REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

(1)	REPORTABLE: Yes
(2)	OF INTEREST TO OTHER JUDGES: Yes

DATE SIGNATURE

Case No.: 24953/2019

In the matter between:

D, N — Applicant

and

D, M — Respondent

JUDGMENT

Gilbert AJ

1. The law is settled that, save for the statutory exception which is the subject of this judgment, a spouse's accrual claim in terms of section 3 of the Matrimonial Property Act, 1984 only arises at the dissolution of

the marriage and that the determinative date for calculating the value of that accrual claim is the date of dissolution of the marriage.[1]

2. This brings with it the difficulty that one spouse may seek to dissipate his or her assets in anticipation of the dissolution of the marriage and the resultant determination of the value of the accrual claim. A dissipation of assets before that determinative date has two direct negative effects on the accrual claim:

2.1. the alienator spouse has less assets in his or her estate at the determinative date, which reduces the extent of the difference in accrual between that estate and the estate of the beneficiary spouse;

2.2. the less assets there are in the alienator spouse's estate once the value of the accrual claim has been determined upon the dissolution of the marriage, the less assets there are available to satisfy that accrual claim once awarded by the court.[2]

3. It is not unusual that the spouse who believes that he or she will have an accrual claim against the other upon dissolution of the marriage will be fearful of the other spouse dissipating assets and so would take steps to protect his or her contingent right to that accrual claim. As Schulze observes,[3] once one of the spouses has filed for a divorce the

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[1] *AB v JB* 2016 (5) SA 211 (SCA) at paras 16, 19 and 20.
[2] The terms alienator spouse and beneficiary spouse are borrowed from Sutherland J in *JA v DA* 2014 (6) SA 233 (GJ) at para 5.
[3] HCAW Schulze "Some thoughts on the Interpretation and Application of Section 8(1) of the Matrimonial Property Act 88 of 1984" 2000 (63) *THRHR* 116 at pp 116, 117.

risk that one of the spouses may attempt to diminish the value of his or her final assets increases considerably, as the institution of divorce proceedings usually results in estrangement and hostility developing between the spouses, thus leading to lack of confidence in each other and mistrust between them.

4. The present matter is such a case.

5. The applicant, having already instituted divorce proceedings which included a claim for accrual, approached court on an urgent *ex parte* basis and obtained *inter alia* interim relief on 5 November 2019:

5.1. preventing her husband as respondent from dissipating various assets pending the finalisation of the divorce action;

5.2. that there be an immediate division of the accrual in the parties' respective estates in terms of section 8(1) of the Matrimonial Property Act, calculated as at 30 September 2019, with ancillary relief including that a liquidator be appointed with the power to calculate the accrual.

6. Although the formulation of the interim order is not without difficulty, the parties accepted that both the interdictory relief and the section 8(1) relief was interim in nature, particularly as it had been granted on an *ex parte* basis, and was open to reconsideration by this court.

7. The applicant seeks that this court grants a final division of the accrual as at 30 September 2019 and that the interim interdictory relief

presently in place be extended until the finalisation of the divorce action and/or determination of the accrual claim.

8. The applicant has accordingly made use of two methods to seek to protect what she contends is her contingent right to share in the accrual, namely interim interdictory proceedings pending the determination of the accrual claim and an immediate division of the accrual in terms of section 8(1) of the Matrimonial Property Act.

9. Each method raises issues of particular interest, some of which are *res nova*, especially in relation to the immediate division of the accrual. As far as I can establish there has been no reported case where there has been an analysis of section 8(1) of the Matrimonial Property Act or where a party has been successful in obtaining such relief. In relation to the interim interdictory relief, there does not appear to have been a close consideration of the nature of the interim relief which has on occasion been sought and granted, particularly whether the usual requirements for interim interdictory relief need be satisfied[4] or whether the generally more stringent requirements of anti-dissipatory relief (*Knox d'Arcy*-type relief) are to be satisfied, the latter of which generally requires the applicant to demonstrate an intent on the part of the respondent to dissipate or secret away his or her assets in order to defeat the applicant's claim.[5]

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[4] *Setlogelo v Setlogelo* 1914 AD 221 at 227.
[5] *Knox d'Arcy Ltd and others v Jamieson and others* 1996 (4) SA 248 (A) at 372G.

10. Given the potential of the alienator spouse to prejudice the beneficiary spouse's contingent accrual claim, a purposive approach should be taken to considering and applying the remedies so as to protect the proprietary position of the vulnerable spouse.

SOME GENERAL PRINCIPLES RELATING TO THE ACCRUAL CLAIM

11. To facilitate a conceptual analysis of these two forms of relief seeking to protect an accrual claim, it is useful to summarise certain principles in relation to the accrual claim.

12. The accrual claim is a monetary claim that the spouse who has lesser of the accrual during the marriage has against the spouse who has the greater accrual during the marriage, upon dissolution of a marriage subject to the accrual system. The claim can be described as an equalisation claim as between the spouses.[6]

13. The accrual claim is not a claim to a share in the other spouse's assets themselves.[7] That the claim is a monetary claim is clear from the provisions of section 3(1) and section 10 of the Matrimonial Property Act. The one spouse does not own any portion of the other spouse's assets. It is a deferred equalisation claim. This distinction is important

[6] See *Schulze* above at 117 in his comparison of a final division under section 8(1) to the *Ausgleichsforderung* in the German Civil Code of 1896, section 1363(2).
[7] *Reeder v Softline Limited and another* 2001 (2) SA 844 (W) at 848J- 849A; *RS v MS and another* 2014 (2) SA 511 (GJ) at para 11.

as it impacts upon the nature of the interdictory relief to protect the claim.[8]

14. The accrual claim is contingent in nature until it vests upon dissolution of the marriage or earlier in the event that an immediate division of the accrual is granted in terms of section 8(1).[9]

15. As will appear below, the contingent nature of the accrual claim, until it vests whether upon dissolution of the marriage or an immediate division in terms of section 8, has an impact on the interim interdictory relief that may be available.

16. The determinative date for calculating the extent of the accrual claim is the date of dissolution of the marriage. Although certain cases provided for an earlier date, such as at *litis contestatio* rather than the date of dissolution of the marriage, the Supreme Court of Appeal in *AB v JB*[10] rejected that line of cases and held that the determinative date is the date of dissolution of the marriage, notwithstanding that this increased the potential for the alienator spouse to dissipate his or her assets in anticipation of that date. Tsoka AJA found[11] that given the clear and unambiguous wording of section 3, the date for determination of the accrual could not be brought forward from the date of dissolution of the

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[8] For an example of an applicant labouring under this fundamental misconception that she had an entitlement to a half-share in the assets themselves, and so failed in interdictory relief seeking to protect that non-existent right, see *Reeder* above at 852D.
[9] *JA v DA* para 9.1; *Reeders* at 849 B/C.
[10] 2016 (5) SA 211 (SCA) at paras 16, 19 and 20.
[11] In para 16.

marriage, and further[12] that the time when the right comes into existence is determinative of the calculation of the value of that right. Tsoka AJA did refer to the exception that arises in terms of section 8 of the Matrimonial Property Act, to which consideration will be given in this judgment as the applicant seeks such relief.

17. Although the accrual claim only arises or vests upon the dissolution of the marriage in terms of section 3(1) and therefore is only capable of being valued after it has arisen,[13] the parties during the divorce proceedings can lead evidence to establish the value of the accrual claim and so enable the court to award a quantified monetary judgment in respect of the accrual claim contemporaneously upon granting the divorce. This has the advantage of avoiding a more costly and delayed two-stage process to the litigation, where in the first stage the divorce is granted with the resultant dissolution of the marriage giving rise to the accrual claim, and then a second stage in which the value of the accrual claim itself is determined.[14]

18. Absent agreement on the extent of the accrual claim or agreement to refer the determination of the extent of the accrual claim to a third party, the court must decide the extent of the accrual claim. This is a function of the court that cannot be delegated to a third party without agreement by the parties. Neither counsel were able to refer me to any case where a liquidator or third party was appointed to determine the value of the

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[12] In para 19, approving Sutherland J in *JA v DA*, para 17.
[13] *AB v JB* at paras 16, 19 and 20.
[14] See, for example, the *obiter* remarks by Sutherland J in *JA v DA* at para 20, and as approved, *obiter*, by Tsoka AJA in *AB v JB* at para 19.

accrual in a marriage subject to the accrual system, at least absent agreement of the parties. This can be contrasted to the position prevailing upon a dissolution of a marriage in community of property where the division of the joint communal estate can be referred to a liquidator, on principles analogous to those which prevail in partnership law.[15]

19. The importance of this principle is that the relief sought by the applicant in the present instance that a liquidator be appointed to determine the extent of the accrual, without the agreement of the respondent who opposes the relief, cannot be granted.

A consideration of section 8(1) of the Matrimonial Property Act

20. Although section 8(1) can be invoked where the spouses intend remaining married, the remedy will arise mainly where there are divorce proceedings afoot or contemplated.

21. Sutherland J in *JA v DA* recognised the potentially prejudicial implications for the beneficiary spouse in his *obiter dictum*, as subsequently affirmed *obiter* by the Supreme Court of Appeal in *AB v JB*, that the determinative date for calculating the accrual claim is the date of dissolution of the marriage:

> *"If this analysis is correct, then the sole source of a lawful intrusion onto the unfettered rights of the alienator spouse to*

[15] Compare *KM v TM* 2018 (3) SA 225 (GP) and *Wilken v Freysen N.O* 2019 JDR 1994 (GJ*)* citing *Gillingham v Gillingham* 1904 TS 609 at 613.

dispose of assets, can only be a statutorily created right, with an accompanying remedy, which despite the logical contradiction of the concept of distinct estates, entitles a beneficiary spouse to a form of relief. Such a result would be a triumph of policy over logic."[16]

22. It is in this context that section 8(1) of the Matrimonial Property Act should be interpreted in order to protect the position of the vulnerable beneficiary spouse.

23. Section 8(1) of the Matrimonial Property Act provides:

"8(1) A court may on the application of a spouse whose marriage is subject to the accrual system and who satisfies the court that his right to share in the accrual of the estate of the other spouse at the dissolution of the marriage is being or will probably be seriously prejudiced by the conduct or proposed conduct of the other spouse, and that other persons will not be prejudiced thereby, order the immediate division of the accrual concerned in accordance with the provisions of this Chapter or on such other basis as the court may deem just."

24. As is clear from the wording of section 8(1), the spouse who seeks an order for the immediate division of the accrual must satisfy the court that:

[16] At para 32.

24.1. the marriage is subject to the accrual system;

24.2. he or she would have a right to share in the accrual of the estate of the other spouse at the dissolution of the marriage;

24.3. such right is being or will probably be seriously prejudiced by the conduct or proposed conduct of the other spouse; and

24.4. other persons will not be prejudiced by an immediate division of the accrual.

25. As the immediate division of the accrual is final relief, the well-known test enunciated in *Plascon-Evans* is to be applied in resolving any factual disputes,[17] namely the relief can only be granted if the facts as stated by the respondents, together with the admitted facts in the applicants' affidavits, justify the granting of the relief. Effectively, any factual disputes ought to be resolved by accepting the respondents' version, save where such version is "*so far-fetched or clearly untenable that the court is justified in rejecting (it) merely on the papers.*"[18]

26. This was evident in *Reeders*[19] where the court refused the immediate division because of factual disputes that could not be resolved in those motion proceedings. Nonetheless, in any particular instance close

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[17] *Plascon-Evans Paints Limited v Van Riebeeck Paints (Pty) Limited* 1984 (3) SA 623 (A) at 634 E-G, as reaffirmed in *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) at 290 D-G.

[18] *Botha v Law Society, Northern Provinces* 2009 (1) SA 277 (SCA) at para 4, with reference to *Plascon-Evans Paints* above at 634 E – 635 C.

[19] At 846J-847A and 847F.

consideration must be given to whether any apparent factual disputes are genuine so as to advance immediate division as an effective remedy to protect the position of the vulnerable spouse.

27. As the *Plascon-Evans* approach is used to resolve *bona fide* factual disputes, the first step is to determine whether there is a *bona fide* dispute of fact:

> *"The crucial question is always whether there is a real dispute of fact. That being so, and the applicant being entitled in the absence of such dispute to secure relief by means of affidavit evidence, it does not appear that a respondent is entitled to defeat the applicant merely by bare denials such as he might employ in the pleadings of a trial action, for the sole purpose of forcing his opponent in the witness box to undergo cross-examination. Nor is the respondent's mere allegation of the existence of the dispute of fact conclusive of such existence."*[20]

28. If there is no genuine dispute, and so the respondent's version can be rejected, then the applicant's version will effectively stand alone and so there would be no need to resolve a factual dispute by the *Plascon-Evans*. Whether there is a *bona fide* factual dispute is an anterior issue to the application of *Plascon-Evans*.

29. In deciding whether there is a factual dispute, the court adopts a "robust, common sense approach:"

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[20] *Room Hire Co (Pty) Limited v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1162-1163.

> *"If by a mere denial in general terms a respondent can defeat or delay an applicant who comes to Court on motion, then motion proceedings are worthless for a respondent can always defeat or delay a petitioner by such a device. It is necessary to make a robust, common-sense approach to a dispute on motion as otherwise the effective functioning of the Court can be hamstrung and circumvented by the most simple and blatant stratagem. The Court must not hesitate to decide an issue of fact on affidavit merely because it may be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over-fastidious approach to a dispute raised in affidavits."*[21]

30. The "robust, common sense approach" also applies where the version is untenable as a whole although detailed:

> *"I am also mindful of the fact that the so-called 'robust, common-sense, approach' which was adopted in cases such as Soffiantini v Mould 1956 (4) SA 150 (E) in relation to the resolution of disputed issues on paper usually relates to a situation where a respondent contents himself with bald and hollow denials of factual matter confronting him. There is, however, no reason in logic why it should not be applied in assessing a detailed version which is wholly fanciful and untenable."*[22]

31. As to whether there is a genuine dispute of fact, the well-known *Room Hire Co (Pty) Limited v Jeppe Street Mansions (Pty) Ltd*[23] identifies various categories of disputes.

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[21] *Soffiantini v Mould* 1956 (4) SA 150 (E) at154G/H.
[22] *Truth Verification Testing Centre v PSE Truth Detection* CC *and others* 1998 (2) SA 689 (W) at 6981-J,
[23] 1949 (3) SA 1155 (T) at 1163.

32. A denial will be inadequate for creating a genuine dispute of fact where the person making the denial has in his or her possession the relevant facts to amplify the denial.[24] A court should be wary in accepting bare or unsubstantiated denials by the alienator spouse as creating a *bona fide* dispute of fact, especially where the relevant detail is within the peculiar knowledge of the alienator spouse. This will be particularly acute where the alienator spouse may be seeking to avoid a disclosure of his or her assets.

33. The right to share in the accrual of the estate as referred to in section 8(1) only arises and vests upon dissolution of the marriage or, if immediate division is ordered in terms of the subsection, upon the order being granted. Until then, the right to share in the accrual is a contingent right only. It therefore follows, if any sense is to be made of the reference to a spouse's right to share in the accrual as referred to in section 8(1), it must be a reference to that spouse's contingent right rather than to the right as it vests. Otherwise, it would be impossible as a matter of logic to give effect to section 8(1). Accordingly, the right that an applicant in terms of section 8(1) must demonstrate is being or will probably be seriously prejudiced by the conduct of the other spouse is the contingent right to share in the accrual.

34. The spouse seeking an immediate division must demonstrate that he or she will have an accrual claim if immediate division is ordered by the court. This is not to find that the value of that accrual claim must be

[24] *Wightman trading as JW Construction v Headfour (Pty) Limited and another* 2008 (3) SA 371 (SCA) at 375G-376B

determined simultaneously with ordering the immediate division of the accrual, just as it is unnecessary to determine the value of the accrual claim upon that accrual claim being awarded in divorce proceedings upon the dissolution of the marriage. To require of an applicant to establish the extent of the accrual claim as part of the section 8(1) relief will largely emasculate the section as affording effective relief to a vulnerable spouse as it is unlikely, except perhaps in extraordinary circumstances, that the applicant spouse will have at his or her disposal sufficient information to discharge the onus to demonstrate the extent of the accrual claim as a matter of final relief.[25]

35. Nonetheless, it remains necessary for the applicant to establish that he or she will be the beneficiary of an accrual claim, whatever its value as may be subsequently determined. It will not suffice for an applicant spouse to rely upon a notional contingent right to an accrual claim arising from the mere fact that he or she is married subject to the accrual system. To find otherwise may result in anomalies. For example, a spouse who is expecting a substantial upside in his or her estate, and who would not be the beneficiary of the accrual claim as his or her estate shows the greater accrual, may abuse the remedy by relying on section 8(1) to achieve an immediate division of the accrual and change of marital regime in terms of section 8(2) before the upside in his or her estate materialises, and so deprive the other spouse of a corresponding increase in the difference of accrual between the two

[25] The onus is on the applicant to establish the monetary value of the share in the accrual of the other spouse's estate: *MB v DB* 2013 (6) SA 86 (KZD), para 22, unaffected by the SCA's not following of this case in other respects in *AB v JB*.

estates. Requiring the applicant spouse to demonstrate that he or she will actually be the beneficiary of an accrual claim curbs the potential for such abuse.

36. In some cases it would be clear who would be the beneficiary of an accrual claim, and this would be easily established, even on motion, such as where there is a large disparity between the extent of the respective spouses' estates. But where each spouse asserts that his or her estate has had the lesser accrual during the marriage, as in the present instance, the spouse seeking immediate division must demonstrate that he or she will be the beneficiary of the accrual claim, whatever the determination of the extent of the claim.

37. The related question of whether it would be necessary for an applicant in establishing that he or she would the beneficiary of an accrual claim to also demonstrate that he or she will not forfeit his or her right to share in the accrual, particularly given that the relief sought in section 8(1) is final, need not be determined in the present instance as the respondent does not claim any such forfeiture.

38. An immediate division of the accrual achieves an earlier date at which the accrual claim is to be determined than would otherwise be the case when that determinative date would be the date of dissolution of the marriage. This accords with section 3(2) of the Matrimonial Property Act, which expressly provides for an exception in the form of section 8(1). This then will enable the successful applicant spouse under section 8(1) to subsequently determine, such as in the divorce action

(whether pending or still to be launched), the extent of the accrual claim where the determinative date for the determination of that accrual has already been established by way of the immediate division in terms of section 8(1). This relieves the applicant spouse of having to demonstrate in motion proceedings the extent of the accrual claim, and the amount of the monetary award, and so limiting the scope for factual disputes to derail an immediate division as an effective remedy to a vulnerable spouse.

39. The question arises as to whether that determinative date, if relief is granted under section 8(1), is the date the court grants the immediate division of the accrual or whether the court is able under section 8(1) to order that the determinative date be some other date. In the present matter the applicant seeks that the determinative date in respect of the immediate division of the accrual be 30 September 2019 but where the application for such relief was launched on 30 October 2019 and where a final order in terms of section 8(1) has not yet been made.

40. The applicant submits that section 8(1) in providing that the court may order the immediate division of the accrual concerned in accordance with the provisions of Chapter 1 of the Matrimonial Property Act or "*on such other basis as the court may deem just"*, enables the court to order an earlier determinative date should it be just. That earlier date would be before the alienation by the spoliator spouse of his or her assets. Should the court be able to do so, it would provide more scope to protect a vulnerable spouse. This would also diminish the need for the vulnerable spouse to seek interim relief pending the determination

of an application in terms of section 8(1) preventing the alienator spouse from dissipating his or her assets so as to the reduce the extent of the accrual in his or her estate before immediate division is ordered, as an earlier date for calculating the accrual claim can be established. On the other hand, a finding of a determinative date earlier than the date that the court grants the immediate division is inconsistent with the logic accepted by the Supreme Court of Appeal in *AB v JB* that the value of the accrual claim can only be determined once it vests.

41. As will appear later in this judgment, it is unnecessary for me to make a finding on this particular issue. As will also appear later in this judgment, there are other remedies available to a vulnerable spouse such as interim interdictory relief to protect his or her contingent right to share in the accrual pending the outcome of an application for immediate division.

42. The use of the wording that a spouse's right to share in the accrual of the estate "*is being or will probably be seriously prejudiced by the conduct or proposed conduct of the other spouse*" implies that section 8(1) is to be used to address ongoing prejudice or prejudice that may still happen and is not a remedy to address past prejudice. Should the prejudicial conduct have already taken place and the applicant cannot demonstrate that there will be further prejudicial conduct, then the relief under section 8(1) would not be appropriate. Again, as will appear below, I need not make any finding on this issue.

43. A question arises as to whether it is sufficient for the applicant to demonstrate the requirement of ongoing or future prejudice as at the date the application was launched or must the prejudice still be on-going when the application is heard. The former would advance the scope of section 8(1) as an effective a remedy to a vulnerable spouse. Should it be required that such prejudicial conduct is on-going when the application is ultimately heard and the order granted, which may be many months later, as in the present instance, that may defeat the purpose of section 8(1) as by then the alienator spouse may have made considerable progress in dissipating all of his or her assets. This too though is an issue I need not decide in this matter.

A consideration of interim interdictory relief to preserve the contingent accrual claim

44. When considering interdictory relief aimed at protecting the contingent right to share in the accrual, a distinction should be drawn between ordinary interim relief and what can be described as anti-dissipatory or *Knox d'Arcy*-type relief. The requirements for each are not the same and it assists to keep in mind that the two forms of relief are distinct although both can be used to protect the contingent accrual claim.

45. As stated above, the alienator spouse in alienating his or her assets before the accrual claim vests prejudices the claim in two respects. The first respect is to deplete the assets before the determinative date of the accrual claim, thereby reducing, if not extinguishing the difference in accrual between the two estates. In such instance, interdictory relief

aimed at preventing a dissipation of assets to preserve the extent of the difference in the accrual claim is appropriate – it is aimed at preserving the contingent right to share in the accrual, so that when the accrual claim is awarded, there is an accrual left in the marriage. Anti-dissipatory relief features where the alienator spouse alienates his or her assets so that once the accrual claim is granted and quantified there may be no assets left to satisfy that monetary judgment.

46. The requirements for an ordinary interim interdict are well-known:

46.1. the existence of a *prima facie* right, although open to some doubt;[26]

46.2. a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is granted;

46.3. that the balance of convenience favours the granting of the interdict;

46.4. the absence of a suitable alternative remedy.[27]

47. The courts have already found that the contingent accrual claim, if *prima facie* established though open to some doubt, is susceptible to preservation by way of an interim interdict preventing the dissipation of assets pending the vesting and determination of that claim.[28] This is so

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[26] *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189.
[27] *Setlogelo* above at 227.
[28] *Langebrink v Langebrink* 2017 JDR 1059 (GJ), para 24, where the court granted an order interdicting the dissipation of assets pending the determination of the applicant's claim for an

irrespective of the contingent nature of the accrual right but provided that the applicant can demonstrate *prima facie* although open to some doubt that an accrual claim will accrue in his or her favour, once vested, although the extent thereof need not be determined.[29]

48. Importantly, and decisively as will be seen in the present instance, the applicant's contingent right to share in the accrual as the subject of interim interdictory proceedings need only be established *prima facie* although open to some doubt, in contrast to establishing on the more stringent *Plascon-Evans* approach the same right for purposes of final relief in section 8(1) proceedings for an immediate division of the accrual.

49. Accordingly, in the present instance, the applicant would have to show for purposes of interim interdictory relief a *prima facie* right, although open to some doubt, of an accrual claim in her favour. It follows that it would generally be easier for an applicant spouse to succeed in obtaining interim relief by way of ordinary interdictory proceedings than obtaining an immediate division of the accrual relief under section 8(1), which is final in nature.

50. The requirements for ordinary interdictory relief must not be considered in isolation to each other, but holistically so that a weakness in any of

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immediate division of the accrual in terms of section 8(1). In *Gernetzky v Gernetzky* 2007 JDR 0247 (E) the court found that the contingent accrual claim was worthy of protection by way of an interim interdict pending divorce proceedings. Similarly, *obiter,* In *Reeders above* at 851C-F.

[29] *Gernetzky*, para 7. I, with respect, differ from the *obiter* comments made in *Reeders* at 851I that the applicant must have quantified the value of the right to succeed in interim interdictory proceedings.

the requirements can be counter-balanced by the strength in relation to the other requirements.[30] This will enable more scope for a court to come to the assistance of a vulnerable spouse, particularly by way of the application of the balance of convenience.

51. Should the interim interdictory relief be construed as being quasi-proprietary in nature, then there would be no need for an applicant to demonstrate irreparable harm if the interim relief is not granted (as such harm is presumed) or that there is no other satisfactory remedy.[31] In any event, given the nature of the accrual claim, it is difficult to imagine what would constitute an alternate satisfactory remedy.

52. An interim interdict by an applicant to preserve the contingent accrual claim is capable of being construed as quasi-proprietary. In so finding, this advances the availability of this remedy to the vulnerable spouse. Sutherland J in *JA v DA* stated *obite*r that such interdictory relief would fall into a *sui generis* category.[32]

53. As distinct from ordinary interim interdictory relief, should an applicant seek anti-dissipatory relief in the sense that he or she seeks to prevent the other spouse from dissipating his or her assets so that such other spouse has assets remaining against which the beneficiary spouse can execute once a judgment is granted in his or her favour consequent upon the court's determination of the extent of the accrual claim, such

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[30] *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton and another* 1973 (3) SA 685 (A) at 691F**.**

[31] *Erasmus Superior Court Practice* RS 13, 2020, D6-21, 22 and the authorities cited.

[32] Para 34 referring to *Gernetzky v Gernetzky*.

relief is not directed at safeguarding the contingent accrual claim before it vests. Rather such anti-dissipatory relief is to ensure that there are sufficient assets to satisfy the accrual claim once determined by way of judgment.

54. Bester AJ in *RS v MS and others*[33] held in relation to such relief[34] that the applicant spouse would have to demonstrate that:

54.1. the respondent spouse has assets within the jurisdiction of the court;

54.2. the respondent, *prima facie*, has no *bona fide* defence against the applicant's contended for contingent accrual claim;

54.3. the respondent spouse has the intention to defeat the applicant's claim or to render it hollow by dissipating or secreting assets.

55. It is especially this last requirement that may be difficult for an applicant to establish. Bester AJ[35] continued that even if these jurisdictional requirements are present, the applicant must still show well-grounded apprehension of irreparable loss and that because of the draconian nature of such anti-dissipatory relief, its invasiveness and conceivably inequitable consequences a court will be reluctant to grant such relief except in the clearest of cases.

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[33] 2014 (2) SA 511 (GJ) at para 17, per Bester AJ.
[34] A close consideration of the judgment shows the court was dealing with anti-dissipatory relief rather than ordinary interim relief, and so the judgment must be assessed in that context.
[35] At 18.

56. With respect, this may be too strongly put. Seeking anti-dissipatory relief in relation to preserving assets to satisfy a judgment on an accrual claim may be one of "the special situations" envisaged in *Knox d'Arcy*[36] where the intention to *mala fide* dissipate to prevent execution need not be demonstrated. As observed by Davis AJ in *MG v KG,*[37] in *Knox d'Arcy* the court was dealing with anti-dissipatory proceedings pending the outcome of an action for damages, where the applicant asserted no proprietary or quasi-proprietary interest in the respondent's assets, and the position may be different if an applicant spouse's asserted right was viewed as quasi-proprietary in nature. In that matter Davis AJ found that anti-dissipatory relief aimed at preserving assets to satisfy a claim for arrear maintenance may be considered as one of the "special circumstances" contemplated in *Knox d'Arcy* and so where the requisite intent to dissipate need not be established by the applicant.

57. In my view, *a fortiori* in relation to anti-dissipatory relief directed at preserving assets to satisfy an accrual claim once awarded.

58. But the precise boundaries and requirements of anti-dissipatory relief in the context of an accrual claim, and whether the requirements as stipulated in *RS v MS* need be tempered*,* can be left for determination to another day as the applicant in the present proceedings does not seek this form of relief but rather ordinary interim relief directed at

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[36] At 372H-I.
[37] [2016] JOL 37048 (WCC), para 57 to 59.

preserving her contingent accrual claim, both until it is granted and vests and the quantification thereof.[38]

Some observations of the interaction between the three remedies

59. Whether the spouse seeks to protect his or her contingent right to share in the accrual as it may vest upon dissolution of the marriage in terms of section 3 of the Matrimonial Property Act or as it may vest upon the court ordering the immediate division of the accrual in terms of section 8(1) of that Act, the spouse may seek ordinary interdictory relief pending the vesting of that accrual claim. As appears above, the spouse need not establish all the requirements for interim interdictory relief given that his or her claim to share in the accrual, although contingent, is quasi-proprietary in nature.

60. If immediate division of the accrual is granted under section 8(1) of the Matrimonial Property Act, and the value of that claim is determined by way of judgment, there is no need for interim interdictory relief as the beneficiary spouse's right to share in the accrual will have vested and been determined.

61. In such instance, the successful spouse armed with a monetary judgment can execute against the other spouse's assets subject to such relief as the court may grant for deferment of the satisfaction of

[38] This appears from the revised draft order handed up at the conclusion of the hearing of these proceedings. This is also consistent with the manner in which the applicant has approached the matter as appears from the affidavits and heads of argument.

the established accrual claim in terms of section 10 of the Matrimonial Property Act.

62. Should the spouse be successful in obtaining the immediate division of the accrual but the extent of that accrual claim has not yet been calculated, as the determinative date for the quantification of the accrual is known, namely the date the immediate division is ordered (or such earlier date as the court may order depending upon whether it has the jurisdiction to do so under section 8(1)), there is no need for any interim interdictory relief to protect that accrual claim which has already been awarded and has vested. Should the other spouse dissipate assets after the immediate division, the determinative date protects the successful spouse in the quantification of his or her claim.

63. To the extent that the successful spouse seeks to prevent the other spouse from dissipating his or her assets pending the vesting of the claim and/or determination of the extent of the accrual claim as at the already established determinative date, so as to ensure that there are assets against which to execute once the extent of the claim is determined, the spouse would have to satisfy the requirements for anti-dissipatory relief.

Application of these principles to the present facts

64. Based upon the relief sought by the applicant in her amended draft order, I am called on to decide:

64.1. whether the applicant has established her claim to an immediate division of accrual, bearing in mind that such relief is final in nature and therefore the usual *Plascon-Evans* rule will apply. If the applicant does succeed in this claim, the court will then have to consider the issues that follow thereupon such as the determinative date for calculating the extent of the accrual and whether a liquidator can be appointed to determine the extent of the accrual and to perform various other functions;

64.2. whether the applicant is entitled to interim relief preventing the respondent from alienating his assets pending the determination of the applicant's contended for accrual claim including the extent thereof, whether consequent upon an immediate division if granted, or, if an immediate division is refused, until the determination of the accrual claim in the pending divorce proceedings.

65. The applicant and respondent were married to each other on 20 September 2013, subject to the accrual system. Two daughters were born of the marriage, who remain minors.

66. The applicant and the respondent separated in early 2019 and the applicant vacated the former matrimonial home with the minor children in February 2019. Since then the applicant had no access to the former matrimonial home or the assets situated within the home. The

respondent also changed the locks after the applicant vacated the former matrimonial home.

67. Each of the parties allege abuse at the hands of the other. Although the parties each dispute that he or she abused the other, it is common cause that there is an irretrievable breakdown in the marriage.

68. On 16 July 2019 the applicant as plaintiff initiated divorce proceedings against the respondent as the defendant under the present case number. Although the applicant in the present motion proceedings seeks an immediate division of the accrual in terms of section 8(1), the particulars of claim include an accrual claim. The applicant as the plaintiff seeks an order that the defendant pay to the plaintiff an amount equal to one-half of the difference between the accrual of the respective estates of the parties. It is unclear whether the determination of the extent of the accrual claim, if awarded, would form part of the pending divorce action under this case number or would take place in subsequent proceedings.

69. The defendant does not appear to have pleaded to this portion of the particulars of claim. The paragraph numbering of the applicant's particulars of claim is confusing and this may explain the omission of the respondent as defendant to have pleaded to the accrual claim in his plea. It is nonetheless clear from the respondent's papers in the present proceedings that he disputes that the applicant has an accrual claim, contending that she is a successful businesswoman in her own right.

70. The respondent does not contend for any forfeiture by the applicant of her accrual claim, if she has such a claim.

71. The applicant contends that on 25 September 2019 the respondent forcibly and without her consent removed a Mercedes Benz from her possession and that she immediately contacted her attorney of record to raise the matter with the respondent's attorneys. After an exchange of correspondence, the vehicle was returned to the applicant. The applicant contends that this is a factor demonstrating her need for relief, as the respondent is seeking to dissipate assets. The respondent admits that he did take possession of the vehicle in the Fourways area whilst it was being driven by an unknown man, thinking that the car had been hijacked. Neither parties' factual version of the circumstances surrounding the removal of this vehicle is detailed and I am therefore unable to make any final finding on such factual disputes as there may be as to the intent of the respondent in removing the vehicle. Notably though the respondent's attorneys in responding to the applicant's attorneys in relation to the removal of the vehicle did not set out the respondent's version subsequently presented in his answering affidavit.

72. The applicant describes that shortly after that incident, during the early morning at 06h00 on Friday morning, 27 September 2019, the respondent gained access to her residential complex. The applicant describes that she does not know how this access was achieved as she had cancelled her access tag to the residential complex, which was in the vehicle that the respondent had taken possession of a few days' previously. The respondent nonetheless managed to gain access to the

residential complex and to the applicant's garage, which had an inter-linking door into the house. The applicant describes that the respondent was waiting at the inter-leading garage door and when her domestic worker opened the door that morning, he gained entry into the main residential home. The applicant then describes how the respondent assaulted her, in the presence of the minor children and the domestic worker. The assault was so severe that the applicant was admitted to an intensive care unit where she remained for three days before being released to a care ward and then from hospital on 3 October 2019.

73. The applicant further describes that the SAPS and ambulance services arrived on the scene of the assault, that the respondent was arrested and charged with assault and released on police bail. When the respondent appeared in court on 30 September 2019, his bail was revoked, the charges were amended to attempted murder and pursuant to which the respondent remained incarcerated, after his bail application was dismissed, until 16 January 2020 when bail was granted.

74. The respondent admits that he is currently on bail for the assault of the applicant and that the incident of 27 September 2019 is currently being investigated by the SAPS and is before the criminal courts. The respondent however elects not to deal with any of the allegations made by the applicant in relation to the assault, contending that he has been advised not to deal with the issues surrounding the assault, because of the pending criminal proceedings against him.

75. The respondent has a right not to respond to the averments in the founding affidavit, particularly should he be of the view that to do so may prejudice him in his criminal trial. But that election comes with consequences.[39] The respondent having elected not to respond to the applicant's averments in relation to the assault has the consequence that this court must accept those averments as being correct for purposes of assessing whether relief should be granted in these proceedings. There is nothing in any of the papers that would justify the applicant's averments being rejected out of hand. I therefore accept that the respondent did assault the applicant for purposes of these proceedings.

76. The question remains what is to be made of this assault insofar as is relevant to the present proceedings. The applicant contends that the assault or more accurately what she describes as the respondent's attempt to kill her were aimed at preventing her from benefiting financially from the marriage. This motivation for the assault or attempted murder does not necessarily follow as there may be other motives for the respondent doing so. Nonetheless, the court cannot be blinded to the assault and it remains a factor to be taken into account.

77. The next incident was on 23 October 2019. The applicant alleges that by chance she discovered that the respondent's brother was removing all the assets from the former matrimonial home and that the

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[39] *Law Society of the Cape of Good Hope v Randell* 2013 (3) SA 437 (SCA) para 18 to 26, approving of *Davis v Tip NO and others* 1996 (1) SA 1152 (W) and *Equisec (Pty) Ltd v Rodrigues and another* 1999 (2) SA 113 (W) at 115A-C.

respondent, being incarcerated at the time, had instructed his brother to do so. This was being done by way of a large removal truck. The applicant again acted urgently, which resulted in the SAPS attending at the former matrimonial home and the applicant's attorneys contacting the respondent's attorneys to ascertain why assets were being removed from the former matrimonial home.

78. The SAPS arrived at the scene and pursuant to which the respondent's brother was ordered to and did offload and return to the former matrimonial home all the furniture and household assets. This was followed by a letter by the applicant's attorneys to the respondent's attorneys demanding an undertaking from the respondent that he would not dispose of or alienate any assets, failing which the applicant would seek an immediate division in terms of section 8 of the Matrimonial Property Act.

79. The respondent does not dispute these averments. The respondent admits that he had instructed his brother to remove certain of the assets. Rather the respondent disputes his motivation for doing so. The respondent disputes that he did so for purposes of frustrating the applicant's accrual claim, but rather because he feared that whilst he was incarcerated the applicant would remove and sell his belongings. The respondent explains that he therefore asked his brother to take his belongings into safekeeping. The respondent contends that the applicant had when vacating the former matrimonial home in February 2019 removed assets and that this fortified his belief that the applicant would now do so again.

80. There are difficulties with the respondent's version. As he had changed the locks to the former matrimonial home when the applicant vacated it in February 2019, his assertion that she could gain access and remove his belongings is problematic. If the respondent was concerned that whilst he was incarcerated the applicant would gain access to the former matrimonial home and remove his assets, this could have been addressed by his attorneys seeking undertakings of the applicant through her attorneys. Although there is a factual dispute in relation to the applicant having, according to the respondent, removed assets from the former matrimonial home when she vacated the home in February 2019, not much can be inferred from the conduct of a spouse taking assets when he or she leaves the matrimonial home. It is hardly likely that a person leaving the matrimonial home would not take some assets with him or her. Nonetheless, I am not able to reject the respondent's version as being farfetched and fanciful.

81. The next incident was the following day, on 24 October 2019. The applicant when attending at the former matrimonial home discovered that the respondent's brother had nonetheless returned and removed from the former matrimonial home certain motor vehicles together with other movable items such as television sets. This removal took place after and notwithstanding the SAPS' intervention the previous day to prevent assets being removed from the property. Again, the applicant's attorneys addressed a letter to the respondent's attorneys demanding the return of the motor vehicles and movable items.

82. The respondent admits these allegations but denies that the removal of his assets was unlawful and that such removal was prejudicial to the applicant's accrual claim. He admits that notwithstanding the police's intervention he was nonetheless entitled to remove the assets as the police did not have any right to stop his brother from doing so. The respondent repeats his fear that the applicant would remove and sell his assets whilst he was in prison.

83. The respondent again did not seek of his attorneys to protect his interests by way of seeking undertakings from the applicant that she would not remove and sell any of the assets. This notwithstanding the two letters from the applicant's attorneys relating to his removal of the assets, which remained substantially unanswered by the respondent.

84. When the respondent's removal of assets immediately after the attempted removal of the previous day and in the face of two letters from the applicant's attorneys demanding undertakings from him is considered, the applicant's assertions that the respondent has conducted himself in such a manner as was prejudicial to her accrual claim are well-founded.

85. The respondent has demonstrated that he is inclined to take the law into his own hands rather than to seek to protect his rights through his attorneys in an appropriate manner. Whatever is to be made of the respondent's assertion that he had a legitimate fear the applicant would proceed to remove and sell his assets, it does not detract from his conduct probably being seriously prejudicial to the applicant's accrual

claim. No disclosure is made in the papers as to precisely what assets were removed by him and the value thereof for purposes of those assets being taken into account in the determination of any subsequent accrual claim.

86. The applicant also relies upon what she describes is the respondent's selective disclosure of assets pursuant to his obligation in terms of section 7 of the Matrimonial Property Act to furnish particulars of the value of his estate for purposes of determining the accrual. The deficient disclosure is asserted by the applicant in the respondent's failure to disclose his interests in various companies and close corporations and of various investments, savings and motor vehicles. This assertion by the applicant is made for the first time in her replying affidavit, which does detract somewhat from the force thereof. The applicant also relies upon the respondent's failure to comply with the order granted on 5 November 2019 requiring the respondent to disclose his assets under oath. As that order had not been granted by the time the applicant delivered her founding affidavit, the applicant cannot obviously be faulted for not including that in that affidavit. The applicant does raise it in her replying affidavit. The respondent as at date of the hearing of this application has still not made such a disclosure under oath.

87. For reasons that will follow, I need not decide whether the applicant on the facts and versions set out above has discharged the onus of demonstrating on the application of the usual *Plascon-Evans* approach whether the respondent is conducting himself in a manner which is

being or will probably be seriously prejudicial to her accrual claim for purposes of final relief under section 8(1). But I am satisfied that the applicant has sufficiently made out a case that there is a reasonable apprehension that the respondent has conducted himself in such a manner that warrants protection by way of interim interdictory relief to the extent that the applicant can establish a *prima facie* right to share in the accrual, although open to some doubt.

88. I now turn to whether the applicant has established that she would be a beneficiary of an accrual claim, once and if it vests. As appear above, for the applicant to succeed by way of final relief in the form of an immediate division of the accrual, she would have to satisfy this court that there are no *bona fide* factual disputes on this issue that would preclude the court from ordering the relief. In contrast, as also appears above, for purposes of interim interdictory relief, the applicant need only demonstrate a *prima facie* right, although open to some doubt, that she would be a beneficiary of an accrual claim.

89. The applicant contents herself with the following assertion in her founding affidavit as demonstrative of her right to share in the accrual, without any supporting details:

> "*During the subsistence of the marriage my estate has shown no accrual alternatively a lesser accrual than the estate of the respondent*".

90. In answer the respondent denies this assertion, pointing out that the applicant has not supported her bare assertion and that the notice

furnished by the plaintiff in terms of section 7 of the Matrimonial Property Act disclosing her assets and the value thereof reflects net assets of R3 million. The respondent also contends in his answering affidavit that "*the applicant is a wealthy person in her own right and in fact I have an accrual claim against her estate*".

91. The applicant in reply does not detail her financial position but instead contends that it is for a liquidator once appointed to assess both parties' estates and come to a determination of whose estate shows the bigger accrual. The difficulty with the applicant's approach is that as I have already found absent agreement between the parties, as is presently the position, the court cannot delegate its duty to determine the accrual to a third party such as a liquidator.

92. In response to the respondent's assertion that she is a wealthy businesswoman in her own right, the applicant denies this, attaching copies of her bank statements and various other documents. The applicant also refers to the respondent's failure to disclose further assets and also asserts in her replying affidavit that the respondent stated at his first bail hearing that his estate was worth approximately R17 million.

93. The difficulty is that these allegations only appear in reply and the respondent accordingly was not afforded an opportunity to respond thereto.

94. Based on the applicant's section 7 notice, her net asset position is R3 million. There does not appear to be any disclosure of her business interests. In comparison, the respondent's section 7 notice shows a net asset position of just under R2.6 million. Based on these disclosures, the applicant would not enjoy an accrual claim. But to the respondent's disclosure it may be necessary to add further assets, such as potentially the respondent's half-share in an immovable property situated in Spruitview, a Range Rover Evoque and what the applicant contends are the respondent's undisclosed interests in various business entities. Although it does appear that he has such interests, there is no evidence of the value thereof.

95. I am unable to dismiss as farfetched and fanciful the respondent's version as to why the applicant does not have an accrual claim. The applicant did not seek a referral to oral evidence. In the circumstances, I am unable to find that the applicant has demonstrated on a *Plascon-Evans* approach that she would be a beneficiary to an accrual claim, even taking into account the allegations made by her in her replying affidavit which should have featured in the founding affidavit.

96. Nonetheless, I do find that there is sufficient evidence in the affidavits to arrive at a conclusion that the applicant has established at least a *prima facie* right, although open to some doubt, that she may be a beneficiary on an accrual claim. Although most of her allegations in support thereof appear in reply, given the urgency with which the application was initially launched, this is understandable. The respondent also did not seek an opportunity to file a further affidavit in response to those

allegations once they appeared in the replying affidavit or to strike-out those allegations. The respondent also did fail to comply with the court order requiring him to disclose under oath his assets, although this was drawn to his attention in the applicant's replying affidavit.

Relief

97. The applicant has accordingly failed to demonstrate her entitlement to an immediate division of the accrual as she cannot demonstrate that she will be the beneficiary of an accrual claim. I therefore do not have to determine whether the applicant has demonstrated the other requirements for relief under section 8(1) on the application of the *Plascon-Evans* approach.

98. I also therefore do not have to consider whether the determinative date for calculating the extent of the accrual claim flowing upon such immediate division would be the date such relief was granted, or an earlier date, as contended for by the applicant.

99. The applicant is entitled to continued interim interdictory relief pending the determination in the divorce action as to whether she has an accrual claim, as sought in her particulars of claim in the pending divorce action. It follows that the interdictory relief that is granted is of the character described above as ordinary interdictory relief to preserve her *prima facie* contingent right to share in the accrual of the estate, being quasi-proprietary in nature, although open to some doubt. It is not anti-dissipatory relief in the sense of preventing the respondent from dissipating his assets once and if judgment has been granted against

him, and therefore the applicant need not show that the respondent had the intention of dissipating or secreting away his assets to prejudice her claim (and assuming that would need to have been shown, in respect of which I have expressed doubt).

100. I find that the balance of convenience favours the granting of the interim relief. Although the respondent complains vaguely in his answering affidavit filed in January 2020 that the interim relief prejudices the conduct of his business interests, the interim relief that is to be extended has been in place since November 2019. The respondent has not sought leave to adduce any supplementary affidavit demonstrating any on-going prejudice caused by the interim relief.

101. The applicant as the plaintiff in the pending divorce action seeks an order that the defendant pay to the plaintiff an amount equal to one-half of the difference between the accrual of the respective estates of the parties. It is unclear from this formulation of the accrual claim whether the determination of the extent of the accrual claim, if awarded, would form part of the pending divorce action under this case number or would take place in subsequent proceedings. In the circumstances, I approach the matter on the basis that the applicant is only seeking interim relief pending an award in her favour of an accrual claim rather than the quantification thereof.

102. The interim relief is limited in duration until a determination in the trial proceedings whether she has an accrual claim. If the applicant requires further interdictory relief pending the determination of the extent of that

accrual claim should that determination not be made simultaneously with whether she has an accrual claim, it would then be for the applicant to approach the court for further interdictory relief.

103. During the course of argument and by way of an amended draft order (to which the respondent formally responded), the applicant sought to amend the extent of the identified assets failing within the ambit of the interdictory relief. This included the respondent's interests in various entities and more particularly his member's interests and member's emoluments (other than monthly salaries) and dividends. There does not appear to be any difficulty in this extension of the relief, and the respondent did not raise any objection thereto.

104. The applicant also sought to include further assets of the respondent that had since been discovered including his undivided half-share in the Spruitview property and in various bank accounts and investment retirement annuities. In my view, this extension is also warranted.

105. The applicant sought in the relief as initially formulated that all assets registered in the name of Lemmon Peel Management CC of which the respondent was the sole member fall within the ambit of the interdictory relief. In the applicant's amended relief she persists in seeking an interdict over this close corporation's assets, and seeks to expand on the range of those assets. The applicant relies on the judgment in *Langebrink*[40] why the close corporation's assets are to fall within the ambit of the relief. In that matter the successful applicant for interim

[40] Above.

relief obtained an order that the respondent was interdicted from transferring assets held by him in various trusts pending the determination of the applicant's accrual claim. I have closely considered that judgment. The court's reasoning appears to be largely influenced by the respondent's power to deal with the assets of those trusts in running his international finance business. Without making any finding as to the cogency of the reasoning in *Langebrink*, I do not find support in that judgment for interdicting the close corporation from dealing in its assets. The applicant has not made out a case that the close corporation is a sham or some other device used by the respondent to hide what as his assets. No relief is claimed by the applicant in the divorce action seeking to pierce a corporate veil between the close corporation and the respondent, or any such relief. By all accounts, as can be gathered from the affidavits, the close corporation is an operational business entity, although it may be the main source of the first respondent's wealth.

106. Accordingly, the interdictory relief is to be limited to those identified assets belonging to the respondent.

107. The applicant was awarded her costs in respect of the interim relief that was granted on 5 November 2019 on an *ex parte* basis. I am not required to reconsider that costs order. What remains are the costs that follow relating to the respondent's opposition to the confirmation of the interim relief that had been granted on 5 November 2019. The applicant has failed in obtaining an immediate division of the accrual but has succeeded in extending the interim interdictory relief. That interim

interdictory relief is to protect such right of accrual that the applicant may establish during the divorce action. Should the applicant fail to demonstrate in the divorce action that there is any accrual claim in her favour, it would follow that such *prima facie* right as she sought to protect was not finally established. In my discretion, it is appropriate that the costs of opposition in relation to the present application are reserved for determination in the divorce action for the fate of the applicant's accrual claim may have an impact upon the incidence of the costs of the respondent's opposition.

108. I order that:

108.1. Pending the determination in the action under this case number of the applicant's accrual claim, and more particularly whether the applicant enjoys an accrual claim, the respondent is prohibited, interdicted and restrained, either directly and/or indirectly through any third party, from removing, disposing of, selling, transferring, and/or otherwise alienating in any manner whatsoever any of the protected assets which are the following:

108.1.1. all furniture and household effects which are currently situated in the former matrimonial property being Erf […] Meyersdal Ext 12, as per the inventory conducted by the applicant as at 31 January 2020;

108.1.2. the immovable property situated at Erf […], Meyersdal Ext 12 and the respondent's undivided half-share in Erf […], Spruitview Ext 1;

108.1.3. any money in the respondent's personal bank accounts, pension funds and/or any other investments (other than required in the ordinary course of business and/or for day-to-day expenses);

108.1.4. the respondent's open-ended Investment Retirement Annuity (Plan Description: Focussed Investment Plan) held at Old Mutual under contract number: […]17;

108.1.5. the respondent's open-ended Investment Retirement Annuity (Plan Description: Committed Investment Plan) held at Old Mutual under contract number: […]17;

108.1.6. the respondent's member's interest in Lemmon Peel Management CC, and any member's emoluments (other than his monthly salary) and/or dividends received by the respondent in the 2019 and 2020 financial years and receivable in the 2021 financial year;

108.1.7. the respondent's member's interest in GVB Transport CC (2006/225208/23) and any

member's emoluments (other than his monthly salary) and/or dividends received by the respondent in the 2020 financial year and receivable in the 2021 financial year;

108.1.8. the respondent's member's interest in Mampodi Projects CC (2003/066872/23) and any member's emoluments (other than his monthly salary) and/or dividends received by the respondent in the 2020 financial year and the receivable in the 2021 financial year;

108.1.9. the respondent's member's interest in Intuition Development Services CC (2006/019380/23) and any member's emoluments (other than his monthly salary) and/or dividends received by the respondent in the 2020 financial year and the receivable in the 2021 financial year;

108.1.10. any director emoluments received by the respondent for the financial year 2020, or receivable by the respondent for the financial year end 2021, in respect of his directorship in RRD Marketing (Pty) Ltd (2017/412063/07);

108.1.11. any director emoluments received by the respondent for the financial year 2020, or receivable by the

respondent for the financial year end 2021, in respect of his directorship in Chiskop Investments Solutions (2014/024730/07);

108.1.12. any director emoluments received by the respondent for the financial year 2020, or receivable by the respondent for the financial year end 2021, in respect of his directorship in Diatla Tsa Dikgale Construction (Pty) Ltd (2014/024732/07);

108.1.13. any director emoluments received by the respondent for the financial year 2020, or receivable by the respondent for the financial year end 2021, in respect of his directorship in Babereki Ba Makgonthe (Pty) Ltd (2019/032825/07).

108.1.14. all motor vehicles registered in the respondent's and/or entities' names, which include the Harley Davidson motor bike, VW Caddy, Mitsubishi Colt and Range Rover Evoque (registration number JD 25 GZ GP).

108.2. The costs of opposition of the application are reserved for determination in the action.

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Gilbert AJ

Date of hearing:	5 August 2020
Date of judgment:	16 September 2020
For the applicant:	Advocate E Larney
Instructed by:	Canario Cornofsky Attorneys
For the respondent:	Advocate I Strydom
Instructed by:	Jurgens Bekker Attorneys