

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CCT CASE NUMBER : 69/11**

In the matter between;

**THE OCCUPIERS OF PORTIONS 124 AND -150  
OF THE FARM ZANDFONTEIN**

**APPLICANTS**

and

**BROOKWAY PROPERTIES 30 (PTY) LTD  
THE CITY OF TSHWANE**

**FIRST RESPONDENT  
SECOND RESPONDENT**

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**AFFIDAVIT**

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I, the undersigned

**HENDRIK CHRISTOFFEL DE BEER**

hereby declare under oath:

**DEPONENT AND AIM OF APPLICATION**

- 1.1 I am a major male businessman of occupation and residing at 25 Fish Eagle Street, Silverlakes, Pretoria, Gauteng.
- 1.2 The facts deposed to herein are within my personal knowledge, save where otherwise stated, and are true and correct.
- 1.3 I depose to this affidavit in both my capacity as the sole Trustee of the Hennie de Beer Family Trust, which holds 50% of the issued shares in the First Respondent and in the capacity of the co-director of the First Respondent. I will refer to myself in the aforementioned capacities hereinafter as “I” or “myself”.
- 1.4 I depose to this Affidavit to answer to the direction of this honourable Court dated 2 November 2011

**BACKGROUND:**

- 2.1 A Provisional Winding-up Order was granted by the North Gauteng High Court against the First Respondent under case number 27382/2011 on 1 August 2011, which order was

returnable on Tuesday 13 September 2011. On that day the return day was further extended to 19 September 2011.

2.2 I have opposed the liquidation proceedings of the First Respondent through an opposing affidavit and through an application to intervene wherein *inter alia* the discharging of the provisional order granted against the First Respondent is sought. In order not to burden the papers of this honourable Court, I do not attach these papers to this affidavit, but same will be available at the hearing of this matter.

2.3 As an affected party in terms of the Companies Act, I applied to the North Gauteng High Court to initiate business rescue proceedings under case number 53459/2011 and the application was issued on 19 September 2011. I also do not attach a copy of this application hereto as it is voluminous, it will however be available at the hearing of this matter.

2.4 The return date of the liquidation application against the First Respondent, along with:

2.4.1 an application for intervention by Mr. Salomo Jacobus Delpont (a co-director, shareholder and creditor of the First Respondent);,

2.4.2 an application for intervention by me; and

### 2.4.3 the application for business rescue

was postponed to the 31<sup>st</sup> January 2012 for the allocating of a date to be heard by the North Gauteng High Court.

- 2.5 From the onset it should be noted that the relationship between me and Delport is strained and that communication between us is difficult. Delport had questioned the mandate of the First Respondent's attorneys to act on behalf of the First Respondent, especially seen in the light of the intervention application by him supporting the liquidation of the First Respondent.
- 2.6 A provisional liquidator was appointed by the Master of the High Court Pretoria during the beginning of October 2011 (the exact date is unknown to me), Mr. Damons of Legae Trust, to administer the affairs of the First Respondent.
- 2.7 On 14 October 2011 at 10:51 the First Respondent's attorneys sent an e-mail to the provisional liquidators with a brief explanation of the history of the matter before this honourable Court. Instructions were requested to proceed with the drafting of heads of argument. (Annexure "A")
- 2.8 In the light of the aforesaid, I was not in a position to instruct counsel to draw heads of argument and the counsel that was

previously involved conveyed to me that we required the consent of the provisional liquidator in order to proceed.

2.9 On the 18<sup>th</sup> October 2011, the date upon which the heads of argument was due to be delivered by the First Respondent, de Beer Janse van Vuuren Inc. sent an e-mail to the provisional liquidators requesting feedback. The answer was received only on the 25<sup>th</sup> October 2011 and it was simply a termination of the mandate of the First Respondent's attorneys. (Annexure "B")

2.10 I contacted the representative of the provisional liquidator (Ms. Elmarie Booyse) on 26 October 2011 and indicated to her that I will personally accept liability for the payment of the legal fees of the hearing on the 9<sup>th</sup> November 2011 and requested the permission of the provisional liquidator to proceed with the opposing of the application. De Beer Janse van Vuuren Inc. then sent a letter to the liquidator to confirm this discussion. (Annexure "C")

2.11 I then went to personally see the assistant Master of the High Court in Pretoria, Mrs Christine Rossouw, in order to try and salvage the situation without any success.

2.12 Ms. Booyse of the provisional liquidator then sent an e-mail to the attorneys of the First Respondent on 27 October 2011,

informing that the matter was to be handled by Mr. Henk Strydom, the attorney for the applicant in the application for liquidation of the Respondent. (Annexure "D")

2.13 On the same date a letter was received from this Honourable Court requesting details of the attorney who would represent the First Respondent at the hearing of this matter. This letter was answered by de Beer Janse van Vuuren Inc. on 28 October 2011 confirming the termination of their mandate. (Annexure "E")

2.14 On 31 October 2011 the attorneys of the First Respondent received a letter from the provisional liquidators with an attached e-mail from Stuart van der Merwe Inc. (acting for Mr. Delport) confirming the instruction from Mr. Delport that De Beer Janse van Vuuren Inc., the First Respondent's attorneys were not to proceed with the matter as Delport was of the opinion that the De Beer Janse van Vuuren Inc. was allegedly acting against him in certain cases. (Annexure "F").

2.15 I was advised by Mrs. Booyse that Mr. Henk Strydom was appointed by the provisional liquidators as the legal representative of the First Respondent.

- 2.16 On 1 November 2011 a letter was sent to the provisional liquidator by De Beer Janse van Vuuren Inc., confirming that an account will be drawn and that, upon payment of the account, the file would be handed over to the attorneys appointed by the provisional liquidators. (Annexure "G")
- 2.17 During this time settlement negotiations had begun with the auditor of Mr. Delpont in terms whereof it was inter alia discussed that the matter in this honourable Court should preferably proceed on the 9<sup>th</sup> November 2011 as it would be extremely detrimental to the First Respondent to not proceed with it's old legal team with the matter.
- 2.18 The fact that the application is not finalised, is seriously detrimental to the First Respondent and the main reason for the financial woes of the First Respondent, in as far as the development on the properties of the First Respondent is nigh impossible and the land is not sellable.
- 2.19 Mr. Delpont agreed on 2 November 2011 to confirm the instruction of De Beer Janse van Vuuren Inc. to proceed with the matter. His affidavit is attached hereto as Annexure "H".

**LOCUS STANDI:**

I respectfully submit that I have the necessary *locus standi* to act on behalf of the First Respondent in this matter because:

- 3.1 I am advised, which advice I accept, that, in terms of Section 131(6) of the Companies Act 71 of 2008, the liquidation proceedings launched against the First Respondent are suspended until the North Gauteng High Court has adjudicated upon the application;
- 3.2 I am a co-director of the Respondent;
- 3.3 I am a 50% shareholder and co-member of the Respondent;
- 3.4 I am a creditor of the Respondent, having a loan account in the Respondent for the amount of R30 million plus interest calculated at the prime lending rate of Standard Bank of Southern Africa Limited from August 2008 to date of payment.

The shares in the First Respondent are held by the Hennie de Beer Family Trust (50%) and Delport (50%) and Delport is also a director of the company. I submit that Delport's instruction to proceed with the matter in this honourable Court along with my instruction, is sufficient for the purposes of the application before this honourable Court.

In view of the foregoing I respectfully agree that the application is to be removed from the roll on the 9<sup>th</sup> November 2011. It is humbly submitted that this matter is similar to the matters that were recently heard by the Constitutional Court to the matters of PPC Aggregate Quarries (Pty) Ltd. and Golden Thread (Pty) Ltd, and Tshwane Metropolitan Municipality, and that this matter should be heard subsequent to the pending judgement by the Constitutional Court in those matters becoming available.

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**DEPONENT**

SIGNED and sworn to before me at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2011, the deponent having acknowledged that he/she knows and understands the contents of this affidavit and all the provisions of Act 16 of 1963 and the Regulations promulgated in terms thereof concerning the taking of the oath having been complied with in my presence and within the area for which I have been appointed as Commissioner of Oaths.

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COMMISSIONER OF OATHS

Capacity:

Full names:

Physical address: