – 67) are governed by Uniform Commercial Code with obligations. Please find attached **ANNEXURE D** (pages 68 – 72).

24. Furthermore, Agents do not follow the correct chain of title on the promissory notes and bills of exchange, a violation of Rule 8, 32 and

33 of the Bill of Rights.

25. The BILLS OF EXCHANGE ACT 34 OF 1964 as amended by Suretyship Amendment Act 57 of 1971 as amended by Bills of Exchange Amendment Act 58 of 1977 as amended by Finance Act 77 of 1986 as amended by Bills of Exchange Amendment Act 56 of 2000 states:

"91 Presentment of note for payment

(1) (a) If a note is in the body of it made payable at a particular place, it must be presented for payment at that place to render the maker liable, unless the particular place mentioned is the place of business of the payee and the note remains in his hands.

(b) In no other case is presentment for payment necessary in order to render the maker liable.

(2) Presentment for payment is necessary to render the indorser of a note liable.

(3) (a) If a note is in the body of it made payable at a particular place, presentment at that place is necessary to render an indorser liable.

(b) If a place of payment is indicated by way of memorandum only, presentment at that place is necessary to render an indorser liable: Provided that presentment to the maker elsewhere, if sufficient in other respects, shall be sufficient to render an indorser liable."

26. The Applicants do not receive proper presentment of the Bills in question and are denied full settlement, discharge by Acceptance For Value as per the aforementioned Act. Instead Applicants are forced into an alleged ‘debt’ when there is remedy provided by law. We, the people have requested proper presentment of Bills from various Agents, as obligors, as no valid contracts exist and a bill of exchange meets the basic requirements of a contract. Furthermore, we have the right to re-negotiate the contract when alternative remedy is discovered.

27. The Applicants intend to adduce further evidence before a Tribunal Commission.

28. Furthermore, everyone has the right to just administrative action that is lawful, reasonable and procedurally fair. Everyone whose rights have been adversely affected by administrative action has the right to have their wish and requests met according to PROMOTION OF ADMINISTRATIVE JUSTICE ACT 3 OF 2000. Find attached **ANNEXURE E** (pages 73 – 93).

29. In all cases, the Agents have shown a lack of understanding or a total disregard for principles and rules of commercial transactions. Only an Independent Impartial Tribunal and Commission of Inquiry can properly review all presentments as to the promotion of administrative action.

30. Furthermore, in all cases claimants fail to produce a *Corpus Delicti* or one who is qualified to answer all questions presented. See attached **Annexure F** (pages 94 – 96). We wish to present statements by both foreign and local expert witnesses to attest to the facts presented. This is but one reason that only a Tribunal Commission can be procedurally fair in this case.

31. Equitable estoppel applies in all cases presented with regards to these matters. Equitable estoppel is a defensive doctrine preventing one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way, with the result that the other person has been injured in some way. This doctrine is founded on principles of fraud. The five essential elements of this type of estoppel are that:

31.1. There was a false representation or concealment of material facts;

31.2. The representation was known to be false by the party making it, or the party was negligent in not knowing its falsity;

31.3. It was believed to be true by the person to whom it was made;

31.4. The party making the representation intended that it be acted on, or the person acting on it was justified in assuming this intent; and

31.5. The party asserting estoppel acted on the representation in a way that will result in substantial prejudice unless the claim of

estoppel succeeds. Also termed estoppel by conduct.

CONCLUSION

32. We wish and respectfully submit that we have shown sufficient good cause that Agents are not acting impartially, providing proper remedy or observing substantive evidence as to the promotion of administrative justice and as per Rule 8, 32 and 33 of the Bill of Rights, the supreme law.

33. We wish and humbly pray that the Honorable Court grant an order for the institution of a Tribunal Commission by Public Hearing, independent of the state, to review all related matters presented challenging the same rule of law.

34. It is in the national and public interest to settle any and all just debts by remedy of the law, which is currently being denied, in order to promote just administrative action.

35. We humbly wish and pray that the Honorable Court grant an order to impose a duty on the state to give effect to these rights, and provide for the review of and presentment of evidence by the public before a Tribunal Commission in the national interest of our country and order to promote an efficient administration.

and

36. Further and/or alternative relief as this Honourable Court deems fit.

37. In view of the above, the Applicants humbly requests the Honourable Court to repeal all cases filed regarding this matter pending the outcome of this matter.

38. Failing this Honourable Court granting the herein wishes and requests and if beyond the jurisdiction of this Honourable Court, the Applicants wish that this matter be transferred for cause to a Court of Record.

Respectfully,

Administrator, Unified Grand Jury ZA

Brother-Thomas:Carlsson-Rudman

I certify that the deponent acknowledged to me that:

- he knows and comprehends the contents of this declaration;
- he has no objection to taking the prescribed oath;
- he considers the prescribed oath to be binding on his/her conscience.

The deponent signed this declaration in my presence at **Johannesburg** on this **3rd** Day of **February 2014**.

ANNEXURE A

What is Money?:

MODERN MONEY MECHANICS
A Workbook on Bank Reserves and Deposit Expansion
Federal Reserve Bank of Chicago

"If money is viewed simply as a tool used to facilitate transactions, only those media that are readily accepted in exchange for goods, services, and other assets need to be considered. Many things - from stones to baseball cards - have served this monetary function through the ages. Today, in the United States, money used in transactions is mainly of three kinds - currency (paper money and coins in the pockets and purses of the public); demand deposits (non-interest bearing checking accounts in banks); and other checkable deposits, such as negotiable order of withdrawal (NOW) accounts, at all depository institutions, including commercial and savings banks, savings and loan associations, and credit unions. Travellers checks also are included in the definition of transactions money. Since $1 in currency and $1 in checkable deposits are freely convertible into each other and both can be used directly for expenditures, they are money in equal degree. However, only the cash and balances held by the nonbank public are counted in the money supply. Deposits of the U.S. (and RSA) Treasury, depository institutions, foreign banks and official institutions, as well as vault cash in depository institutions are excluded.
This transactions concept of money is the one designated as M1 in the Federal Reserve's money stock statistics. Broader concepts of money (M2 and M3) include M1 as well as certain other financial assets (such as savings and time deposits at depository institutions and shares in money market mutual funds) which are relatively liquid but believed to represent principally investments to their holders rather than media of exchange. While funds can be shifted fairly easily between transaction balances and these other liquid assets, the money-creation process takes place principally through transaction accounts."

An investigation into the payment system in South African Law.
SA Law Commission.

"The bill of exchange is a financial instrument for the completion of commercial transactions. It's use is not confined to transactions in any specific country. It is truly an international instrument. It is the most cosmopolitan of all contracts. The quest for unification was aided by another factor, a desire to formulate, within human limits, a perfect system of law governing bills and notes. This part of the law leads itself to precise formulation. They constitute a rigid and geometrically perfect system."

Overview of the National Payment system in South Africa – SARB

1. INSTTITUTIONAL ASPECTS
1.1 General legal aspects
"The SOUTH AFRICAN RESERVE BANK ACT No. 90 of 1989 provides in general terms that the central bank may organize and participate in a clearing system. The Reserve Bank does not presently have any specific statutory powers to supervise the national payment system.

The payment system, however, is in general terms regulated by commercial law while the banking industry is subject to various laws, regulations and related legislation such as:

- The Banks Act. Act No. 94 of 1990;
- The Mutual Banks Act. Act No. 124 of 1993;
- The Bills of Exchange Act. Act No. 34 of 1964;
- The Companies Act. Act No. 61 of 1973;

3.2.1 Major legislation, regulation and policies

There is no specific legislative framework governing the operations of the payment system except for cheques and other bills of exchange subject to the provisions of the Bills of Exchange Act (see 1.1)."

---

1. HOW CREDIT IS CREATED

1.1 An understanding of how banks extend credit is necessary to show, prima facie, that the bank operates contrary to public opinion and misrepresents itself to the extent that it is *contra bonos mores*.

1.2 According to the Applicants research, these are the ways in which a loan may be provided:

i) Via a bookkeeping entry initiated with a promissory note;

ii) Via the process of securitization, also initiated with a promissory note;

iii) A combination of the above;

iv) With the bank physically lending its own money.

1.3 In this section, we will focus on the first method. In the next section, we will focus on the second. According to the Applicants research, the fourth method is no longer practiced in modern times.

1.4 In both the first and the second instance, money is not loaned in the ordinary sense of the word. As bizarre as it may seem, money was not transferred from the Bank's account into the Applicants account.

1.5 Be that as it may, we will endeavor to provide prima facie evidence that public perception differs significantly from the reality of how banks actually operate. Absolute proof of this will require expert witness testimony and the right to request relevant documents.

1.6 Banks do not make ordinary "loans" and neither we, nor anyone else in South Africa, could be considered ordinary "borrowers." In a nutshell, the money was created via nothing more than a book-keeping entry.

"Each and every time a bank makes a loan, new bank credit is created – new deposits – brand new money." - Graham F. Towers. Governor, Bank of Canada (1934-1954)

1.7 Credit is "advanced" to the borrower using a promissory note provided by the borrower, which banks record as an asset on their books. Banks simply swap this promissory note for credit which can then be spent by the seller.

1.8 In other words, this was not a "loan" it was an "exchange." The difference between the two is extremely significant.

1.9 From an accounting perspective a promissory note (the asset) requires a balancing entry on the banks books. This balancing entry (or bank liability) is the "money" which reflects in the borrowers account. A bank's

liability (money) was thus created using a mere book-keeping entry and no money was actually lent to us.

1.10 The impact of this to both of us and the public at large is extraordinary. Not only is it contrary to public perception, it would mean that primary control of both i) the money creation process and ii) where and how that money is spent in the economy, rests substantially with commercial banks. They would conceivably wield more influence than government policy.

1.11 While we accept that some aspects of the Usury Act have been repealed by the National Credit Act, we reference it here to show a specific and relevant distinction. Section 10 of the Usury Act mentions "*a money lending transaction or a credit transaction."* As such, there must be a difference between the two.

2. Lending money and advancing credit are two different things.

We believe the following example alludes to the fact that the above is accurate:

i) If we are in the process of buying a property, but we do not yet own it, it is not possible for us to sign it over as security. Yet somehow the property is paid for and transferred into the Applicants name, thus allowing us to sign it over as surety. As we need the security in order to borrow the money used to pay for it, clearly something is amiss.

ii) It seems obvious that the title deed for the property can only be transferred once it has been paid for. However, in theory it cannot be paid for until the loan has been granted. The loan cannot be granted unless we place the property (which we do not yet own because it has not been paid for) as security.

iii) This catch 22 situation can only be resolved if banks are able to "advance credit" or create money "out of thin air" (discussed later) using

a book-keeping entry guaranteed against a promissory note. This is a highly secretive process which indicates to us just why the Bank refuses to answer the Applicants questions about it.

iv) A loan created from a book-keeping entry originates from a negotiable instrument (promissory note) given by the borrower. It is not paid with the banks' own money. This is contrary to The Bank's own advertising and public communication which clearly promotes "home loans" and "lending money" on street boards, in the print media and during many prime time TV shows.

v) While The Bank was the "Credit Provider" we must have been the "Credit Originator." It was not disclosed to us up front that we were the ones who would be creating the Applicants own home loan!

Ralph Hawtrey, Secretary of the British Treasury stated that *"Banks lend by creating credit. They create the means of payment out of nothing."*

2.1 Prima facie evidence that all this is true in the Applicants specific case is the simple fact that The Bank refuses to answer the questions we put to them. If the transaction was not secret or without malice, we would imagine it to be a very simple matter to explain it to us. Instead, they made no attempt to answer the Applicants questions and immediately instigated legal action against us.

2.2 The Federal Reserve Bank of Chicago published a workbook entitled Modern Money Mechanics [Dorothy M Nichols, 1961, revised in 1992] that outlines precisely how the money creation process works in banks:

"Deposits are merely book entries... Transaction deposits are the modern counterpart of bank notes. It was a small step from printing notes to making book entries crediting the deposits of borrowers, which the borrowers in turn could spend by writing checks, thereby printing their own money."

2.3 Although Modern Money Mechanics is a US document, the definition of a promissory note is virtually identical in almost every country in the world. In fact, the South African Bills of Exchange Act [as amended by Act 64 of 2000] is founded on the United Kingdom Act, stretching out in its similarity across the globe as far as India and Australia. It is therefore reasonable to assume, prima facie, that the system used to process negotiable instruments here in South Africa is equally similar. We will know for certain once we obtain expert testimony, interview witnesses and request the relevant documents.

3. THE FULL RAMIFICATIONS OF THE ORIGINAL AGREEMENT WERE NOT DISCLOSED

3.1 The Applicants perception of a mortgage bond is that they offer their property as security to repay money, which we borrowed from a bank. The bank earns money through its ordinary course of business (through deposits, fees, or by borrowing from other banks, such as the Reserve Bank) which it transfers to us as a loan.

3.2 It was the Applicants understanding that failure to repay a loan would result in a real financial loss to the bank. This loss would justify the pledging of a real asset security to guarantee the loan, and perhaps justify the bank's somewhat aggressive approach to its debt collection procedures. After all, the bank has employees that need to be paid.

3.3 This misconception creates a strong emotional and moral obligation to repay one's debts. One feels that it will be gravely detrimental to society and the employees of the bank if a loan is not repaid.

3.4 In reality however, the word "re-pay" is totally misleading. The word is expected by ordinary people to mean something like *"I physically handed you money from my wallet, so you must physically re-pay it back to us."* However the bank's meaning of the word is very different. It is more along the lines of *"You must make payments over and over again,*

regardless of whether there is an original debt or not, and regardless of whether or not the bank provided you with anything in return."

3.5 The Continuing Covering Mortgage Bond which The Bank brought forth as evidence in this case only has one signature on it (which is not even my own). As such, the constant repayments that we have been making are not repayments of a debt in the ordinary everyday sense of the word. This is because the mortgage bond does not require any consideration or obligation from the bank's side. It is a totally one-sided transaction!

"Banks do not take security for any loans or mortgages. The credit beneficiary or nominal borrower pledges his own security as a guarantee of his performance, i.e., as security for his payment obligations, not as security for the credit/loan granted by the bank. Technically, this is extremely important from the bank's perspective" (Modern Money Mechanics).

3.6 The Applicants property, which was supposedly placed as security for a loan, is actually there to enforce a stream of payments and nothing more. This is completely contrary to public perception who honestly believes that repayments are for a true and honest debt.

3.7 The obligation to continue making repayments is NOT linked to money that was physically loaned, which is precisely why The Bank cannot and will not prove to us that they loaned us money. (There is another reason for this, securitization, which we will deal with separately). In the meantime, let us explain the former:

i) The security (the Applicants farm) used to guarantee the home loan is believed by most South Africans (including us) to be for the repayment of money loaned in the ordinary sense of the word.

ii) However, the security is provided only to guarantee a stream of payments. It is not connected to the borrowing of actual money. This became apparent to the public when the concept of "securitization" came into the spotlight after the stock market crash of 2008.

iii) Banks can only securitise a string of repayments which are on-sold

in an outright or “true sale” to a third party investor. A bank is therefore required to separate the *obligation* (the string of payments) from the *debt* (the money supposedly lent) so it can be on-sold. This is achieved simply by the fact that there is actually no debt from which it must be split! This leaves a clean string of repayments, not attached to any debt, open and ready to be sold to a third party investor.

iv) The bank does have one dilemma: They must also separate from the string of repayments, the security that was pledged for it. That way, if a default occurs, the bank is seen, prima facie, to have the power to foreclose on the secured property. They look like they are the proprietor of the loan, but in reality they are not and this is a key aspect of the Applicants case.

v) Even if securitization did not occur (and the note was not sold to a third party), once the bank monetised the Applicants asset (the note), only then could the property be transferred into the Applicants name. Once the property was in the Applicants name, a continuing covering mortgage bond could be signed in favour of the bank by a person who should have power of attorney to do so.

vi) The property must have been paid for <u>before</u> it was transferred into the Applicants name. This can only be achieved if we actually funded the purchase price by way of a negotiable instrument and not by the banks own money. This is how the bank overcomes the catch 22 situation outlined earlier.

vii) We, the people are being forced, under complete misrepresentation, to sign a one-sided, unilateral promise to keep making a stream of payments to the bank (let’s call this TRANSACTION 1). Then, when the property was transferred, that real asset was signed over to the bank as a guarantee to keep making those payments (TRANSACTION 2). This looked to us as if it was to repay a loan, but this cannot possibly be true because the bank needs to sell the stream of payments, but still keep the right to the secured property if there is a default. How the bank manages to pull this off can only be explained using the term “magic trick.”

3.8 To use an analogy: The Bank has attempted to split the atom. The obligation to repay the loan has been split from the security. What is left is a shell of the original transaction which makes it appear to the Honourable Court as if it is the full and complete agreement. In nearly every case, this is mistakenly ratified by a defendant who, by way of sheer apathy, concedes that there is a legitimate loan in place.

3.9 In the Applicants opinion, the above gives rise to a claim of *non est factum.*

3.10 In the US case **Credit River Decision** [284 Minn.567, 171 N.W.2d 818 (1969)], which we appreciate is substantially removed from this case, at least demonstrates that such a notion is not new to a Court of law. In this case, the bank manager:

"…admitted that all of the money or credit which was used as a consideration was created upon their books, that this was the banking practice exercised by their bank."

3.11 The Bank has brought to the court two documents: i) a "Home Loan Agreement" and ii) a "Continuing Covering Mortgage Bond."

3.12 With reference to s10 (2) of the **Usury Act of 1968**, we put the following to The Bank: *"Which of these two documents, if any, is the instrument of debt?"*

"s10 (2) On a written demand by a borrower or a credit receiver or a lessee and against payment of an amount prescribed by the minister, a moneylender, excluding the holder of a debenture, or credit granter or lesser shall, at any time during the currency of an agreement in connection with a money lending transaction or a credit transaction, furnish to such borrower or credit receiver or lessee or to any person named in such demand, a true copy of the Instrument of debt concluded in connection with such transaction."

3.13 Walker F Todd was called in as an expert witness in the US case **Bank One v. Harshavardhan Dave and Pratima Dave** [03-047448=CZ]. He is an attorney and former officer for the Federal Reserve Bank and recognized expert on the history of banking and financial instruments. His affidavit was made to the court on December 5th 2003. In his affidavit he stated:

"Banks are required to adhere to Generally Accepted Accounting Principles (GAAP). GAAP follows an accounting convention that lies at the heart of the double entry bookkeeping system called the Matching Principle.
…it must record offsetting liabilities that match the assets that it accepted from customers.
…the bookkeeping entries required by application of GAAP… should trigger close scrutiny of The Applicant's [the bank's] apparent assertions that it lent it funds, credit or money.
…most of the funds advanced to borrowers are created by the banks themselves and are not merely transferred from one set of depositors to another set of borrowers.
…no lawful money [gold, silver and official currency notes] was or probably ever would be disbursed by either side of the covered transactions.
…it remains to be proven whether the bank has incurred any financial loss or actual damages."

3.14 David H Friedman in his book *Money and Banking* [4th ed, 1984] reiterates that:

"When a commercial bank makes a business loan, it accepts as an asset the borrower's debt obligation (the promise to repay) and creates a liability on its books in the form of a demand deposit in the amount of the loan. Therefore, the bank's original bookkeeping entry should show an increase in the amount of the asset credited on the asset side of its books and a corresponding increase equal to the value of the asset on the liability side of its book.

This would show that the bank received the customer's signed promise to repay as an asset thus monetizing the customer's signature."

3.15 History has taught us that when we split an atom, it tends to blow up. Such an explosion is evidenced by the stock market crash of 2008, as well as the ensuing chaos in Iceland, Greece, Portugal, Ireland, Spain, Italy, the United States and a host of other countries who face economic collapse.

3.16 The common man, including us, is under the impression that an ordinary debt exists. We are intimidated by harassing sms messages and phone calls into i) paying back a loan that includes interest (another story entirely) and ii) giving up our real assets if we do not pay.

3.17 We hereby declare and express the Applicants natural universal right to ask for the truth, and to stop paying the Applicants bond, and thus stop perpetuating what we believe to be a criminal act of unspeakable proportions, until such time that the bank provides the answers.

3.18 We truly believe that once the Agents of corporations are asked under oath to reveal the true nature of its credit creation process, and the relevant documents are produced as evidence, the Applicants contentions will be validated.

4. THE APPLICANTS LAWFUL RIGHT TO SETTLE THE CLAIM USING A NEGOTIABLE INSTRUMENT

4.1 To cement the above contentions, and to also bring to the Court's attention a brand new defence, it is necessary that we demonstrate and explain the use and effect of negotiable instruments by a bank.

4.2 This is a body of law that has been quoted as being "notoriously difficult" by numerous law professors, including the late Leonard Gering.

4.3 The Law of Negotiable instruments is governed by the Bills of Exchange Act 34 OF 1964 [As amended by Act 64 of 2000]. A document entitled *"Overview of the National payment System in South Africa"* from the Bank for International Settlements confirms this (p151 and p156):

The banking system, however, is in general terms regulated by commercial law while the banking industry is subject to various laws, regulations and related legislation such as...

– the Bills of Exchange Act No 34 of 1964

From a payment system viewpoint, the Bills of Exchange Act deals mainly with the usage of paper-based-cheques and bills of exchange.

4.4 It seems reasonable to assume that when dealing with a Mortgage Bond and therefore a "note" (ie. Promissory note) that the Bills of Exchange Act must apply to the transaction. A detailed understanding of the Act is vital to understanding the Applicants argument.

4.5 The Act defines two groups of instruments:

Negotiable Instruments

**/ **

Promissory Notes (two party promise) **Bills of Exchange** (three party order)

Maker → Payee Drawer → Drawee → Payee

4.6 A promise to pay **(promissory note)** is the underlying agreement of a commercial contract, and the **bill of exchange** is the method for its payment.

4.7 In August 1994, The South African Law commission published a document called **An Investigation into the payments system in South African Law**. Their opening statement confirmed that:

"A bill of exchange is a financial instrument necessary for the completion of commercial transactions...
- such transactions being the act or instance of conducting business or other dealings, especially the formation, performance or discharge of a contract.
No commercial transaction is complete without an instrument [the Applicants emphasis] of payment."

4.8 There are only two categories of instruments: Bills of Exchange and Promissory notes. Therefore, it stands to reason that a bill of exchange (NOT necessarily a cheque) is required to conclude a transaction initiated by a promissory note. As such, we are well within the Applicants rights to request a bill from the bank like so: *if The Bank believes we owe them money, then they are to please provide us with the original certificate of indebtedness that was used to generate the opening balance (book entry) on the statement that they claim shows that we owe them money, and / or to provide us with a bill so that we may complete the transaction."*

4.9 Legal Definitions:

i) ***NEGOTIABLE INSTRUMENT:*** In South African Law, we have found only one definition of a negotiable instrument. This was provided by Professors Denis Cohen and Leonard Gering from the book **Southern Cross: Civil Law and Common Law in South Africa [ISBN 0198260873, p482].** The professors jointly define a negotiable instrument as follows:

A negotiable instrument is a document of title embodying rights to the payment of money or the security of money, which, by custom or legislation, is (a) transferable by delivery (or by endorsement and delivery) in such a way that the holder pro tempore may sue on it in his own name and in his own right, and (b) a bona fide transferee *ex causa onerosa* may acquire a good and complete title to the document and the rights embodied therein, notwithstanding that his predecessor had a defective or no title at all.

In the **Handbook on the Law of Negotiable Instruments [Third Edition, ISBN 978 – 702 17263 2 p226]**, Professor Leonard Gering states: "*The*

phrase 'under onerous title' corresponds with the Latin expression ex causa onerosa."

The only section of the Bills of Exchange Act in which the phrase '*under onerous title'* appears, is section 25: *"A holder takes a bill for value if he takes it under onerous title."* Therefore, s25 of the Bills of Exchange Act provides a clear and direct link between The Bills of Exchange Act and the only workable definition of a negotiable instrument in South African Law.

In 1933, money of substance (ie. money backed by gold) no longer existed in South Africa. Only the instruments themselves (ie. bills, notes and other commercial paper acting as *the security for money*) contained the perceived value that allowed them to be used as currency by banks and the common man.

ii) ***PROMISSORY NOTE (s87, Bills of Exchange Act):*** *A promissory note is an unconditional promise in writing made by one person to another, signed by the maker and engaging to pay on demand or at a fixed determinable future time, a sum certain in money, to a specified person or his order, or to bearer.*

iii) ***NOTE:*** The word "note" appears in many documents relating to mortgage backed securities and it pivotal to the securitisation process. Most notably, it appears in a series of documents outlining The Bank's very own mortgage backed securities programme entitled: **PROGRAM MEMORANDUM, BLUE GRANITE INVESTMENTS MASTER PROGRAMME together with TRANSACTION SUPPLEMENT.**

Despite multiple references to the word "note" in this and other documents, the word "note" is not specifically defined in any of them, nor is it defined in any of the other statutes that we have researched. For example:

- The word "note" is not defined at all in the **Banks Act** (although s79 discusses "Shares, debentures, negotiable certificates of deposit, share

warrants and promissory notes or similar instruments.")

- The **Securities Services Act, 2004** includes "notes" in the definition of "securities" (along with a list of several other instruments), but does not specifically define the word "note."
- There is no definition of "note" in the **Collective Investment Schemes Control Act of 2002**, the **Participation Bonds Act** or the **Financial Institutions Act**.

t seems reasonable to assume that a "note" must therefore refer to one of two things:

1. It refers to a BANK NOTE in the ordinary sense of the word which people use every day as "money" (eg. a R50 note) for the buying and selling of goods and services. If this is true, then a "note" used by a bank must be an asset of equal value to cash money. In other words, if a bank accepts a promissory note from a customer, it is treated with the same overall effect as cash.
2. A note must be a "promissory note" as defined in the **Bills of Exchange Act**.
3. An amalgamation of both 1 and 2 above.

iv) BILL OF EXCHANGE (s2): *A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to a specified person or his order, or to bearer.*

We wish to point out that Black's Law Dictionary defines a **DRAFT ORDER** as almost identical to that of a bill of exchange.

v) CHEQUE (s1): *Cheque means a bill drawn on a bank, payable on demand.*

4.10 If we give The Bank a cheque to settle the debt, that would be acceptable because the common perception of a cheque is that it is paid by debiting the customer's account. However, in reality, this is not the case. There are actually two transactions involved in the payment of a cheque: 1) payment of the cheque by the bank and 2) debiting the customer's account. This separation is critical to understand the Applicants argument in this section because it shows that it is feasible to contend that a bill of exchange can be paid by a bank without the need for debiting the customer's account. This happens by way of a similar same book-keeping entry outlined earlier in the credit creation process.

4.11 The Bills of Exchange Act makes it clear that a cheque and a bill of exchange are different. A cheque is a bill of exchange drawn on a bank. It has the additional property that it also instructs the bank to debit the customer's account. Paying a debt by cheque will involve two transactions instead of only one. I will show this in law using three references:

i) Professor Leonard Gering on **The Handbook of Negotiable Instruments** states (p175, with regard to post-dated cheques) that they "…*prevent the drawee banker from paying the cheque and debiting the drawer's account."*

Use of the word "and" instead of "by" in the above quotation implies that there are two transactions involved in honouring a cheque, not just one.

ii) This contention is made even clearer in **Amler's Precedents of Pleadings** [5th edition, ISBN 0409011045, p60]: *"If a client issue a cheque the banker must pay according to its tenor (provided he [the banker] is in funds) and debit the account of the client.*

Once again we clearly see that the banker pays a bill of exchange and, in a second transaction (presumably by way of prior contractual agreement with the customer), the account is debited. we will return to the issue of the

"banker's funds" later in the section on liquidity behind the bill when we show that banks have unlimited funds with which to pay bills of exchange.

iii) On the latest account application form used by Mercantile Bank, the following is stated*:*

> 2. AUTHORISATIONS - I/We authorise you:
> 2.1 to pay all promissory notes, bills of exchange and other negotiable instruments drawn, made and accepted by me/us **and** to debit the amount of such instruments to the Applicants/our aforesaid account;

Note that authorisation is required by the customer to allow both transactions outlined above. In other words, the customer must authorise the bank to i) pay the cheque and ii) debit the account.

4.12 Therefore the power of a customer over a bank is substantially greater than the common man has ever been led to believe.

4.13 Based on this research, we maintain that it is therefore plausible, practical and reasonable for us to presume that a bank has the authority to pay a bill of exchange without having to debit the Applicants account. A bill of exchange, issued by the bank and drawn on us, *held for value* using s25 of the Bills of Exchange Act, will convert their bill (ie. the piece of paper itself) into *the security for money.* More simply put, a bill of exchange held for value is "money" because *money* and the *security for money* are the same thing, provided that we operate in a society that uses a form of currency not backed by any physical resource (eg. gold).

4.14 In **Allied Credit Trust v Cupido** [1996 (2) SA 843 (C) at 847], Conradie J stated:

"The fundamental purpose of a negotiable instrument is to be freely negotiable, **to serve in effect as money**, and this fundamental purpose is

frustrated if the taker of a bill or note is obliged to have regard to matters extraneous to the instrument."

4.15 The South African Reserve Bank is a signatory to the **Reform of the Bills of Exchange Act** which was adopted at the UNCITRAL Convention in 1999. On page 25 it stipulates that:

"bills and notes are 'commercial' paper money..."

4.16 The notion that a bill of exchange is considered *security for money* is even echoed in the High Court's own rules under **"Incorporeal Property:"**

"Immovable property Rule 45(8)(a) Where the property or right to be attached is a lease or a bill of exchange, promissory note, bond or other security for the payment of money"

4.17 It is trite that what we call money is actually a promise made by a bank (bank obligation / liability). As such the confidence in these instruments is held together by the fact that if people knew the power they had over such instruments, the entire banking system would require a severe overhaul. To quote **SOUTH AFRICAN RESERVE BANK - HISTORY, FUNCTIONS AND INSTITUTIONAL STRUCTURE** [Jannie Rossouw - Management of the South African money and banking system (Para 9.1.3: Exit policy and process for managing distress in banks)]:

"The maintenance of public confidence in the stability of the banking system is the cornerstone of the process of financial intermediation. The emergence of liquidity or solvency problems in a particular bank can threaten confidence not only in that particular bank, but also because of the possibility of contagion, in the safety and stability of the system as a whole."

4.18 As we are witnessing first hand across the world, the current financial system is unsustainable. If the confidence of the people that Mr Jannie

Rossouw refers to is held together by misrepresentation, then an urgent reform of the banking system is required. On a micro level, an urgent reform of the Applicants personal loan account is required.

4.19 We believe that we have every right to demand transparency from the Applicants bank. We refuse to sit back and let the financial chaos spreading all over the world reach us here in South Africa to the severe and detrimental effect of the Applicants, their family and community.

5. HOLDER IN DUE COURSE

5.1 It is a common misconception to most people in South Africa, that a bank pays a cheque *by* debiting the customer's account as one single transaction. However, this perception is incorrect because as we have shown above, the bank first pays the cheque as if it were money, then debits the account. This is because a bill of exchange is the *"security for money"* and in modern banking where money is not backed by substance, "*money"* and the "*security for money"* are synonymous.

5.2 It is the role of a bank to, on instruction of their client, pay / discount bills of exchange, promissory notes and other negotiable instruments. Therefore, banks are fully capable of monetizing these instruments and actually do so every day. This sentiment is echoed in the Reserve Bank Act, Section 10 (g) (1):

"The Bank may, subject to the provisions of section 13… buy, sell, discount or re-discount bills of exchange drawn or promissory notes issued for commercial, industrial or agricultural purposes."

5.3 Furthermore, Modern Money Mechanics continues:

"The actual process of money creation takes place primarily in banks... bankers discovered that they could make loans merely by giving their promise

to pay, or bank notes, to borrowers. In this way banks began to create money."

5.4 Therefore, a bill of exchange drawn on us, when *accepted for value* in the correct way using the Bills of Exchange Act, will become the *security for money* required to set-off the account. Thus, as per the South African Law Commission statement above, it becomes an instrument of payment necessary to complete the transaction.

5.5 To complete the acceptance of the bill, we must first define acceptance:

"Acceptance means an acceptance completed by delivery or notification" (s1**, BILLS OF EXCHANGE ACT NO 34 OF 1964 AS AMENDED BY ACT 56 OF 2000**)

5.6 The requirements for delivery of a bill are found in s19:

Delivery as requirement for contract on a bill *(1) No contract on a bill, whether it be the drawer's, the acceptor's, an indorser's, or that of the signer of an aval, shall be complete and irrevocable, until delivery of the instrument in question in order to conclude such a contract: Provided that if an acceptance or an aval is written on a bill and the drawee or the signer of the aval, as the case may be, gives notice to, or according to the directions of, the person entitled to the bill that he has accepted or signed it, the acceptance or aval then becomes* ***complete and irrevocable****.*

5.7 It is the Applicants understanding that, by accepting for value and completing by delivery; we have become the holder in due course of the instrument (as per s27, Bills of Exchange Act) and have acquired a better title to the instrument than The Bank who originally issued it.

5.8 The notion that we may acquire a better title to the instrument than the issuer of the bill is the fundamental aspect of a negotiable instrument. Not only is it expressed in the definition outlined earlier, but ***In Impala***

Plastics v Coetzer, Flemming J said:

"Whilst avoiding definition, I must refer to one characteristic which goes to the foundation of negotiable instruments…

More or less common to all systems and at all times is, however, the fact that the party entitled to the instrument can through a very informal act vest in another party the right, whist "holding" the document, to claim payment in his own name and in his own right from the party liable under the instrument, which right can conceivably be stronger than the rights which the transferor had. A document in respect of which the law tolerates such consequences, which it endows with the latent potential for such consequences, is a negotiable instrument."

5.9 It is submitted that this requirement is correctly stated in Cowan, Law of Negotiable Instruments, general Principles, as follows*:*

"It is only a transferee who gives value in the sense of taking ex causa onerosa who holds free from defects in the transferor's title. In South African law, a transferee who takes gratuitously will occupy no better position than a mere cessionary of the instrument."

5.10 Placing one's signature on a piece of paper is an extremely powerful act. In the Applicants case, a bill provided to us from The Bank must be held for value in order that we may be holder in due course / secured party in the transaction. As "value" is vested in the confidence of the public (ie. us), we give value to the bill simply by accepting and signing it. The fact that the banks make a profit behind the scenes should not prejudice South Africans who are losing their homes and other assets as a result of misrepresentation of banking activity.

THE USURY ACT OF 1968

10 1) A moneylender… or a credit grantor… shall, within 14 days… deliver or send through the post to the borrower or credit receiver … a duplicate or true

copy of the **instrument of debt** was so executed, a duplicate or true copy of a document which has been signed… by the moneylender and borrower or the credit grantor and credit receiver…

5.11 Note again the distinction between borrowing money and receiving credit which are misrepresented by the bank as the same thing. In fact, that same section in The Act refers to *"money lending or a credit grantor," "a money lending transaction or a credit transaction"* and the parties *"moneylender and borrower or the credit grantor and credit receiver."* These distinctions are not defined.

5.12 Therefore, a bill drawn by The Bank on us can be held for value and, on the Applicants instruction, they are able to set-off the amount they claim we owe them. For them, it is a simple matter of closing the accounting. we therefore express the Applicants right to ask The Bank to justify their "statement of account" / "certificate of balance" by providing us with the instrument that initiated the liability, or at least show accounting evidence that the liability came about by way of an ordinary loan. They have not done either.

5.13 Based on the above evidence, we see no reason why we may not set-off the debt using the above payment method. At the very least, when this method was put to the bank, they should have given us a suitable answer as to why we could or could not use it. Instead, they avoided the topic and immediately took legal action against us, under threat to both the Applicants land and the Applicants community who reside there.

5.14 To conclude, the form of money used to "repay" a loan is irrelevant to an accounting software system in a bank because an asset is simply an asset. we originated the Applicants own credit and if we initiated the transaction using a signed piece of paper, we must also be able to conclude it in the same way. If banks are able to do it then it stands to reason that so can we.

6. LIQUIDITY BEHIND AN INSTRUMENT

6.1 A counter argument we have encountered in the Applicants research is that an asset (ie. promissory note) is only considered valuable because it will be paid at some future date. One of the shocking revelations of our monetary system is there is actually no evidence for this contention. Banks have unlimited funds which are made available by the signature of the customer. The fact that they trade and profit behind the scenes from the illusion that money is scarce is testament to the financial crisis we are experiencing.

6.2 It is clear by world news reports that every hour of every day, the total amount of the world's debt is increasing. Only a physical resource can be scarce and as we have no physical resource to back our currency, it is a clear and obvious truth that money is an infinite resource.

6.3 Professor Antal E. Fekete [Professor, Intermountain Institute of Science and Applied Mathematics, Missoula, MT 59806, U.S.A] in his article **Detractors of Adam Smith's Real Bills Doctrine** put it succinctly when he stated:

"Debt repayable in irredeemable currency is nothing but an interest-bearing promise to pay that is exchangeable at maturity for a non-interest-bearing one. Bonds at maturity are exchanged but for an inferior instrument, insofar as interest-paying debt is considered preferable to non-interest-paying debt.

…But debt can never be retired under the regime of irredeemable currency. At maturity it is shifted from one debtor to another. People are constructing a Debt Tower of Babel destined to topple in the fullness of times.
…Only if we approach our differences with sufficient humility can we prevail against the evil forces opposing freedom armed, as they are, with the formidable weapon of irredeemable currency."

6.4 It is the Applicants understanding that overseas cases may be used as a reference in South Africa, provided that no suitable local case law exists.

In Stanek vs. White [172 Minn.390, 215 N.W. 784]:

“There is a distinction between a 'debt discharged' and a debt 'paid'. When discharged, the debt still exists though divested of its charter as a legal obligation during the operation of the discharge, something of the original vitality of the debt continues to exist, which may be transferred, even though the transferee takes it subject to its disability incident to the discharge.”

6.5 In other words, payment of a debt instrument (the Applicants promissory note to The Bank) with another debt instrument (bank promises, promissory notes, or other “money” as we know it) will *discharge* the obligation, but it will not actually *pay* the debt! This extraordinary revelation implies that i) not only is there a misrepresentation being undertaken by the banks, but ii) that we would be acting dishonorably if we were to discharge the obligation in the common way.

6.6 All money must be borrowed into existence which in turn means all money is debt. In modern terms, the two terms “money” and “debt” are almost synonymous, with the only exception being that, due to the interest factor, there is nowhere near enough “money” in the world to pay off all the “debt” in the world.

“… our whole monetary system is dishonest, as it is debt-based… We did not vote for it. It grew upon us gradually but markedly since 1971 when the commodity-based system was abandoned.” **The Earl of Caithness, in a speech to the House of Lords, 1997.**

6.7 All money in circulation is therefore owed by someone, and due to the interest factor, far more people owe money than money is available to pay it. A potentially unlimited supply of money, not backed by any substance or resource whatsoever, is available to the banks at any given time. The Applicants failure to take a stand against such a discrepancy between public opinion and reality would be a dereliction of the Applicants duty to the Applicants, the Applicants family and the Applicants community.

6.8 The Bank misrepresented itself to us as having its own money to lend. They do not have money, they only have the *promise to pay money.* Using fractional reserve banking, combined with a book-entry system and very complex legal and internal procedures, they create money "out of thin air." The stream of repayments made by us (which is a <u>separate, one sided agreement</u> that has nothing to do with the original credit) is then sold into a securitisation scheme where the bank profits overnight and we are none the wiser.

6.9 The notion that money is made "out of thin air" is not new. Stephen Goodson, director of our own **South African Reserve Bank** stated in a recent article attached as **F1:**

"Did you know that commercial banks create money out of nothing, and lend it to you at compound interest, and moreover insist that you pledge real assets for such loans? Let me repeat - banks make money out of nothing."

6.10 On 10th August 2011 – **Die Beeld newspaper**, published an article in which it quotes Dr Chris Stals (the previous governor of the SA Reserve Bank):

"Minister Pravin Gordhan is reg as hy sê dat die lening wat die Reserwebank aan die regering van Swaziland toegestaan het, nie met belastingbetalersgeld gefinansier sal word nie....Dis inderdaad so dat die Reserwebank normaalweg nie belastingbetalersgeld gebruik om enige van sy bedrywighede te finansier nie. Die Reserwebank is 'n unieke instelling wat deur spesiale wetgewing van die parlement die reg verkry het om geld te kan skep. Wanneer die Reserwebank 'n lening toestaan, soos aan die regering van Swaziland, krediteer die bank eenvoudig die regering van Swaziland se rekening met die leningsbedrag en debiteer sy rekening vir "lenings en voorskotte". Die regering van Swaziland verkry nou die reg om geld uit hierdie rekening te onttrek. In die eenvoudige geval kan hy vra om banknote in rand te onttrek.

Die Reserwebank “**skep**” dan die geld deur nuwe banknote te druk en aan Swaziland uit te reik”.

6.11 The 14th edition of Encyclopedia Britannica goes on to state that:

“Banks create credit. It is a mistake to suppose the bank credit is created by the payment of money into the banks. A loan made by a bank is a clear addition to the amount of money in the community.”

6.12 Therefore, banks create money by monetizing negotiable instruments. These instruments operate within a bank *virtually like* money, but this is not disclosed to the public. The Applicants signature allowed the Applicants loan to be created “out of thin air” and this is totally against what we have been led to believe.

6.13 The Banks bring to court what they believe to be a simple agreement. Their presumption is that they have a contract that guarantees a string of re-payments to them in return for a loan granted by them. We are victims of this misconception and when we approached the bank to get clarity, their response is legal action. We hereby wholeheartedly rebut these presumptions.

ANNEXURE B

The Applicant has requested Agents or financial services providers acting as Agents of the REPUBLIC OF SOUTH AFRICA, hereinafter Agents, on numerous occasions to answer a few questions regarding the alleged contract. We have asked Agents to answer the following questions under the penalty of perjury:

1. Please confirm that Agents actually possessed money prior to my loan being granted?

2. Would Agents be prepared to amend the credit agreement as follows: “We, Agents, did in fact possess the money we loaned you, prior to the loan being approved.”?

3. Please provide me with accounting proof that you actually loaned the Principal money?

4. Please can you send me a transaction certificate, as required by Generally Accepted Accounting Principles (GAAP), proving that Agents was funded by assets belonging to Agents at the time the so-called "loan" was made?

5. Was the amount borrowed actually "deposited", as per the definition of “deposit” in terms of the Banks Act?

6. Please confirm that Agents can show perfection of the chain of Title at the time the Application for Summary Judgement was filed?

7. Would Agents be prepared to provide the original Deed of Trust/loan agreement?

8. Please confirm if there were any assignments of the promissory note (ie. the loan agreement or other) by Agents.

9. Please can you send me the record reflecting any and all assignment(s) of the promissory note as being recorded by the Deeds Office?

10. Can Agents show a chain of endorsement of the promissory note following UCC 9-206 such as a stamp on the back of the promissory note “Pay to the order of”?

11. Can Agents demonstrate that it has the position as Holder in Due Course in respect of the promissory note or that it has authority from the Holder?

12. Please confirm if any of the assignments of the promissory note were made blank?

13. Did Agents record my bill of exchange/promissory note (ie. the loan agreement or other) as an asset on your books? If yes, then where is my promissory note / negotiable instrument now under the Bills of Exchange Act?

14. Please tell me if you recorded the Principal's original promissory note as an asset on your books and, if so, its value?

15. Do Agents participate in a securitisation scheme whereby debts / promissory notes are bundled and then sold-on to a third party/parties via special purpose vehicles, entities or SIMILAR processes?

16. Was this ‘loan’ securitised?

17. Regarding the security given to the bank by me, has this security been sold on or given as security to another party as I, the Applicant now have a Security Interest in this matter?

18. Please send me any records you have in your possession with regard to the securitisation of the alleged debt into a special purpose entity and confirmation that you had my permission to do so?

19. Are you in possession of an original, lawfully binding contract between you and the Principal?

20. If the Principal pays off the full alleged outstanding amount owing, please confirm, in writing, that you will immediately return the original instrument of indebtedness to me?

Conclusion

In all cases, the Agents have failed to provide a qualified witness who can answer questions presented. Only a Tribunal Commission can satisfy the pre-requisites of a procedurally fair and equal hearing as is constitutionally mandated. To deny such a right would be a travesty of justice as all are equal before the law.

ANNEXURE C

1. The REPUBLIC OF SOUTH AFRICA is a company trading on the US Securities & Exchange Commission. Refer to Examples A & B below.
2. The four major Banks act as securities intermediaries and managers of REPUBLIC OF SOUTH AFRICA. Refer to Examples C – G below.
3. As all these companies trade on the US Securities & Exchange Commission, and the governing law is New York, as stated in the examples below, they thus governed by the following Acts:
    - Securities Act of 1933
    - Securities Exchange Act of 1934
    - Investment Advisers Act of 1940
    - Investment Company Act of 1940
4. Furthermore, all member countries of the United Nations adhere to the Convention Providing a Uniform Law For Bills of Exchange and Promissory Notes (Geneva, 1930) - The League of Nations.

EXAMPLES on US SECURITIES & EXCHANGE COMMISSION FROM:

REPUBLIC OF SOUTH AFRICA

Example A

<SEC-DOCUMENT>0001193125-12-006763.txt : 20120109
<SEC-HEADER>0001193125-12-006763.hdr.sgml : 20120109
<ACCEPTANCE-DATETIME>20120109172727
ACCESSION NUMBER: 0001193125-12-006763
CONFORMED SUBMISSION TYPE: FWP
PUBLIC DOCUMENT COUNT: 1
FILED AS OF DATE: 20120109
DATE AS OF CHANGE: 20120109

SUBJECT COMPANY:
COMPANY DATA:
COMPANY CONFORMED NAME: REPUBLIC OF SOUTH AFRICA
CENTRAL INDEX KEY: 0000932419

STANDARD INDUSTRIAL CLASSIFICATION: FOREIGN GOVERNMENTS [8888]
IRS NUMBER: 000000000
FISCAL YEAR END: 1231
FILING VALUES:
FORM TYPE: FWP
SEC ACT: 1934 Act
SEC FILE NUMBER: 333-163821
FILM NUMBER: 12518295
BUSINESS ADDRESS:
STREET 1: EMBASSY OF THE REPUBLIC OF SOUTH AFRICA
STREET 2: 3051 MASSACHUSETTS AVENUE, NW
CITY: WASHINGTON
STATE: DC
ZIP: 20008
BUSINESS PHONE: 021 464 6100

MAIL ADDRESS:
STREET 1: NATIONAL TREASURY, 240 VERMEULEN STREET
CITY: PRETORIA
STATE: T3
ZIP: 0001

Example B

FINAL TERM SHEET

Filed Pursuant to Rule 433
Registration No. 333-163821
January 9, 2012

Final Term Sheet

Final Terms and Conditions
Republic of South Africa
US$1,500,000,000 Fixed Rate Twelve Year Notes

Issuer:	Republic of South Africa
Securities:	Global Notes
Settlement Date:	January 17, 2012 (T+5)
Expected ratings:	A3 (Moody's) / BBB+ (S&P) / BBB+ (Fitch)
Size:	US$1,500,000,000
Format:	SEC Registered Global (No. 333-163821)
Ranking:	Unsecured
Maturity Date:	January 17, 2024
Interest Payment Dates:	January 17 & July 17, beginning July 17, 2012
Redemption:	Not redeemable by the Issuer prior to maturity

Coupon:	4.665% per annum (payable semi-annually,30 / 360)
Re-offer price:	100%
Re-offer yield:	4.665%
Benchmark bond:	UST 2.00% due November 2021
Benchmark cash price*:	100-10
Benchmark yield*:	1.965%
Re-offer spread over Benchmark:	+ 270 bps
Listing:	Luxembourg Stock Exchange
Minimum denominations:	US$100,000 and integral multiples of US$1,000 in excess thereof
CUSIP:	836205AQ7
ISIN:	US836205AQ75
Governing Law:	**New York**
Joint Lead Managers:	**Barclays Capital, Citigroup**
Co-Managers:	**Nedbank Capital, Rand Merchant Bank**
B&D:	**Citigroup**

** Market data as of pricing*

Note: A securities rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time.

The issuer has filed a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC for more complete information about the issuer and this offering. You may get these documents for free by visiting EDGAR on the SEC's website at www.sec.gov. A prospectus supplement of the Republic of South Africa (which includes the prospectus) accompanies the free-writing prospectus supplement and is available from the SEC's website at: http://www.sec.gov/Archives/edgar/data/932419/000119312512005862/d267756d424b3.htm.

Alternatively, the issuer, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request it by calling Barclays Capital Inc. at +1 (800) 438-3242; or Citigroup Global Markets Inc. at +1 (877) 858-5407.

NEDBANK LIMITED/OLD MUTUAL

Example: C

SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-49846; International Series Release No. 1277]
June 10, 2004

List of Foreign Issuers That Have Submitted Information Under the Exemption Relating to Certain Foreign Securities

Company Name	Country	File Number
Nedcor Ltd.	**South Africa**	**82-3893**

Example: D

[PDF] Incoming Letter: Old Mutual PLC - U.S. Securities and Exchange ...

exerpt from a Letter -
“Old Mutual is an international financial services group headquartered in the United Kingdom. Old Mutual's principal businesses comprise life assurance, asset management, banking and general insurance. Old Mutual's largest markets, by revenue and operating profit, are South Africa and the United States. Old Mutual also has start-up businesses in the United Kingdom and other parts of the
world. Old Mutual's banking business is conducted principally through Nedbank, a JSE-listed subsidiary in which Old Mutual has a 50.4 percent interest, and its general insurance business is conducted through Mutual & Federal, a JSE-listed subsidiary in which Old Mutual has a 77.0 percent interest.”

Example: E

INVESTMENT COMPANY ACT RELEASES
Old Mutual Global Shares Trust, et al.

An order has been issued on an application filed by Old Mutual Global Shares Trust, et al. The order permits (a) certain open-end management investment companies and their series to issue shares (Shares) that can be redeemed only in large aggregations (Creation Units); (b) secondary market transactions in Shares to occur at negotiated prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares. (Rel. IC-28898 - September 9)

Example: F

INVESTMENT COMPANY ACT OF 1940
Release No. 28898 / September 9, 2009
In the Matter of :
Old Mutual Global Shares Trust :
Old Mutual Global Index Trackers (Pty) Ltd. :
c/o Betserai Tendai Musikavanhu : 144 Katherine Street : Grayson Ridge Office Park : Block A First Floor : Sandton 2196 : South Africa :

Foreside Fund Services, LLC : Two Portland Square : First Floor : Portland, ME 04101 : (812-13614) :

ORDER UNDER SECTIONS 6(c), 12(d)(1)(J) AND 17(b) OF THE INVESTMENT COMPANY ACT OF 1940
Old Mutual Global Shares Trust, Old Mutual Global Index Trackers (Pty) Ltd., and Foreside Fund Services, LLC filed an application on December 16, 2008, and amendments to the application on May 7, 2009 and August 12, 2009, requesting an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

Example: G

UNITED STATES OF AMERICA Before the SECURITIES AND EXCHANGE COMMISSION
SECURITIES ACT OF 1933 Release No. 9270 / October 24, 2011
SECURITIES EXCHANGE ACT OF 1934 Release No. 65608 / October 24, 2011
INVESTMENT ADVISERS ACT OF 1940 Release No. 3304 / October 24, 2011
ADMINISTRATIVE PROCEEDING File No. 3-14599

In the Matter of BANCO ESPIRITO SANTO S.A. Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASEAND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 203(e) and

203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Banco Espirito Santo S.A. (“Respondent” or “BES”).

12. BES offered and sold a variety of securities to U.S. Customers and U.S. Clients. Prior to ceasing this conduct in 2009, Respondent sold securities and provided investment advice to approximately 3,800 U.S. Customers and U.S. Clients. BES sold several different types of securities to U.S. Customers and U.S. Clients, including:
    a) debt securities issued by third-party entities such as the Royal Bank of Scotland, HBOS plc, Lloyds Bank, Prudential, Limited Brands, Europe Immobiliere, HSH Nordbank, Old Mutual, Banco Panamericano, Banco do Brasil, and Banco Mercantilo do Brasil;

ABSA Bank

Example: H

August 23, 2013 Securities & Exchange Commission 450 Fifth Street, NW Washington, DC 20549 Attn.: Document Control
RE: American Depositary Shares evidenced by the American Depositary Receipts of ABSA Group Limited. Form F6 File Number: 333110418)
Ladies and Gentlemen: Pursuant to Rule 424(b)(3) under the Securities Act of 1933, as amended, on behalf of The Bank of New York, as Depositary for securities against which American Depositary Receipts (ADRs) are to be issued, we attach a copy of the new prospectus (Prospectus) reflecting the name change to Barclays Africa Group Limited.
As required by Rule 424(e), the upper right hand corner of the Prospectus cover page has a reference to Rule 424(b)(3) and to the file number of the registration statement to which the Prospectus relates. Pursuant to Section III B of the General Instructions to the Form F6 Registration Statement, the Prospectus consists of the ADR certificate for (company). The Prospectus has been revised to reflect the new name, and has been over stamped with: Effective August 23, 2013 the Companys name changed to Barclays Africa Group Limited.
Please contact me with any questions or comments at 1.212.815.2852.
Kim Schwarz BNY Mellon ADR Division Encl.
CC: Paul Dudek, Esq. (Office of International Corporate Finance)

Example: I

COMPANY DATA:

COMPANY CONFORMED NAME:	ABSA GROUP LTD /ADR/	
CENTRAL INDEX KEY:	0001064772	
STANDARD INDUSTRIAL CLASSIFICATION:		UNKNOWN SIC - 8880 [8880]
IRS NUMBER:		000000000
FILING VALUES:		
FORM TYPE:	424B3	
SEC ACT:	1933 Act	
SEC FILE NUMBER:	333-09018	
FILM NUMBER:	131049935	
BUSINESS ADDRESS:		
STREET 1:	BANKERS TRUST CO	
STREET 2:	130 LIBERTY ST	
CITY:	NEW YORK	
STATE:	NY	
ZIP:	10006	
BUSINESS PHONE:		2124542500

The Standard Bank of South Africa Limited

Example: J

Investment Company Act of 1940 – Section 7(d)

ASA (Bermuda) Limited

December 13, 2006

RESPONSE OF THE OFFICE OF

INVESTMENT COMPANY REGULATION Our Ref. No. 2006-2-ICR

DIVISION OF INVESTMENT MANAGEMENT ASA (Bermuda) Limited

Your letter of December 12, 2006 requests our assurance that we would not recommend that the Securities and Exchange Commission (the "Commission") take any enforcement action against ASA (Bermuda) Limited ("ASAB") under section 7(d) of the Investment Company Act of 1940 (the "Act") if, under the circumstances described below, ASAB continues to rely on an existing order issued to it and its predecessor, ASA Limited ("ASA"), in 2004 (the "Existing Order").[1] The Existing Order permitted ASA, which was incorporated in South Africa, to reorganize into ASAB, which was organized in Bermuda; allowed ASAB to register under the Act; and permitted ASA to amend its custodian agreement with JPMorgan Chase Bank, N.A. ("JPMorgan Chase") and ASAB to enter into a virtually identical agreement with JPMorgan Chase. JPMorgan Chase now proposes to replace The Standard Bank of South Africa Limited ("Standard Bank"), the entity specifically designated in the terms and conditions of the Existing Order as JPMorgan Chase's subcustodian with respect to ASAB's assets in South Africa, with First National Bank ("First National"), a division of FirstRand Bank Limited ("FirstRand") and to amend Schedule 1 of the custodian agreement between ASAB and JPMorgan Chase solely in order to reflect such substitution. In addition, FirstRand proposes to irrevocably designate CT Corporation System ("CT Corp") as its agent in the United States to accept service of process ("U.S. Service Agent"), instead of ASAB's custodian, JPMorgan Chase, who

was identified in the terms and conditions of the Existing Order as the entity that would serve as U.S. Service Agent for Standard Bank.

Substitution of Subcustodian

You state that the services provided by First National pursuant to the subcustodian

agreement between JPMorgan Chase and FirstRand (the "New Subcustodian Agreement") with respect to the assets of ASAB will be substantially the same as those currently provided by Standard Bank.[2] You represent that First National's assumption of these subcustodian duties will not result in any significant change

[1] ASA Limited, et al., Investment Company Act Release Nos. 26582 (Aug. 27, 2004) (notice) and 26602 (Sept. 20, 2004) (order).

[2] You state that First National is a leading custody provider in South Africa. Like Standard Bank, First National is a full participant ("CSD Participant") in the central securities depositary of South Africa ("CSD"). You represent that to become a full CSD Participant, an entity must meet all of the CSD's entry criteria, which include the maintenance of a minimum level of capitalization, maintenance of an account at the South African Reserve Bank, adequate systems, procedures, personnel, facilities and technical capacity to fulfill its obligations and operational requirements as a CSD Participant, and certain other requirements relating to protection of information, insurance and corporate governance. CSD Participants are regulated either by the Financial Services Board ("FSB"), an agency of the South African government that supervises the activities of South African financial services

in the nature or scope of services provided to ASAB. Further, upon assumption of its duties as JPMorgan Chase's subcustodian with respect to ASAB's assets in South Africa, First National will serve as ASAB's CSD Participant in place of Standard Bank. You state that ASAB will continue to comply with rule 17f-5 under the Act as if it were a registered management investment company organized or incorporated in the U.S. with respect to any of its assets held by eligible foreign custodians (including First National) or overseas branches of U.S. banks (including JPMorgan Chase) outside the U.S. You state that the New Subcustodian Agreement meets the requirements of rule 17f-5(c)(2) under the Act. You further state that ASAB's board of directors has complied with the requirements of rule 17f-5 under the

Act in considering the approval of First National as subcustodian and will continue to comply with all the duties imposed upon it as foreign custody manager (as that term is defined in rule 17f-5(a)(3) under the Act), including monitoring the corresponding custody arrangements.

You represent that ASAB and JPMorgan Chase will continue to comply with the terms and conditions of the Existing Order, except that First National will take the place of Standard Bank as custodian of ASAB's assets in South Africa. You further represent that First National and FirstRand will comply with the terms and conditions of the Existing Order applicable to Standard Bank as though First National were the subcustodian contemplated by the Existing Order, except that FirstRand will appoint CT Corp instead of JPMorgan Chase as its U.S. Service Agent with respect to First National's activities as ASAB's South African subcustodian. You state that ASAB and JPMorgan Chase will amend the custodian agreement solely by revising Schedule 1 to such agreement to reflect the substitution of First National in place of Standard Bank as JPMorgan Chase's subcustodian with respect to ASAB's assets in South Africa.

U.S. Service Agent for Subcustodian You also seek assurances with respect to FirstRand's irrevocable designation of CT Corp, instead of JPMorgan Chase, as FirstRand's U.S. Service Agent in connection with the activities of First National as ASAB's South African subcustodian. As specified under the terms and conditions of the Existing Order, you state that JPMorgan Chase has served as a U.S. Service Agent for Standard Bank. You represent that JPMorgan Chase is not willing, however, to serve as a U.S. Service Agent any longer.

You state that FirstRand and JPMorgan Chase have entered into an amendment to the New Subcustodian Agreement in which FirstRand irrevocably designated and appointed CT Corp as its U.S. Service Agent to accept service of process in any suit, action, or proceeding (collectively, "Proceeding") before the Commission or any appropriate court to enforce the provisions of the laws administered by the Commission in connection with the New Subcustodian Agreement, or to enforce any right or liability based on the New Subcustodian Agreement or which alleges a liability on the part of

FirstRand arising out of its services, acts or transactions under the New Subcustodian Agreement and relating to ASAB's assets. CT Corp, a leading registered agent in the U.S., has agreed to such designation and appointment. You also state that FirstRand has agreed to take all actions as may be necessary to

institutions, or by the South African Reserve Bank. You state that First National meets all of the CSD's criteria and is regulated by the FSB.

continue the designation and appointment of CT Corp in full force and effect for so long as First National continues to act as subcustodian for ASAB's assets[3] and, upon First National ceasing to act as subcustodian for ASAB's assets, until the statute of limitations for the initiation of any Proceeding has lapsed, but in that case only with respect to a Proceeding or a liability based on any action or inaction of First National prior to its having ceased holding such assets. You also state that the CT Corp office designated to accept service of process for FirstRand will be located in the same state as the office of JPMorgan Chase in its role as ASAB's custodian.[4]

Analysis and Conclusion

Under the circumstances discussed above, you assert that it would be consistent with the public interest and the protection of investors and consistent with the terms and conditions of the Existing Order to allow ASAB to continue to rely on the Existing Order after First National has assumed subcustodian responsibilities for ASAB's assets in South Africa and after FirstRand has designated CT Corp as its U.S. Service Agent in any Proceeding relating to the activities of First National as ASAB's South African subcustodian. You represent that it will remain both legally and practically feasible effectively to enforce the provisions of the Act against ASAB after First National has assumed these subcustodian responsibilities and after FirstRand has designated CT Corp as its U.S. Service Agent. You further represent that the proposed appointment of CT Corp, rather than JPMorgan Chase, as FirstRand's U.S. Service Agent under the terms and conditions of the Existing Order will not impair the likelihood that there is a court of

competent jurisdiction that would be an appropriate forum for a Proceeding. You state that personal jurisdiction over FirstRand will continue to exist in the same location as ASAB's custodian and U.S. assets. You also state that you do not believe that having a registered agent for service of process in Manhattan, rather than Brooklyn, should meaningfully affect a federal or state court's analysis when considering whether to dismiss a Proceeding against FirstRand on the grounds of forum non conveniens.

Based on the facts and representations made in your letter, we would not recommend enforcement action to the Commission against ASAB under section 7(d) of the Act if First National acts as JPMorgan Chase's subcustodian with respect to ASAB's assets in South Africa and if FirstRand designates CT Corp as its U.S. Service Agent in any Proceeding before the Commission or any appropriate court relating to the activities of First National as ASAB's South African subcustodian. This response expresses our views on enforcement action only and does not express any legal conclusions on the issues presented. Because our position is based on the facts and representations in your letter, you should note that any different facts or representations may require a different conclusion.

Shannon Conaty

[3] You state that ASAB, not FirstRand, will be responsible for the payment of CT Corp's fees for its services as FirstRand's U.S. Service Agent.

[4] You represent that the CT Corp office designated to accept service of process for FirstRand is located in Manhattan (New York County) while JPMorgan in its role as custodian for ASAB is located in Brooklyn (Kings County).

Senior Counsel

Office of Investment Company Regulation

December 13, 2006

INCOMING LETTER:

Investment Company Act of 1940 Section 7(d)

December 12, 2006

Nadya B. Roytblat, Esq.

Assistant Director
Office of Investment Company Regulation Division of Investment Management
Securities and Exchange Commission 100 F Street, NE
Washington, D.C. 20549

Re: ASA Limited and ASA (Bermuda) Limited ☐ Exemptive Order, dated September 20, 2004 (File No. 812-12970; Release No. IC-26602)

Dear Ms. Roytblat:
On behalf of ASA (Bermuda) Limited, a Bermuda exempted limited liability company
("ASAB"), we respectfully request assurance that the staff of the Division of Investment Management (the "Staff") will not recommend that the Securities and Exchange Commission (the "Commission") take enforcement action against ASAB under section 7(d) of the Investment Company Act of 1940, as amended (the "1940 Act"), if, under the circumstances described below, ASAB continues to rely on the exemptive order granted in Release No. IC-26602 (September 20, 2004) (the "Existing Order"). Capitalized terms not defined herein have the meanings set forth in the application for the Existing Order filed with the Commission on August 13, 2004.
ASAB has been informed by its custodian, JPMorgan Chase Bank, N.A. ("JPMorgan"),
that JPMorgan proposes to change ASAB's South African subcustodian designated in the Existing Order from The Standard Bank of South Africa Limited ("Standard Bank") to First National Bank ("First National"), a division of FirstRand Bank Limited ("FirstRand") and to amend Schedule 1 of the custodian agreement between ASAB and JPMorgan solely in order to reflect such substitution.[5] First National is a CSD Participant. Effective June 23, 2006, First National began to serve as the custody provider in South Africa for all of JPMorgan's clients, except ASAB.[6] In carrying out its duties as JPMorgan's subcustodian in South Africa, First National will operate pursuant to the subcustodian agreement, dated June 13, 2006, between

JPMorgan and FirstRand (the “New Subcustodian Agreement”) that meets the requirements of rule 17f-5(c)(2) under the 1940 Act and will perform substantially the same services currently provided by Standard Bank as ASAB’s South African subcustodian. JPMorgan has also informed ASAB that JPMorgan is not willing to serve as an agent in the United States to accept service of process (“U.S. Service Agent”) for FirstRand in any suit, action, or proceeding (collectively, “Proceeding”) before the Commission or any appropriate court to enforce the provisions of the laws administered by the Commission in connection with the New Subcustodian Agreement, or to enforce any right or liability (“Liability”) based on such agreement or which alleges a liability on the part of First National arising out of its services, acts or transactions under the New Subcustodian Agreement relating to ASAB’s assets. JPMorgan, as ASAB’s custodian, had been specifically designated as such U.S. Service Agent under the terms and conditions of the Existing Order and has served in this capacity for Standard Bank. To satisfy this condition of the Existing Order, ASAB requests that the Staff permit FirstRand to irrevocably designate CT Corporation System (“CT Corp”) as its U.S. Service Agent in any Proceeding before the Commission or any appropriate court relating to the activities of First National as ASAB’s South African subcustodian. CT Corp, a leading registered agent in the United States, has been in the business of providing registered agent services for over 100 years.

ASAB does not believe that the proposed change of subcustodian and such subcustodian’s U.S. Service Agent will have any effect on the special circumstances and arrangements underlying the Existing Order. ASAB believes that it will remain both legally and practically feasible effectively to enforce the provisions of the 1940 Act against ASAB. ASAB and JPMorgan will continue to comply with the terms and conditions set forth in the Existing Order, except that First National will take the place of Standard Bank as custodian of ASAB’s assets in South Africa. First National and FirstRand will comply with the terms and conditions of the Existing Order applicable to Standard Bank as though First National were the subcustodian contemplated by the Existing Order, except that FirstRand will appoint CT Corp instead of

JPMorgan as its U.S. Service Agent with respect to First National's activities as ASAB's South African subcustodian. As required by the Existing Order, ASAB's Board of Directors (the "Board") acting as foreign custody manager (as that term is defined in rule 17f-
5(a)(3) under the 1940 Act) ("Foreign Custody Manager") has complied with the requirements of rule 17f-5 under the 1940 Act in considering and approving the proposed custody arrangements with First National and the New Subcustodian Agreement. The Board will continue to comply with all of the duties imposed upon it

[5] In 2000, ASA Limited ("ASA"), the South African predecessor of ASAB, received an order under section 7(d) of the 1940 Act permitting ASA to maintain its portfolio securities in the central securities depositary ("CSD") in South Africa that commenced operations on November 1, 1999. See Investment Company Act Release Nos. 24321 (Feb. 29, 2000) (notice) and 24367 (Mar. 27, 2000) (order). Standard Bank is a participant in the CSD (a "CSD Participant").

[6] JPMorgan has agreed to continue to maintain ASAB's South African assets with Standard Bank for a limited time pending the Staff's review of this request for relief.

as Foreign Custody Manager, including monitoring these custody arrangements. In our view, under the circumstances described above, permitting First National to serve as JPMorgan's subcustodian for ASAB's assets in South Africa and CT Corp
to serve as U.S. Service Agent for FirstRand would be consistent with the public interest and the protection of investors and consistent with the terms and conditions of the Existing Order.

Background Information

On September 20, 2004, ASA and ASAB received the Existing Order to: (i) permit ASA to change its country of incorporation from the Republic of South Africa to Bermuda by reorganizing itself into ASAB, a newly-formed limited liability company in Bermuda, (ii) allow ASAB to register as an investment company under Section 8 of the 1940 Act and (iii) permit ASA to amend its custodian agreement with JPMorgan and ASAB to enter into a virtually

identical agreement with JPMorgan. The Existing Order was granted, as relevant here, upon the following conditions:

• JPMorgan will serve as ASAB's custodian and will continue to meet the qualifications of a custodian under section 17(f) of the 1940 Act, and Standard Bank will serve as JPMorgan's subcustodian in South Africa. As long as Standard Bank holds ASAB's assets, Standard Bank will designate JPMorgan as its agent for service of process in the United States;

• ASAB will comply with rule 17f-5 under the 1940 Act as if it were a registered management investment company organized or incorporated in the United States with respect to any of its assets held by eligible foreign custodians (including Standard Bank) or overseas branches of U.S. banks (including JPMorgan) outside the United States;

• The Board will serve as foreign custody manager and will not delegate such functions to its custodian or any other person;

• ASAB will seek an order of the Commission prior to any amendment of its custodian agreement with its custodian;

• ASAB will file with the Commission a copy of the subcustodian agreement that irrevocably designates ASAB's custodian as U.S. Service Agent in any Proceeding before the Commission or any appropriate court to enforce the provisions of the laws administered by the Commission in connection with the subcustodian agreement with Standard Bank ("Existing Subcustodian Agreement"), or to enforce any right or liability based on the Existing Subcustodian Agreement or which alleges a liability on the part of Standard Bank arising out of its services, acts, or transactions under the Existing Subcustodian Agreement relating to ASAB's assets;

• If an "eligible foreign custodian" or an overseas branch of the custodian is to be appointed as subcustodian, ASAB will comply with the requirements of rule 17f-5 under the 1940 Act prior to the purchase of securities on an Established Exchange; and

• ASAB will withdraw its assets from the care of a subcustodian as soon as practicable, and in any event within 180 days of the date when a majority of the Board makes the determination that a particular subcustodian may no longer be considered eligible under rule l7f-5 under the 1940 Act or may no

longer be considered an overseas branch of the custodian, or that continuance of the subcustodian arrangement would not be consistent with the best interests of ASAB and its shareholders.

Effective June 23, 2006, JPMorgan appointed First National as JPMorgan's custody provider in South Africa for all of JPMorgan's clients, except ASAB. First National is a division of FirstRand, an indirect wholly-owned subsidiary of FirstRand Limited, one of the largest financial service groups in South Africa. First National is a leading custody provider in South Africa. Like Standard Bank, First National is a full CSD Participant. To become a full CSD Participant, an entity must meet all of the CSD's entry criteria, which include: the maintenance of a minimum level of capitalization; the maintenance of an account at the South African Reserve Bank; adequate systems, procedures, personnel, facilities and technical capacity to fulfil its obligations and operational requirements as a CSD Participant; and certain other requirements relating to protection of information, insurance and corporate governance. CSD Participants are regulated either by the Financial Services Board ("FSB"), an agency of the South African government that supervises the activities of South African financial services institutions, or by the South African Reserve Bank. First National meets all of the CSD's criteria and is regulated by the FSB. JPMorgan decided to transfer its business from Standard Bank to First National after a determination that First National was best positioned to meet the immediate and long-term service and product needs of JPMorgan and its clients.[7]

On June 21, 2006, the Board acting as Foreign Custody Manager approved the proposed custody arrangements and determined that ASAB's assets held by First National will be subject to reasonable care, based upon the standards applicable to custodians in South Africa and taking into account the factors set forth in rule 17f-5(c)(1) under the 1940 Act.[8] The Board also determined that the New Subcustodian Agreement satisfies the requirements of rule 17f-5(c)(2) under the 1940 Act. [9] If the Staff grants the no-action assurance requested hereby, upon assumption of it's

[7] The proposed change of subcustodian is not the result of a Board determination that Standard Bank should no longer be considered eligible under rule 17f-5 under the 1940 Act. Nor has the Board determined that continuance of the existing subcustodian arrangement with Standard Bank would not be consistent with the best interests of ASAB and its shareholders.

[8] Rule 17f-5(c)(1) requires the Board to consider (i) First National's practices, procedures, and internal controls, including security and data protection practices and method of keeping custodial records, (ii) its financial strength,
(iii) its general reputation and (iv) ASAB's ability to enforce judgments against First National, such as by virtue of the existence of offices in the United States or consent to service of process in the United States.

[9] Rule 17f-5(c)(2) requires the New Subcustodian Agreement to provide that (i) ASAB will be adequately indemnified or its assets adequately insured (or any combination) to protect against the risk of loss; (ii) ASAB's assets will not be subject to any right, charge, security interest, lien, or claim of any kind in favor of First National or its creditors, except a claim of payment for their safe custody or administration, or, in the case of cash deposits, liens

duties as JPMorgan's subcustodian with respect to ASAB's assets in South Africa, First National will serve as ASAB's CSD Participant in place of Standard Bank.

Discussion

We believe that permitting First National to serve as subcustodian for ASAB's assets in South Africa and permitting CT Corp to serve as U.S. Service Agent for FirstRand in any Proceeding relating to the activities of First National as ASAB's South African subcustodian would be consistent with the public interest and the protection of investors and with the terms and conditions of the Existing Order because First National would essentially be "standing in the shoes" of Standard Bank and CT Corp would essentially be "standing in the shoes" of JPMorgan in its role as U.S. Service Agent. We also believe that it will remain both legally and practically feasible effectively to enforce the provisions of the 1940 Act against ASAB after First National
has assumed subcustodian responsibilities for ASAB's assets in South Africa and after FirstRand has designated CT Corp as its U.S. Service Agent.
The services provided by First National to JPMorgan with respect to assets of ASAB will be substantially the same as those currently provided by Standard Bank and will be consistent with the terms and conditions of the Existing

Order. First National's assumption of subcustodian duties for ASAB's assets in South Africa will not result in any significant change in the nature or scope of the services provided to ASAB. The New Subcustodian Agreement contains provisions necessary to satisfy the requirements of rule 17f-5(c)(2) under the 1940 Act. ASAB and JPMorgan will amend the custodian agreement solely by revising Schedule 1 to such agreement to reflect the substitution of First National in place of Standard Bank as JPMorgan's subcustodian with respect to ASAB's assets in South Africa. After receipt of the requested relief, ASAB will file with the Commission a copy of the subcustodian agreement that, with respect to assets of ASAB held pursuant to the New Subcustodian Agreement, irrevocably designates CT Corp as a U.S. Service Agent for FirstRand in any Proceeding before the Commission or any appropriate court to enforce the provisions of the laws administered by the Commission in connection with the New Subcustodian Agreement. Thus, except with respect to its designation of CT Corp as U.S. Service Agent, First National and FirstRand will comply with the terms and conditions in the Existing Order applicable to Standard Bank as though First National were the subcustodian contemplated by the Existing Order.

The appointment of CT Corp as U.S. Service Agent for FirstRand will not lessen the ability of the Commission to conduct any Proceeding against FirstRand arising out of services, acts or transactions effected under the New Subcustodian Agreement which relate to ASAB's assets. FirstRand and JPMorgan entered into an amendment to the New Subcustodian Agreement in which, with respect to ASAB's assets held under the New Subcustodian Agreement, FirstRand irrevocably designated and

or rights in favor of creditors of the custodian arising under bankruptcy, insolvency, or similar laws; (iii) beneficial ownership of ASAB's assets will be freely transferable without the payment of money or value other than for safe custody or administration; (iv) adequate records will be maintained identifying the assets as belonging to ASAB or as being held by a third party for the benefit of ASAB; (v) ASAB's independent public accountants will be given access to those records or confirmation of the content of those records; and (vi) ASAB will receive periodic reports with respect to the safekeeping of its assets, including, but not limited to, notification of any transfer to or from

ASAB's account or a third party account containing assets held for the benefit of ASAB.

appointed CT Corp as its U.S. Service Agent to accept service of process in any Proceeding before the Commission or any appropriate court to enforce the provisions of the laws administered by the Commission in connection with the New
Subcustodian Agreement, or to enforce any right or liability based on the New Subcustodian Agreement or which alleges a liability on the part of FirstRand arising out of its services, acts or transactions under the New Subcustodian Agreement. CT Corp has agreed to such designation and appointment. Like the duration of the designation and appointment by Standard Bank of JPMorgan, the duration of the designation and appointment by FirstRand of CT Corp complies with the terms and conditions of the Existing Order. Such designation and appointment automatically terminates upon First National ceasing to be ASAB's South African subcustodian, except as to a Proceeding or a Liability based on an action or inaction of First National prior to First National having ceased serving as subcustodian. FirstRand has agreed to take all actions as may be necessary to continue the designation and appointment of CT Corp in full force and effect for so long as First National continues to act as subcustodian for ASAB's assets and, upon First National ceasing to act as subcustodian for ASAB's assets, until the statute of limitations for the initiation of any Proceeding has lapsed, but in that case only with respect to a Proceeding or a Liability based on any action or inaction of First National prior to its having ceased holding such assets. We believe that the proposed appointment of CT Corp, rather than JPMorgan, as FirstRand's U.S. Service Agent under the terms and conditions of the Existing Order will not impair the likelihood that there is a court of competent jurisdiction that would be an appropriate forum for a Proceeding. Personal jurisdiction over FirstRand will continue to exist in the same location as ASAB's custodian and U.S. assets. While the CT Corp office designated to accept service of process for FirstRand will not be located in the same city and county as the office of JPMorgan in its role as custodian for ASAB,[11] service on a registered agent

anywhere in the State of New York is sufficient to confer personal jurisdiction over
FirstRand in any federal or state court in the State of New York with respect to any Proceeding arising out of FirstRand's services or acts with respect to ASAB's assets.[12] The question of whether a federal or state court possesses subject matter jurisdiction would not depend on the New York city or county in which FirstRand's registered agent is located. We do not believe that having a registered agent for service of process in Manhattan, rather than Brooklyn, should meaningfully affect a federal or state court's analysis when considering whether to dismiss a Proceeding against FirstRand on the grounds of forum non conveniens.
ASAB will continue to comply with the terms and conditions of the Existing Order,
including the requirement that it comply with rule 17f-5 under the 1940 Act as if it were a registered management investment company organized or incorporated in the United States with respect to any of its assets held by eligible foreign custodians (including First National) or overseas branches of U.S. banks (including JPMorgan) outside the United States. The Board will serve as Foreign Custody Manager and will not delegate such functions to its custodian or any other person. The Board has

[10] ASAB, not FirstRand, will be responsible for the payment of CT Corp's fees for its services as FirstRand's U.S. Service Agent.
[11] The CT Corp office designated to accept service of process for FirstRand is located in Manhattan (New York County) while JPMorgan in its role as custodian for ASAB is located in Brooklyn (Kings County).
[12] *See* Fed. R. Civ. P. 4(k) and N.Y. C.P.L.R. 301, 311.

established a system to monitor its foreign custody arrangements and, at least annually, will review the continued appropriateness of its arrangements with First National and monitor performance of the New Subcustodian Agreement. Thus, ASAB's foreign custody arrangements will meet the same standards as those that are applicable to continued custody by Standard Bank and will be subject to the same Board oversight.

Conclusion

As discussed above, the special circumstances and arrangements underlying the Existing Order will still exist, and the terms and conditions upon which the Existing Order was granted will continue to be satisfied after the proposed transfer of South African subcustodian duties to First National and the proposed substitution of CT Corp as U.S. Service Agent. Accordingly, we respectfully submit that granting the requested no-action relief would be consistent with the provisions, policies, and purposes of the 1940 Act and with the Staff's prior no-action positions.[13] We therefore respectfully request assurance that the Staff will not recommend enforcement action against ASAB if it continues to rely on the Existing Order while First National serves as subcustodian of its assets in South Africa and CT Corp serves as U.S. Service Agent for FirstRand. ASAB acknowledges that any subsequent change to ASAB's subcustodian in South Africa or to the designation of CT Corp as U.S. Service Agent for ASAB's South African subcustodian will require ASAB to seek further relief from the Commission or its Staff.

In compliance with the procedures set forth in Investment Company Act Release Nos. 6220 (Oct. 29, 1970) and 6330 (Jan. 27, 1971) two copies of this letter are submitted herewith, and the specific subsection of the particular statute to which this letter pertains is indicated in the upper-right-hand corner of the first page of this letter and each copy. Please do not hesitate to contact me at (202) 778-9298 or Yoon Choo at (202) 778-9340 if you have any questions or need any additional information regarding this request.

Sincerely,

R. Darrell Mounts

cc: Janet M. Grossnickle, Esq., Branch Chief

Shannon E. Conaty, Esq., Senior Counsel

Robert J.A. Irwin

Paul K. Wustrack, Jr., Esq.

ANNEXURE D

As the REPUBLIC OF SOUTH AFRICA is governed by New York law, it is obligated to adhere to the UNIFORM COMMERCIAL CODE with the securities intermediary being the secretary of the Treasury.

UNIFORM COMMERCIAL CODE
ARTICLE 1 – GENERAL PROVISIONS
PART 1
GENERAL PROVISIONS
SECTION 1-101. SHORT TITLES.
(a) This Act may be cited as the Uniform Commercial Code.
(b) This article may be cited as Uniform Commercial Code – General Provisions.

SECTION 1-102. SCOPE OF ARTICLE.
This article applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code.

SECTION 1-103. CONSTRUCTION OF Uniform Commercial Code TO PROMOTE ITS PURPOSES AND POLICIES; APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW.
(a) The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are:
(1) to simplify, clarify, and modernize the law governing commercial transactions;
(2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
(3) to make uniform the law among the various jurisdictions.
(b) Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.

SECTION 1-104. CONSTRUCTION AGAINST IMPLIED REPEAL.
The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

SECTION 1-105. SEVERABILITY.
If any provision or clause of The Uniform Commercial Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of The Uniform Commercial Code which can be given effect without the invalid provision or application, and to this end the provisions of The Uniform Commercial Code are severable.

SECTION 1-108. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., except that nothing in this article modifies, limits, or supersedes Section 7001(c) of that Act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that Act.8.

UNIFORM COMMERCIAL CODE:
Fact: Furthermore, UCC states:

§ 8-504. DUTY OF SECURITIES INTERMEDIARY TO MAINTAIN FINANCIAL ASSET.
(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favour of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.
(b) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (a).
(c) A securities intermediary satisfies the duty in subsection (a) if:
(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.
(d) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

Your Rights as entitlement holder:
§ 8-505. DUTY OF SECURITIES INTERMEDIARY WITH RESPECT TO PAYMENTS AND DISTRIBUTIONS.
(a) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:
(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.
(b) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

§ 8-506. DUTY OF SECURITIES INTERMEDIARY TO EXERCISE RIGHTS AS DIRECTED BY ENTITLEMENT HOLDER.
A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
(2) in the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

§ 8-507. DUTY OF SECURITIES INTERMEDIARY TO COMPLY WITH ENTITLEMENT ORDER.
(a) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:
(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.
(b) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall re-establish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not re-establish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

§ 8-508. DUTY OF SECURITIES INTERMEDIARY TO CHANGE ENTITLEMENT HOLDER'S POSITION TO OTHER FORM OF SECURITY HOLDING.
A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:
(1) the securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or
(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

§ 8-509. SPECIFICATION OF DUTIES OF SECURITIES INTERMEDIARY BY OTHER STATUTE OR REGULATION; MANNER OF PERFORMANCE OF DUTIES OF SECURITIES INTERMEDIARY AND EXERCISE OF RIGHTS OF ENTITLEMENT HOLDER.
(a) If the substance of a duty imposed upon a securities intermediary by Sections 8-504 through 8-508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(b) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.
(c) The obligation of a securities intermediary to perform the duties imposed by Sections 8-504 through 8-508 is subject to:
(1) rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and
(2) rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.
(d) Sections 8-504 through 8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

§ 8-510. RIGHTS OF PURCHASER OF SECURITY ENTITLEMENT FROM ENTITLEMENT HOLDER.
(a) In a case not covered by the priority rules in Article 9 or the rules stated in subsection (c), an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.
(b) If an adverse claim could not have been asserted against an entitlement holder under Section 8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.
(c) In a case not covered by the priority rules in Article 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection (d), purchasers who have control rank according to priority in time of:
(1) the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under Section 8-106(d)(1);
(2) the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under Section 8-106(d)(2); or
(3) if the purchaser obtained control through another person under Section 8-106(d)(3), the time on which priority would be based under this subsection if the other person were the secured party.
(d) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.
[Comment]

§ 8-511. PRIORITY AMONG SECURITY INTERESTS AND ENTITLEMENT HOLDERS.

(a) Except as otherwise provided in subsections (b) and (c), if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(b) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(c) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

ANNEXURE E

THE FUNDAMENTAL RIGHT TO JUST ADMINISTRATIVE ACTION:

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION IN THE DEMOCRATIC SOUTH AFRICA

A thesis submitted in fulfilment of the requirements of the degree of

DOCTOR OF PHILOSOPHY of **RHODES UNIVERSITY** by **CLIVE PLASKET**

Now Dr Plasket and Justice of the High Court

June 2002

The postscript to the interim Constitution made this clear when it said that this Constitution provided a 'historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex'. The preamble of the final Constitution speaks of it healing the 'divisions of the past', establishing a society 'based on democratic values, social justice and fundamental rights' and laying 'the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law'.

The Constitution – the founding document of the democratic South Africa – is the ultimate source of all state power, whether legislative, executive or judicial. To be valid, every exercise of state power must have a legal pedigree

that can be traced back to the Constitution.52 The Constitution is the specific source of authority for a variety of institutions of an administrative nature. Chapter 9, for instance, creates the office of the Public Protector,53 the Human Rights Commission,54 the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities,55 the Commission for Gender Equality,56 the Auditor General,57 the Electoral Commission, 58 and an independent body to regulate broadcasting.59 It describes these institutions as bodies designed to ‘strengthen constitutional democracy in the Republic’.

11.1 The Right to Reasons

11.1.1 Reasons and Their Importance

But when an organ of government invokes legal processes to impede the rightful claims of its citizens, it not only defies the Constitution, which commands all organs of state to be loyal to the Constitution, and requires that public administration be conducted on the basis that “people’s needs must be responded to”. It also misuses the mechanisms of the law, which it is the responsibility of the courts to safeguard’.

In respect of administrative action, s33(1) of the Constitution gives specific expression to these concepts by providing that everyone has a fundamental right to lawful, reasonable and procedurally fair administrative action. Within this constitutional environment that places so much emphasis on rationality and justification for the exercise of power, the right to demand reasons for adverse administrative action, contained in s33(2), follows like day follows

night, is an indispensable adjunct to the fundamental rights entrenched in s33(1) and is an important mechanism to ensure that public powers of an administrative nature are exercised in accordance with the values of accountability, responsiveness and openness.

The giving of reasons is not merely a mechanical procedural step. It is certainly of prime important for those adversely affected by administrative action and probably too for the public at large who have an obvious interest in public powers being exercised in the public.

It is also important for the administration itself, particularly a public administration such as that in South Africa that is placed under a constitutional duty to act ethically, efficiently, impartially, fairly, equitably, without bias and accountably

Secondly, furnishing reasons satisfies an important desire on the part of the affected individual to know why a decision was reached. This is not only fair: it is also conducive to public confidence in the administrative decision-making process. Thirdly – and probably a major reason for the reluctance to give reasons – rational criticism of a decision may only be made when the reasons for it are known. This subjects the administration to public scrutiny and it also provides an important basis for appeal or review. Finally, reasons may serve a genuine educative purpose, for example where an applicant has been refused on grounds which he is able to correct for the purpose of future applications.'

11.2. The Right to Information

11.2.1. Introduction

The right of access to information, first entrenched as a fundamental right in s23 of the interim Constitution, then extended by s32 of the final Constitution and now regulated by the Promotion of Access to Information Act 2 of 2000, is important for the development of a system of administrative law founded upon values of accountability, responsiveness and openness. It self-evidently promotes these values if the inner workings of the administration can be laid open to scrutiny by those affected by administrative decisions or, indeed, by the public in general.

The importance of freedom of information provisions is stressed by Baxter who wrote, in 1984:

'Secrecy is an undoubted cause of maladministration, yet it still permeates many facets of the administrative process. The perennial avalanche of official reports and statistics tends to conceal the fact that much information of real importance is withheld from the public. This is particularly true in South Africa.' He also observed that access to information 'is a necessary prerequisite for public accountability and an essential feature of modern democratic theory'.

11.2.4. The Final Constitution

Item IX of Schedule 4 of the interim Constitution bound the Constitutional Assembly, when drafting the final Constitution to make provision for 'freedom of information so that there can be open and accountable administration at all levels of Government'. Section 32 of the final Constitution is the product of this obligation. It provides:

‘(1) Everyone has the right of access to –

(a) any information held by the state; and

(b) any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.’

This section had to be read with item 23(1) of Schedule 6 which provided that the legislation envisaged by s32, s33 and s9(4) of the Constitution ‘must be enacted within three years of the date on which the new Constitution took effect’ and item 23(2)(a) which provided that until that occurs, s32(1) of the Constitution was to regarded to read that ‘[e]very person has the right of access to all information held by the state or any of its organs in any sphere of government in so far as that information is required for the exercise or protection of any of their rights’.126

The effect of these provisions was, therefore, to place the s32 of the Constitution on ice, as it were, until freedom of information legislation to give effect to the right had been enacted. It also had a second effect which is apparent from some of the cases decided in this period in which the interim Constitution’s right was applied within the context of the final Constitution’s values. What this meant was that the right was interpreted against the backdrop of s1 of the Constitution and in order to give effect to the value of accountability, responsiveness and openness in the furtherance of democratic governance.127

11.2.5. The Promotion of Access to Information Act 2 of 2000

(a) Purpose and Scheme

As was the case with the Promotion of Administrative Justice Act, the Promotion of Access to Information Act was rammed through Parliament in order to meet the three year deadline set by the Constitution. In addition, it was also not brought into operation immediately because the necessary administrative preconditions for its functioning were not in place. Most of the Act has now been brought into operation. In its preamble the Act acknowledges the need for open government legislation, recognising that 'the system of government in South Africa before 27 April 1994, amongst others, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'. With this in mind, the preamble states further that the primary purposes of the Act are to 'foster a culture of transparency and accountability in public and private bodies' and actively to promote 'a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights'.132

In respect of the application of the Act in general, the following bear mention: the Act applies to access to what it terms records of both public and private bodies irrespective of when a record that has been requested came into existence;133 the Act trumps any other legislation that 'prohibits or restricts the disclosure of a record of a public body or private body' and which is 'materially inconsistent with an object, or a specific provision, of this Act';134 the Act may not be construed in such a way as to prevent access to a record held by either a public or private body in terms of the National Environmental

Management Act 107 of 1998; 135 the Act may not be used as a means of obtaining discovery in criminal or civil proceedings once those proceedings have commenced and as long as ‘the production of or access to that record’ for purposes of the proceedings ‘is provided for in another law’.136 Importantly, s10 places an obligation on the Human Rights Commission to compile a guide on how to use the Act. It must publish the guide in all of the official languages, must do so within 18 months of s10 coming into force and must update the guide at least every two years.

(b) Obtaining Information

The Act draws a distinction between requests for information from public and private bodies. The distinction flows from the nature of each right as defined in s32(1) of the Constitution. In the first instance, s11 provides that a person ’must be given access to a record of a public body’ if he or she complies with the procedures provided by the Act and access is not denied in terms of one or other of the grounds upon which such a request may lawfully be refused. Section 50(1), on the other hand, provides that a person ‘must be given access to any record of a private body’ if he or she meets three requirements, namely, that the record is required for the exercise or protection of a right, that the requester complies with the procedures of the Act for the making of a request for information and that access to the information is not subject to refusal in terms of one or other of the grounds for refusal contemplated by the Act. If the requester is a public body and requests information from a private body in the exercise or protection of rights other than its own, then, in addition to meeting the general requirements for access, it must also be acting in the public interest.137 Certain types of information – all of a public nature – are

specifically excluded from the ambit of the Act. They are records of the cabinet or any cabinet committees, records relating to 'the judicial functions' of courts and Special Tribunals or of judicial officers in these tribunals, or records of individual Members of Parliament or of Provincial legislatures.138 The Act seeks, in broad terms, to give effect to the right of access to information in three ways: first, it requires that within six months of the commencement of s14, in the case of a public body, and s51, in the case of a private body, or of the coming into existence of the public or private body, a manual must be compiled by the body's information officer or head (in at least three official languages in the case of a public body) containing such information as a description of the structure and functioning of a public body, its contact details and 'sufficient detail to facilitate a request for access to a record of the body, a description of the subjects on which the body holds records and the categories of records held on each subject';139 secondly, s15 and s52 place obligations on the information officer of every public body and the head of every private body to provide information, annually, to the Minister that will be available automatically and will not require a request; and thirdly, the Act creates mechanisms for individuals to request other information from public and private bodies and avenues of redress when requests are refused.140

The grounds for refusals of requests for information held by public bodies fall into two broad categories: certain requests must be refused, while others may be refused.141 For instance, an information officer must refuse a request (subject to certain exceptions) if it 'would involve the unreasonable disclosure of personal information about a third party, including a deceased

individual';142 if disclosure would divulge a trade secret of a third party, other information that may prejudice the commercial or financial interests of a third party or information supplied in confidence by a third party the disclosure of which may place him or her at a disadvantage in contractual or other negotiations or would prejudice his or her commercial interests;143 if the information requested is protected from disclosure by legal professional privilege;144 or if disclosure 'could reasonably be expected to cause prejudice' to either the defence, the security or the international relations of the country.145

An information officer has a discretion to refuse access to information if, for instance, disclosure 'would be likely to materially jeopardise the economic interests or financial welfare of the Republic or the ability of the government to manage the economy of the Republic effectively in the best interests of the Republic';146 or if the request for information is either 'manifestly frivolous or vexatious' or if 'the work involved in processing the request would substantially and unreasonably divert the resources of the public body'.147 In most instances in which the information officer may refuse access to information, he or she must, despite the existence of grounds of refusal nonetheless allow disclosure if disclosure would reveal evidence of unlawful conduct or an 'imminent and serious public safety or environmental risk' and, in addition, 'the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question'.148

12.2.4. Onus

The final procedural issue to be dealt with is the onus. The state of the law prior to 1994 was largely uncontroversial: with the exception of cases in which the liberty of the individual was at issue, the onus to establish a reviewable irregularity rested on the applicant. Two complementary ideas appear to have animated this approach to the onus: first, it is generally accepted by the law that the party who alleges a state of affairs must prove his or her allegations; secondly, in the sphere of administrative law, it is presumed that administrators act properly, rather than improperly, and that they comply with all of the formal procedural requirements of their tasks.23 Should this still be the law when the right to just administrative action is a fundamental right just like the right to freedom of the person?

In During v Boesak24 the respondents on appeal argued that the onus to establish the lawfulness of a decision taken by the appellant, the provincial commissioner of police, to prohibit under the Emergency Regulations, a concert to celebrate the birthday of Nelson Mandela, rested on the appellant. The case is of some importance because it corrected the law in respect of the onus in arrest cases. In Minister of Law and Order v Dempsey25 Hefer JA had held that only part of the onus rested on the arrestor in arrest cases. If he or she established that he or she had formed the opinion that it was necessary to arrest a person in terms of the Emergency Regulations, the onus shifted to the arrestee to prove that the opinion was not properly formed.26 This finding was held by a unanimous Appellate Division in During to be clearly wrong: the onus rested on the arrestor to prove the lawfulness of his or her actions.27 More importantly for present purposes, EM Grosskopf JA (with

whom Milne JA concurred) held that the same rule ought to apply in respect of all (common law) fundamental rights.

His reasoning was that two policy considerations were central to the determination of where the onus lay in arrest cases. First, it was self-evidently unfair for a court to work from the premise that, if it could not decide whose version to accept, an arrested person should remain in custody and the arrestor's version should prevail. It would be much fairer in these circumstances to give the benefit of the doubt to the person whose freedom had been taken away. Secondly, from a pragmatic point of view, as the arrestor knew why he or she arrested the arrestee, he or she should bear the onus of persuading a court that he or she acted regularly.28 Having held that Dempsey's case had been wrongly decided, Grosskopf JA then held that the same principles should apply in respect of all instances of infringements of fundamental rights.29 He also held, however, that such cases had to be distinguished from what he termed 'die gewone soort hersiening' in which, presumably, fundamental rights were not in issue. In these cases, the assumption of the law – in order to promote orderly administration – is that all administrative action is, on the face of it, lawful until the contrary is proved.30 It is noteworthy that the majority of Nestadt JA, Joubert JA and Botha JA, while expressing doubts as to the correctness of the extension of the onus to all fundamental rights, did not decide on this issue but assumed for the purposes of their decision that the onus was on the appellant to justify his prohibition of the concert.31 Two important changes necessitate a re-assessment of the onus in the judicial review of administrative action. In the first place, there are no longer any 'gewone soort hersiening sake'. All cases

in which it is alleged that administrative action is either unlawful, unreasonable or procedurally unfair are now, in themselves, cases involving the potential infringement of a fundamental right. Secondly, the Constitution is now explicitly based on values of accountability, responsiveness and openness. That means that, whatever the correct position may have been before April 1994, it is now expected of administrators that they justify their decisions and their actions. These considerations aside, there is no reason why, when a court is unable to decide on which version to accept, it should automatically assume that the administrator acted lawfully, reasonably and procedurally fairly and that the individual should suffer the consequences of this assumption. While the consequences of the deprivation of a person's freedom are both obvious and serious, the same is true of a great many administrative actions. This is reason enough to treat them in the same way as instances of deprivations of freedom or, indeed, in the same way as any other case in which a fundamental right is infringed or threatened. In all such cases too, the administrator knows the basis for his or her actions better than the person adversely affected by them. From a practical point of view, there is thus no reason why the onus should not rest on administrators to justify every decision which is challenged in court. The idea that it is necessary to assume, for the sake of orderly administration, that administrative actions are regular until the contrary is proved is not a legal reason to place an onus on an aggrieved party. It is nothing more than a practical rule in organised societies, of much the same order as the assumption that most people obey the law. It should not be given more importance than that. It is to be hoped that the

courts will grasp the nettle and grapple with the impact that the Constitution has had on the onus in cases in which administrative action is reviewed.

12.3. Remedies

12.3.1. Rights and Remedies

The law of remedies in South African law is largely Roman-Dutch in origin. It is characterised by two qualities, namely, a pragmatic and un-technical approach and an acceptance of the inter-relationship of rights and remedies: where a right has been in-fringed, a remedy will be provided. On the first aspect, Baxter says that while they may lack the variety of English law, 'South African remedies are generally free of the complex technicalities which once surrounded those of English law and of many of the countries in the British Commonwealth. Even so, the South African remedies are not only more flexible, but probably just as comprehensive as their English counterparts'.32 On the second aspect, in Minister of the Interior v Harris33 – The High Court of Parliament case – held that the idea of a right without a remedy was an absurdity:

'To call the rights entrenched in the Constitution constitutional guarantees and at the same time to deny to the holders of those rights any remedy in law would be to reduce the safeguards enshrined in sec. 152 to nothing. There can to my mind be no doubt that the authors of the Constitution intended that those rights should be enforceable by the Courts of Law. They could never have intended to confer a right without a remedy. The remedy is, indeed, part and parcel of the right. Ubi jus, ibi remedium.'

In the result, Baxter's observation on the state of the law in 1984 is correct when he stated that the remedies recognised by the courts, when used singly or in combination, as the circumstances of cases dictate, 'are capable of providing adequate relief in nearly all cases of unlawful administrative action; in principle there is little the judges cannot do if they are so minded'.34 Now the hands of the judges have been strengthened in two ways: first, the Constitution has enhanced their jurisdiction to hold administrative authorities (and all others bound by the Bill of Rights and the Constitution) accountable to explicit constitutional standards and secondly, their jurisdiction to grant relief for constitutional infringements is explicitly granted by s38 and s172(1) of the Constitution and potentially open-ended: courts must, as Ackermann J stated in Fose v Minister of Safety and Security,35 ensure that the remedies they grant are effective and approach their task from the perspective that in a country such as South Africa 'where so few have the means to enforce their rights through the courts, it is essential that on those occasions when the legal process does establish that an infringement of an entrenched right has occurred, it be effectively vindicated'.36

12.3.2. The Constitution

The founding value of constitutional supremacy is given concrete form in s2 of the Constitution which states, in as many words that the Constitution is, the supreme law of the land and that *'law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled'*. This section, in turn, must be read with s7(2), which places a duty on the state to 'respect, protect, promote and fulfil' the rights entrenched in the Bill of Rights, with s34, which

creates a fundamental right of access to court, and with s38, which is the first section of the Constitution to speak in express terms of remedies. This section provides that anyone who has standing in terms of s38(a) to (e) *'has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights'.*

Section 172(1), deals with the powers of courts in constitutional matters. It provides that, in the first instance, when determining a constitutional matter within its jurisdiction, a court 'Must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency'.37 In the second place, such a court is then empowered to 'make any order that is just and equitable', including orders that limit the retrospective effect of declarations of invalidity or suspend orders of invalidity for set periods or under prescribed conditions.38 Section 173 gives constitutional recognition to the inherent jurisdiction of the superior courts. It provides that the Constitutional Court, Supreme Court of Appeal and High Courts *'have the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice'. Finally, sight should not be lost of the fact that the courts to which this array of formidable powers are given are, in terms of s165(2), 'independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice'.*

In Fose v Minister of Safety and Security39 Ackermann J held that appropriate relief *'will in essence be relief that is required to protect and enforce the Constitution. Depending on the circumstances of each particular*

case the relief may be a declaration of rights, an interdict, a mandamus or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced. If it is necessary to do so, the courts may even have to fashion new remedies to secure the protection and enforcement of these all-important rights'.40 In a separate concurring judgment, Kriegler J held that the foundations of the concept of appropriate relief were that violations of fundamental rights had to be remedied,41 that *'the harm caused by violating the Constitution is a harm to the society as a whole'* because the violator harms not only the victim but also *'impedes the fuller realisation of our constitutional promise'*42 and, because of this wider impact, the '*object in remedying these kinds of harms should, at least, be to vindicate the Constitution, and to deter its further infringement'*.43 He concluded as follows:44 *'Public administration, which is part of the executive arm of government, is subject to a variety of constitutional controls. The Constitution is committed to establishing and maintaining an efficient, equitable and ethical public administration which respects fundamental rights and is accountable to the broader public. The importance of ensuring that the administration observes fundamental rights and acts both ethically and accountably should not be understated. In the past, the lives of the majority of South Africans were almost entirely governed by labyrinthine administrative regulations which, amongst other things, prohibited freedom of movement, controlled access to housing, education and jobs and which were implemented by a bureaucracy hostile to fundamental rights or accountability. The new Constitution envisages the role and obligations of government quite differently.'*

In Hoffmann v South African Airways45 Ngcobo J dealt with the same issue in much the same way:

'The determination of appropriate relief, therefore, calls for the balancing of the various interests that might be affected by the remedy. The balancing process must at least be guided by the objective, first, to address the wrong occasioned by the infringement of the constitutional right; second, to deter future violations; third, to make an order that can be complied with; and fourth, of fairness to all those who might be affected by the relief. Invariably, the nature of the right infringed and the nature of the infringement will provide guidance as to the appropriate relief in the particular case. Therefore, in determining appropriate relief, "we must carefully analyse the nature of [the] constitutional infringement, and strike effectively at its source".'

From the above it will be apparent that the courts have been given all of the power that they can possibly need to uphold and protect the Constitution and its fundamental rights and that in order to fashion remedies for infringements of any of the rights contained in the Bill of Rights – such as the right to just administrative action – they must be guided by what justice and equity require and by what is appropriate in this context. Indeed, the interrelationship of justice, equity and appropriateness was specifically alluded to by Ngcobo J in Hoffmann when he stated that the meaning of the term appropriate relief was to be *'construed purposively, and in the light of section 172(1)(b), which empowers the Court, in constitutional matters, to make "any order that is just and equitable". Thus construed, appropriate relief must be fair and just in the circumstances of the particular case. Indeed, it can hardly be said that relief that is unfair or unjust is appropriate'*.46

12.3.3. The Promotion of Administrative Justice Act

Section 8 of the Promotion of Administrative Justice Act, which deals with remedies for infringements of the right to just administrative action, must be interpreted and applied in the light of the constitutional provisions and their interpretation outlined above. In other words, s8 of the Act must fit snugly into s38 and s172 in its interpretation and application.

The section provides:

‘(1) The court or tribunal, in proceedings for judicial review in terms of section 6(1), may grant any order that is just and equitable, including orders-

(a) directing the administrator-

(i) to give reasons; or

(ii) to act in the manner the court or tribunal requires;

(b) prohibiting the administrator from acting in a particular manner;

(c) setting aside the administrative action and-

(i) remitting the matter for reconsideration by the administrator, with or without directions; or

(ii) in exceptional cases-

(aa) substituting or varying the administrative action or correcting a defect resulting from the administrative action; or

(bb) directing the administrator or any other party to the proceedings to pay compensation;

(d) declaring the rights of the parties in respect of any matter to which the administrative action relates;

(e) granting a temporary interdict or other temporary relief; or

(f) as to costs.

(2) The court or tribunal, in proceedings for judicial review in terms of section 6 (3), may grant any order that is just and equitable, including orders-

(a) directing the taking of the decision;

(b) declaring the rights of the parties in relation to the taking of the decision;

(c) directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court or tribunal considers necessary to do justice between the parties; or

(d) as to costs.'

The section seeks to do at least three things. In the first place, it maintains a direct link with s172 of the Constitution by referring to the relief that courts may grant as relief that is, above all else, just and equitable. Secondly, it lists various forms of relief, some usual and others less usual in judicial review cases, as examples of the type of relief that may, in appropriate circumstances be just and equitable. In this sense, it maintains the open-ended nature of s38 and s172(1)(b) of the Constitution: the remedy must be fashioned to effectively deal with the infringement of the right. Thirdly, it expressly indicates that the rather unusual remedy of damages – compensation, in the words of s8(1)(c)(ii)(bb) – is to
be considered in 'exceptional cases'. For the rest, however, s8(1) and s8(2) contain a list of what may be termed the usual remedies for infringements of the right to just administrative action: the mandamus, the prohibitory interdict, the setting aside and remittal of decisions, and the substitution of the

administrator's decision in exceptional cases, the declarator, the granting of temporary relief and the making of costs orders.47

Remedies for Refusals of Access

It is apparent from the above that the central figure in the regime created by the Act is the information officer in public bodies. It is this functionary who will decide on requests for information and upon whom the substantial duties to give effect to the tenor of the Act will fall.149 The Act creates an internal appeal against the decisions of certain information officers: 150 this appeal only lies in respect of certain of the decisions taken under the Act 151 These functionaries are listed in Column 2 of Schedule 1 of the Public Service Act (Proclamation 103 of 1994).

152 These functionaries are listed in Column 2 of Schedule 3 of the Public Service Act.

153 Section (a)(i) of the definition of 'relevant authority' in s1.

154 Section (a)(ii) of the definition of 'relevant authority' in s1.

155 Section (b)(i) of the definition of 'relevant authority' in s1.

156 See further on the procedure on appeal, s75-s77.

157 Section 82.

by the Directors-General of the departments of state in the national sphere of government, including the Directors-General of such bodies as the Secret Service and Statistics South Africa, and the Directors-General of the nine provincial governments, and by the Executive Director of the Independent Complaints Directorate and the Head: Sport and Recreation South Africa.152 The appeal lies to the 'relevant authority'. This functionary will, in terms of the

relevant part of the definition in s1, be: a person designated, in writing, by the President if the information officer concerned is the Director-General in the office of the President,153 the Minister responsible for any other public body in the national sphere of government, or a person designated by him or her in writing;154 or the person designated, in writing, by the Premier of a province if the information officer concerned is the Director- General of a province.155 An aggrieved person may only apply to a court for relief if he or she has exhausted the appeal process provided for by s74.156 Unsuccessful parties to appeals and other parties are afforded a special statutory review created by s78(2) and (3), which must be instituted ‘within 30 days’. Presumably this time period is intended to run from the time when the applicant became aware of the decision that he or she wishes to take on review. In such review proceedings the court may grant relief that is just and equitable.

Section 79 provides that, within 12 months of the section commencing, the Rules Board for Courts of Law must ‘make and implement’ rules of procedure for ‘a court in respect of applications in terms of section 78' as well as ‘a court to hear ex parte representations’ as contemplated by s80(3)(a). Before rules have been formulated – and hence before the courts contemplated by obliquely by the section are created – the High Court will hear matters arising from the Act.158 In such proceedings, while the rules of evidence that generally apply are those that apply in civil proceedings, s81(3) provides that when a request for information is refused or certain other decisions are taken, the burden of establishing that the decision complies with the Act ‘rests on the party claiming that it so complies’.

ANNEXURE F

"CORPUS DELICTI"

"For a crime to exist, there must be an injured party (Corpus Delicti) There can be no sanction or penalty imposed on one because of this Constitutional right." Sherer v. Cullen 481 F. 945:

"With no injured party, a complaint is invalid on its face". Gibson v. Boyle, 139 Ariz. 512

Supreme courts ruled "Without Corpus delicti there can be no crime""In every prosecution for crime it is necessary to establish the “corpus delecti”, i.e., the body or elements of the crime.” People v. Lopez, 62 Ca.Rptr. 47, 254 C.A.2d 185.

"In every criminal trial, the prosecution must prove the corpus delecti, or the body of the crime itself-i.e., the fact of injury, loss or harm, and the existence of a criminal agency as its cause. " People v. Sapp, 73 P.3d 433, 467 (Cal. 2003) [quoting People v. Alvarez, (2002) 27 Cal.4th 1161, 1168-1169, 119 Cal.Rptr.2d 903, 46 P.3d 372.].

"As a general principal, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury. " People v. Superior Court, 126 Cal.Rptr.2d 793.

“Without standing, there is no actual or justiciable controversy, and courts will not entertain such cases. (3 Witlen, Cal. Procedure (3rd ed. 1985) Actions § 44, pp 70-72.) “Typically, … the standing inquiry requires careful judicial examination of a complaint’s allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted. ” (Allen v. Wright, (1984) 468 U.S. 737, 752…Whether one has standing in a particular case generally revolved around the question whether that person has rights that may suffer some injury, actual or threatened. ” Clifford S. v. Superior Court, 45 Cal.Rptr.2d 333, 335.

There are seven elements of jurisdiction and every element MUST be met in order for the court to proceed.

SEVEN ELEMENTS OF JURISDICTION:

1. The accused must be properly identified, identified in such a fashion there is no room for mistaken identity. The individual must be singled out from all

others; otherwise, anyone could be subject to arrest and trial without benefit of "wrong party" defense. Almost always, the means of identification is a person's proper name, BUT ANY MEANS OF IDENTIFICATION IS EQUALLY VALID IF SAID MEANS DIFFERENTIATES THE ACCUSED WITHOUT DOUBT. (There is no constitutionally valid requirement you must identify yourself, see 4th Amendment; also see, Brown vs. Texas, 443 US 47 and Kolender v. Lawson 461 US 352.)

2. The statute of offense must be identified by its proper or common name. A number is insufficient. Today, a citizen may stand in jeopardy of criminal sanctions for alleged violation of statutes, regulations, or even low-level bureaucratic orders (example: colorado National Monument Superintendent's Orders regarding an unleashed dog or a dog defecating on a trail). If a number were to be deemed sufficient, government could bring new and different charges at any time by alleging clerical error. For any act to be triable as an offense, it must be declared to be a crime. Charges must negate any exception forming part of the statutory definition of an offense, by affirmative non-applicability. In other words, any charge must affirmatively negate any exception found in the law.

3. The acts of alleged offense must be described in non-prejudicial language and detail so as to enable a person of average intelligence to understand nature of charge (to enable preparation of defense); the actual act or acts constituting the offense complained of. The charge must not be described by parroting the statute; not by the language of same. The naming of the acts of the offense describes a specific offense whereas the verbiage of a statute describes only a general class of offense. Facts must be stated. Conclusions cannot be considered in the determination of probable cause.

4. The accuser must be named. He/she may be an officer or a third party, but some positively identifiable person (human being) must accuse; some certain person must take responsibility for the making of the accusation, not an agency or an institution. This is the only valid means by which a citizen may begin to face his accuser. Also, the injured party (corpus delicti) must make the accusation. Hearsay evidence may not be provided. Anyone else testifying that they heard that another party was injured does not qualify as direct evidence.

5. The accusation must be made under penalty of perjury. If perjury cannot reach the accuser, there is no accusation. Otherwise, anyone may accuse another falsely without risk.

6. To comply with the five elements above, that is for the accusation to be valid, the accused must be accorded due process. Accuser must have complied with law, procedure and form in bringing the charge. This includes court-determined probable cause, summons and notice procedure. If lawful process may be abrogated in placing a citizen in jeopardy, then any means may be utilized to deprive a man of his freedom, and all dissent may be stifled by utilization of defective process.

"The essential elements of due process are notice and an opportunity to defend. “Simon v. Craft, 182 US 427.

"one is not entitled to protection unless he has reasonable cause to apprehend danger from a direct answer. The mere assertion of a privilege does not immunize him; the court must determine whether his refusal is justified, and may require that he is mistaken in his refusal. “Hoffman v. United States, 341 U.S. 479 (1951)

7. The court must be one of competent jurisdiction. To have valid process, the tribunal must be a creature of its constitution, in accord with the law of its creation, i.e., Article III judge.
Lacking any of the seven elements or portions thereof, (unless waived, intentionally or unintentionally) all designed to ensure against further prosecution (double jeopardy); it is the defendant's duty to inform the court of facts alleged for determination of sufficiency to support conviction, should one be obtained. Otherwise, there is no lawful notice, and charge must be dismissed for failure to state an offense. Without lawful notice, there is no personal jurisdiction and all proceedings prior to filing of a proper trial document in compliance with the seven elements is void. A lawful act is always legal but many legal acts by government are often unlawful. Most bureaucrats lack elementary knowledge and incentive to comply with the mandates of constitutional due process. They will make mistakes. Numbers beyond count have been convicted without benefit of governmental adherence to these seven elements. Today, informations are being filed and prosecuted by "accepted practice" rather than due process of law.

Jurisdiction, once challenged, is to be proven, not by the court, but by the party attempting to assert jurisdiction. The burden of proof of jurisdiction lies with the asserter. The court is only to rule on the sufficiency of the proof tendered. See, “McNutt v. General Motors Acceptance Corp, 298 U.S. 178 (1936). The origins of this doctrine of law may be found in “MAXFIELD v. LEVY, 4 U.S. 330 (1797), 4 U.S. 330 (Dall.) 2 Dall. 381 2 U.S. 381 1 L.Ed. 424

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: CCT

In the matter between:

Unified Common Law Grand Jury of Southern Africa **Applicants**

and

REPUBLIC OF SOUTH AFRICA

Chief Justice: **Mogoeng Mogoeng**

Deputy Chief Justice: **Moseneke**

Justice: **Nkabinde; Jafta; Cameron; Froneman; van der Westhuizen; Zondo; Khampepe; Skweyiya;**

Acting Justice: **Majiedt**

Respondents

SPECIAL POWER OF ATTORNEY

KINDLY TAKE NOTICE THAT THE herein mentioned Applicants, people, do hereby appoint Brother-Thomas:Carlsson-Rudman, hereinafter Brother

Thomas, a people, as Agent with Special Power of Attorney in Fact regarding the aforementioned matter as per Rule 33 of the Bill of Rights;

Chapter 2, Bill of Rights:

Enforcement of rights

38. Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are -

(a) anyone acting in their own interest;

(b) anyone acting on behalf of another person who cannot act in their own name;

(c) anyone acting as a member of, or in the interest of, a group or class of persons;

(d) anyone acting in the public interest; and

(e) an association acting in the interest of its members.

Interpretation of Bill of Rights

39. (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

The Agent, **Brother Thomas,** is hereby authorized by common law to act for

the Applicants regarding the herein mentioned case and matters incidental thereto.

The term “exclusive” shall be construed to mean that while these powers of attorney are in force, only my attorney in fact may obligate me in these matters, and I forfeit the capacity to obligate myself with regard to the same. This grant of exclusive power is binding for the duration of this case.

Executed and sealed by the voluntary act of my own hand, this **2nd** Day of **February 2014.** This instrument was prepared by **Brother Thomas: Carlsson Rudman.**

Acceptance:

Faiez Kirsten
Jan Lohfeldt
Brenda Shelley
Yvonne Weilenmann
Sandra Voges
Anthea Torr

Executed within the Land South Africa, I declare under penalty of perjury under the laws of the Republic of South Africa that the foregoing is true and correct, without Prejudice.

I, the above named exclusive attorney in fact, do hereby accept the fiduciary interest of the herein-named Defendant and will execute the herein-granted powers-of-attorney with due diligence.

Self-governed in Truth, Integrity, Responsibility, Accountability and Transparency to the people on the land of Southern Africa.

In Peace; in Absolute Truth; in Pure Trust; Non-assumpsit; All Rights Reserved; UCC 1-308; Under onerous title,

Respectfully,

Brother Thomas

Administrator, Unified Grand Jury ZA

Witnesses: **With the autographs:**

Sandra Voges

Anthea Torr

Faiez Kirsten

Jan Lohfeldt

ANNEXURE 1

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

Case Number: 5126/2013

BEFORE THE HONOURABLE JUDGE PRESIDENT HLOPHE
CAPE TOWN: WEDNESDAY, 28 AUGUST 2013

28/08/2013

In the matter between:

WESTERN CAPE HIGH COURT
2013 -00- 02
CAPE TOWN/KAAPSTAD
WES-KAAP HOË HOF

CHANGING TIDES 17 (PTY) LTD N.O. **Plaintiff**

and

JAN LOHFELDT **Defendant**

2013 -00- 02
CAPE TOWN/KAAPSTAD
WES-KAAP HOË HOF

DRAFT ORDER

Having read the documents filed of record and having heard counsel for the plaintiff ~~and defendant appearing in person~~, the following order is made:

1. The application for summary judgment is granted against defendant as follows:

   1.1 Payment of the sum of R1 145 638.83;

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

Case Number: 5126/2013

BEFORE THE HONOURABLE JUDGE PRESIDENT HLOPHE
CAPE TOWN: WEDNESDAY, 28 AUGUST 2013

28/08/2013

In the matter between:

CHANGING TIDES 17 (PTY) LTD N.O. **Plaintiff**

and

JAN LOHFELDT **Defendant**

DRAFT ORDER

Having read the documents filed of record and having heard counsel for the plaintiff ~~and defendant appearing in person~~, the following order is made:

1. The application for summary judgment is granted against defendant as follows:

   1.1 Payment of the sum of R1 145 638.83;

1.2 Payment of interest on the amount of R1 145 638.83 at the rate of 8.80% per annum, compounded monthly in arrear from 1 March 2013 to date of payment;

1.3 An order declaring:

ERF 14738 FISH HOEK, situate in the City of Cape Town, Cape Division, Western Cape Province

In extent: 996 SQUARE METRES

Held by Deed of Transfer No T42078/2011, subject to the conditions therein contained or referred to, to be specially executable;

1.4 Costs of suit on an attorney and client scale.

BY ORDER OF THE COURT

COURT REGISTRAR

Box 268

Velile Tinto & Associates Inc.

Cape Town

1.2 Payment of interest on the amount of R1 145 638.83 at the rate of 8.80% per annum, compounded monthly in arrear from 1 March 2013 to date of payment;

1.3 An order declaring:

ERF 14738 FISH HOEK, situate in the City of Cape Town, Cape Division, Western Cape Province

In extent: 996 SQUARE METRES

Held by Deed of Transfer No T42078/2011, subject to the conditions therein contained or referred to, to be specially executable;

1.4 Costs of suit on an attorney and client scale.

BY ORDER OF THE COURT

COURT REGISTRAR

Box 268

Velile Tinto & Associates Inc.

Cape Town

2013 -09- 12

CAPE TOWN/KAAPSTAD

WES-KAAP HOE HOF

ANNEXURE 2

THE OCCUPIER
8 CORFU AVENUE,
CAPRI VILLAGE
SUNNYDALE
7945

DATE: 04 NOVEMBER 2013
MY REF: MRS JUANITA HELM
REF: S8283/DBS/Y ENGELBRECHT
CASE NO: 5126/13

Dear Sir/Madam

Enclosed find a copy of the following:

ATTACHMENT OF FIXED PROPERTY

ERF	**ERF 14738 FISH HOEK** 8 CORFU AVENUE, CAPRI VILLAGE, SUNNYDALE, 7975
DEFENDANTS:	**JAN LOHFELDT (ID: 721011 5998 187)** **Defendant**
CASE NUMBER:	5126/13

URGENT, DO NOT IGNORE / **DRINGEND, MOENIE IGNOREER NIE**

The property you are occupying has been placed under judicial attachment. Enclosed please find our notice of attachment and inventory along with a copy of the Warrant of Execution against immovable property concerned. Kindly, as a matter of urgency, contact the instructing attorney, whose information is reflected on the notice of attachment as well as the Warrant of Execution.

Yours faithfully

JUANITA HELM
OFFICE MANAGER
KANTOOR BESTUURDER

SHERIFF FOR SIMON'S TOWN
PO BOX 26 SIMON'S TOWN 7996
131 ST GEORGE'S STREET SIMON'S TOWN 7975
Tel: +27(0)21-786 1576
Fax: +27(0)21-786 2435
Fax-to-email: 08651 64978
Email: sheriff1@iafrica.com

BALJU VIR SIMONSTAD
POSBUS 26 SIMONSTAD 7995
ST GEORGE'S STRAAT 131 SIMONSTAD 7975
Tel: +27(0)21-786 1576
Faks: +27(0)21-786 2435
Fax-to-email: 08651 64978
Epos: sheriff1@iafrica.com

NOTICE OF OF ATTACHMENT: FIXED / IMMOVABLE PROPERTY

In the matter between: CASE NUMBER: **5126/13**

CHANGING TIDES 17 (PTY) LIMITED N.O. **Plaintiff**

And

JAN LOHFELDT (ID: 721011 5998 187) **Defendant**

Physical address: **8 CORFU AVENUE, CAPRI VILLAGE, SUNNYDALE, 7975**
Domicilium address: **44 ROODEBLOEM ROAD, WOODSTOCK, WESTERN CAPE, 7975**

PLEASE TAKE NOTE that I have this day seized and laid under judicial attachment the Property Comprised in the following inventory in persuance of a Warrant directed to me under the hand of the REGISTRAR OF THE HIGH COURT, CAPE TOWN to me to the sum of **R 367,093.97** plus interest to date of payment and costs recovered against you by the judgment of the said court in this action and also for my charges of the said Warrant of Execution.

INVENTORY

CERTAIN ERF:	ERF 14738 FISH HOEK
SITUATED AT:	CITY OF CAPE TOWN, CAPE DIVISION, WESTERN CAPE
IN EXTENT:	996 SQUARE METERS (nine hundred and ninety six) m²
HELD BY DEED OF TRANSFER:	T42078/2011
MORTGAGE BOND/S:	B22285/2011, SA HOME LOANS GUARANTEE TRUST, for R1,200,000.00
INTERDICTS:	NONE KNOWN

Physical address: **8 CORFU AVENUE, CAPRI VILLAGE, SUNNYDALE, 7975**
Domicilium address: **44 ROODEBLOEM ROAD, WOODSTOCK, WESTERN CAPE, 7975**

SIGNED: DEPUTY SHERIFF / ADJUNK BALJU
DATE: 04 NOVEMBER 2013

ATTORNEYS: VELILO TINTO
REF: S8283/DBS/Y ENGELBRECHT

SHERIFF FOR SIMON'S TOWN
PO BOX 26 SIMON'S TOWN 7996
131 ST GEORGE'S STREET SIMON'S TOWN 7975
Tel: +27(0)21-786 1576
Fax: +27(0)21-786 2435
Fax-to-email: 08651 64978
Email: sheriff1@iafrica.com

BALJU VIR SIMONSTAD
POSBUS 26 SIMONSTAD 7995
ST GEORGE'S STRAAT 131 SIMONSTAD 7975
Tel: +27(0)21-786 1576
Faks: +27(0)21-786 2435
Fax-to-email: 08651 64978
Epos: sheriff1@iafrica.com

Box 268

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

CASE NUMBER: **5126/2013**

In the matter between:

CHANGING TIDES 17 (PROPRIETARY) LIMITED N.O. **PLAINTIFF**

and

JAN LOHFELDT **DEFENDANT**
I.D.: 721011 5998 18 7
(Unmarried)

WARRANT OF ATTACHMENT

TO: THE SHERIFF FOR THE DISTRICT OF SIMONSTOWN

WHEREAS you are directed to cause to be realized the sum of **R1 145 638,83** together with interest thereon at the rate of **8.80%** per annum as from **1ST MARCH 2013** to date of payment, in satisfaction of a Summary Judgment debt and costs obtained by **PLAINTIFF** against the Defendant, on **28TH AUGUST 2013.**

AND WHEREAS the under mentioned property was declared specially executable for the said sums on **28TH AUGUST 2013** by the Court;

NOW THEREFORE you are directed to attach and take into execution the immovable property of the said Defendant, being:

ERF 14738 FISH HOEK,
IN THE CITY OF CAPE TOWN,

CAPE DIVISION,
PROVINCE OF THE WESTERN CAPE,
IN EXTENT: 42078/2011,
SUBJECT TO THE CONDITIONS THEREIN CONTAINED OR REFERRED TO

(DOMICILIUM ADDRESS: 44 ROODEBLOEM ROAD, WOODSTOCK, WESTERN CAPE AND PHYSICAL ADDRESS: 8 CORFU AVENUE, CAPRI, FISH HOEK, CAPE TOWN, WESTERN CAPE)

And cause to be realized there from the aforesaid sum of **R1 145 638,83** together with interest thereon at the rate of **8.80%** per annum as from **1ST MARCH 2013** to date of payment, costs still to be taxed, together with the costs hereof and your charges in and about the same, and to dispose of the proceeds thereof in accordance with Rule of Court No. 46.

Any party dissatisfied with the Summary Judgment granted or direction given by the Registrar may in terms of Rule 31(5)d and within 20 (TWENTY) days after he/she/they have acquired knowledge of such Summary Judgment or direction, set the matter down for reconsideration by the Court.

FOR WHICH THIS SHALL BE YOUR WARRANT.

DATED AT **CAPE TOWN** ON THIS _____ DAY OF _____**2013.**

_____
THE REGISTRAR OF THE HIGH COURT
CAPE TOWN

(sgd) _____
ATTORNEY FOR PLAINTIFF
VELILE TINTO & ASSOCIATES INC
UNIT A13, BLOCK 1

NORTHGATE ISLAND
C/O KOEBERG & SECTION ROAD
BROOKLYN
CAPE TOWN
REF: JOHAN VAN DER MERWE

Instructed by:

VELILE TINTO & ASSOCIATES
Tinto House
C/o Solomon Mahlangu (previously Hans Strijdom) & Disselboom Streets
Wapadrand
Pretoria
Docex: 178.
Tel: (012) 807 3366
Fax: (012) 807 5299
Reference: S8283/DBS/Y ENGELBRECHT/BY

ANNEXURE 3

COMBINED
SUMMONS (NO 2B)

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF **RANDBURG**

HELD AT **RANDBURG**

CASE NO.

In the matter between :-

NEDBANK LIMITED Plaintiff

and

LOHFELDT: JAN Defendant

TO: **THE SHERIFF OR HIS DEPUTY**

INFORM:

JAN LOHFELDT, an adult male, whose full and further particulars are to the Plaintiff unknown and who resides at, **8 CORFU AVENUE, CAPRI VILLAGE, FISH HOEK** being his chosen **domicilium citandi et executandi.**

(hereinafter referred to as the Defendant) that:

NEDBANK LIMITED (Reg No 51/00009/06) (hereinafter referred to as the Plaintiff) acting herein through its Credit Card Division, as a bank as defined in the Banks Act, No 94 of 1990 and a registered credit provider, carrying on business as such at its principal place of business at First Floor, Block 1, 135 Rivonia Road, Sandown

(hereinafter called the Plaintiff), hereby institutes action against the Defendant in which action the Plaintiff claims the relief on the grounds set out in the particulars annexed hereto.

INFORM the Defendant further that if the Defendant disputes the claim and wishes to defend the action, the Defendant shall :-

(i) Within ten days of the service upon the Defendant of this summons, file with the Registrar or Clerk of the Court at the Magistrate Court Building, Ground Floor, 18 Shepherd Avenue, Kensington B, notice of the Defendant's intention to defend and serve a copy thereof on the Attorneys of the Plaintiff, which notice shall give an address (not being a post office or poste restante) referred to in Rule 13 (3) for the service upon the Defendant of all notices and documents in the action.

(ii) Thereafter and within twenty days after filing and serving notice of intention to defend as aforesaid, file with the Registrar or Clerk of the Court and serve upon Plaintiff or Plaintiff's attorney a plea, exception, notice to strike out, with or without a counterclaim.

INFORM the Defendant further that if the Defendant fails to file and serve notice as aforesaid, judgment as claimed may be given against the Defendant without further notice to the Defendant, or if having filed and served such notice, the Defendant fails to plead, except, make application to strike out or counterclaim, judgment may be given against the Defendant.

AND immediately thereafter serve on the Defendant a copy of this summons and return the same to the Registrar or Clerk of the Court with whatsoever you have done thereupon.

SHERIFF FOR SIMON'S TOWN
2014 -01- 14

ANNEXURE 4

COMBINED
SUMMONS (NO 2B)

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF **JOHANNESBURG**

HELD AT **JOHANNESBURG**

CASE NO.

In the matter between :-

NEDBANK LIMITED Plaintiff

and

LOHFELDT: JAN Defendant

TO: **THE SHERIFF OR HIS DEPUTY**

INFORM:

JAN LOHFELDT, an adult male, whose full and further particulars are to the Plaintiff unknown and who resides at, **8 CORFU AVENUE, CAPRI VILLAGE, FISH HOEK** being his chosen **domicilium citandi et executandi.**

(hereinafter referred to as the Defendant) that:

NEDBANK LIMITED (Reg No 51/00009/06) (hereinafter referred to as the Plaintiff) acting herein through its Credit Card Division, as a bank as defined in the Banks Act, No 94 of 1990 and a registered credit provider, carrying on business as such at its principal place of business at First Floor, Block 1, 135 Rivonia Road, Sandown

(hereinafter called the Plaintiff), hereby institutes action against the Defendant in which action the Plaintiff claims the relief on the grounds set out in the particulars annexed hereto.

INFORM the Defendant further that if the Defendant disputes the claim and wishes to defend the action, the Defendant shall :-

(i) Within ten days of the service upon the Defendant of this summons, file with the Registrar or Clerk of the Court at the Magistrate Court Building, Cnr. Fox and Ntemi Piliso Streets, Johannesburg, notice of the Defendant's intention to defend and serve a copy thereof on the Attorneys of the Plaintiff, which notice shall give an address (not being a post office or poste restante) referred to in Rule 13 (3) for the service upon the Defendant of all notices and documents in the action.

(ii) Thereafter and within twenty days after filing and serving notice of intention to defend as aforesaid, file with the Registrar or Clerk of the Court and serve upon Plaintiff or Plaintiff's attorney a plea, exception, notice to strike out, with or without a counterclaim.

INFORM the Defendant further that if the Defendant fails to file and serve notice as aforesaid, judgment as claimed may be given against the Defendant without further notice to the Defendant, or if having filed and served such notice, the Defendant fails to plead, except, make application to strike out or counterclaim, judgment may be given against the Defendant.

AND immediately thereafter serve on the Defendant a copy of this summons and return the same to the Registrar or Clerk of the Court with whatsoever you have done thereupon.

PLEASE PUT IN AKD BOX

ANNEXURE 5

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case No: 1227/2013

In the matter between:-

NEDBANK LIMITED Plaintiff

and

JAN LOHFELDT Defendant

COURT ORDER

HAVING read the documents filed of record and having considered the matter:-

DEFAULT Judgment will be sought against the Defendant for:

1) Confirmation of the cancellation of the agreement;

2) An order authorizing the Sheriff of the High Court to attach, seize and hand over the **NEW TOYOTA QUANTUM 2.5 D-4D F/C P/V, ENGINE NUMBER: 2KD5136433 & CHASSIS NUMBER: JTFH902P60009482** to the Plaintiff;

3) Forfeiture of all monies paid to plaintiff by Defendant;

4) ~~Leave to apply for:-~~

   (i) Damages, if any, in an amount to be calculated in accordance with Sect 127 (5) – (9) of the Act;

5) Costs in the amount of R650.00;

6) Further or alternative relief.

Dated at Cape Town on this the day of 2013.

BY THE COURT

REGISTRAR

ANNEXURE 6

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case No: 1227/2013

In the matter between:-

NEDBANK LIMITED Plaintiff

and

JAN LOHFELDT Defendant

WARRANT OF ATTACHMENT AND DELIVERY OF GOODS

TO: **THE SHERIFF OF THE HIGH COURT**

WHEREAS in this action, the Court ordered the Sheriff of the High Court to attach remove the goods wheresoever same may be found as described, being:

NEW TOYOTA QUANTUM 2.5 D-4D F/C P/V, ENGINE NUMBER: 2KD5136433 & CHASSIS NUMBER: JTFH902P60009482;

This is to authorize and require you to attach and remove the said goods as described and hand over to Plaintiff, for which this shall be your Warrant.

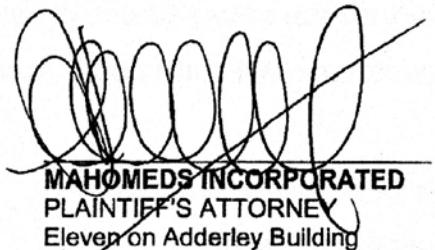
To the best of our knowledge the vehicle is situated at the Defendant's address being **44 ROODEBLOEM ROAD, WOODSTOCK, 7925**

AND return to this Court what you have done by virtue hereof.

DATED at on this 2013.

BY ORDER OF THE COURT

THE REGISTRAR OF THE COURT



MAHOMEDS INCORPORATED
PLAINTIFF'S ATTORNEY
Eleven on Adderley Building
6th Floor, 11 Adderley
Street, Cape Town
TEL: (021) 815 2000
REF: CNED08/0019314

ANNEXURE 7

Left at 16 Hoog Street.

BOX 15

IN THE HIGH COURT OF SOUTH AFRICA

(Western Cape High Court, Cape Town)

CASE NO : 4465/13

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED Judgment Creditor

And

BRENDA JUNE SHELLEY First Judgment Debtor

JACQUELINE YVONNE WEILENMANN Second Judgment Debtor

WRIT OF EXECUTION

TO THE SHERIFF for the district of the High Court or his Deputy:

You are hereby directed to attach and take into execution the immovable property being ERF 580 NAPIER, IN THE CAPE AGULHAS MUNICIPALITY, DIVISION OF BREDASDORP, PROVINCE OF THE WESTERN CAPE situate at FARM 10, ERF 580 BLOUBOKKIESFONTEIN, NAPIER of BRENDA JUNE SHELLEY and JACQUELINE YVONNE WEILENMANN, the abovementioned Judgment Debtors of 16 HOOG STREET, NAPIER, (chosen domicilium citandi et executandi) and of the same to cause to be realised by public auction the sum of

1. R 925,779.51;

2. Payment of interest on the aforesaid amount calculated from 30 JANUARY 2013 to date of payment at the interest rate prevailing from time to time on the Mortgage bond, which interest rate on 30 JANUARY 2013 was 8.50% per annum, such interest to be capitalized monthly in arrears from 30 JANUARY 2013;

3. Cost of suit on the scale as between attorney and client.

STBB SMITH TABATA BUCHANAN BOYES
Ref: N GRUNDLINGH
Tel.: (021) 943 3800

which it recovered by Judgment of this Court dated the 11 JUNE 2013 in the abovementioned case, and also all other costs and charges of the Judgment Creditor in the said case to be hereafter duly taxed according to Law, besides all your costs thereby incurred.

FURTHER pay to the said Judgment Creditor's Attorneys the sum or sums due to it with costs as abovementioned, and for your so doing this shall be your warrant.

DATED at CAPE TOWN on 21 JUNE 2013

REGISTRAR OF THE HIGH COURT

STBB SMITH TABATA BUCHANAN BOYES

Per:

N GRUNDLINGH
Attorneys for Judgment Creditor
2nd Floor, 5 High Street
Rosenpark
BELLVILLE
Ref: ZB007257/gl
Care of
9th Floor
5 St George's Mall
Cape Town
HOME LOAN 361786514

ANNEXURE 8

CONVEYANCER'S CERTIFICATE

I, the undersigned,

HANLIE FERREIRA

Conveyancer, duly admitted and practising at STBB SMITH TABATA BUCHANAN BOYES, 2nd Floor, 5 High Street, Rosenpark, BELLVILLE do hereby certify as follows:

1. The property described as:

ERF 580 NAPIER, IN THE CAPE AGULHAS MUNICIPALITY, DIVISION BREDASDORP, PROVINCE OF THE WESTERN CAPE;

IN EXTENT: 7,5858 Hectares ~~Square Metres~~

held by Deed of Transfer T53392/2007

situate at BLOUBOKKIESFONTEIN, NAPIER

is registered in the name of

BRENDA JUNE SHELLEY

IDENTITY NO 5806200126089

UNMARRIED

and

JACQUELINE YVONNE WEILENMANN

IDENTITY NO 5603020355182

UNMARRIED

2. The property is bonded as a first bond to THE STANDARD BANK OF SOUTH AFRICA LIMITED (No 1962/000738/06) by bond B63410/2007. The capital amount of the bond is R825 000.00 with an additional amount of R206 250.00.

3. ATTACHMENTS: NONE

DATED at BELLVILLE on 21 JUNE 2013.

CONVEYANCER

ANNEXURE 9

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

CASE NO 4465/13

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED Execution Creditor

and

BRENDA JUNE SHELLEY First Execution Debtor
JACQUELINE YVONNE WIELEMANN Second Execution Debtor

NOTICE OF SALE IN EXECUTION

IN TERMS of a judgment granted by the High Court of South Africa (Western Cape High Court, Cape Town) dated 11 June 2013, the undermentioned property will be sold voetstoots and without reserve in execution by PUBLIC AUCTION held at the premises, to the highest bidder on **19 September 2013** at 10h00:

ERF 580 NAPIER, IN THE CAPE AGULHAS MUNICIPALITY, DIVISION BREDASDORP, PROVINCE OF THE WESTERN CAPE;
IN EXTENT 7,5858 Hectares
Held by deed of Transfer T53392/2007
Street address: FARM 10, ERF 580 BLOUBOKKIESFONTEIN, NAPIER

CONDITIONS OF SALE

(1) The property will be sold in execution without reserve and voetstoots to the highest bidder by Public Auction and subject to the provisions and conditions of the sale which will be announced by the SHERIFF OF THE HIGH COURT or AUCTIONEER immediately before the sale and will lie for inspection at the offices of the Sheriff, Bredasdorp, and also subject to the servitudes and conditions attaching to the property contained in the relevant Title Deeds.

(2) The following information is furnished but not guaranteed:
A dwelling house consisting of 3 bedrooms, kitchen, lounge, 3 bathrooms, 2 store rooms, milking room, cheese room and tack room.

(3) The Purchaser shall on completion of the sale, pay a deposit of 10% of the purchase price immediately on demand by the sheriff, in cash or by bank guaranteed cheque or per electronic transfer, provided that satisfactory proof of payment is furnished immediately on demand to the sheriff, and the balance of the purchase price against registration of transfer of the property into the name of the purchaser, which payment shall be secured by an approved bank guarantee within 21 (twenty one) days of the date of sale. If the transfer of the property is not registered within 1 (one) month after the date of the sale, the purchaser shall be liable for payment of interest at the rate of 8.50%.

(4) The Purchaser shall pay auctioneer's commission, payable on the day of sale.

DATED at BELLVILLE on 13 August 2013.

STBB SMITH TABATA BUCHANAN BOYES

Attorneys for Execution Creditor
2nd Floor, 5 High Street
ROSENPARK
BELLVILLE

ANNEXURE 10

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO: 4465/13

In the matter between:

THE STANDARD BANK OF SA LTD	**JUDGMENT CREDITOR**
And	
BRENDA J SHELLEY	**1ST JUDGMENT DEBTOR**
JACQUELINE Y WEILENMANN	**2ND JUDGMENT DEBTOR**

NOTICE OF ATTACHMENT

Under and by virtue of a certain Writ of the Honourable Court, dated **1 JULY 2013** in a Suit wherein **THE STANDARD BANK OF SA LTD** was the **JUDGMENT CREDITOR** and **BRENDA J SHELLEY** the **1ST JUDGMENT DEBTOR** and **JACQUELINE Y WEILENMANN** the **2ND JUDGMENT DEBTOR** whereby the Sheriff of the Province or his Lawful Deputy is commanded to attach and to take possession of:

INVENTORY

CERTAIN ERF:	**580 NAPIER, IN THE CAPE AGULHAS MUNICIPALITY, *DIVISION BREDASDORP***
IN EXTENT:	**7,5858 HECTARES**
HELD BY :	**DEED OF TRANSFER NO: T53392/2007**
SITUATE AT:	**FARM 10 BLOUBOKKIESFONTEIN, NAPIER**

Now therefore, **LIEZEL D GERTZE, SHERIFF BREDASDORP,** do hereby attach and take possession of the said property.

Given under my hand at **BREDASDORP** on this **17th** day of **JULY 2013**

TO: THE REGISTRAR
HIGH COURT
CAPE TOWN

TO: SMITH TABATA BUCHANAN BOYES
P O BOX 3758
TYGER VALLEY
7536
(Plaintiff's Attorney)

LIEZEL D GERTZE
SHERIFF BREDASDORP
P O BOX 102
BREDASDORP
7280

ANNEXURE 11

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

CASE NO.: **13332/2013**

Before the Honourable Mr. Justice Fourie
At Cape Town: Thursday, 7 November 2013

In the matter between:

NEDBANK LIMITED Plaintiff

and

FAIEZ KIRSTEN Defendant

ORDER

HAVING HEARD COUNSEL FOR THE PLAINTIFF AND HAVING READ THE SUMMONS AND OTHER DOCUMENTS FILED OF RECORD, JUDGMENT BY DEFAULT IS GRANTED IN FAVOUR OF THE PLAINTIFF AGAINST THE DEFENDANT FOR:

1. Payment of the sum of R651 018,15;

2. Interest thereon from 01 July 2013 to date of payment at the interest prevailing from time to time, presently being 7.10 % per annum, then reckoned monthly in advance and any arrear interest capitalised;

3. An order declaring the following mortgaged property executable;

A Unit consisting of:

(i) Section No. 59 as shown and more fully described on Sectional Plan No. SS 59/2008 in the scheme known as D'VINE TERRACES in respect of the land and building or buildings situate at BURGUNDY, IN THE CITY OF CAPE TOWN of which section the floor area, according to the said sectional plan, is 64 (sixty four) square metres in extent; and

(ii) An undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan,

held by deed of transfer ST 3506/09;

4. Costs to be taxed on the scale as between attorney and client.

BY ORDER OF THE COURT

COURT REGISTRAR

PH 15
SMITH TABATA BUCHANAN BOYES
MS. D JARDINE

ANNEXURE 12

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

CASE NO.: **13332/2013**

Before the Honourable Mr. Justice Fourie
At Cape Town: Thursday, 7 November 2013

In the matter between:

NEDBANK LIMITED Plaintiff

and

FAIEZ KIRSTEN Defendant

ORDER

HAVING HEARD COUNSEL FOR THE PLAINTIFF AND HAVING READ THE SUMMONS AND OTHER DOCUMENTS FILED OF RECORD, JUDGMENT BY DEFAULT IS GRANTED IN FAVOUR OF THE PLAINTIFF AGAINST THE DEFENDANT FOR:

1. Payment of the sum of R651 018,15;

2. Interest thereon from 01 July 2013 to date of payment at the interest prevailing from time to time, presently being 7.10 % per annum, then reckoned monthly in advance and any arrear interest capitalised;

3. An order declaring the following mortgaged property executable;

A Unit consisting of:

(i) Section No. 59 as shown and more fully described on Sectional Plan No. SS 59/2008 in the scheme known as D'VINE TERRACES in respect of the land and building or buildings situate at BURGUNDY, IN THE CITY OF CAPE TOWN of which section the floor area, according to the said sectional plan, is 64 (sixty four) square metres in extent; and

(ii) An undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan,

held by deed of transfer ST 3506/09;

4. Costs to be taxed on the scale as between attorney and client.

BY ORDER OF THE COURT

COURT REGISTRAR

PH 15
SMITH TABATA BUCHANAN BOYES
MS. D JARDINE

ANNEXURE 13

BOX 93

Case Number: **5111/2013** B

IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE HIGH COURT, CAPE TOWN

Before the Honourable Ms Acting Justice Cossie
Cape Town: Friday 26 July 2013
In the matter between:-

NEDBANK LIMITED **Plaintiff**

and

SANDRA MARIA VOGES **Defendant**

CAPE TOWN:
BEFORE THE HONOURABLE JUSTICE

ORDER

HAVING heard Counsel for the Plaintiff, and having read the Summons and other documents filed of record :

DEFAULT JUDGMENT IS GRANTED in favour of the Plaintiff against the Defendant for:

1. Payment of the sum of R819 970.47;

2. Interest calculated on the sum referred to in 1. hereof calculated daily and compounded monthly at the rate of 8.10% per annum from 02 February 2013 to date of payment, both dates inclusive;

3. An order declaring REMAINDER ERF 87491 CAPE TOWN, situate in the City of Cape Town, Cape Division, Province of the Western Cape held by virtue of Deed of Transfer No. T15790/2009 executable for the said sum.

WESTERN CAPE HIGH COURT
GENERAL OFFICE
2014 -01- 28
CAPE TOWN / KAAPSTAD
WES-KAAP HOË HOF

CERTIFIED A TRUE COPY OF THE ORIGINAL AND THAT NO VISIBLE ALTERATIONS HAVE BEEN MADE BY ANY UNAUTHORISED PERSON.
GESERTIFISEER AFSKRIF VAN DIE OORSPRONKLIKE DOKUMENT EN DAT GEEN ONGEMAGTIGDE VERANDERINGE AANGEBRING IS NIE.
REGISTRAR/GRIFFIER

4. Attorney and client costs to be taxed.

BY ORDER OF THE COURT
COURT REGISTRAR

93 Minde Schapiro & Smith Inc.
BELLVILLE

/mdz

WESTERN CAPE HIGH COURT
GENERAL OFFICE
2014 -01- 28
CAPE TOWN/KAAPSTAD
WES-KAAP HOË HOF

CERTIFIED A TRUE COPY OF THE ORIGINAL AND THAT NO VISIBLE ALTERATIONS HAVE BEEN MADE BY ANY UNAUTHORISED PERSON.
GESERTIFISEER 'N WARE AFSKRIF VAN DIE OORSPRONKLIKE DOKUMENT EN DAT GEEN SIGBARE VERANDERING DEUR ENIGE ONBEVOEGDE PERSOON AANGEBRING IS NIE.
REGISTRAR/GRIFFIER

109 words

ANNEXURE 14

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

15/10

CASE NO: 6460/13

On the roll: Tuesday, 15 October 2013 at CAPE TOWN
Before the Honourable Mr Justice Davis

In the application of:

WESTERN CAPE HIGH COURT
FOURTH DIVISION
2013 -10- 15
CAPE TOWN/KAAPSTAD
WES-KAAP HOË HOF

CITY OF CAPE TOWN **Applicant**

and

ANTHEA DOROTHY TORR **First Respondent**
ANDREW JOHN TORR **Second Respondent**
INVESTEC LTD **Third Respondent**

~~**DRAFT**~~ **ORDER**

WESTERN CAPE HIGH COURT
FOURTH DIVISION
2013 -10- 15
CAPE TOWN/KAAPSTAD

Having heard counsel for the Applicant and the First Respondent in person, it is ordered as follows:

1. It is declared that, in the absence of approval by the City of Cape Town *("the City")* in terms of the National Building Regulations and Building Standards Act 103 of 1977, the temple consisting of two rooms, the staff dwellings (which include a wooden structure and a

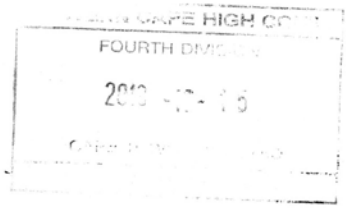
WEBBER WENTZEL
Per: P. Vanda
Tel: (021) 431 7000
E-mail: phila.vanda@webberwentzel.com

cobb building) and a shed, erected upon Erf 294, Chapman's Peak are unlawful (being the unauthorised building works identified as blocks 1, 2, 3 and 4 in the aerial photograph which is attached, as Annexure **"F06"** to the founding affidavit);

2. Directing the first and second respondent to demolish the unauthorised building works referred to in paragraph 1 hereof, and to restore the property to compliance with approved building plans within sixty days of the date of this order, failing which, directing and authorising the Sheriff to do so at the first and second respondents cost, and if necessary with the assistance of the South African Police Services;

3. Pending the demolition of the unauthorised building works referred to in paragraph 2 above, the first and second respondent are prohibited from using or occupying the buildings referred to in paragraph 1 hereof erected on Erf 294, Chapman's Peak, or permitting any person to use or occupy them;

4. Directing that the first respondent is to pay the costs of the application on a scale as between attorney and client.



BY ORDER OF COURT

COURT REGISTRAR

154 Webber Wentzel, CAPE TOWN
/ec

ANNEXURE 15

Republic of South Africa

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

CASE NO: 15903/2013

Before: The Hon. Mr Justice Binns-Ward

In the matter between:

STANDARD BANK OF SOUTH AFRICA LIMITED Plaintiff
(Registration No: 1962/00073806)

and

ANTHEA DOROTHY TORR Defendant

JUDGMENT: 3 DECEMBER 2013

BINNS-WARD J:

[1] The plaintiff bank concluded an instalment agreement (as defined in the National Credit Act 34 of 2005) with the defendant in terms of which it sold a VW Polo motor vehicle to the latter on credit with reservation of ownership. The defendant having allegedly fallen into arrears with payment of the instalments, the plaintiff instituted action against the defendant, having first given the notice required in terms of s 129 of Act 34 of 2005. The particulars of claim included a notice of cancellation of the agreement. The plaintiff claims return of the vehicle and payment by the defendant of any balance that might remain owing after the plaintiff has disposed of the vehicle and applied the proceeds in reduction of its damages. The defendant entered an appearance to defend the action, whereupon the plaintiff applied for summary judgment for delivery up of the vehicle.

[2] The defendant purported to oppose the application for summary judgment. She delivered a document which described itself as an 'Affidavit of Truth – Notice & Demand', which was accompanied by various annexures, labelled respectively as 'Peace Declaration', 'Certificate of Service', 'International Media Cease & Desist Order' and 'Foreclosure Document', respectively. It is unnecessary to go into these documents. Suffice it to say that, taken as a whole, they do not have the characteristics of an opposing affidavit of the nature contemplated in terms of rule 32(3)(b) of the Uniform Rules of Court, and impress instead as nothing else but quite incoherent and nonsensical ramblings.

[3] The summary judgment application came before Griesel J on 18 November 2013. It would appear that a certain 'Brother Thomas' sought to appear to represent the defendant on that day. Counsel for the plaintiff informed me that Griesel J declined to entertain 'Brother Thomas' because the latter admitted that he was not a legal practitioner. Griesel J, however, postponed the matter until 28 November 2013 in order to allow the defendant the opportunity to deliver an opposing affidavit that complied with the Rules of Court.

[4] By the stage at which the matter came before me on 28 November, the defendant had delivered an affidavit, inappositely labelled as a 'Founding Affidavit', in purported availment of the opportunity afforded her by Griesel J. Despite the averment contained therein that the deponent did 'not have knowledge of law' or 'the means to obtain formal legal representation', most of the body of the affidavit consists of rambling and, frankly, incoherent legal argument. Along the way various topics are touched upon; viz. 'equitable estoppel', 'The Bills of Exchange Act 54 of 2000' (presumably an erroneous citation of the Bills of Exchange Amendment Act 56 of 2000), the Uniform Commercial Code (which, to the best of my knowledge, is an instrument devised to facilitate inter-state commercial transactions in the United States of America), 'equitable estoppel', 'promissory notes' and payment systems. Nothing is said in the affidavit about the allegations that the defendant had been in default of her obligations under the instalment agreement. There is, however, an expression of a wish to settle the matter, and in that connection a 'Notice of Settlement' is annexed to the affidavit.

[5] The 'Notice of Settlement' reads:

PLEASE TAKE NOTICE THAT it is the wish of the people to settle this account by full settlement and discharge of the bill in order to balance the books, contract the amount and close the account regarding the matter as per GAAP and the Accrual Accounting Method in order for the Trustors to settle this matter, the Applicant requires STANDARD BANK LIMITED to issue a TRUE BILL in the form of an INVOICE or a REMITTANCE as this is the only form of settlement that contracts the debt and closes the account properly.
Please read the Founding Affidavit to verify the facts. Equitable estoppel applies.
You have 10 days to properly present the Bill as per the Bills of Exchange Act 56 of 2000.
Failing your acceptance of this offer, we will deem this matter settled.
DATED AT Cape Town this 25th day of November 2013

Respectfully
[signature]
Administrator, Unified Grand Jury ZA
c/o Brother-Thomas: Carlsson-Rudman
[physical and email address]

[Defendant's signature]

The document bears a circular seal mark depicting a set of scales with the words '2013 A.D.' under it and the words 'Unified Common Law Grand Jury of Southern Africa Seal' inscribed around the edge.

[6] A person who called himself 'Brother Thomas' once again appeared in court at the postponed hearing on 28 November, purporting to represent the defendant. He confirmed that he was the person who had been refused a hearing before Griesel J. He submitted, however, that he had standing to represent the defendant by virtue of s 38(b) of the Constitution. The provision in question provides that any person who alleges that their basic rights under the Bill of Rights have been infringed may approach the court for appropriate relief and that in the case of a person who cannot act in their own name anyone acting on behalf of such person may approach the court. 'Brother Thomas' did not explain why the defendant was not able to act on her own behalf. Furthermore it was not apparent to me on the papers what infringement of the defendant's basic rights was supposedly implicated.

[7] In answer to the court's enquiry as to which of the defendant's basic rights was implicated on the papers before court, 'Brother Thomas' advised that it was the right to access to information. In this connection he referred to the lists of questions addressed to the plaintiff set out in annexures to the affidavit deposed by the defendant. The relevant right to information that the defendant has is that to information held by another person and that is required for the exercise or protection of any rights (see s 32 of the Constitution).

[8] The exercise of the right to information is regulated in terms of the legislation promulgated in terms of s 32(2) of the Constitution. This is in accordance with the principle of subsidiarity; see e.g. *PFE International Inc (BVI) and Others v Industrial*

Development Corporation of South Africa Ltd 2013 (1) SA 1 (CC), at para 4. The applicable legislation is the Promotion of Access to Information Act 2 of 2000. 'Brother Thomas' confessed to being unaware of the principle of subsidiarity. There is no indication in the defendant's opposing affidavit that she has sought, or that she now seeks to exercise any rights in terms of Act 2 of 2000. Assuming therefore that 'Brother Thomas''s invocation of s 38(b) of the Constitution to establish his standing to represent the defendant was well-founded (as to which I find it unnecessary to express a view), the only basic right of the defendant which he contended to be implicated in the current proceedings was not asserted in a cognisable manner on the papers.

[9] I did, however, nevertheless give some consideration to the questions in the annexures to the opposing affidavit to which 'Brother Thomas' referred. It seemed to me that it was appropriate to do so having regard to the discretionary nature of the summary judgment remedy, which allows that even if a defence is not made out in a manner compliant with rule 32(3), the court may still refuse to grant summary judgment if it appears in the interests of justice to do so. It will suffice for illustrative purposes to quote just a few of the questions: (i) '*Please confirm that Standard Bank Limited actually possessed money prior to my loan being granted?*; (ii) '*Would Standard Bank Limited be prepared to amend the credit agreement as follows: "We, Standard Bank Limited, did in fact possess the money we loaned you, prior to the loan being approved?*'; (iii) '*Was the amount borrowed actually "deposited", as per the definition of "deposit" in terms of the Banks Act?*'; (iv) '*Would Standard Bank Limited be prepared to provide the original Deed of Trust/loan agreement?*'; (v) '*Please confirm if there were any assignments of the promissory note (i.e. the loan agreement or other) by Standard Bank Limited*' and (vi) '*Can Standard Bank Limited demonstrate that it has the position as Holder in Due Course in respect of the promissory note or that it has authority from the Holder?*'. The questions raised in the annexures to the defendant's opposing affidavit have no bearing on the issues in the action. The transaction in question is an instalment agreement; it is not a loan and it does not concern promissory notes, or bills of exchange.

[10] Indeed, most, if not all, of the defendant's opposing affidavit bears no cognisable connection with the nature of the plaintiff's claim based on the consequences of its cancellation of the instalment agreement. She does not deny that

she was in arrears with the instalment payments. She does not rely on any non-compliance with the formalities prescribed in terms of Chap. 6 of the National Credit Act. She does not make any allegations that could suggest that she would have any basis at a trial of the action to show that the plaintiff's cancellation of the instalment agreement had been invalid or ineffectual. In short, the defendant has not come anywhere close to establishing that she has a *bona fide* defence to the plaintiff's claim. Her affidavit does not set out any material facts upon which a sustainable defence might be advanced.

[11] There is nothing about the case which would justify the exercise of the court's discretion in the defendant's favour. On the contrary, there are good grounds to regard the two sets of documents put before the court in opposition to the application as vexatious. I suspect that they were the product of 'Brother Thomas''s efforts rather than the work of the defendant herself. 'Brother Thomas' may consider himself fortunate that the plaintiff did not raise the question whether he should be made liable, together with the defendant, for the costs occasioned by the opposition to the application.

[12] In the circumstances the plaintiff is entitled to the relief it seeks in the summary judgment application. The following order is made:

1. The cancellation of the instalment agreement between the plaintiff and the defendant on 21 April 2011 in respect of certain 2011 Volkswagen Polo 1.6 TDI motor vehicle is confirmed.
2. The defendant is directed to deliver up to the plaintiff the aforementioned vehicle with engine number CLN150708 and chassis number AAVZZZ6RZBU02720 and the Sheriff is authorised to take the vehicle into possession wherever it may be found and deliver it to the plaintiff.
3. The defendant shall pay the plaintiff's costs of suit in the action.
4. Proceedings for the further relief sought in terms of the summons is concerned, including the costs attendant thereon, are postponed *sine die*.

A.G. BINNS-WARD
Judge of the High Court

EXHIBIT 5a

EXHIBIT 1a

Complainant: Faiez (Kirsten)
Sworn on: 30TH JANUARY 2014

Statement of Complaint of Faiez (Kirsten)

In relation to Case Number 5111/13 presided over by judge Patricia Goliath in the High Court of South Africa, Western Cape Division, Cape Town

I, Faiez (Kirsten), being the Undersigned, do solemnly swear, declare, and depose:

1. THAT I am competent to state the matters set forth herein.
2. THAT I have first-hand knowledge of the facts stated herein.
3. THAT all the facts stated herein are true, correct, and certain, admissible as evidence, and if called upon as a witness, I will testify to their veracity.

On Tuesday the 21st day of January 2014 I attended the hearing of Sandra Maria Voges in the above Honourable Court, which involved her application (as per the above case number) for rescission of judgment following an Order and Writ of Execution which was granted against her on the 26th day July 2013 and on the 30th day of July 2013 respectively in the same court.

My understanding is that one of the most important obligations of a judge is to be strictly *impartial* with respect to the parties involved in the matter over which he or she presides. The extract below from the **Canadian Superior Court Judges Association** bears testimony to this:

Judges play many roles. They interpret the law, assess the evidence presented, and control how hearings and trials unfold in their courtrooms. Most important of all, judges are impartial decision-makers in the pursuit of justice. We have what is known

as an adversarial system of justice - legal cases are contests between opposing sides, which ensures that evidence and legal arguments will be fully and forcefully presented. The judge, however, remains above the fray, providing an independent and impartial assessment of the facts and how the law applies to those facts.

The full text can be accessed at http://goo.gl/5MTLtL

Furthermore points d of Article 7: Equality and a (iii) of Article 9: Fair Trial of the **Code of Judicial Conduct Adopted In Terms Of Section 12 Of The Judicial Service Commission Act 1994 (Act No. 9 of 1994)** state respectively:

A judge must at all times in the performance of duties refrain from being biased or prejudiced.

A judge must resolve disputes by making findings of fact and applying the appropriate law in affair hearing, which includes the duty to remain manifestly impartial.

My complaint stems from the fact that on the 21st day of January 2014 whilst attending the hearing of the Applicant / Defendant Sandra Maria Voges in the above Honourable Court I was disturbed to witness, specifically during the latter part of the hearing, the presiding judge, Patricia Goliath, behaving contrary to Article 7 (d) and Article 9 a(iii). Instead of confining herself to the facts of the matter as laid out in the documents submitted, including the fact that the Applicant / Defendant had asked NEDBANK LIMITED on numerous occasions to answer a few questions regarding the alleged contract but which it had refused to answer and had again wished to ask NEDBANK LIMITED via her submission, to answer a series of questions under penalty of perjury, judge Patricia Goliath repeatedly advised the Applicant / Defendant and her representative that the solution to this matter was simple: "Just

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acknowledge your debt and pay the bank what you owe it!" To my mind the judge was obviously and blatantly being biased and impartial against the Applicant / Defendant Sandra Maria Voges. Given this very disturbing experience I felt compelled to lodge a complaint regarding the matter as I hereby do.

All words herein are as the Complainant defines them.

Signed and sealed this 30TH day of JANUARY, 20 14.

By: _____
(Complainant)
Faiez (Kirsten)

SUID-AFRIKAANSE POLISIEDIENS
STASIEKOMMISSARIS
MOWBRAY
30 JAN 2014
STATION COMMISSIONER
MOWBRAY
SUID-AFRIKAANSE POLISIEDIENS

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Acknowledgment

For verification purposes only

SUBSCRIBED AND SWORN TO before me by Faiez (Kirsten), known to me or proven to me to be the real human signing this Affidavit this

30th day of January, 2014.

WITNESS my hand and official seal.

COMMISSIONER OF OATHS [Print Name]

Signature

SUID-AFRIKAANSE POLISIEDIENS
STASIEKOMMISSARIS
MOWBRAY
30 JAN 2014
STATION COMMISSIONER
MOWBRAY
SUID-AFRIKAANSE POLISIEDIENS

Sworn at: Mowbray SAP

32 Main Road Mowbray