

972

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG
(REPUBLIC OF SOUTH AFRICA)

CASE NO: 10945/2012

In the matter between:

VAN TONDER, ANALIZE First Applicant

WEMA BELEGGINGS (PTY) LTD Second Applicant

PEGMA MINERALE (PTY) LTD Third Applicant

and

FNB TRUST SERVICES (PROPRIETARY) LIMITED
(Registration No. 1986/003488/07) First Respondent

FIRSTRAND BANK LIMITED
(Registration No. 1929/001225/06) Second Respondent

RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

BARBARA CATHARINE BOTHA

do hereby make oath and state that:

1. I am an adult female employed by the first respondent as a legal compliance officer and I confirm to the extent necessary that I am duly authorised to depose to this affidavit on behalf of the respondents.

2. The facts herein contained are, unless the contrary is stated or indicated, within my own personal knowledge and such facts are to the best of my knowledge and belief both true and correct.
3. Where I make submissions of a legal nature I do so based on the advice that I have received from the respondents' legal representatives which I accept as being correct.

**THE APPLICATION AND THE BASIS OF THE RESPONDENTS' OPPOSITION
THERE TO**

4. I have read the notice of motion and founding affidavit (which is entitled "affidavit") by the first applicant, Analize van Tonder and wish to answer thereto.
5. I indicate that the respondents have undertaken not to take a technical objection to the form of the notices received for the request for information, the fact that the fee payable in the amount of R50 as a deposit was not paid timeously and that the Form C was not completed in detail.
6. The respondents agreed and decided to adopt this approach because they have maintained a cooperative approach throughout and have endeavoured to the best of their ability to provide the information requested.
7. There is no intention to frustrate the applicants insofar as they may have a legitimate right to request the records for purposes of exercising a right as envisaged in the Promotion of Access to Information Act, 2000 (Act 2 of 2000) ("PAIA").

8. Notwithstanding the foregoing I am advised that in terms of section 50 of PAIA the applicants can only be entitled to the records of a private body if –
- 8.1. the record is required for the exercise or protection of any rights;
 - 8.2. the applicants comply with the procedural requirements of PAIA relating to a request for access to that record; and
 - 8.3. access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of Part 3 relating to the access to records of private bodies.
9. It is submitted that the essential issue in this matter that the Honourable Court has to determine is precisely what is being requested, and flowing from that ^{A.} the right of the applicants to request same including an explanation of why the _{B.} requested record is required for the exercise of or protection of that right.
10. Whilst the respondents have adopted the approach that they did not wish to be technical in their objections in requiring the compliance with the requirements set out in Section 53 of the Act in regards to the form of the request, it is submitted that this Honourable Court nonetheless needs to be advised of the matters raised below as they relate to the real issues (or merits) of the application and the right of the applicants to obtain relief at all.
11. It is in the light of the foregoing that I am advised and respectfully submit that it will be argued at the hearing of this application that the applicants have failed:

11.1. to provide the respondents and this Honourable Court with sufficient particulars to identify –

11.1.1. the record or records requested; and

11.1.2. the requestor (as envisaged in section 53(2)(a));

11.2. to identify the right the applicants are seeking to exercise or protect and to provide an explanation of why the requested record is required for the exercise of protection of that right (Section 53(2)(d)).

12. The applicants' request in paragraph 1 of the notice of motion the "full transaction history of the following bank accounts, from the inception of such bank accounts in 1989 until the closure thereof in 2006". They then list in paragraphs 1.1 to 1.8 of the notice of motion various "accounts". This prayers are to be read with paragraph 27 of the founding affidavit and annexures "B1" to "B8" to identify what is being requested.

13. However the difficulty in this matter is that what has been requested and what has in fact been supplied is not bank accounts but an accounting from the first respondent of what it has done and is described as a transaction history. There are no bank account with the second respondent as suggested in the founding affidavit and described in the notice of motion. (1)

14. The further difficulty is that in respect of each of the items requested the applicants have failed to identify why they would have a right to request those records and what the relevance is to the right they are suggesting they will exercise. It was not made clear in the request and there was non-compliance with the form of the request in this regard (which is not being objected to) but (2)

the defect has not been remedied in the founding affidavit either. It is submitted that the present application is fatally defective as a result.

15. In this regard it is impossible to try and relate, for instance, what estate late FJ van Tonder's account has to do with the management and administrative functions in respect of the second applicant's business and the second and third applicants' respective property portfolios as described in paragraph 17 of the founding affidavit and why the disclosure of these accounts will somehow resolve the dispute outlined in paragraphs 24 and 25 of the founding affidavit.
16. Similarly it is the accounts requested in paragraphs 1.2, 1.3, 1.4, 1.5 (which refers to PEGMA (EDMS) BPK and which is on the face different to the citation of the third applicant), 1.7 and 1.8 would somehow resolve these matters. It seems from the notice of motion that only prayer 1.6 of would yield any relevant document, however the first respondent contends it has provided all such statements.
17. The applicants have failed to set out with any clarity the history and background to the relationship between the applicants and the first and second respondents or that of the parties referred to in the notice of motion save in a very cursory fashion as set out in paragraphs 14 to 17 of the founding affidavit. That description as set out therein is of little assistance and does not address what is raised above.
18. The first applicant does not allege that she is entitled to the information relating to the estates and entities as described in the notice of motion and she does not show any causal connection that would entitle her or the other applicants

to the records or otherwise comply with amongst others the provisions of Section 63 of PAIA.

19. Notwithstanding these inadequacies, the respondent has endeavoured even prior to the formal request in terms of the provisions of PAIA, to provide all statements and documents that it believed are being requested, and still believes have been requested, to the applicants.
20. It is the respondents' case that the first respondent has indeed provided the applicants with all the relevant statements that existed at the time and a copy of all the statements so provided will be made available to this Honourable Court at the hearing of the application for this Honourable Court to consider what has been made available. 22
30.2
21. In order to understand what is in fact being made available it is necessary briefly outline the nature of the relationship between the parties and the nature of the documents made available.
 - 21.1. The first respondent was appointed as the executor in the estate of the late Mr FJ van Tonder.
 - 21.2. In his will the late Mr Van Tonder created a testamentary trust in favour of the first applicant which was generally described by the first respondent as the FJ van Tonder Testamentary Trust in respect of Anelize van Tonder.
 - 21.3. As alleged in paragraph 14 of the founding affidavit the trust continued until the first applicant reached the age of 35 which was on 21 July 2003.

- 21.4. The first respondent was not only appointed as the administrator of the trust but was also the executor of the deceased estate.
- 21.5. In performing these functions there would therefore be different roles that the first respondent would play and different requirements.
- 21.6. Insofar as the winding-up of the estate of FJ van Tonder would be concerned same would be governed by the Administration of Estates Act, 2004 1965 (Act 66 of 1965) and this estate was wound-up years ago in accordance with those requirements.
- 21.7. Insofar as the first respondent acted as a trustee, The Trust Property Control Act, 1988 (Act 57 of 1988) applies. In this regard Section 17 of that Act requires that a trustee only keep the documents in safe custody for a period of 5 years from the termination of a trust. The obligation to keep any documents accordingly terminated on 21 July 2008, since on the first applicant's own version the trust was terminated on 21 July 2003 when she reached the age of 35 (see paragraph 17 of the founding affidavit).
- 21.8. As such all the records of the trust were no longer required to be kept by the first respondent.
- 21.9. Be that as it may the first respondent has done its best to try and salvage these records in accordance with what it could decipher as being the request of the applicants.

- 21.10. It is further necessary to understand that the function that the first respondent performed after the termination of the trust is that the first respondent performed a management function.
- 21.11. In this capacity, what the first respondent was seeking to do for the first applicant was to manage the portfolio of investments which would include shares, moneys and other investments.
- 21.12. I annex marked "AA1" a copy of the Portfolio Statements of Investments as at 19 September 2005 as an example.
- 21.13. What this document demonstrates is that the first respondent was making investments and managing the portfolio of those investments on behalf of the first applicant.
- 21.14. In doing so it will provide transaction history statements as appears from // the examples annexed marked "B1" to "B8" to the founding affidavit.
- 21.15. Having regard to the documents annexed as "B1" to "B8" to the founding affidavit it appears that what is being requested by the applicants is all the statements in regard to these accounts. ||
- 21.16. The first respondent is of the view that it has provided these statements in respect of each of the accounts and the founding affidavit fails to identify which statements have not been made available by the respondents.
- 21.17. As indicated the respondents will make a copy of all the documents made available to the applicants available to the Court.

- 21.18. It is necessary however to identify that these statements although some of them describe them as "*bank statements*" as reflected on "B1" to "B3", they are in fact transactional histories for the estate as created by the FNB Trust Services Estates System.
- 21.19. This is apparent for instance by the identification of the words "*Estate Account*" and the words "*Estate Officer*" in English on "B1" and "*Boedel Beampste*" on "B2" and "B3".
- 21.20. The purpose of these statements was to reflect the management of the funds in respect of the estates as reflected thereon.
- 21.21. As appears from annexure "B4" not all the statements provided reflect monetary transactions but some relate for instance to capital transactions reflecting the movement and the holding of shares.
- 21.22. Accordingly these are the documents that were provided, as appears from the agreement, to the first applicant on a quarterly basis setting out and accounting for the functions performed by the first respondent on behalf of the applicant.
- 21.23. The manner in which the bank accounts were conducted is that the first respondent as the trust company held a trust banking account with the second respondent. That banking account would contain the funds of all of the various trust clients of the first respondent in much the same way as an attorney's trust account would.
- 21.24. As such, unless for specific investment purposes, funds were not held in the individual names of the clients with the second respondent. As such

there are not banking accounts in the names requested with the second respondent and the transaction accounts as described above are all statements and accounts produced by the first respondent.

21.25. It is clear reading the prayers in the notice of motion together with annexures "B1" through "B8" as read with paragraph 27 of the founding affidavit that what is being requested is the transaction history statements with the first respondent and not the bank accounts with the second respondent, which in any event do not exist.

21.26. In further elaborating on the foregoing I refer to the following:

21.26.1. the heading on annexure "B4" which describes the document as "*FJ van Tonder – Analyze Trust Transaction Statement...*";

21.26.2. the description on annexure "B5" describing the "*Account Name: #Mev Amis-PEGMA (EMS) BPK*" and underneath that "*Transaction statement for the period...*";

21.26.3. the similar description on "B6", "B7" and "B8" describing the documents as transaction statements;

21.26.4. the description "*Tams*" on annexure "B8" which is a reference to the asset management system used to generate the statements.

22. It is submitted that in the light of the foregoing, given the attachments and what is requested in the notice of motion all documents of that nature have been made available to the applicants. If other documents are being

32.2

requested by the applicants they have not been adequately described nor called for.

23. It is submitted that on this basis alone the present application should be dismissed with costs.

24. There is however a further reason why the application must fail and that is because the applicants no longer have any rights that they can pursue. I elaborate on this aspect as follows:

24.1. In regard to whether the applicants would have any right at this stage and whether the documents requested would assist them in enforcing such rights I submit that on the applicants' own version any claim that they might have had as long since prescribed.

24.2. In this regard it is clear that from at least 21 July 2003 the trust had terminated and the first applicant was managing the affairs for her own account. She was the director of the second and third applicants from, it appears, no later than 20 September 2006, but was in a position to take charge of her and their affairs from 21 July 2003.

24.3. The applicants would receive statements from the first respondent at least on a quarterly basis.

24.4. Her excuse that she was travelling extensively and living abroad for long periods of time does not assist her in suggesting that prescription would be delayed.

- 24.5. On her own version she terminated any mandate that the first and second respondents might have had in 2006.
- 24.6. Moreover on the first applicant's own version, she would therefore have been in a position to investigate the affairs of the applicants from that date.
- 24.7. Any claim that she might have against the respondents has accordingly long since prescribed.
- 24.8. The alleged dispute that arose in 2010 in regard to commission claims with Clasto Konsultante CC, who were appointed on her own request, was long after the relationship with the respondents had terminated.
- 24.9. Any amounts that had been paid incorrectly, if at all, must be considered to be debts which would, ordinarily, fall due for repayment on the date of the incorrect payment being made. In regard to the respondents' involvement and the documents relating thereto – those documents relate to a period more than 3 years before the dispute even arose.
- 24.10. There can be no suggestion, and none is made in the papers, that the first applicant was prevented from becoming aware of that indebtedness or did not have knowledge of the identity of the debtor or the facts from which the debt arises since the first applicant would be deemed to have such knowledge if she could have acquired it by exercising reasonable care as provided in Section 12 of the Prescription Act 68 of 1969.
- 24.11. In the circumstances any claim or right that the applicants may have had fell due no later than the beginning of January 2007 by which time the first

applicant was the sole director and sole shareholder of both the second and third applicants and had terminated the respondents' mandate.

25. In the premises any alleged rights have become prescribed in terms of Section 11 of the Prescription Act 68 of 1969 and in those circumstances there are no rights left to enforce.
26. In the circumstances despite the respondents' cooperative attitude, as a matter of law and for purposes of this application in terms of the provisions of PAIA, there is no right which would entitle the applicants to the documents in any event.
27. It is submitted that for this reason too the relief sought in the application should be refused.

AD SERIATIM RESPONSE

28. In the light of the foregoing it is not the respondents' intention to necessarily answer each and every allegation contained in the founding affidavit and our failure to do so should not be construed as an admission of the correctness of anything therein stated. This affidavit should be read as a whole and anything contrary to what I have stated herein should be deemed to be denied.
29. **AD PARAGRAPH 2**

I deny that all the allegations in the founding affidavit are within the personal knowledge of the first applicant. I further deny that they are all true and correct.

30. AD PARAGRAPHS 3 TO 5

These allegations are not disputed for purposes of the present application.

31. AD PARAGRAPH 8

31.1. As described above the first respondent did not conduct bank accounts at the second respondent in the name of the second and third applicants.

31.2. In any event those bank accounts are not what is being requested in terms of the notice of motion as dealt with above.

31.3. The statements that were produced were in respect of transactions that were conducted on behalf of the trust accounts as set out in the examples annexed marked "B1" to "B8" in the founding affidavit.

31.4. When the mandate was finally terminated the "accounts" were closed and all moneys and other investments such as shares and share certificates were transferred to the applicants or their nominee.

31.5. The respondents have no knowledge as to what the second and third applicants did thereafter.

31.6. Save as aforesaid, the allegations herein contained are denied.

32. AD PARAGRAPH 9

32.1. No indication has been given as to what forensic investigation has been conducted and what it has revealed.

32.2. Moreover it is the respondents' version that a full transaction history in respect of each of the accounts mentioned in paragraphs 1.1 to 1.8 of the notice of motion has been provided, as dealt with above.

32.3. The applicants give no indication as to exactly which statements are allegedly missing and it is denied that the respondents have failed to provide any documents that are in existence and that have been properly requested to the applicants.

32.4. Save as aforesaid, these allegations are denied.

33. AD PARAGRAPH 10

33.1. It is denied that this is an application in terms of Section 53 of PAIA. Section 53 does not deal with applications to court.

33.2. I am advised that in terms of the provisions of Section 78 of PAIA an application may be made within 30 days for appropriate relief as envisaged in Section 82 of PAIA and that such application must be brought in accordance with the procedure set out in Section 79 of PAIA.

33.3. In particular I deny that the application complies with the Rules of Procedure for Applications to Court in terms of the Promotion of Access to Information Act 2 of 2000 published under Government Notice R965 in Government Gazette 32822 of 9 October 2009. In particular it is denied that the provisions of Rule 3 have been complied with.

34. AD PARAGRAPH 14

As dealt with above the trust was generally described by the first respondent as the FJ van Tonder Testamentary Trust in respect of Anallze van Tonder.

35. AD PARAGRAPH 15

It is denied that the immovable properties, indirectly or otherwise form part of the assets of the trust. The second and third applicants' shares were part of the trust but save as aforesaid, these allegations are denied.

36. PARAGRAPH 16

These statements constitute a further reason why there can be no basis for the present application since at all material times, even on the first applicant's version, the companies were duly audited. As part of the audit procedures the bank accounts would have been checked and balanced. There is no suggestion that this task was not performed by the auditors and accordingly it is not understood what the intended forensic audit is supposed to reveal.

37. AD PARAGRAPH 17

37.1. To the best of the respondents' knowledge the first applicant was appointed as a director of each of the second and third applicants on 20 September 2006.

37.2. It is denied that the first respondent managed the property portfolios of the second and third applicants after 21 July 2003. As the first applicant herself concedes the managing agent in this regard was responsible for managing the property portfolios.

37.3. The suggestion that the first applicant was travelling abroad extensively and did not have time to attend to the aspects of the business amounts to neglect of her duties as a director of the second and third applicants and is no excuse. It substantiates precisely why any claim she might have had has long since become prescribed.

38. AD PARAGRAPH 18

Clasto Konsultante CC was appointed by and at the insistence of the first applicant.

39. AD PARAGRAPH 19

It is denied that the first respondent was obliged to perform administrative or accounting functions or that they outsourced same to Clasto Konsultante CC as alleged.

40. AD PARAGRAPHS 20 TO 22

40.1. It is denied that the first respondent ever performed the function of manager and administrator of the second and third applicants' buildings either as alleged or at all.

40.2. I further deny that there were bank accounts that had been conducted at the second respondent in the name of the first and the second applicants via the first respondent since such moneys as were received, as dealt with above, by the first respondent were dealt with through its trust account with the second respondent.

40.3. It is accepted, however, that the first respondent transferred all moneys and other assets to the applicants upon the termination of the relationship.

40.4. Save as aforesaid, these allegations are too vague to be dealt with further and are in any event irrelevant to the relief sought in the application. They are accordingly denied.

41. AD PARAGRAPH 23

On the applicant's own version Visser Louw Professional Accountants SA were appointed to the management of the second applicant's business from during or about 2006. They would have seen to the auditing of the business and the running of same.

42. AD PARAGRAPH 24

On the applicants' own version more than three years after termination of the relationship with the respondents, an alleged dispute arose between the second applicant and Clasto Konsultante CC in regard to the commission claims. It is in these circumstances that it submitted that any claim that the applicants might have had in respect of documentation that they seek from the respondents has long since become prescribed.

43. AD PARAGRAPH 25

43.1. The alleged unsatisfactory and disconcerting aspects relating to the management of the second applicant's business is not explained. It is in any event denied that this has anything to do with the respondents.

43.2. I have no knowledge as to what interaction the first applicant had with Mr Lombard.

44. AD PARAGRAPH 26

I have no knowledge of what Mr Lombard advised the first applicant.

45. AD PARAGRAPH 27

45.1. As dealt with in detail above despite the descriptions on annexures "B1" to "B3" the transaction histories provided are not in respect of bank accounts *per se*. This is precisely why bank account numbers do not appear on the statements.

45.2. In regard to paragraphs 27.5 to 27.8 and the accounts referred to therein, those account numbers are the account numbers for the first respondent in accordance with its "Tams" system which is its trust management system that it uses to keep record of its dealings with its clients.

45.3. Accordingly all the statements are in fact issued by the first respondent and not the second respondent.

46. AD PARAGRAPHS 28 TO 31

Aside from the receipt of the correspondence, the respondents have no knowledge of these allegations.

47. AD PARAGRAPH 32

As explained at length during the various meetings and in the correspondence, the documentation requested goes back many years and spans three different

systems. Accordingly collating all the different transactional history statements proved to be an arduous task which took much time.

48. AD PARAGRAPHS 33 TO 36

48.1. As dealt with above the respondents cooperated by trying to have meetings to understand what was requested and to deal with the matters properly.

48.2. It is clear from the first sentence in paragraph 36 that as far as the respondents are concerned they were dealing with a transaction history but not with bank accounts per se. The mention of bank statements by the first applicant is erroneous.

48.3. It is true that some of the documents could be provided in an excel format from the existing system, but other documents, due to them having being held on older transaction history systems had to be obtained from the Microfiche film which are held at branch level generally.

49. AD PARAGRAPHS 37 TO 39

49.1. If a proper analysis of the bank statements provided is conducted it will be discovered that the transfers were done but at a later date. So although the accounts may have commenced with a zero balance as per the system, transfers from the previous accounts in respect of the transaction history were made thereafter. An analysis of the transaction histories for the period 1996, which will be made available to the Court at the hearing hereof will demonstrate what I am stating.

49.2. Accordingly It is denied that the transaction history statements provided were inaccurate.

49.3. Even if they were, It is Irrelevant since the respondents, for purposes of the present application can only be compelled to provide documentation that in fact exists. If the documentation is Inaccurate, that is an entirely different matter.

50. AD PARAGRAPH 40

It is uncertain what the relevance of these allegations are?

51. AD PARAGRAPH 41

Again, these allegations are irrelevant for purposes of this application. If the statements are allegedly inaccurate that is another matter. It is denied that they are inaccurate but the respondents can only be obliged to make available, in terms of the provisions of PAIA, such documents as do exist.

52. AD PARAGRAPHS 42 TO 45

52.1. Initially it was not possible to locate the Microfiche records.

52.2. Accordingly at that stage I had suggested that if they could not be located the first respondent would try and reconstruct the records by going to its trust banking accounts with the second respondent and blanking out the various transactions pertaining to all the various other accounts and clients that it had should obviously be confidential and Irrelevant to the first respondent.

52.3. However, that arduous process, which I am advised as a matter of law the first respondent would not in any event have been obliged to undertake, was not necessary because the Microfiche documents were located and they were provided under cover of the letter dated 10 June 2011.

52.4. It is denied that any "bank statements" are missing.

52.5. It is submitted that the full transaction history has been provided. The alleged documents that are still missing have not been identified.

53. AD PARAGRAPHS 46 TO 48

53.1. The statement referred to in this correspondence was a request to specify what if any other documents were still missing and were still required. This was done in an attempt to try and be helpful because as far as I was concerned all the documents requested had been provided.

53.2. As far as the respondents are concerned all the documents requested were delivered.

54. AD PARAGRAPHS 49 TO 52

54.1. As indicated above the respondents are not taking a technical objection to the form of the request and the nature thereof.

54.2. However, it is denied that no formal response was received and I annex hereto copy of a response marked "AA2" reflecting the formal response to the request which denied that the applicants were entitled to the documents as a result of the provisions of Section 7(1)(a) of PAIA. I have subsequently been advised, however, that the basis of this objection is not correct and the respondents do not rely thereon.

54.3. Be that as it may, for the reasons set out herein above it is the respondents' case that they have provided all the documents requested but that in any event no right to the documentation has been demonstrated.

55. AD PARAGRAPH 53

55.1. As dealt with above the documents are not bank statements per se but transaction histories.

55.2. Save as aforesaid the respondents contend that they have provided everything requested and the remaining allegations herein contained are denied.

55.3. In particular it is denied that the transaction histories of necessity reflect the work done by the managing agents.

56. AD PARAGRAPH 54

56.1. Again the alleged serious nature of the apparent discrepancies have not been described.

56.2. The respondents repeat that they have provided the transaction history in respect of the transactions with the first respondent.

56.3. Save as aforesaid, these allegations are denied.

57. AD PARAGRAPH 55

For the reasons dealt with above it is denied that any claim that the applicants might have had still exists and same would have become prescribed.

58. AD PARAGRAPH 56

It is denied that the first respondent has breached any of its fiduciary duties that rested on it or its employees in relation to the second and third applicants' affairs. For the reasons dealt with above, any alleged claim against the respondents would have in any event have become prescribed more than 2 years ago.

59. AD PARAGRAPH 57

59.1. As dealt with above the respondents contend that the first respondent has complied with its obligations to provide the documentation that it has.

59.2. I deny that the first applicant has made out any case for a derivative action of the type described herein and it is denied that she has *locus standi* to seek relief in respect of the second and third applicants' accounts as alleged.

60. AD PARAGRAPHS 58 TO 61

- 60.1. It is denied that this application could ever be urgent. Any claims that might have existed have prescribed many years ago.
- 60.2. In any event, the applicants are the authors of their own misfortune in having delayed more than four years after the first applicant took charge of the affairs of the second and third applicants before taking any steps towards making any investigations.
- 60.3. I indicate further that on 28 March 2012 and after being instructed to attend to the application on the respondents' behalf the respondents' attorneys Bezuidenhout van Zyl and Associates Incorporated ("BVZ") addressed correspondence in an attempt to try and resolve the matter more expeditiously and amicably and sought to draw to the attention of the applicants the shortcomings in the application. A copy of this letter is annexed marked "AA3".
- 60.4. Unfortunately the response received only on 5 April 2012 from the applicants' attorneys, Millers Attorneys did not deal with the substance of the matter. A copy of their response is annexed marked "AA4".
- 60.5. In the circumstances it is submitted that the respondents are entitled to be indemnified against the full costs of the applicants unnecessarily proceeding with this application and would seek an appropriate costs order on the attorney and clients scale to give effect to this.

WHEREFORE the respondents pray that the application be dismissed with costs on the attorney and clients scale, alternatively on the party and party scale.

DEPONENT

I CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to, before me, at _____ on this the ____ day of _____ 2012, the Regulations contained in Government Notice No. R.1258 dated 21 July 1972 (as amended) and Government Notice No. R.4848 dated 19 August 1977 (as amended) having been complied with.

COMMISSIONER OF OATHS

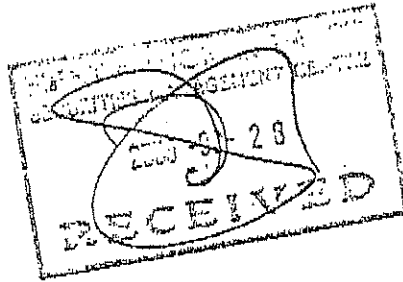
AA1

First National Asset Management and Trust Company (Pty) Ltd
 Registration No 1986/003488/07

✉ Mrs E Y Antek
 Account Administrator
 P O Box 40076
 Arcadia
 0007

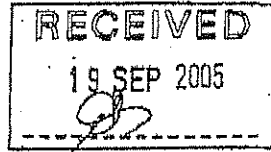
e-Mail: firstnathco@fnb.co.za
 Web: www.fnb.co.za

☎ (012) 346 1843
 0800 102 783
 An Authorised Financial Services Provider



Portfolio Statement of Investments

for account: Mej A Van Tonder Tams Account Number: 0007709
 as at 19 September 2005



Date Account Opened : 1985-08-30
 Value as per attached Statement : R 6,945,985.91
 Exchange Control Status : Resident
 Investment Powers : Full Capital Limited Income
 Investment Objective : Max After Tax INC & CAP Growth
 Income Distribution : Monthly

Category	Cost / Book Value (R)	Latest Available Value (R)	Percentage of Account	Estimated Annual Income	Yield at Market
Government stock	107,049	102,771	1.5	12,125	11.80
Resources	141,397	478,720	6.9	8,907	1.87
Financials	284,830	444,083	6.4	18,400	4.14
General Industries	36,708	68,280	1.0	1,834	2.69
Cyclical consumer goods	84,200	105,800	1.5	4,356	4.13
Non-cyclical consumer goods	79,833	168,471	2.4	3,613	2.14
Cyclical services	31,782	52,024	0.7	549	1.08
Non-cyclical services	21,252	28,280	0.4	390	1.38
Specialist securities	535	837	0.0	0	0.00
Other assets	788,975	5,499,765	79.1	0	0.00
Call funds	5,372	5,372	0.1	54	1.01
Total of Capital Assets	1,551,139	6,945,985	100.0	50,230	

Sell:
 200 SOL

Buy:
 220 BAW
 1200 MDC

Lightening overweight position in Resources + increasing industrial exposure.

19032
 19033

17/04/2012 16:32

(FAX)

P.029/041

"AA2"



30 March 2012

Our Ref: PAIA38

Requestor: Mr Adriaan Lombard

Address: P O BOX 35
GEORGE
7441

Dear Sir or Madam,

NOTICE IN TERMS OF SECTION 56(3) OF THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 ("the Act")

With reference to your request for information received on 29 March 2012 we notify you, in terms of Section 56(3) of the Act, that your request has been refused on the following grounds:

- In terms of Section 7(1)(a) of the Act, "this Act does not apply to a record of a Public Body or a Private body, if that record is requested for the purpose of criminal or civil proceedings".

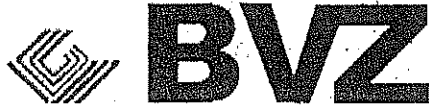
In the event that you wish to appeal this decision you may do so by lodging an application to court within 180 days from date hereof in terms of Section 78 of the Act.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'C. Swartz', is written over a horizontal line.

Cynthia Swartz
FNB Risk - Compliance Support
3rd Floor, No 1 FirstPlace, BankCity, JHB, 2001
P O Box 1153, JHB, 2000
Tel: 011 371 8494/8485 and Fax: 0860 002 032.

RD
"AA3"



BEZUIDENHOUT VAN ZYL & ASSOCIATES INC

Reg. No.2000/027411/21

ATTORNEYS

NOTARIES

CONVEYANCERS

P.O.BOX 3666
RANDBURG 2125

SURREY SQUARE
ON REPUBLIC
C/O REPUBLIC ROAD
& SURREY AVENUE
RANDBURG
2194

TEL: (011) 789-3050
FAX: (011) 787-8507
E-MAIL:
066 658 3017

E-MAIL:
grobler@bvzlaw.co.za

DOCEX 271 JHB
LODGMNT NUMBER
334 JHB

Directors
Stephanus Ignatius van Zyl
B.Comm. B.Proc.

Johannes Louw
B.A. B.Proc.

Bernard Stefan Fourie
B.Proc.

Bismarck Olivier
B.A. LL.B.

Karen Theunissen
A. LL.B. LL.M

v Grobler van der Merwe
B.Comm. LL.B.

Hester A Kruger
B. Proc.

Associates

Ryan - Maro de Klerk
B.A. LL.B.

Michiel Theron Bouwer
LLB.

Assisted by

Deon Haasbroek
B. Proc.

Lizke Gericks
LLB.

Werner Charles Louis Pypers
LLB.



OUR REF : MR G VAN DER MERWE / MAT

YOUR REF : LSJ/ CH/WV3113/V6340

DATE : 28 March 2012

MILLERS INCORPORATED

PER TELEFAX: 086 517 8733

Dear Sirs,

RE: FNB TRUST SERVICES (PTY) LIMITED and ANOTHER / ANNALIZE VAN
TONDER and TWO OTHERS

1. We refer to the above matter and, in particular, your clients' application to, *inter alia*, be given access to our clients' records by virtue of the provisions of the Promotion of Access to Information Act, No. 2 of 2000 ("the Act") and note the contents thereof.
2. At the outset we wish to place on record that it is not our intention to conduct a technical approach to this matter, but nevertheless have to advise our clients to act lawfully.



BEZUIDENHOUT VAN ZYL & ASSOCIATES INC

Reg. No.2000/027411/21

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RANDBURG 2125

SURREY SQUARE
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2194

TEL: (011) 789-3050
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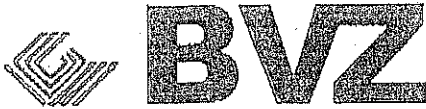
Lizke Gerloka
LLB.

Werner Charles Louis Pypar
LLB.



3. Both the requests in terms of section 53 of the Act, and we draw in particular your attention to the provisions of section 53(2)(d), and the application itself fall short of what is required in the Act. In particular, your clients are required to identify the right your clients are seeking to exercise or protect, and provide an explanation of why the requested record is required for the exercise or protection of that right and, as such, we would require specific details in this regard. What your clients have failed to indicate, other than a vague reference to a potential claim against our client, FNB Trust Services (Proprietary) Limited (see paragraph 56 of the founding affidavit and a reference to David Newham and/or Claassen Stone and/or Clasto Konsultante) is to explain why the transaction history of the bank accounts of each of the persons referred to in paragraphs 1.1. to 1.5 and 1.7. to 1.8 (of the Notice of Motion) would be required for the exercise or protection of the alleged right.

4. We accept that the bank statements of Wema Beleggings (Pty) Limited would be required as referred to in paragraph 1.6. of the Notice of Motion.



BEZUIDENHOUT VAN ZYL & ASSOCIATES INC

Reg. No.2000/027411/21

ATTORNEYS

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P.O.BOX 3888
RANDBURG 2125

SURREY SQUARE
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RANDBURG
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TEL: (011) 789-3050
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X TO EMAIL:
065 659 3017

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grobler@bvzlaw.co.za

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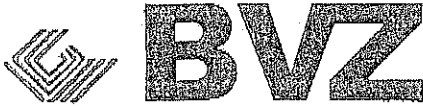
5. The Pegma (Edms) Bpk. referred to in paragraph 1.5. of the Notice of Motion is not the same entity it would appear as the Third Applicant.

We draw your attention to section 63 of the Act which states that, subject to subsection (2), our client is obliged to refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual. We furthermore draw your attention to section 64 and section 65 of the Act.

6. In order to comply with our clients' obligations to their clients, and without conceding that records can be found or do in fact exist, please provide us with the prescribed information so that we may properly advise our clients as to how they can assist your clients. To this end, we are prepared to meet in order to identify what you have and haven't have.

7. It is furthermore noted that none of the parties, in respect of which you require transaction history of bank accounts, have been joined in the application, notwithstanding the fact that such parties, on the face of it, have a substantial interest in the application.

8. We do not wish to oppose applications on technical grounds, that is why we address this letter to you as to avoid incurring further costs. In the meanwhile we trust that the filing times can be held over to avoid incurring further costs and incurring further delays.



BEZUIDENHOUT VAN ZYL & ASSOCIATES INC

Reg. No.2000/027411/21

ATTORNEYS

NOTARIES

CONVEYANCERS

P.O.BOX 3686
RANDBURG 2125

SURREY SQUARE
ON REPUBLIC
C/O REPUBLIC ROAD
& SURREY AVENUE
RANDBURG
2194

TEL: (011) 789-3050
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grobler@bvzlaw.co.za

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B.A. LL.B.

Michiel Theron Bouwar
LLB

Assisted by

Deon Haasbroek
B. Proc.

Lizke Gericka
LLB.

Werner Charles Louis Pypers
LLB.



9. This letter is not intended to be an exhausted reply to the allegations made in the founding affidavit and, as such all our clients' rights remain strictly reserved in order to deal with all the aspects.

10. We await to hear from you.

Regards,

BEZUIDENHOUT VAN ZYL & ASSOCIATES INC

MR G VAN DER MERWE

Send Result Report



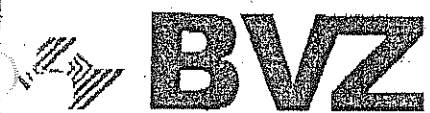
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Completed

Document : doc20120328095031

 BEZUIDENHOUT VAN ZYL & ASSOCIATES INC	
Reg. No.2000/027411/21	
ATTORNEYS NOTARIES CONVEYANCERS P.O.BOX 3686 RANDBURG 2125 SURREY SQUARE ON REPUBLIC C/O REPUBLIC ROAD & SURREY AVENUE RANDBURG 2194 TEL: (11) 789-3050 (11) 767-8607 FAX TO EMAIL: 086 658 3017 E-MAIL: info@bvzlaw.co.za	OUR REF : MR G VAN DER MERWE / MAT YOUR REF : LSJ/ CH/WW3113/V6840 DATE : 28 March 2012 MILLERS INCORPORATED PER TELEFAX: 086 517 8733

No.	Date and Time	Destination	Times	Type	Result	Resolution / ECM
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"AA4"

URGENT



Attorneys | Millers | Prokureurs

Faks Dekblad

Aantal bladsye, insluitend hierdie een: 7

Datum: 5 April 2012

Aan: **BEZUIDENHOUT VAN ZYL & VENNOTE
INGELYP**

Faks No: (011) 787-8507

Ons Verw: **LSJ/CH/6340/WV3113**

U Verw: **G VAN DER MERWE/MAT**

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Geagte Sire,

**A VAN TONDER & 2 ANDERE / FNB TRUST SERVICES (EDM) BPK & FIRSTRAND
BANK BEPERK**

Ons het gelet op u skrywe gedateer 23 Maart 2012.

Ons bevestig dat ons nog nie u klient se Antwoordende Eedverklaring ontvang het, soos per die tydsriglyne wat met u klient se verteenwoordiger, Barbara Botha, ooreengekom is nie. 'n Afskrif van gemelde tydsraamwerk word hierby aangeheg vir u kennisname.

Ons wys u daarop dat indien ons nie u klient se Antwoordende Eedverklaring teen eluit van besigheid vandag ontvang nie, ons ons reg voorbehou om 'n kostebevel teen u klient te vra indien dit sou nodig wees om die aansoek uit te stel weens die laat lussering van gemelde Antwoordende Eedverklaring.

Ons bevestig dat wens die Paasnaweek ons oor beperkte tyd beskik om ons Repliserende Eedverklaring voor te berei en versoek ons graag dat u die Antwoordende Eedverklaring self onbeëdig aan ons beskikbaar sal stel, vir voorlegging aan Adv. Vivier te Kaapstad, vir die opstel van ons Repliserende Eedverklaring.

Oskler: Kaapstad
Dirigter: P J Snel, BA LLB | W M van der Walhuizen, B Juris LLB; Sers Sol Rog | F J Botet, B Proc LLB; Gov Dip Arbeidsreg | M Goldie, BA LLB | S van Wyk, BA LLB; Sers Konst Ut | DR Henney, B Proc, Dip Konst Ut; Dip Projekbestuur | G Joubert, B Juris LLB | D du Toit, B Com LLB; B Compl (Hons) GR, (SA) | LL Makgare, LLB
Professionele Assistentie: L Zeebe, BA LLB | U Fourie, LLB; Sers Korp Reg | C A Bekker, B Com LLB, LLM (Boordelng)

Kontakant: C Kraus, BA LLB MBA
The Phatshoane Henney Group is an association of independent firms not practicing in partnership and with separate liability.

phatshoanehenney
GROUP OF ASSOCIATED FIRMS



Millers Ingelyf.
Reg No 93/02024/21
Beaconsfield
Meadastraat 123 George 8530
Postbus 38 George 8530 RSA
Dorcx 10 George

Telefoon: (044) 874 1140
Algemene faks: (044) 873 4848
Direkte faks: 088 517 8733
E-pos: chantal@millers.co.za
Webblad: <http://www.millers.co.za>
BTW No: 4630138240

Ons bevestig verder dat ons nie op hierdie stadium volledig gaan reageer op die besware wat u klient in die aangehegte artikel 56(3) kennisgewing sowel as die besware vervat in u skrywe van 28 Maart 2012 gaan reageer nie, maar vir u kennisname, heg ons hierby aan 'n artikel getiteld "The Promotion of Access to Information Commentary" en verwys u spesifiek na subpara 4.15 daarvan op bladsy 2. In breë trekke, handel dit met u klient se beswaar ingevolge die artikel 56(3) kennisgewing.

Wat betref u besware vervat in u skrywe van 28 Maart 2012, wys ons u daarop dat ons, wat betref die beswaar in para 3 van u skrywe, u aandag vestig op die volgende gesag, naamlik:

- *Unifas Hospitaal v van Wyk 2008 (4) bl. 444 A – D SCA*
- *Classe v SA Airways 2007 (5) bl. 469 SCA*
- *Clutch CO v Davies 2005 (3) bl. 488 SCA – bl. 491 D – bl. 492 A*

Ons wys u daarop dat ons ook hierdie aspekte meer breedvoerig met u sal bespreek tydens volgende week se konsultasie by u kantore, soos ooreengekom, naamlik op 11 April 2012 om 11h30.

Ons wys u daarop dat indien die sameprokings geskeduleer vir volgende week nie die gewenste resultaat vir ons klient sou oplewer nie, ons u nou reede daarop wys dat ons van voorneme is om op die ooreengekome datum, naamlik 17 April 2012, voort te gaan met gemeide aansoek, waar ons sal vra vir 'n gepaste bevel ooreenkomstig ons Kennisgewing van Mosie.

Ons wys u daarop dat indien u na ontvangs van gemeide gesag steeds van mening is dat u besware vervat in u klient se kennisgewing ingevolge artikel 56(3) en u besware vervat in u skrywe van 28 Maart 2012 relevant is, u met die gemeide besware sal handel in u Antwoordende Eedsverklaring, waarop ons dan sal repliseer.

Ons hoop en vertrou egter dat die versoek gunstig deur u klient oorweeg sal word en dat 'n gunstige ooreenkoms volgende week tydens die konsultasie bereik sal kan word.

Die uwe
MILLERS INGELYF - GEORGE

per: 
L. JOUBERT



Attorneys | Millers | Prokureurs

E-mail

Number of pages, including this one:

Date: 10 March 2012

To: FNB WEALTH

E-mail address: babotha@fnbwealth.co.za

Our Ref: LSJ/CH/WV3113/V6340

Your Ref: Barbara Botha

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Dear Madam,

ANNALIZE VAN TONDER & 2 OTHERS / FNB TRUST SERVICES (PTY) LTD. & FIRSTSTRAND BANK LIMITED

We refer to the abovementioned matter, more specifically to the telephonic conversation between your Barbara Botha and the writer hereof, on even date, during which discussion the following timelines were agreed upon for the filing of the application documentation and the date for the hearing of the application, namely: -

1. Filing of the application on or before the 22nd of March 2012;
2. Filing of a Notice of Opposition on the 23rd of March 2012;
3. Filing of an Answering Affidavit on or before 12h00 on the 3rd of April 2012;
4. Filing of a Replying Affidavit on or before 12h00 on the 12th of April 2012;
5. Proceed with the application on the 17th of April 2012.

As discussed and agreed, we kindly request that you confirm in writing before 10h00 on Tuesday, the 20th of March 2012, that the said timeline is acceptable.

Yours faithfully,
MILLERS INCORPORATED GEORGE

per:
LB JOUBERT

Also at: Cape Town

Officers: PJP Braddell, BA LLB | WM van der Werfhuizen, B Juris LLB; Conf Tax Law | PJ Botes, B Proc LLB; Adv Dip Lab Law | M Goida, BA LLB | J van Wyk, BA LLB; Conf Const Lit | DR Hanney, B Proc Dip Const Lit; Dip Project Man | L.J. Joubert, B Juris LLB | D du Toit, B Com LLB; B Compl (Hans) CA (SA) | L. Mokgoro, LLB

Professional assistants: L. Zeeha, BA LLB | V Fouca, LLB; Conf Corp Law | G A Bekker, B Com LLB, LLM (State Law) | A. Clove, B Com LLB | J. Tannahill, LLB

Consultants: C Kraus, BA LLB; MBA

The practitioners hereby group as an association of independent firms not trading in partnership and not separate entities.

phatshoanehenney
GROUP OF ASSOCIATED FIRMS



Millers Incorporated
Reg No 03/02024/21
Beacon House
123 Meade Street George 6530
PO Box 35 George 6530 RSA
Docex 10 George

Telephone: (044) 874 1140
General fax: (044) 843 4848
Direct fax: 086 517 8733
E-mail: chantal@millers.co.za
Website: <http://www.millers.co.za>
VAT Nr: 4530136240

17/04/2012 16:44
5. APR. 2012 10:21

(FAX)

NO. 286 P. 4

P.038/041



30 March 2012

Our Ref: PAIASS

Requestor: Mr Adrian Lombard

Address: P O BOX 98
GEORGE
7441

Dear Sir or Madam,

NOTICE IN TERMS OF SECTION 54(3) OF THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 ("the Act")

With reference to your request for information received on 28 March 2012 we notify you, in terms of Section 54(3) of the Act, that your request has been refused on the following grounds:

- In terms of Section 7(1)(a) of the Act, "this Act does not apply to a record of a Public Body or a Private body, if that record is requested for the purpose of criminal or civil proceedings".

In the event that you wish to appeal this decision you may do so by lodging an application to court within 180 days from date hereof in terms of Section 78 of the Act.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'C. Swartz', is positioned above the typed name and contact information.

Cynthia Swartz
FNB Risk - Compliance Support
2nd Floor, No 1 FirstPlace, BankCity, JHB, 2001
P O Box 1163, JHB, 2000
Tel: 011 571 8494/8485 and Fax: 0860 002 032.

THE PROMOTION OF ACCESS TO INFORMATION ACT COMMENTARY

by

IAIN CURRIE

Associate Professor of Law, University of the Witwatersrand

and

JONATHAN KLAAREN

Associate Professor of Law, University of the Witwatersrand
Senior Researcher, Wits Institute for Social and Economic
Research (WISER)

2001



Siber Ink

[4.15]

AIA: A Commentary

Certain categories of records are, however, entirely exempt from the provisions of the Act and cannot be the subject of a request in terms of the Act. Moreover, exempt records are not subject to the operation of the public-interest override.²⁷ There are four categories of exempt records: records requested for litigation purposes, cabinet records, court records and records of members of Parliament or a provincial legislature.

Records requested for the purpose of criminal or civil proceedings

[4.15] The Act does not apply to records that have been requested for purposes of criminal and civil proceedings pending at the time that the request is made.

7. Act not applying to records requested for criminal or civil proceedings after commencement of proceedings

- (1) This Act does not apply to a record of a public body or a private body if —
- (a) that record is requested for the purpose of criminal or civil proceedings;
 - (b) so requested after the commencement of such criminal or civil proceedings, as the case may be; and
 - (c) the production of or access to that record for the purpose referred to in paragraph (a) is provided for in any other law.

(2) Any record obtained in a manner that contravenes subsection (1) is not admissible as evidence in the criminal or civil proceedings referred to in that subsection unless the exclusion of such record by the court in question would, in its opinion, be detrimental to the interests of justice.²⁸

All three conditions set out in s 7(1)(a)–(c) must be satisfied by a particular request and record for the exemption to take effect. One of these is that the criminal or civil proceedings must have already commenced at the time of the request. The exemption therefore does not prevent the use of the AIA to obtain information in contemplation of possible litigation in the future.²⁹ Once the litigation has commenced, however, litigants must

²⁷ On the override, see [7.10]–[7.13] below.

²⁸ There was a drafting error in the title of s 7 as originally enacted: 'Act not applying to records required for criminal or civil proceedings . . .'. The body of s 7(1) then used the term 'requested'. The latter term made more sense, and in terms of the ordinary rules of statutory interpretation was preferable to the word used in the title. 'Required' would have caused the exemption to be both too broad and too narrow. Section 23 of the Judicial Matters Amendment Act 42 of 2001 amended the title of s 7 and the index of the Act to make it clear that the section applies to records requested and not records required.

²⁹ A 'fishing expedition' of this sort poses no difficulty in relation to information held by public bodies. In the case of private bodies, however, it will be necessary for the requester to show that the information is required for the exercise or protection of rights. See, in this regard, *Van Niekark v Pretoria City Council* 1997 (3) SA 839 (T) at 848E–H (permissible to use constitutional right to request access to documents in order to assess whether a claim against Council should be pursued or abandoned) and *Inkatha Freedom Party v Truth and Reconciliation Commission* (note 17 above) at 137 (undesirable to have the types of fishing expeditions that might arise in civil proceedings if the right of access to information was interpreted as granting a generalised pre-action right of discovery). On the interpretation of the phrase 'required for the exercise or protection of any rights' see, further, [5.10]–[5.12] below.

Scope of the application of the Act

[4.15]

content themselves with the ordinary rules of evidence and discovery applicable to that litigation.

The purpose of the section is to prevent the AIA from having any impact on the law relating to discovery or compulsion of evidence in civil and criminal proceedings.³⁰ The exemption represents a legislative determination that the existing law of evidence adequately governs access to information in criminal or civil proceedings. It is with this purpose in mind that we must read the third condition for application of the exemption. Section 7(1)(c) provides that the exemption is applicable if 'production of or access to the record' is 'provided for in any other law'. This is ambiguous. On the one hand, 'provided for' could be read as meaning that the exemption applies only when the rules of evidence and discovery permit disclosure of a record and not when they prevent disclosure.³¹ On the other hand, the phrase can be read as synonymous with 'regulated by'.³² In other words, if the law of evidence governs the production of or access to a record, whether it does so positively by requiring disclosure or negatively by preventing it, the record is exempt from the AIA. Our preference is for the second interpretation. The first would require litigants to make a distinction between rules of evidence permitting and preventing disclosure, then apply the ordinary rules of criminal and civil procedure to the discovery of records governed by the former class of rules and apply the AIA to those governed by the latter class. The s 7 exemption is best read as exempting the body of law applicable to compulsion of evidence in pending civil and criminal proceedings from the AIA, a body of law developed in the interests of ensuring the fairness of the adversarial system of litigation. The rules of evidence and discovery and the aims of the AIA will mostly not be at odds, and much of what is subject to disclosure under the Act would also

³⁰ Clause 10 of the Open Democracy Bill was more clear about the purpose of the exemption: 'No request for access to a record of a governmental body may be made in terms of this Act for the purpose of criminal or civil discovery provided for in any other law'. Arguably, the exemption in the Act has a wider reach than that in the Bill, in that the Act clearly exempts evidence relevant to litigation that is in the possession of a person who is not a party to the litigation. The production of such evidence is compellable by means of a subpoena duces tecum.

³¹ For example, on this sense of the phrase, the rule that production of privileged evidence cannot be compelled is a law preventing production of a record as opposed to a law providing for its production.

³² The Afrikaans version of the Act prefers this interpretation, rendering s 7(1)(c) as follows: 'die voorlegging van of toegang tot daardie rekord . . . in enige ander reg geraai word'.

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139

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG SOUTH DIVISION)

Case No: 10945 / 2012

In the matter between:

ANALIZE VAN TONDER
WEMA BELEGGINGS (PTY) LTD
PEGMA MINERALE (PTY) LTD

First Applicant
Second Applicant
Third Applicant

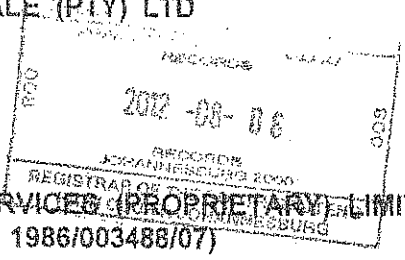
and

FNB TRUST SERVICES (PROPRIETARY) LIMITED
(Registration No. 1986/003488/07)

First Respondent

FIRSTRAND BANK LIMITED
(Registration No. 1929/001225/06)

Second Respondent



FILING NOTICE

DOCUMENT FILED HEREWITH:

1. Applicant's Replying Affidavit.

DATED at GEORGE on this 1st day of AUGUST 2012

MILLERS INCORPORATED
Applicant's Attorneys

133

BEACON HOUSE
123 MEADE STREET
GEORGE
REF: LSJ/V6340/WV3113
C/O ERASMUS DE KLERK INC
299 PENDORING ROAD
PENDORING OFFICE PARK
BLOCK 6 GROUND FLOOR
BLACKHEATH
CRESTA 2194
TEL: 011-678-1988
REF: NV DE KLERK/edb/M239

TO: THE REGISTRAR
HIGH COURT
JOHANNESBURG

AND TO: FNB TRUST SERVICES (PTY) LTD
First Respondent
4 MERCHANT PLACE
FREDMAN DRIVE
SANDTON
JOHANNESBURG

Received without Prejudice of Rights	
FirstRand Bank Limited - Reg. No. 1929/001225/06	
FirstRand Banking Group Legal Services	
2nd Floor, 4 Merchant Place, 1 Fredman Drive, Sandton	
Name:	<i>Erasmus de Klerk</i>
Date:	<i>06/08/08</i> Time: <i>15:10</i>
Signature:	<i>[Signature]</i>

AND TO: FIRSTRAND BANK LTD
Second Respondent
4 MERCHANT PLACE
FREDMAN DRIVE
SANDTON
JOHANNESBURG

Received without Prejudice of Rights	
FirstRand Bank Limited - Reg. No. 1929/001225/06	
FirstRand Banking Group Legal Services	
2nd Floor, 4 Merchant Place, 1 Fredman Drive, Sandton	
Name:	<i>Erasmus de Klerk</i>
Date:	<i>06/08/08</i> Time: <i>15:10</i>
Signature:	<i>[Signature]</i>