REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: 2008/41311

(1) REPORTABLE: YES / ~~NO~~
(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~
(3) REVISED. ✓

20.4.2012
DATE

SIGNATURE

In the matter between:

THE CHEMICAL INDUSTRIES NATIONAL PROVIDENT FUND **Plaintiff**

and

TRISTAR INVESTMENTS (PTY) LTD **Defendant**

J U D G M E N T

LAMONT J:

[1] At the commencement of the trial I separated the issues which were heard before me from the other issues. Those issues concerned whether or not:-

1.1 the defendant had acted or offered to act as a Financial Services Provider at a time when it did not have a licence; and if so,

1.2 the effect of acting in breach of the provisions of Section 7 of the Financial Advisory and Intermediary Services Act No. 37 of 2002 was to visit the contract with voidity.

[2] I made an order of separation as it appeared to me that it was convenient that these issues be separated from the other issues. The issues are freestanding insofar as the evidence is concerned and the separation would result in an expeditious finalisation of the matter. In my view, the fact that the plaintiff may have had an additional motive for seeking the separation in that it was unable to run the balance of the trial is irrelevant to the decision of convenience.

[3] The contract was concluded at a time when the provisions of the Act impacted upon the rights of persons to conclude such contracts. The provisions of the Act provide: –

> *"7 (1) with effect from a date determined by the Minister by notice in the Gazette, a person may not act or offer to act as a financial services provider unless such person has been issued with a licence under Section 8.*
>
> *(2) Subject to Section 40, a transaction concluded on or after the date contemplated in subsection 1 between a product supplier and any client by virtue of any financial services rendered to the client by a person not authorised as a financial services provider, or by any other person acting on behalf of such an authorised person, is not unenforceable between the product supplier and the client merely by reason of such lack of authorisation."*

[4] At the time the contract was concluded the defendant was to the knowledge of both parties, only licenced to furnish advice to the plaintiff. The plaintiff's legal adviser, who is skilled in the industry, oversaw the conclusion of the contract and rendered advice to the plaintiff. The plaintiff's legal team was aware at all times of the fact that the licence did not entitle the defendant to perform any act

other than the rendition of advice.

[5] The first issue for determination is whether the conclusion of the contract constitutes an act or an offer to act as a financial services provider. That issue is dependent upon an interpretation of the contract.

THE CONTRACT

[6] The contract is styled "Investment Consulting Agreement".

[7] In the preamble it is recorded:-

7.1 in paragraph (a), that the plaintiff has elected to retain the services of the investment expert to advise it on investment matters;

7.2 in paragraph (b), that the plaintiff wishes to change the way it manages its investments by exerting greater control over the investment processes;

7.3 in paragraph (c), that the plaintiff wishes to appoint the defendant to provide the plaintiff with investment consulting services regarding the investment and

management of the plaintiff's assets.

[8] The caption to paragraph 3 reflects that the defendant is appointed as an investment consultant. The body of paragraph 3 provides that the defendant is to provide the plaintiff with the full range of investment consulting services (as is more fully detailed in Annexure A annexed thereto) with regard to the investment and management of the plaintiff's assets.

[9] The caption to paragraph 4 reflects the defendant's duties and responsibilities:-

9.1 paragraph 4.1 provides that the defendant is to provide the full range of investment consulting services required by the plaintiff as is more fully detailed in Annexure A with regard to the investment and management of plaintiff's assets.

9.2 paragraph 4.2 provides that the defendant acknowledges that it is fully aware of the relevant regulations and of the relevant restrictions and limitations with which the plaintiff must comply in making and managing its investments.

9.3 paragraph 4.3 provides the plaintiff with a warranty that the advice and recommendations made by the defendant will in all respects comply with the acts, regulations, restrictions and limitations of application to the plaintiff.

9.4 paragraph 4.6 provides that the defendant will not negotiate or receive any commission from any asset manager, implementer, administrator, custodian or other third party service provider employed in connection with the investment and management of the plaintiff's assets.

9.5 paragraph 5.11 provides that within 18 months the defendant's advice must demonstrate an aggregate annual reduction in fees.

[10] Annexure A to the contract contains provisions set out under a general heading providing that the defendant will provide the plaintiff with certain investment consulting services. The detailed provisions are contained in two basic headings: an investment policy implementation heading and an ongoing monitoring and management heading.

10.1 Under the investment policy implementation heading, a series of paragraphs are set out dealing with the giving of advice and the obtaining of data including:-

10.1.1 paragraph 1(u) provides that the defendant consult with the plaintiff before "they" negotiate any contractual issues with the current and any new asset managers on behalf of the plaintiff.

10.1.2 paragraph 1(v) provides that the defendant will manage the transition from the plaintiff's current domestic and international portfolios and that in doing so the defendant will take all necessary steps to reduce the costs and risks of the transition process.

10.2 Under the heading ongoing monitoring and management in Annexure A:-

10.2.1 paragraph 2(a) provides that the defendant will commence its services and that those "consulting services" are listed.

10.2.2 paragraph 2(b) provides that the defendant will regularly review the assumptions and

effectiveness of the investment policy statement.

10.2.3 paragraph 2(c) provides that the defendant will continuously monitor, review and re-evaluate the plaintiff's obligations and liabilities to ensure that the plaintiff's benchmark asset allocation model and investment strategy remain appropriate.

10.2.4 paragraph 2(e) provides that the defendant will monitor the plaintiff's portfolio management and correct non-compliance with the Pension Fund Act.

10.2.5 paragraphs 2(f),2(g) 2(i) and 2(j) provide that the defendant will continuously perform certain acts of monitoring and evaluation and if there is a deviation will correct such deviation.

10.2.6 paragraph 2(k) provides for the defendant to perform certain acts and if necessary take any appropriate corrective action.

10.2.7 paragraphs 2(l) and 2(m) provide that the defendant will recommend appropriate corrective action in certain circumstances.

10.2.8 paragraph 2(r) provides that the defendant is to continuously monitor investment related

costs and is to take appropriate steps to reduce those costs.

10.2.9 paragraph 2(v) provides that the defendant "will carry out any changes to plaintiff's portfolio or asset managers requested by the plaintiff".

10.2.10 paragraph 2(w) provides that the defendant will manage the costs and risks of any rebalancing of or changes to plaintiff's portfolio.

10.2.11 paragraph 2(x) provides that the defendant will manage the relationship between the plaintiff and the plaintiff's asset managers, administrators and custodians.

[11] The above provisions are the material ones dealing with the acts to be performed by the defendant.

[12] I heard the evidence of the defendant's witness, the plaintiff having closed its case without leading evidence. The defendant's witness gave evidence which sought to place the contract within its context. His evidence was to the effect that at all relevant times the defendant only gave "advice". The defendant was not licenced at

that time to do more than advise and it did not render intermediary services. He explained the process by which the advice would be given, namely, that facts would be gathered at the time of the commencement of the contract as to then existing state of affairs of the plaintiff; the requirements of the plaintiff would be established; advice would be given to enable a plan to be designed and then implemented to achieve those objectives. Throughout the process, the defendant would render advice alone. The plaintiff would make decisions based on the advice of the defendant and then it would act by giving the relevant instructions to financial intermediaries and not to the defendant. Words in the contract, appearing to oblige the defendant to perform work which would in the ordinary course be categorised as the work of a financial intermediary are words which consist of acts of implementation and not advice. The objective of these words would be achieved by way of the defendant rendering advice, not by way of the defendant itself implementing the advice. His evidence was that the wording appearing in the contract was intended to be wording relating to an obligation to furnish advice alone.

[13] The submission was made on the part of the plaintiff that it appears from the sections of the contract cited above that the defendant was not only to provide advice, but was also to take

steps to implement the advice. To the extent that the plaintiff was taking steps to implement advice, the plaintiff would be acting otherwise than as an advisor and would be acting as a financial service provider. The submission was made on the part of the defendant that in the context of the contract words which on the face of it required the defendant to perform acts in relation to the advice were to be read as requiring the defendant to give advice to the plaintiff as to the performance of such acts. The submission was that the contract provides for acts to be performed but not for the manner in which the performance was to be achieved.

[14] The process of interpretation of a contract involves the search for and identification of the parties' true intention. The parties were in agreement as to the law governing the process. The differences of interpretation arose out of each having a different interpretation of the result the application of the law would have on the wording in question.

CONTEXT

[15] The meaning of words is elastic, the meaning mutates with delivery and occasion. This is so whether or not the delivery is oral accompanied by gestures or written. When interpretation of words

within a contract is undertaken, it is necessary to place the contract within the context in which it was concluded. This enables the appropriate meaning of any particular word or set of words to be chosen out of the range of meanings available. The context comprises the background and surrounding circumstances. This process is frequently referred to as setting the matrix.

PARTICULAR MEANINGS OF WORDS

[16] An author designs the sets of words he uses to convey a meaning which can be decoded by the person or sets of persons who intends to be able to decode them. Sometimes, an author will use a word which can only be decoded by someone who is aware of the particular meaning the writer gives to a word. The author and decoder are entitled to provide evidence of that particular meaning.

See: *Gotze v Estate van der Westhuizen* 1935 AD 300.

The rendering of the words into common parlance involves translation not interpretation.

[17] Once the words within the contract have been reduced to common parlance and the contract placed in its context, the task of interpreting the words can commence.

[18] The technique of interpretation, the "Golden Rule" has been summarised by Joubert JA in *Coopers and Lybrand and Others v Bryant* 1995 (3) SA 761(A) at 767 to 768

> *"According to the "golden rule" of interpretation the language in the document is to be given its grammatical and ordinary meaning unless this would result in some absurdity or some repugnancy or inconsistency with the rest of the instrument... The mode of construction should never be to interpret the particular word or phrase in isolation... by itself... The correct approach to the application of the "golden rule" of interpretation after having ascertained the literal meaning of the word or phrase in question is, broadly speaking, to have regard: (1) to the context in which the word or phrase is used with its interrelation to the contract as a whole, including the nature and purpose of the contract...; (2) to the background circumstances which explain the genesis and purpose of the contract, i.e. to matters probably present to the minds of the parties when they contracted... (3) to apply extrinsic evidence regarding the surrounding circumstances when the language of the document is on the face of it ambiguous, by considering previous negotiations and correspondence between the parties, subsequent conduct of the parties showing the sense*

in which they acted on the document, save direct evidence of their own intentions"

Harms DP in *KPMG Chartered Accounts (SA) v Securefin Ltd & Another* 2009 (4) SA 399 (SCA) at [39] held:

"First, the integration (or parol evidence) rule remains part of our law. However, it is frequently ignored by practitioners and seldom enforced by trial courts. If a document was intended to provide a complete memorial of a jural act, extrinsic evidence may not contradict, add to or modify its meaning (Johnson v Leal 1980 (3) SA 927 (A) at 943B*). Second, interpretation is a matter of law and not of fact and, accordingly, interpretation is a matter for the court and not for witnesses (or, as said in common-law jurisprudence, it is not a jury question: Hodge M Malek (edition) Phipson on Evidence (*16 ed 2005*)* paras 33-64*). Third, the rules about admissibility of evidence in this regard do not depend on the nature of the document, whether statute, contract or patent (Johnson & Johnson (Pty) Ltd v Kimberly-Clark Corporation and Kimberly-Clark of South Africa (Pty) Ltd* 1985 BP 126 (A) ([1985] ZASCA 132 *(at www.saflii.org.za)). Fourth, to the extent that evidence may be admissible to contextualise the document (since 'context is everything') to establish its factual matrix or purpose or for purposes of*

identification, 'one must use it as conservatively as possible' (Delmas Milling Co Ltd v Du Plessis 1955 (3) SA 447 (A) at 455B - C*). The time has arrived for us to accept that there is no merit in trying to distinguish between 'background circumstances' and 'surrounding circumstances'. The distinction is artificial and, in addition, both terms are vague and confusing. Consequently, everything tends to be admitted. The terms 'context' or 'factual matrix' ought to suffice. (See Van der Westhuizen v Arnold* 2002 (6) SA 453 (SCA) ([2002] 4 All SA 331) paras 22 and 23, and *Masstores (Pty) Ltd v Murray & Roberts Construction (Pty) Ltd and Another* 2008 (6) SA 654 (SCA) para 7)".

Malan JA in *Engelbrecht & Another NNO v Senwes* Ltd 2007 (3) SA 29 (SCA) at 7 stated:

"*The intention of the parties is ascertained from the language used read in its contextual setting and in the light of admissible evidence. There are three classes of admissible evidence. Evidence of background facts is always admissible. These facts, matters probably present in the minds of the parties when they contracted, are part of the context and explain the 'genesis of the transaction' or its 'factual matrix'. Its aim is to put the Court 'in the armchair of the author(s)' of the document. Evidence of 'surrounding circumstances' is*

admissible only if a contextual interpretation fails to clear up an ambiguity or uncertainty. Evidence of what passed between the parties during the negotiations that preceded the conclusion of the agreement is admissible only in the case where evidence of the surrounding circumstances does not provide 'sufficient certainty'."

[19] The ordinary grammatical meaning of the words must be considered to establish the common intention of the parties. If the ordinary grammatical meaning of the words is unambiguous and points to a particular intention then no evidence is admissible.

THE CONTRACTUAL TERMS CONSIDERED

[20] The management of the plaintiff's assets referred to in paragraph (c) was to take place by way of the defendant furnishing advice. The appointment of the defendant as an investment consultant was to provide investment consulting services, with regard to the investment and management of the plaintiff's assets. The general wording used in the body of the contract invokes the detail appearing in Annexure A. The ambit of the general wording is defined by the wording in Annexure A. Annexure A details the obligations of the defendant in relation to investment and

management. To the extent that the paragraphs in Annexure A, oblige the defendant to perform acts other than giving advice, this must be read as requiring the defendant to perform such acts. Acts other than those acts of advice include the imposition on the defendant are:-

20.1 to correct non-compliance (paragraph 3), to correct deviation (paragraph 2(f), 2(g), 2(i) and 2(j)), take corrective action (2(k), 2(l) and 2(m);

20.2 to take appropriate steps to reduce costs paragraph 2(p);

20.3 to carry out any changes to plaintiff's portfolio or asset managers requested by the plaintiff paragraph 2(v);

20.4 to manage costs and risks of rebalancing, or changes to the portfolio paragraph 2(w);

20.5 to manage the relationship between plaintiff and the plaintiff's asset managers, administrators and custodians paragraph 2(x).

[21] In each case the wording of the paragraph is clear and unambiguous on an ordinary grammatical meaning of each paragraph. There is no room for the interpretation which the

defendant suggests is appropriate, namely that the result the acts describe would have attained by the defendant rendering advice which the plaintiff would implement.

WORDING HAS A SPECIAL MEANING

[22] The oral evidence before me was that, notwithstanding the apparent meaning of words contained within the contract, the common continuing intention of the parties was that certain words had a different meaning from their apparent meaning. For that reason the message contained within the words was not the one apparent to a casual reader who did not know that special meaning. This is a translation issue rather than an interpretation issue. To decide the issue I must accept that it is probable that the words as a fact did have the meaning attributed by the witness namely that the words which imposed an obligation to act required the defendant to act by way of rendering advice which plaintiff would accept and act upon.

[23] Evidence on this issue is admissible see Gotze *supra*. The fact that the only evidence on the issue was that of the defendant's witness is not dispositive of the issue; the probabilities must be considered.

See: *McDonald v Young* (292/10) [2011] ZASCA 31.

"The appellant bore the onus of proving the agreement upon which he relied as well as the terms thereof. Having regard to the deficiencies in the appellant's evidence and the probabilities, it cannot be said that it measures up to the standard required for acceptability in respect of the existence of the joint venture agreement". In Da Mata v Otto NO, Van Blerk JA, dealing with the approach to be adopted when deciding probabilities, said:

'In regard to the appellant's sworn statements alleging the oral agreement, it does not follow that because these allegations were not contradicted — the only witness who could have disputed them had died — they should be taken as proof of the facts involved". Wigmore on Evidence, 3rd ed., vol. VII, p. 260, states that the mere assertion of any witness does not of itself need to be believed, even though he is unimpeached in any manner, because to require such belief would be to give a quantative and impersonal measure to testimony. The learned author in this connection at p. 262 cites the following passage from a decision quoted:

"It is not infrequently supposed that a sworn statement is necessarily proof, and that, if uncontradicted, it established

the fact involved. Such is by no means the law. Testimony, regardless of the amount of it, which is contrary to all reasonable probabilities or conceded facts – testimony which no sensible man can believe – goes for nothing; while the evidence of a single witness to a fact, there being nothing to throw discredit thereon, cannot be disregarded".

[24] I consider the probabilities that the wording was structured to convey a message apparent only to the parties to the contract and hence was one which could only be decoded by them.

24.1 The document is voluminous and there is no reason why in each particular case the appropriate wording could not have been used. This is a standard form contract which is used by the defendant. If the intention had been, as suggested by the defendant, then there is no reason why appropriate wording could not have been used.

24.2 The contract is one which is concluded on behalf of a body (the plaintiff) where those in control of the body will change from time to time and will require documentary evidence of the existing contracts between the plaintiff and other entities. It would be unlikely for the plaintiff not to require the precise

wording which it wished to have contained in the document so included. It is improbable that it agreed to a special meaning. It is much more probable that it would require wording containing a message which would readily be decoded by all.

24.3 The plaintiff submitted the contract to its legal advisor. Even if the advisor was aware of the message it is improbable that he would have advised the use of words which would readily be misunderstood by all and hence which would convey a meaning not intended to be conveyed to 3rd parties.

24.4 The most telling point against the message being the one the defendant's evidence reveals, is that the document is one provided to regulate the conduct between the parties in a highly regulated activity. The regulatory authority would be entitled to have sight of the document and take steps in accordance with views it formed in consequence. It is probable that the parties to the document would have wished their true intention to appear from the document with great precision in common parlance and be readily understood by the Regulatory Authority.

They would not have wished to use language which the regulatory authority could misconstrue.

24.5 If the message the words send, is the one ascertainable form the words in the document, read as "un-translated", then the provisions of Section 7 of the Act could have serious consequences for the parties. The drafter of and parties to the contract would in my view seek to convey a message readily comprehensible as not being in conflict with Section 7. This is particularly so in the light of the express intention of the parties in the contract (in paragraph 4) to ensure compliance with legislation.

[25] It is my view that the probabilities are against there being a special meaning.

[26] In my view the contract constitutes the conduct of acting of offering to act as a financial service provider. The contract, as the defendant is unlicensed, is a breach of Section 7 of the Act.

THE STATUTE

[27] If a statute prohibits conduct and provides no penalty, then the proper interpretation of the prohibition is that contravention of it will result in the act being void. This statute prohibits the conduct, but provides for a penalty. The issue to be decided is whether or not the legislature intended the penalty which is provided for in the statute to be the sole result of a contravention of the prohibition.

[28] The proper approach to the matter is to approach each case individually in the light of its own language and circumstances and have regard to the consequences in relation to justice and convenience of adopting one view rather than the other.

See: *Metro Western Cape (Pty) Ltd v Ross* 1986 (3) SA 181 at 188.

[29] Central to the question of interpretation is the context and purpose of the statute.

[30] This statute is designed to control persons who render advisory and intermediary services to their clients. A regulatory authority is established to regulate the activities of the industry. The regulatory authority has wide-ranging powers, including the power

to require persons to be licenced to perform activities; to furnish information or documents which the authority may require; to control advertising, the production of brochures and other documents; to deal with persons who contravene or fail to comply with provisions of the Act; to conduct on-site visits of businesses and conduct investigations of their affairs; to instruct inspectors to carry out inspections in terms of other legislation. The regulatory authority's wide ranging powers are designed to enable it to completely control all facets of the industry, all activities of all persons carrying on business in the industry and also the persons themselves.

[31] In order to carry on its activities effectively the regulatory authority, requires information as to the identity of participants in the industry. That information is provided by way of the licensee, furnishing at the time of the application, all the facts and matters as are required by the regulatory authority including what the licenser does and what he is capable of doing. The authority decides who shall be allowed to perform acts in the industry and what acts they shall perform. It then issues appropriate licences. It ensures that the terms of the licences are adhered to by way of the sections in the Act (including Section7) which empower it to do so.

[32] Licensees render services to a variety of persons who place their financial affairs in their hands. Frequently, such persons have little or no knowledge of financial affairs and are unable to take steps to protect their assets without assistance. These people are in the hands of the persons who give them advice and who may take control of their assets to implement such advice. They can readily fall prey to persons who give them advice, the import of which they do not readily understand. It is understandable that the legislature would want to control the industry; so as to limit the ability of the unscrupulous to fleece the innocent. The legislature achieves this by empowering the regulatory authority to take wide-ranging steps and by way of introducing a licensing system so that only persons who are properly qualified and controlled may lawfully carry on the activities.

[33] The purpose which the legislature sought to achieve cannot be achieved without proper controls being put in place and without the regulatory authority being able to take proper steps to identify and discipline the recalcitrant's.

[34] The question to be answered is whether and not in the light of this context, the purpose of the legislature can be achieved, if the

consequence of breaching the provisions of Section 7 is that the penalty provided for in the statute alone becomes of application.

[35] The provisions of Section 36 of the Act provide for a fine of up to R1 million or imprisonment for a period not exceeding 10 years or to both such fine and imprisonment. The punishment provision does not deal with the effect of a breach upon the contract or offer to contract contemplated in Section 7. In the *Metro* case this issue was dealt with by considering the effect of finding the contract to be void upon the parties to the contracts. The *Metro* case considered the position between a trader who required a licence to trade and his customers who had purchased goods from him. The Court considered the position of the innocent purchaser who had bought from the trader in the ordinary course. It found that no moral culpability attached to the trader or the customer. This was so, it was held, as the purpose of the ordinance was to regulate the relationship between the trader and the regulatory authority as to the right of the trader to run the business in question, not as to the right of the trader to conclude contracts with its customers. To find the contract void, so it held, would cause grave inconvenience and injustices to innocent members of the public without furthering the object of the legislation.

[36] The same approach to the problem was taken in *Savage and Lovemore Mining (Pty) Ltd v International Shipping Co (Pty) Ltd* 1987 (2) 149 (W) at 205 and *Lupacchini NO and Another v Minister of Safety and Security* 2010 (6) SA 457 (SCA) at paragraphs 8 and 9.

[37] In the present matter the very purpose of the legislation is directed towards preventing persons from entering into, or offering to enter into contracts of the prohibited type. The object of the legislature is directed towards the contract in question rather than the conduct of the trader. The underlying objective of the legislature is to compel persons who conclude such contracts to have a particular characteristic, namely a licence. This purpose is clearly distinguishable from the purpose of the legislature, in requiring a trader, to have a certain type of premises and pay certain monies to the fisc.

[38] If the contract is void, contracting parties do not suffer prejudice. The party which is required to be, but is not, licensed cannot enforce it. The other party can legitimately refuse to implement its terms, to make payment or perform any other obligation imposed upon him by the contract. The recipient of

advice and/or actions of the unlicensed will not suffer loss in consequence of the voidness of the contract, as its relationship with those persons with whom it contracted, in consequence of the advice given or acts performed by the financial adviser will remain intact. It may be that it will have the right to avoid such contracts. (See: Section 7 (2)). However, it is not necessary to deal with this question for purposes of this judgement.

[39] The Act and Section in question were pertinently considered in the matter of *Watersure (Pty) Ltd v Nelson Mandela Bay Metropolitan Municipality* 2010 JDR0069 (ECP). Van der Byl AJ who held, when dismissing an application for leave to appeal, that;

> *"These cases are, in my view, all clearly distinguishable from the circumstances in this matter in that the prohibition in Section 7 (1) is patently peremptory. It is cast in negative language and prohibits certain conduct. Section 36 of the Act provides that anyone who contravenes or fails to comply with the provisions of..... is liable to... to hold the agreement to be valid, the Court would give legal sanction to the very mischief which the Legislature sought to prevent, i.e., the protection of the public at large from the provision of financial services without adequate regulation."*

[40] In my view the reasoning of Van der Byl AJ is appropriate.

[41] I have formed the view that:

41.1 the conduct in question is in contravention of the provisions of Section 7 (1) of the Act, in that it constitutes a contract or offer to contract for the performance of an act which the defendant is not licenced to perform,

41.2 the consequence of the contravention is that the contract is void.

[42] I make the following order.

1. The conduct in question is in contravention of the provisions of Section 7 (1) of the Act, in that it constitutes an contract or offer to contract for the performance of a act which the defendant is not licenced to perform,

2. The consequence of the contravention is that the contract is void.

3. The balance of the action is postponed sine die.

4. The defendant is to pay the costs consequent upon the hearing.

LAMONT J

JUDGE OF THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Counsel for Plaintiff	:	Adv. Redding SC
Attorney's for Plaintiff	:	Webber Wentzel
Counsel for Defendant	:	Adv. Franklin SC
Attorney's for Defendant	:	Werksman Inc
Date of hearing	:	14 March 2012
Date of judgment	:	20 April 2012