

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

Before the Honourable Mr Justice Desai

Cape Town: Friday, 22 December 2017

CASE NO: 23195/17

In the *ex parte* application of:-

**ABSA BANK LIMITED
(Registration Number 1986/0047/494/06)**

Applicant

and

**MAYFAIR HOLDINGS PROPRIETARY LIMITED
(Registration Number 2011/009288/07)**

First Respondent

**MAYFAIR SPECULATORS PROPRIETARY) LIMITED
(Registration Number 1987/003549/07)**

Second Respondent

ORDER

By agreement between the parties, IT IS ORDERED THAT:

1. Paragraph 2 of the Order granted by the Honourable Mr Justice Desai on Monday, 18 December 2017, be amended to include the following after paragraph 2.1.2:

2.2 A Notwithstanding paragraphs 2.1.1 and 2.1.2 above, authorising the Second Respondent to operate on a limited basis and in the ordinary course of business the following two bank accounts with the Applicant and on the terms set out below:

2.2.1. Account number 93-2161-6585 where all proceeds from any asset realisations shall be paid for the benefit of the creditors of the Second Respondent, and to be held in escrow.

2.2.2. Account number 93-2219-1815 as an operating expense account from which the Second Respondent shall be entitled to pay the ongoing operating expenses of the Second Respondent. The operating expenses account shall, at all times, be subject to the Applicant's scrutiny and to the extent necessary, the Applicant shall be entitled to stop any payments, until such time as the validity thereof has been confirmed;

2.2.3. The Second Respondent shall circulate a weekly budget in respect of the upcoming week's operating expenses for approval by the Applicant.

2.2 B Authorising the First Respondent to sign any and all documentation to give effect to a guarantee and a cession and pledge of shares in relation to the second respondent's indebtedness to the Applicant, Sanlam Capital Markets (Pty) Ltd and Investec Bank Ltd.

BY ORDER OF THE COURT

COURT REGISTRAR

Bowman Gilfillan Inc
Box 43
Tel: 021 480 7800
Email: adam.harris@bowmanslaw.com

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18/12/2017

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

CASE NO: 23195/17

Before The Honourable Mr Justice Desai
Cape Town: Monday, 18 December 2017

In the *ex parte* application of:-

2017 -12- 18
CAPE TOWN/KAAPSTAD
WES-KAAP HOË HOF
Applicant

ABSA BANK LIMITED
(Registration Number 1986/0047/494/06)

and

MAYFAIR HOLDINGS PROPRIETARY LIMITED
(Registration Number 2011/009288/07)

First Respondent

MAYFAIR SPECULATORS PROPRIETARY) LIMITED
(Registration Number 1987/003549/07)

Second Respondent

2017 -12- 18
CAPE TOWN/KAAPSTAD
WES-KAAP HOË HOF

DRAFT ORDER

Having heard counsel for the Applicant, and having read the documents filed of record, it is ordered that:

1. This application is heard *ex parte* and as one of urgency in terms of rule 6(12)(a).

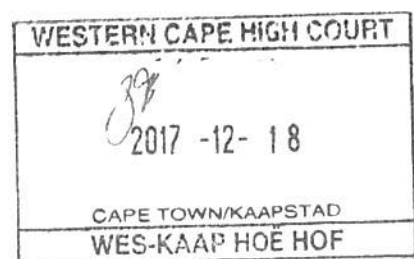
2. A rule *nisi* is issued calling upon the First and Second Respondents and any other interested party to appear and show cause on 29 January 2018 why an order in the following terms should not be made final:

2.1. Pending the appointment of a liquidator in the winding-up application of the Second Respondent under case number 23030/17 and the finalisation of any applications or actions instituted by such liquidator to set aside the declaration and payment of a dividend *in specie* by the Second Respondent in favour of the First Respondent:

2.1.1. interdicting and restraining the First Respondent from directly or indirectly dealing in any way with, disposing of or encumbering any of its present or future assets, including the present or future assets of any company owned or controlled by it, and including any and all monies received or receivable in future from any person;

2.1.2. interdicting and restraining the Second Respondent from directly or indirectly dealing in any way with, disposing of or encumbering any of its present or future assets, including the present or future assets of any company owned or controlled by it, and including any and all monies received or receivable in future from any person.

2.2. To the extent that the First Respondent may be possessed of assets in excess of R1 500 000 000 (one billion five hundred million rand), such additional assets will not be subject to the order in 2.1.1 above.



3. Pending the return day of the rule *nisi*, the order in paragraphs 2.1 and 2.2 above, shall operate as an interim interdict and be of immediate effect.
4. The Respondents, in terms of rule 6(8), have a right to anticipate the return day of the rule *nisi* of not less than twenty four hours' notice or to set the matter down for reconsideration in terms of rule 6(12)(c).
5. Service of this order, together with the notice of motion and accompanying affidavits, shall be effected on the First and Second Respondents by the Sheriff in accordance with the Uniform Rules of Court.

BY ORDER OF THE COURT




COURT REGISTRAR

43 Bowman Gilfillan Inc
SANDTON

/ec

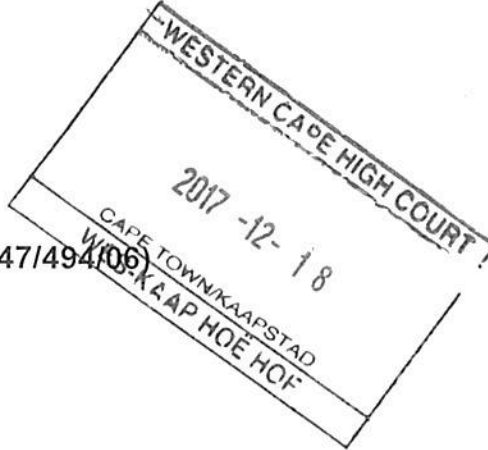
IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

CASE NO: 23195/17

In the *ex parte* application of:-

ABSA BANK LIMITED

(Registration Number 1986/0047/494/06)



Applicant

and

MAYFAIR HOLDINGS PROPRIETARY LIMITED

First Respondent

(Registration Number 2011/009288/07)

MAYFAIR SPECULATORS PROPRIETARY) LIMITED

Second Respondent

(Registration Number 1987/003549/07)

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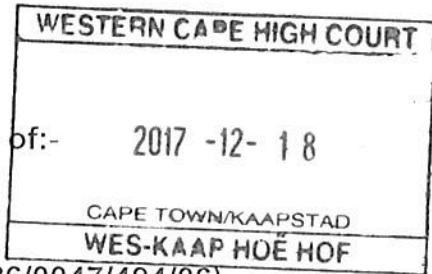
DATED AT CAPE TOWN THIS 18th DAY OF DECEMBER 2017



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TO: **REGISTRAR**
 High Court of South Africa
 Western Cape Division
CAPE TOWN
 Western Cape

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



CASE NO: 23195/17

In the *ex parte* application of:-

ABSA BANK LIMITED
(Registration Number 1986/0047/494/06)

Applicant

and

MAYFAIR HOLDINGS PROPRIETARY LIMITED
(Registration Number 2011/009288/07)

First Respondent

MAYFAIR SPECULATORS PROPRIETARY) LIMITED
(Registration Number 1987/003549/07)

Second Respondent

APPLICANT'S NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT application will be made to the above honourable court on behalf of the Applicant on Monday, 18 December 2017 at 14h00, or so soon thereafter as counsel may be heard, for an order in the following terms:

1. Permitting this application to be heard *ex parte* and as one of urgency in terms of rule 6(12)(a) and dispensing with the forms and service provided in the Rules, insofar as may be necessary, and disposing of this application at such

time and place and in such manner in accordance with such procedure as to the court deems fit.

2. That a rule *nisi* is issued calling upon the First and Second Respondents and any other interested party to appear and show cause on a date to be allocated by the Registrar, why an order in the following terms should not be made final:
 - 2.1. Pending the appointment of a liquidator in the winding-up application of the Second Respondent under case number 23030/17 and the finalisation of any applications or actions instituted by such liquidator to set aside the declaration and payment of a dividend *in specie* by the Second Respondent in favour of the First Respondent:
 - 2.1.1. interdicting and restraining the First Respondent from directly or indirectly dealing in any way with, disposing of or encumbering any of its present or future assets, including the present or future assets of any company owned or controlled by it, and including any and all monies received or receivable in future from any person;
 - 2.1.2. interdicting and restraining the Second Respondent from directly or indirectly dealing in any way with, disposing of or encumbering any of its present or future assets, including the present or future assets of any company owned or controlled by it, and including any and all monies received or receivable in future from any person.
 - 2.2. To the extent that the First Respondent may be possessed of assets in excess of R1 500 000 000 (one billion five hundred million rand), such additional assets will not be subject to the order in 2.1.1 above.
3. Pending the return day of the rule *nisi*, the order in paragraphs 2.1 and 2.2 above, shall operate as an interim interdict and be of immediate effect.
4. The Respondents, in terms of rule 6(8), have a right to anticipate the return day of the rule *nisi* of not less than twenty four hours' notice or to set the matter down for reconsideration in terms of rule 6(12)(c).

5. Service of this order together with the notice of motion and accompanying affidavits, be effected on the First and Second Respondents by the Sheriff in accordance with the Uniform Rules of Court.
6. Granting such further or/and alternative relief as the court may deem appropriate.

TAKE NOTICE FURTHER that the accompanying affidavit of HESTER CORNELIA VAN NIEKERK and the annexures thereto, will be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed Bowman Gilfillan Inc of 22 Bree Street, Cape Town as the address at which it will accept notice and service of all process in these proceedings.

Kindly place the matter on the roll for hearing accordingly.

DATED at CAPE TOWN on this the 18th day of DECEMBER, 2017.



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aanisah.ramroop@bowmanslaw.com
Ref: ASH/AR/yve

TO:
THE REGISTRAR OF THE ABOVE
HONOURABLE COURT

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

CASE NO:

In the *ex parte* application of:-

ABSA BANK LIMITED
(Registration Number 1986/0047/494/06)

Applicant

and

MAYFAIR HOLDINGS PROPRIETARY LIMITED
(Registration Number 2011/009288/07)

First Respondent

MAYFAIR SPECULATORS PROPRIETARY) LIMITED
(Registration Number 1987/003549/07)

Second Respondent

APPLICANT'S FOUNDING AFFIDAVIT

I, the undersigned,

HESTER CORNELIA VAN NIEKERK

do hereby state under oath as follows –

1. I am a Manager, Business Support of the Applicant and am authorised to represent the Applicant in these proceedings.



2. In my aforesaid capacity, I have been monitoring the affairs of the Second Respondent, insofar as these relate to the Second Respondent's indebtedness to the Applicant, and thus have personal knowledge of the facts set out in this affidavit. I have also personally been involved in various discussions arising from the Second Respondent's financial position with one of the controllers of the Second Respondent, Mr Stefanus Johannes Du Toit Potgieter. I have also had reference to the documentation in the Applicant's files pertaining to the subject-matter of these proceedings, which documentation is under my control.
3. Unless excluded by the context or otherwise indicated in this affidavit, the facts to which I depose in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.

APPLICANT

4.

4.1. The Applicant -

4.1.1. is **ABSA BANK LIMITED**;

4.1.2. has registration number 1986/004794/06;

4.1.3. is a public company incorporated with limited liability and registered in accordance with the Companies Act 61 of 1973 (as amended) (the **Companies Act**);

4.1.4. is a bank established and registered in accordance with the Banks Act 94 of 1994 (as amended);

4.1.5. is a credit provider registered in accordance with the National Credit Act 34 of 2005 (as amended) (the **NCA**);
and

4.1.6. has a place of business at 2nd Floor, 15 Alice Lane, Sandton, Johannesburg, Gauteng Province.



FIRST RESPONDENT

5.

5.1. The First Respondent -

5.1.1. is **MAYFAIR HOLDINGS (PROPRIETARY) LIMITED**5.1.2. has registration number **2011/009288/07**;5.1.3. is a company incorporated with limited liability and registered in accordance with the Companies Act 61 of 1973 (as amended) (**1973 Companies Act**) and deemed to exist as a company in terms of Article 2 of Schedule 5 of the Companies Act 71 of 2008 (as amended) (**2008 Companies Act**);

5.2. has, according to the records of the Companies and Intellectual Property Commission, the following active directors –

5.2.1. Markus Johannes Jooste (**Jooste**);5.2.2. Stefanus Johannes Du Toit Potgieter (**Potgieter**);5.3. has its registered address at 2nd Floor Avon Place, 15 Quantum Street, Technopark, Stellenbosch, Western Cape.SECOND RESPONDENT

6.

6.1. The Second Respondent –

6.1.1. is **MAYFAIR SPECULATORS PROPRIETARY LIMITED**;6.1.2. has registration number **1987/003549/07**;6.1.3. is a company incorporated with limited liability and registered in accordance with the Companies Act 61 of 1973 (as amended) (**1973 Companies Act**) and deemed to exist as a company in terms of Article 2 of Schedule 5 of

the Companies Act 71 of 2008 (as amended) (2008 Companies Act);

- 6.2. has, according to the records of the Companies and Intellectual Property Commission, the following active directors –
 - 6.2.1. Markus Johannes Jooste (**Jooste**);
 - 6.2.2. Stefanus Johannes Du Toit Potgieter (**Potgieter**);
- 6.3. has its registered address and chosen *domicilium citandi et executandi* at 2nd Floor Avon Place, 15 Quantum Street, Technopark, Stellenbosch, Western Cape.
7. The First Respondent (**Holdings**) is, to the best of the Applicant's knowledge, a holding and investment company which, *inter alia*, holds 100% of the issued shares in the Second Respondent.
8. The Second Respondent (**Speculators**) is a wholly owned subsidiary of Holdings, which in turn holds 85% of the issued shares in Two The Top Proprietary Limited and 100% of the issued shares in Mayfair Speculators SARL (France) (**Mayfair France**).
9. Speculators' primary assets are the share portfolio held by SBG Securities Proprietary Limited (**SBG**) in Steinhoff International Holdings N.V. (**Steinhoff**), certain racehorses and a 49% share in Klawervlei Stud Proprietary Limited, a property owning entity.
10. Potgieter is Jooste's son in law.

PURPOSE OF THIS APPLICATION

11. This matter relates to a loan advanced by the Applicant to Speculators in terms of a written agreement (more fully dealt with below) which was concluded on 13 December 2016. As at 13 December 2017, the total amount outstanding and due and payable by Speculators to the Applicant is approximately R226 million.
12. To the best of my knowledge Speculators is also indebted to Sanlam Capital Markets Proprietary Limited (**Sanlam**) in an amount of approximately



R800 million and to Investec Bank Ltd (Investec) in an amount of approximately R250 million.

13. As continuing covering security for their loans, Speculators ceded and pledged Steinhoff shares to the Applicant, Sanlam and Investec.
14. In early December 2017 the share price of Steinhoff was trading above R50. On 6 December 2017, the supervisory board of directors of Steinhoff made an announcement that:

"Certain new information had come to light today relating to accounting irregularities which require further investigation" and that "The supervisory board, in consultation with the statutory auditors of Steinhoff had approached PwC to perform an independent investigation."
15. The supervisory board announced further that Jooste, who was the chief executive officer of Steinhoff (and a director of Holdings and Speculators) had resigned from Steinhoff on 6 December 2017. As a consequence of this announcement, the Steinhoff share price plummeted to below R10. At the close of trading on Friday, 15 December 2017, it was trading at approximately R8 per share.
16. Whatever "new information" may have become known to the Steinhoff Board on 6 December 2017, the issue in respect of disclosures and accounting irregularities have the subject of investigation by the German regulatory authorities for some two years and dates back to 2015. There can be no doubt that Jooste, in his capacity as CEO of Steinhoff, must have been aware of these issues long before the board made its announcement on 6 December 2017.
17. Jooste has publicly admitted that he was responsible for the financial irregularities.
18. As appears more fully below, Speculators (represented by Potgieter with the backing of Jooste, his co-director) induced Investec at the end of November 2017 to advance a further amount of R93 509 000 as recorded by Investec, both Potgieter and Jooste must have known, when Speculators applied for and received the further advance from Investec, that the collapse in the Steinhoff

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share price was imminent. They intentionally failed to disclose these facts to Investec.

19. The Applicant has very recently learned that during August 2017 Speculators declared a dividend *in specie* to Holdings in the sum of approximately R1.5 billion. That dividend apparently consisted of houses, development properties, approximately R200 million in cash and Speculators' shares in Loadstone Brands Proprietary Limited (**Loadstone**), a company which manufactures pipes.
20. The Applicant contends that in declaring the dividend *in specie* to Holdings, Speculators effectively disposed of assets to the value of R1.5 billion when Jooste was a director. It is overwhelmingly probable that Jooste and his son in law, Potgieter, were aware that the financial irregularities and fraudulent transactions in Steinhoff would be uncovered in the near future and that when those facts were made public, the value of the Steinhoff shares would collapse. They also knew that. The collapse in the value of the Steinhoff shares would materially affect the security held by the Applicant, Sanlam and Investec for the loans advanced to Speculators.
21. In these circumstances, the Applicant seeks a so-called Mareva injunction or anti-dissipation order in terms of which the First and Second Respondents are prevented from disposing of any assets in order to defeat the Applicant's claims against them. The terms of the order are set out in the notice of motion.

EVENTS SINCE 6 DECEMBER 2017

The Applicant's liquidation application

22. After the precipitous collapse of the Steinhoff share price, the full amount owing by Speculators to the Applicant became due.
23. On 6 December 2017, van Vuuren of the Applicant verbally informed Potgieter of the breach of the share cover covenants (clause 8 of the Facility Agreement)




and requested Speculators to provide it with additional collateral to remedy the covenant breaches. Potgieter advised van Vuuren that Speculators did not have additional collateral to remedy the covenant breaches.

24. On 7 December 2017, the Applicant addressed a letter to Speculators in which it—
- 24.1. referred to the meeting held between representatives of the Applicant and Respondent on 6 December 2017;
 - 24.2. notified Speculators that as at close of business on 6 December 2017, the share price of Steinhoff was R17.61 and Speculators had breached its obligation and an event of default under the Facility Agreement had occurred in that —
 - 24.2.1. the amount outstanding under the facility exceeded 50% of the value of the shares;
 - 24.2.2. the amount outstanding under the facility exceeded 60% of the value of the shares;
 - 24.2.3. the amount outstanding under the facility exceeded 70% of the value of the shares;
 - 24.3. notified Speculators that the Applicant was exercising its rights pursuant thereto.

A copy of the letter is attached marked FA1.

25. On 11 December 2017, the Applicant received a letter from Speculators's attorneys of record advising that, given the complexity of the issue underlying the demand they were consulting at length with their client and hope to be in a position to respond by 12 December 2017. A copy of this letter is attached marked FA2.
26. On 7 December 2017 the Applicant addressed a letter by electronic mail and by hand to Upington, a copy of which is annexed marked FA3. In that letter the Applicant advised Upington that Speculators had breached its obligations



under the Facility Agreement and that the Applicant had elected to exercise its rights in terms of the Cession.

27. On 8 December 2017 the Applicant addressed a further letter to Speculators, a copy of which is annexed marked FA4. In that letter the Applicant confirmed that Speculators had failed to remedy the share covenant breach recorded in annexure FA1. The Applicant demanded payment of the outstanding sum of R226 366 518 together with interest. There was no response to this letter and no payment was forthcoming pursuant to the demand.
28. On 8 December 2017, representatives of the Applicant, namely myself, Tabisa Nkohla, Ian Themba and Lynn Ferguson, and Gerhard Erasmus of Sanlam Capital Markets met with Potgieter and Peter Beckert of Speculators. This meeting was held on a with prejudice basis.
29. At the meeting Potgieter informed the Applicant's representatives that—
 - 29.1. Jooste had resigned as a director of Speculators and all other companies within the group;
 - 29.2. Speculators had liabilities of approximately R1 billion and assets, if realised, of approximately R350 million;
 - 29.3. Speculators was both technically and commercially insolvent, due to the material deterioration in its primary asset (namely the Steinhoff shares held by it);
 - 29.4. Speculators was not able to repay its obligations, which had become due and payable to the Applicant and other lenders;
 - 29.5. Speculators was not able to top-up any security shortfall;
 - 29.6. in August 2017 Speculators made a dividend *in specie* to its sole shareholder, Mayfair Holdings, to the value of R1.5 billion. That dividend consisted of houses, development properties and a company which manufactured pipes.

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30. Speculators undertook to provide copies of its latest financial statements and other financial information to the Applicant by 11 December 2017. To date same has not been forthcoming.
31. On 15 December 2017 the Applicant launched an urgent application out of this court under case number 23030/17 for the provisional winding-up of Speculators. That application has been enrolled for 10h00 on Tuesday, 19 December 2017. A copy of the founding affidavit (excluding the annexures) in the liquidation application is annexed marked FA5. I deposed to that affidavit and confirm the correctness of the allegations recorded therein. I pray that the contents of my founding affidavit in the liquidation application be read as if specifically incorporated herein.
32. Speculators filed a notice to oppose the urgent liquidation application. I have been advised that, in light of the notice of opposition, the court hearing the liquidation application may very well not grant an order on 19 December 2017.

Investec's Urgent Application

33. As set out above, in late November 2017 Speculators (represented by Potgieter) and Ruby Street Investments Proprietary Limited (**Ruby Street**), represented by its sole director, Daniel van der Merwe approached Investec to increase amounts advanced to them under existing loan agreements. Van der Merwe is the chief operating officer of Steinhoff and is closely associated with Jooste.
34. Investec extended additional loans to Speculators and Ruby Street as follows:
 - 34.1. on 29 November 2017 Investec advanced two tranches of funds to Speculators in the amounts of R16 624 462 and R76 884 565 respectively;
 - 34.2. on 29 November 2017 Investec advanced the sum of R26 373 861 to Ruby Street.
35. When Jooste resigned and subsequent to the announcement by the Steinhoff board and the collapse in the price of the Steinhoff shares, Investec launched



an urgent *ex parte* application out of this court under case number 22973/2017 against Speculators and Ruby Street in which it sought an anti-dissipation order. The Applicant (Absa Bank) was cited as a third respondent.

36. On 14 December 2017 Slingers AJ granted the *ex parte* anti-dissipation order, a copy of which is annexed marked FA6.
37. The Applicant only became aware of Investec's urgent application and the facts set out therein when the order and founding papers were served on it on 14 December 2017.
38. I also annex marked FA7 a copy of Investec's founding affidavit (without annexures) deposed to by Avrom Krengel (**Krengel**) and pray that the contents thereof be read as if specifically incorporated herein. Krengel will depose to an affidavit in support of this application in which he confirms the correctness of the allegations in annexure FA7.
39. The Applicant will make every effort to obtain the court file in the Investec urgent application and to place it before the Judge hearing this application.

Meeting of ABSA, Sanlam and Investec

40. On 15 December 2017 the Applicant and Sanlam received a letter from Speculators' attorneys. The letter constituted a without prejudice proposal and consequently, the Applicant has been advised that it ought not to be disclosed to the court.
41. Nonetheless, as a consequence of the letter, representatives of the Applicant, Sanlam and Investec, together with their attorneys, held a meeting on the afternoon of Friday, 15 December 2017. I attended that meeting.
42. At that meeting, the lenders resolved that Holdings and Speculators be approached and that Holdings should furnish the Applicant, Sanlam and Investec with the following by Monday, 18 December 2017:
 - 42.1. a guarantee duly signed on behalf of Holdings with the necessary financial assistance resolutions and authorisation in favour of the three lenders, which guarantee should include a standard negative pledge




not to dispose of assets other than monthly overheads in the ordinary course of business;

- 42.2. a pledge and cession of Holdings shares in Loadstone (**cession and pledge**) together with the necessary financial assistance resolutions and authorisations.
- 43. It was agreed that Sanlam and its attorneys, Norton Rose Fulbright, would approach Speculators and Holdings regarding the guarantee and cession and pledge .
- 44. After the meeting Riza Moosa (**Moosa**) a director of Norton Rose distributed an email to the relevant parties who attended the meeting, a copy of which is annexed marked **FA8**. In that email he recorded that he had called Mr McDougall, Speculators' attorney and advised him that the only basis upon which Absa would consider a postponement of the liquidation application, was if Holdings furnished the lenders with a guarantee. McDougall advised that he was meeting with Potgieter the following morning to discuss the liquidation application and that they would consider the terms of the guarantee and cession and pledge. Moosa advised that those draft agreements would be circulated on the evening of 15 December 2017.
- 45. On 16 December 2017 at approximately 13h40, Moosa forwarded the draft guarantee and cession and pledge agreements to McDougall. In this regard I refer to the email he forwarded to McDougall, a copy of which is annexed marked **FA9**, the contents of which is self-explanatory. He requested McDougall to call him if he had any questions or comments.
- 46. Later on 16 December 2017 Moosa contacted *inter alia*, the Applicant's attorney Claire van Zuylen and advised her that Holdings had rejected the proposal that Holdings furnish a guarantee and conclude an agreement of cession and pledge.

GROUNDS FOR THIS APPLICATION

- 47. At the meeting of the three lenders on 15 December 2017, Sanlam furnished the Applicant with a balance of sheet of Holdings as at 1 December 2017 extracted from its management accounts and provided to Sanlam by

Speculators. A copy of the balance sheet is annexed marked FA10. It is apparent from this balance sheet that Holdings has assets of approximately R1.47 billion and liabilities of approximately R108 million. These assets include the dividend *in specie*.

48. Sanlam also furnished the Applicant with the minutes of a meeting of the directors of Speculators held on 4 August 2017, a copy of which is annexed marked FA11. These minutes record, *inter alia*, the following:

48.1. the operations of Holdings consisted of the Steinhoff shares, a horse racing portfolio, a property portfolio and a private equity portfolio;

48.2. the total value of the private equity portfolio and the property portfolio including loan claims against Holdings was approximately R1.5 billion;

48.3. the Group wished to continue its ongoing restructuring exercise and that a declaration of a dividend *in specie* to Holdings would be the most efficient way to achieve that restructure;

48.4. the minutes were signed by Jooste and Potgieter and the resolution reflecting the declaration of the dividend was signed by Potgieter.

49. In hindsight and having regard to what is set out in the Applicant's liquidation application, Investec's urgent application and in this affidavit, it is overwhelmingly probable that when Speculators declared the dividend *in specie*, Jooste (and, in all probability Potgieter) knew that the financial irregularities and fraudulent transactions within Steinhoff (for which Jooste is responsible) would be made public. Jooste and Potgieter knew that when these facts came to light, Steinhoff's shares would plummet, the loans to the Applicant, Sanlam and Investec would become due and payable and Speculators would not have sufficient liquidity to discharge those debts. The inevitable consequence would be that there would be an application for the winding-up of Speculators and that the assets which formed the subject of the dividend *in specie* would remain 'trapped' in the estate of Speculators and be sold by the liquidators in order to discharge the debts owed to the three lenders.



50. In the circumstances, the declaration of the dividend *in specie* by Speculators in favour of Holdings constituted nothing less than a fraud, the aim of which was to denude Speculators of its assets so as to benefit Holdings and the Silver Oak Trust and its beneficiaries which are, in all likelihood, Jooste and his family.
51. There can also be little doubt that the conduct of Potgieter and Jooste in inducing Investec to advance a further amount of approximately R95 million to Speculators on 29 November 2017 was also nothing less than naked fraud. It constituted a further step in the fraudulent course of conduct.
52. It is little wonder then that Holdings refuses to provide a guarantee and the cession and pledge of shares in Loadstone to cover the debts owed to the Applicant, Sanlam and Investec. The ineluctable inference to be drawn is that in order to give full effect to its fraudulent scheme arising from the declaration of the dividend *in specie*, Holdings and Speculators are likely to dissipate those assets in order to put them beyond the reach of the Applicant, Sanlam and Investec.
53. This inference is fortified by a report in the Sunday Times Business Times of 17 December 2017 that Speculators has commenced selling race horses. According to this report, Speculators owns 350 horses and approximately 100 mares for breeding. A copy of the report is annexed marked FA12.

REQUIREMENTS FOR RELIEF

54. It is submitted that the Applicant has demonstrated, at least *prima facie*, that it has a valid claim against Speculators and that Speculators, in collusion with Holdings, (both companies had the same directors) declared the dividend *in specie* to defraud Speculators' creditors and to benefit Holdings, and probably, the Silver Oak Trust and its beneficiaries.
55. It is submitted that Speculators has no *bona fide* defence to the Applicant's claim for repayment of the outstanding balance of the loan and that, on the evidence set out above, Speculators, Holdings and their common directors, have colluded to defraud Speculators and their creditors.



56. It is submitted that, in these circumstances, Holdings would have not *bona fide* defence to a claim by the liquidators of Speculators to set aside the dividend *in specie* as a collusive dealing under section 31 of the Insolvency Act.
57. In effect, by declaring the dividend *in specie*, Speculators demonstrated some months ago, its intention to dissipate its assets. If the Respondents are given the opportunity to dissipate further assets, the Applicant (and by implication, Sanlam and Investec) will suffer irreparable harm in that they will not be able to recover the debt due to it.
58. The Applicant does not have an alternative remedy to exercise its rights as the Steinhoff share price has decreased to such an extent that the security is wholly insufficient to cover the debt.
59. On the balance of convenience, Holdings and Speculators are, in effect, holding companies and are not trading entities. If the court grants the anti-dissipation order, neither Respondent will be particularly prejudiced. Conversely, the Applicant is likely to suffer severe and irreparable prejudice if the assets are not frozen for reasons which are manifest. The value of the security which the Applicant holds has all but disappeared and does not nearly cover the debt owing to it by Speculators.

URGENCY

60. The Applicant contends that this application is clearly urgent and that there is every probability that Holdings and Speculators continue to dissipate or dispose of assets. If the interdict is not granted, the Applicant will not be able to obtain substantial redress at a hearing in due course.
61. It has become clear, since the discussions with McDougall over the weekend, that the Second Respondent intends to oppose the winding-up application launched by the Applicant and bring a counter-application for business rescue. The only purpose for doing so, in circumstances where the debt to the Applicant is not disputed, is simply to attempt to delay the hearing of the liquidation application to afford the Respondents additional time to continue with the dissipation of assets.

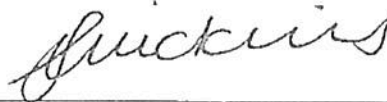



62. The timing of the declaration of the dividend *in specie* and the manner in which that was achieved, the fraud committed on Investec and the financial irregularities and fraudulent transactions in within Steinhoff, all of which were masterminded by Jooste, demonstrate that the frauds are likely continue.
63. In all of the circumstances, the Applicant seeks an order in terms of the notice of motion.



HESTER CORNELIA VAN NIEKERK

I CERTIFY that this affidavit was signed and sworn to before me at *Sandton* on this the *17th* day of **DECEMBER 2017**, by the deponent who acknowledged that she knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on her conscience and who uttered the following words: "I swear that the contents of this affidavit are true, so help me God".



COMMISSIONER OF OATHS

Name:

Address:

Capacity:

SALLY-ANNE WICKINS

Kommissaris van Ede / Commissioner of Oaths
Praktiserende Prokureur / Practising Attorney RSA
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