

IN THE SOUTH GAUTENG HIGH COURT

JOHANNESBURG

CASE NO: 29968/08

DATE: 2012-10-17

10 In the matter between

PANGBOURNE PROPERTIES (PTY) LIMITED Plaintiff

and

VAN DER MERWE DU TOIT & OTHERS Defendants

JUDGMENT

WILLIS J:

20

[1] The first defendant, as applicant, has sought various orders, the first of which relates to a request for further particulars for the purposes of preparation for trial in terms of rule 21 of the High Court Rules, more particularly Rule 21 (2). The second portion of the application relates to a notice in terms of Rule 35 (3) for the discovery of further documents and the

last portion of the application relates to request for admissions and enquires in terms of Rule 37 (4).

[2] The respondents in this application resist compliance with the order on the basis that there is no *lis* between them and the applicant who is the first defendant. In so far as the interpretation of Rule 21 (2) is concerned, I fully endorse the sentiments expressed by Josman J in *Control Instruments Finance (Pty) Ltd v Mercantile Ltd* 2001 (3) SA 645 (C) from paragraphs 649D to 65B in so far as the interpretation of Rule 35 (3) and 37 (4) are
10 concerned. A plain reading of the rules in themselves relating to any party in the litigation clearly entitles the first defendant as applicant to the relief which it seeks.

[3] Mr *Batu* appears for the applicant has requested that the costs of two counsel be allowed, this is in my view imminently reasonable there is a claim of some R45 million the case involves complex issues of law and it is entirely reasonable to have two counsel. Indeed Mr *Heyns* who is appearing for the respondents today, he is being led in the substantive matter by Mr *Maritz*. If I understood correctly, the reason for the absence of Mr *Maritz* today is that he
20 is otherwise engaged.

[4] Consequently, the following is the order of the court: (i) The applicant is granted an order in its favour in terms of prayers 1, 2, 3 and 4 of the notice of motion dated 26 September 2012; (ii) The costs of the application are awarded in favour of the applicant which costs are to include the costs of two

counsel.

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I, the undersigned, hereby certify that, ***in as far as it is audible***, the foregoing is a true and correct transcription of the proceedings recorded by means of a digital recorder in the matter of:

PANGBOURNE PROPERTIES LTD

versus

VAN DER MERWE DU TOIT

<u>CASE NO:</u>	29968/08
<u>RECORDED AT:</u>	JOHANNESBURG
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