IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

In the matter between	Case no: **11735/2005**
IVOR SINDLER N.O.	First Applicant
BRIDGET MARY OSLER N.O.	Second Applicant
GUY EDUARD OSLER N.O.	Third Applicant
v	
PETER OTTO GEES	First Respondent
PETER OTTO GEES N.O.	Second Respondent
ROBIN FREDERICK WILKIN N.O.	Third Respondent
DIANA LOUISE GEES N.O.	Fourth Respondent

and in the matter between	Case no: **1686/2006**
PETER OTTO ALBERT GEES N.O.	First Applicant
ROBIN FREDERICK WILKIN N.O.	Second Applicant
DIANA LOUISE GEES M.O.	Third Applicant
(in their personal capacities as trustees for the time Being of the MARIA TRUST (Reg no IT1457/96)	
v	
MOUILLE POINT INVESTMENTS (PTY) LTD	Respondent

and in the matter between	Case no: **1687/2006**
PETER OTTO ALBERT GEES N.O.	First Applicant
ROBIN FREDERICK WILKIN N.O.	Second Applicant
DIANA LOUISE GEES M.O.	Third Applicant
(in their personal capacities as trustees for the time Being of the MARIA TRUST (Reg no IT1457/96)	
v	
OVERBERG FOOD DISTRIBUTORS (PTY) LTD	Respondent

and in the matter between	Case no: **1688/2006**
PETER OTTO ALBERT GEES N.O.	First Applicant
ROBIN FREDERICK WILKIN N.O.	Second Applicant
DIANA LOUISE GEES M.O.	Third Applicant
(in their personal capacities as trustees for the time Being of the MARIA TRUST (Reg no IT1457/96)	
v	
BASFOUR 2194 (PTY) LTD	Respondent

and in the matter between	Case no: **1796/2006**
IVOR SINDLER N.O.	First Intervening Applicant
BRIDGET MARY OSLER N.O.	Second Intervening Applicant
GUY EDUARD OSLER N.O.	Third Intervening Applicant
For leave to intervene as Respondents in	
the matter between	Case no: 1687/2006
PETER OTTO GEES	First Applicant
ROBIN FREDERICK WILKIN N.O.	Second Applicant
DIANA LOUISE GEES N.O.	Third Applicant
v	
OVERBERG FOOD DISTRIBUTORS (PTY) LTD	Respondent

and in the matter between	Case no: **1797/2006**
IVOR SINDLER N.O.	First Intervening Applicant
BRIDGET MARY OSLER N.O.	Second Intervening Applicant
GUY EDUARD OSLER N.O.	Third Intervening Applicant
For leave to intervene as Respondents in	
the matter between	Case no: 1688/2006
PETER OTTO GEES	First Applicant
ROBIN FREDERICK WILKIN N.O.	Second Applicant
DIANA LOUISE GEES N.O.	Third Applicant
v	
BASFOUR 2194 (PTY) LTD	Respondent

and finally in the matter between	Case no: **1798/2006**
IVOR SINDLER N.O.	First Intervening Applicant
BRIDGET MARY OSLER N.O.	Second Intervening Applicant
GUY EDUARD OSLER N.O.	Third Intervening Applicant
For leave to intervene as Respondents in	Case no 1686/2006
PETER OTTO ALBERT GEES N.O.	First Applicant
ROBIN FREDERICK WILKIN N.O.	Second Applicant
DIANA LOISE GEES M.O.	Third Applicant
v	
MOUILLE POINT INVESTMENTS (PTY) LTD	Respondent

JUDGMENT IN THIS LEAVE TO INTERVENE GIVEN THIS MONDAY, 13 MARCH 2006

CLEAVER J:

[1] The inability of two brothers-in-law to get on with each other in business has spawned four opposed applications which were heard together by me. Mr Guy Eduard Osler ('Osler'), whose sister is married to Mr Peter Otto Gees ('Gees'), and Gees are the only directors of a company known as Mouille Point Investments (Pty) Ltd ('Mouille Point'). Mouille Point is an investment company and its shares (300 in total) are held as to 50% by Mako Trust and 50% by Maria Trust. Osler represents Mako Trust while Gees represents Maria Trust.

[2] By the first quarter of 2005 it was clear that a deadlock had arisen between Osler and Gees. Each blames the other for the deadlock and it is not necessary for the purposes of this judgment to detail the complaints which each has against the other. Significantly, however, in the light of certain of the submissions made on behalf of Gees and Maria Trust, the inability of Osler and Gees to get on with one

another has not affected the profitability of Mouille Point or either of the other two companies which are involved in these applications.

[3] During 2005 attempts were made to achieve a solution to the problems being experienced by Osler and Gees. The assistance of a mediator proved unsuccessful, as were offers made on behalf of Osler whereby he and Gees could buy each other out of the companies.

[4] Osler then found a buyer for Mako Trust's shares in Mouille Point and, as required by the articles of association of the company, Maria Trust was first offered the opportunity of purchasing the shares at the same price as that which the buyer was willing to pay. Maria Trust responded to this offer, not by accepting or rejecting the offer, but by indicating that it would purchase three of the shares offered for sale and tendering payment for the three shares based on the price at which the 150 shares had been offered. I should mention that the offer by Mako Trust was to sell all its shares in Mouille Point for a stated figure which was to be adjusted once the state of its loan account with the company had been established.

[5] Mako Trust contends that it was not open to Maria Trust to purchase only three or a portion of the shares offered; that Maria Trust's attempt to do was ineffectual and that it is therefore entitled to sell its interest to the proposed buyer. It accordingly applied during November 2005 as a matter of urgency for an order

a) Declaring that the sale of shares agreement which it had entered into with the buyer was no longer subject to the suspensive condition recorded in the deed of sale in terms whereof Maria Trust had been given the right to

purchase the shares offered for sale; and

b) Directing the respondents to take the necessary steps to implement the provisions of the deed of sale.

The second, third and fourth respondents are the trustees of Maria Trust.

[6] On 15 November 2005 the matter was postponed to 21 February 2006 for hearing on the semi-urgent roll and a timetable was fixed for the filing of further affidavits, including the filing of any counter application by Maria Trust. Maria Trust duly filed a counter-application in which a declaratory order was sought recording that the applicants had sold to the second, third and fourth respondents in the main application, three shares in Mouille Point for the sum of R30 040 and directing the applicants to transfer the shares to those respondents.

[7] On Friday, 17 February 2006 the trustees of Maria Trust served papers for the urgent liquidation of Mouille Point and the two companies in which Osler and Gees are involved, namely Overberg Food Distributors (Pty) Ltd ('Overberg') and Basfour 2194 (Pty) Ltd ('Basfour'), setting the matters down for hearing on Monday, 20 February, i.e. one day before the hearing relating to the pre-emptive rights application. The grounds upon which the liquidations are sought are said to be the deadlock existing between Osler and Gees. Mako Trust responded to these applications by applying for leave to intervene in order to oppose them. The four applications were then heard by me. Although I have referred to both Mako Trust and Maria Trust as the litigants, I have done so for the sake of convenience. In fact, in respect of both Trusts, it is the trustees acting in their representative capacities who have been cited.

[8] Overberg is owned by Maria Trust, Mako Trust and Osler, each of whom owns one third of the shares in the company. The directors are Osler and Gees. Basfour is owned in equal shares by Maria Trust and Mako Trust, but the business is run by a third party. Mouille Point owns a commercial cold storage and office complex at 5 Duetz Road, Phillipi and five mini factories at 12 Duetz Road, Phillipi. Basfour is an investment company and has a 67% share in the Landsend partnership, which conducts the business of poultry processing in factory space rented from Mouille Point. The remaining 33% interest in the partnership is held by one Keith Lauwrens. On behalf of Maria Trust it was submitted that the three companies operate as divisions in a group. Although Mako Trust and Maria Trust each have interests in the three companies, the companies do not operate as a group in the sense of there being a holding company and subsidiary companies. Counsel for Mako Trust made much of the fact that there were cross-guarantees in place in regard to the different companies, but the applications for liquidation have not been brought on the basis of the companies being unable to pay their debts. It seems clear that all three companies are financially healthy and continue to operate profitably.

[9] Maria Trust contends that as a result of the deadlock between Osler and Gees in running the businesses, it would be just and equitable for the companies to be wound up in terms of section 344(h) of the Companies Act 61 of 1973. Apart from the inability of Gees to get on with Osler, Gees bases his application in the main on the fact that Osler did not disclose to him the identity of the proposed buyer of Mako Trust's interest which he later found to be one Patrick Gäertner (through the medium of a company known as Orion Properties 8 (Pty) Ltd ('Orion Properties'), which company presently leases cold storage facilities from Mouille

Point. Gees alleges further that

a) Osler unreasonably expects him to continue in business with an unknown partner;

b) Osler has sold half of the shares in Mouille Point to Mouille Point's biggest customer and did not disclose the identity of the customer to him;

c) he sees Osler as having connived to bring about the demise of Mouille Point; and

d) Osler has allowed his own interests to be in conflict with those of Mouille Point.

These factors, plus the inability of he and Osler being able to cooperate, are said to represent the deadlock situation. As to the urgency of the application, that is recorded as being due to the fact that the share sale application had been set down for hearing on 21 February.

[10] The applications for leave to intervene have not been opposed and in my view the intervening parties clearly have a sufficient interest and will suffer prejudice if they are not permitted to oppose the applications.

[11] Before dealing with the merits of the applications, I must deal with the question of urgency because the applications are opposed on the grounds that the applicants have failed to make out a case of urgency. Because of the short time available to it, Mako Trust has at this stage relied only on its *in limine* objections relating to urgency and as requested to be allowed more time to deal with the merits in the event of its challenge to the urgency of the applications not being upheld.

Although details are given as to the deadlock existing between Osler and Gees and of Gees's suspicions about Orion Properties' willingness to purchase Mako

Trust's interest in Mouille Point, the only ground of urgency relied upon by the applicants is the fact that the pre-emptive rights application was to be heard one day after the liquidation applications were to be heard. I have already recorded that the applications were brought on the Friday preceding the Tuesday on which the pre-emptive rights application was to have been heard. Mako Trust contends that no grounds of urgency have been established and that having regard to the imminent hearing of the pre-emptive rights application, the applications for liquidation were designed to frustrate the hearing of that application, and accordingly constitute an abuse of the court process. It is common cause that the deadlock which exists between Osler and Gees has been apparent at least since the first quarter of 2005. Gees has recorded that by that time the relationship between him and Osler had been broken down almost completely. Notwithstanding this, he did not think it necessary to bring liquidation proceedings. Furthermore, the companies are in a healthy financial position and are able to trade, notwithstanding the difficulties between Gees and Osler. As to the deadlock, Gees's attitude until 17 February had been that, notwithstanding the deadlock, Maria Trust was entitled to purchase three of the shares offered for sale by Mako Trust. Having regard to this background, the timing of the applications for liquidation is in my view a clear attempt to frustrate the hearing of the pre-emptive rights application and for that reason ought not to be entertained. I also consider that insufficient grounds were established to make out a case that the applications be heard on an urgent basis.

[12] The dispute which Gees now raises with regard to the identity with the proposed purchaser of the shares is in effect the subject of the pre-emptive rights application and until that application has been determined, there is in my view, no

final deadlock or in any event, no deadlock warranting a winding up of the company. In Overberg the shareholding is split. The Maria Trust is a one-third share shareholder only and with regard to Basfour, its sole business is that of an investor as to two-thirds in the Landsend partnership. There is no suggestion that the Landsend partnership is involved in or is subject to any deadlock.

[13] On 29 September 2005, Osler, on behalf of Mako Trust, entered into an agreement in terms whereof Mako Trust's 50% shareholding in Mouille Point was sold to Orion Properties. The purchase price was recorded as being R1 502 000 plus the face value of any claims which the Mako Trust may have had against Mouille Point if they were positive or less the face value of such claims if they were negative (i.e. the loan accounts). The sale was subject to the condition that the Maria Trust must have failed to exercise its pre-emptive rights over the shares that were the subject of the sale agreement. It is common cause that Maria Trust took up the attitude that it was entitled to acquire three shares *"at the price of three shares".* It calculated the price of these shares, based on the offer price for 50% of the issued shares, at R10 013.13 and purported to accept the offer as to only three shares for that price, payment of which was tendered.

[14] For reasons which I hope will become apparent, I am of the view that the adjudication of the pre-emptive rights application can be dealt with independently from the liquidation applications. In my view, this should occur even if I were to grant provisional orders of winding up. For an understanding of the defence raised to the application, it is necessary to have regard to and where necessary to interpret, the provisions of certain of the Articles of Association of Mouille Point. The Articles in question are those appearing in Table B of the Companies Act

(those articles having been adopted by the company) and the relevant Articles are the following:

> *"21. If a member of the company desires to sell all or any of his shares of the company he shall give notice, in writing, of his intention to sell, to the directors of the company, and state the price he requires for the shares.*
>
> *22. The directors shall within one month of the date of receipt of the notice referred to in article 21 advise every other member of the company of the contents thereof and each such member shall be entitled to acquire the shares so offered within one month after the date of the receipt of such advice: Provided that if more than one member makes an offer for all of the shares so offered, the shares shall be sold to each such member in equal proportions, and where fractional proportions of shares remain, such members shall become joint holders of such fractional proportions of the shares.*
>
> *23. ……*
>
> *24. If none of the members of the company offers to purchase the shares within the time referred to in article 22, or if members of the company offer to purchase a part of the shares so offered, the member who is offering the shares for sale may offer the shares or the remaining portion of the shares which have not been purchased by members of the company, for sale to any other person and, notwithstanding the provisions of article 11, the directors shall approve the registration of the shares in the name of that person unless they have good reason to refuse such registration."*

[15] Shares in a company are freely transferable subject to provisions which may be contained in the articles of association. Furthermore, provisions in the articles limiting the right of transfer must be restrictively interpreted[1]. In interpreting the provisions of the articles, the starting point must be a consideration of what was offered for sale. After all, article 22 provides that other members of the company are entitled to acquire the shares so offered within one month of being notified of the offer. In my view, the notice addressed to Maria Trust indicates clearly that the offer is for Mako Trust's entire interest in Mouille Point, consisting of its

1. *Mendonides v Mendonides* 1962 (2) SA 190 (D) at 192B-C;
Estate Milne v Donohue Investments (Pty) Ltd & Others 1967 (2) SA 359 (A) at 370B-F; and
Smuts v Booyens; Markplaas (Edms) Bpk en 'n Ander v Booyens 2001 (4) SA 15 (SCA) at para 11-17

shares and loan account. The offer does not record that the purchase price to be paid by Orion Properties is R10 013.34 per share, but specifies the price to be paid for all the shares in the company which price may be increased or reduced according to the value of the loan account. Counsel were not able to refer me to any South African case in which the interpretation contended for on behalf of Maria Trust was approved. However, an English decision is directly in point. In *Ocean Coal Co. Ltd v Powell Duffryn Steam Coal Co*[2] (which reflects the legal position in the United Kingdom at present) an argument along the same lines as that advanced on behalf of the Maria Trust was rejected. In that case, Powell Duffryn, which held 50% of the issued share capital in a company, notified the board of the company that it wished to sell 135 000 of its shares to a third party at GBP2 per share. In terms of the company's articles, the board offered the shares which Powell Duffryn wished to sell to the other shareholder of the company at the price named. The response of the other shareholder, Ocean Coal, was identical to the response by Maria Trust. It advised that it wished to exercise its option, not to purchase the 135 000 shares which had been offered to it for sale, but 5000 of the shares at a price of GBP2 per share. The following extracts from the judgment are illuminating and informative.

> *"The obligation on the shareholder who desires to sell his shares in a case such as the present is to notify the board in writing the number of shares which he offers for sale, and the price of such shares, and the name and address and qualification of the proposed transferee. If the language is to be construed with complete strictness, the price proposed must be the price proposed for the total number of shares – that is to say, it is the price per share, but it is a price calculated on the total number of shares which are being offered for sale. There may be, as has been pointed out by counsel for the defendants, a considerable difference between the price at which a shareholder is willing to sell his shares if he is desirous of selling a large or a small number, and the price which he obtains for his shares may vary according to the number of shares he is proposing to sell. If one takes the illustration which counsel put of an offer of shares sufficient to give control of*

2. 1932 All ER 845 (Ch)

the company, it may well be that a purchaser would be prepared to pay a much higher price for a number of shares sufficient for that purpose, whereas he would not be willing to pay such higher price if the number of shares were reduced below the necessary number. Therefore, it seems to me that, read strictly at any rate, the price proposed is the price for the total number of shares proposed to be sold.

……..

What is the meaning of the words 'the offer' in para. (b)? Are there 135,000 separate shares offered, or it is an offer of one block of 135,000 shares? If I am to accept the plaintiffs' construction, I must, as it seems to me, treat the word 'offer' there as meaning a separate offer of each of the shares which are being offered for sale, but strictly the offer is not an offer of anything more or less that one block of 135,000 shares. That is the offer which his made under para. (b). The transferor says: 'I am willing to sell 135,000 shares at a price of £2 per share'. He is not, in my judgment, saying: 'I am willing to sell my shares at the price of £2 per share up to the number of 135,000,' which is the way in which the plaintiffs ask me to read the article. That is not the offer which is made.

I come to para. (c):

> *'The shares shall be sold to the parties so accepting the offer, and shall be transferred to them by the holder against payment of the price.'*

There, again, the offer, as I have already said, is an offer of a block of 135,000 shares; it is not an offer of each share at £2 a piece up to and not exceeding 135,000 in all. It is an offer to sell 135,000 shares, and that is an offer which must be accepted, and can only be accepted by one or more persons who conjointly say: 'We will take transfer of the 135,000 shares.' I am not impressed by the argument of counsel for the plaintiffs with regard to one member being prepared to take up a certain number of shares, because as I read this clause, if offers can be obtained from members of the company which together make up the total amount which is being offered for sale, then, of course the vendor must accept that offer. He cannot say: ' I will not take the offer, because it is an offer, not by one member to take up the whole 135,000 shares, but by different people who together offer to take up the total amount.' In my judgment, the offer is not accepted within the meaning of this article unless one or more members agree to take up the whole number of shares offered. Article 39 (1) (c) provides for what is to happen if the total number of shares so accepted is larger than the amount offered, but I do not think that that assists me in the question which I have to decide. ……..

On the whole, it seems to me impermissible to treat this article as having the effect of turning what is an offer to sell a given number of shares, say 5,000 shares, into an offer to sell one share at the price stated for the 5,000." (At 847C – 848B.)

While there is no South African case directly in point, there is in my view no reason why I should not interpret the articles of association in question in the same manner. Considerations of principle and logic determine that this should be

so for an absurd result would follow if the contentions advanced on behalf of the Maria Trust were to be upheld. The result would be that Mako Trust which presently has a 50% shareholding in Mouille Point, with all the benefits attendant to that shareholding, would automatically have the benefit of that shareholding reduced to the extent that Maria Trust would now hold the controlling interest in the company. Commercially, the value of the remaining shareholding would be drastically reduced, and the position of Mako Trust would be detrimentally affected. In my view that could never have been the intention of the legislature.

[16] It is the unfortunate and confusing wording of the articles, and in particular of article 24 which has provided scope for the submissions advanced on behalf of Maria Trust. In their commentary on the articles, the authors of Henochsberg on the Companies Act euphemistically describe the provisions as 'ambiguous'[3]. The articles do not distinguish clearly between *"offer"*, *"acceptance"* and *"counter-offer"*, with 'offer' being used to deal with each of these concepts. Article 22 deals with the shares 'so offered', but then goes on to provide for a situation in which more than one member may respond to the original offer. The reference to more than one member making an offer for the shares *"so offered"*, may be interpreted either as intending to indicate an acceptance by more than one member of the shares so offered, or a counter offer for all of the shares so offered. The failure to distinguish between offer, acceptance and counter-offer is evident again in article 24 in which provision is made for members of the company to offer to purchase a part of the shares so offered. In my view that is clearly intended to mean that the members who have received the offer made by the member wishing to sell (the offeror) may make a counter-offer to purchase part of the shares which have

3. Henochsberg on the Companies Act, p1067

been offered by the offeror. If that counter-offer is not accepted, the offeror may offer the shares for sale to the outside party and there is in my view no basis for the submission that where an existing member makes a counter-offer, the original offeror is obliged to accept the counter-offer. The offeror would, of course, be free to accept the counter-offer for part of the shares and could then offer the remaining shares to the outside party.

To return to article 21, that makes it clear that a member desiring to sell all or any of his or her shares must give notice in writing of his or her intention to sell and state the price required for the shares. That in my view is a clear reference to all the shares offered in the notice and does not refer to the price which the offeror requires for each of the shares offered.

[17] In summary, the following factors are all indications that the submissions advanced on behalf of Maria Trust cannot prevail.

17.1 The language and context of articles 21 to 24 which all deal with the shares *"so offered"*;

17.2 Recognition of a member's right to transfer shares, subject to the provisions of the articles of association;

17.3 Should there be any doubt the provisions must be restrictively interpreted i.e. in favour of the transfer;

17.4 A recognition of the established principles of contract relating to offers and acceptance of offers; and

17.5 Finally and most importantly the interpretation contended for by Maria Trust will lead to absurd commercial consequences.

Mako Trust elected not to accept the counter-offer and it is therefore entitled to

proceed with the sale to Orion Properties.

[18] Further defences to the pre-emptive rights application were also raised on behalf of Maria Trust, but in my view there is no merit in any of these defences which may be dealt with briefly.

[19] The non-joinder of Mouille Point.

The short answer to this is that having regard to the relief sought, the joinder of Mouille Point was not necessary. No relief is sought against Mouille Point.

[20] The non-joinder of Osler

Since Osler is before the court as the trustee representing the other trustees of Mako Trust there is no reason for him to have served the papers on himself.

[21] The failure to have disclosed Gäertner as being the prospective purchaser of the shares. The short answer to this point is that such disclosure is not required by the articles of association.

[22] Counsel for Maria Trust also advanced an argument which he described as pragmatic, urging me not to grant the application by Mako Trust to sell its shares to Orion Properties because the result of that would in effect bring about a deadlock. The difficulty with this approach is that the argument ignores what is before me on the papers and results from an attempt by counsel to introduce into the pre-emptive rights application arguments which stem from the affidavits filed in answer to the affidavits of the intervening parties in the liquidation applications. The papers in the pre-emptive rights application reflect only a dispute between

the parties as to Maria Trust's purported acquisition of three shares resulting from the offer made by Mako Trust. If the application succeeds, it may well be that a deadlock between Gees and Gäertner may arise in the future. That is something which will have to be dealt with and adjudicated upon on the strength of the situation then applying. For the present, it would seem that if the pre-emptive rights application is approved, the directors of the company will be obliged to approve the registration of the shares in accordance with article 24. The power which the directors have to refuse to register the transfer of any shares without giving reasons therefor, as set out in article 11, is restricted by the provisions of article 24. In terms thereof, *"the directors shall approve the registration of the shares in the name of that person unless they have good reason to refuse such registration".* Viewed pragmatically, the directors will not be able to resolve to refuse such registration (Osler and Gees will not be able to agree) and in the absence of a positive decision to refuse the application, it would seem that registration must follow.

[23] Counsel for Maria Trust also relied on the provisions of section 341(1) of the Companies Act. This section provides

> *"Every transfer of shares of a company being wound up or alteration in the status of its members effected after the commencement of the winding up without the sanction of a liquidator shall be void."*

The effective date of a company being wound up is of course the date of the presentation to the court of the application for winding up, but an order for the provisional winding up is required before a company can be said to be being wound up. In their notes on s 341 of the Companies Act the authors of Henochsberg express the view that the purchaser of a share has a right against the seller to delivery of a signed share transfer form if the company issuing that

share is placed into liquidation, but he cannot obtain registration of the transfer without the sanction of the liquidator. That view accords in my view with general principles of contract read with the statutory provisions in the Companies Act. In the case before me, the proposed purchaser of the shares has indicated his awareness of the dispute between Osler and Gees in Mouille Point and has also recorded that he was aware of the fact that an application for liquidation of the company might ensue. I was informed from the bar that the purchaser wishes to enforce his rights as against Mako Trust in respect of the deed of sale signed by it. That is a further reason why I have concluded that even in the event of a liquidation order being granted against the companies it would be an order for me to adjudicate the dispute relating to the pre-emptive rights application.

[24] On behalf of Maria Trust it was submitted that in the event of the applications for liquidation not succeeding, the costs of two counsel ought not to be allowed. It was not suggested that the costs of two counsel ought not to be allowed in the pre-emptive rights application and since the applications are so inter-related, there is in my view no reason why the costs of two counsel ought not to be allowed in the liquidation applications.

In the result the following orders are made:

Case no 11735/2005 (the pre-emptive rights application)

1) It is declared that the Sale of Shares Agreement, which is Annexure **GEO4** to the founding affidavit of the third applicant, is no longer subject to the suspensive condition set out in clause 3 of that agreement.

2) The first, second, third and fourth respondents are directed to do all things and to take all steps as may be necessary to implement the provisions of the Sale of

Shares Agreement referred to in 1).

3) The respondents are ordered to pay the applicant's costs.

4) The counter-application is dismissed with costs.

5) The costs referred to in 3) and 4) shall include the costs attendant upon the employment of two counsel.

Case numbers: 1686/2006, 1687/2006, 1688/2006, 1796/2006, 1797/2006 and 1798/2006 (the liquidation applications)

Each of the applications is dismissed with costs, which costs include the costs in the intervention applications and the costs attendant upon the employment of two counsel.

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R B CLEAVER