**REPUBLIC OF SOUTH AFRICA**
**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NUMBER: 20/24681

REPORTABLE: YES
OF INTEREST TO OTHER JUDGES: YES
REVISED: YES

In the matter between:

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| **W D L** | **First Applicant** |
| **W D L N.O.** | **Second Applicant** |
| **R B N.O.** | **Third Applicant** |

And

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| **BILLY GUNDELFINGER** | **First Respondent** |
| **WANDI STEYN** | **Second Respondent** |
| **A L (born B)** | **Third Respondent** |

**JUDGMENT**

**WINDELL, J:**

**INTRODUCTION**

[1] This is an application for a final interdict. It relates to a situation where an attorney (Ms Steyn) has done work on behalf of a client (Mr L) in divorce

proceedings against his wife, (Mrs L) whilst in the employ of a firm of attorneys (Clarks Attorneys). Ms Steyn then leaves Clarks Attorneys and joins another firm (Billy Gundelfinger Attorneys), whilst the divorce proceedings are still pending. Billy Gundelfinger Attorneys is representing Mrs L (Mr L's adversary) in the divorce proceedings against Mr L.

[2] Ms Steyn (the second respondent) was employed at Clarks Attorneys from at least 2016 until 2020. She was one of three attorneys at Clarks Attorneys that worked on the divorce matter. The other two attorneys at Clarks Attorneys were Beverley Clark
("Clark"), and Nicole Raath ("Raath"). From approximately May 2016 to January 2019 Clarks Attorneys represented the first applicant, Mr L, and the second and third applicants[1] in the divorce proceedings against Mrs L. Mrs L has been represented by Mr Gundelfinger[2] (the first respondent) since 26 November 2014 and is still represented by him. On 22 January 2019 the applicants terminated the mandate of Clarks Attorneys and have been represented by Fluxmans Attorneys from that time onwards. Ms Steyn moved from Clarks Attorneys to Billy Gundelfinger Attorneys with effect from 1 July 2020. When the applicants discovered that Ms Steyn was working at the offices of Billy Gundelfinger Attorneys, Fluxmans Attorneys addressed a letter dated 13 August 2020 to Billy Gundelfinger Attorneys, pointing out the conflict of interest and requiring Billy Gundelfinger Attorneys to withdraw as the attorney of record on behalf of Mrs L. Mr Gundelfinger did not accede to the demand to withdraw. The applicants consequently approached this court for relief.

[1] The second and third applicants are Mr L and Ms B (Mr L's mother), cited in their capacities as trustees of the P Trust, an *inter vivos* Trust. Both the second and third applicants are cited as defendants in the pending divorce proceedings under case number 9827/18.
[2] The first respondent is a professor of the College of Law at the University of South Africa since 1 October 2011 and practices with that title.

[3] The applicants seek a final interdict. The basis of the application is the applicants right to the protection of confidential information imparted to Clarks Attorneys (Ms Steyn) during the period when Clarks Attorneys represented the applicants. The requirements for a final interdict are trite: a clear right, an injury actually committed or reasonably apprehended, and the absence of similar protection by any other ordinary remedy.[3] The applicants seek an order interdicting:

a) The first and second respondent (Mr Gundelfinger and Ms Steyn) or any other employee or attorney associated with the practice, Billy Gundelfinger Attorneys, from representing the third respondent, Mrs L, in the pending divorce proceedings between the applicants and Mrs L;

b) The first and second respondent from interacting with, briefing, advising, sharing information, knowledge or documents with any attorney appointed by Mrs L in the divorce proceedings.

[4] The main issue for determination, explained in more detail below, is whether the information imparted to Ms Steyn is still confidential and relevant to the issues in the subject matter and therefore worthy of protection.

[5] A legal representative owes a fiduciary duty to his or her current client to act in their best interests. That duty precludes a legal representative from simultaneously acting for two clients with conflicting interests, because the legal representative cannot properly serve both of the clients' interests at the same time.[4] A fiduciary duty exists only while the relationship which gave rise to the duty remains in place. A

[3] *Setlogelo v Setlogelo* 1914 AD 221 at 227.
[4] *Wishart and Others v Blieden N.O. and Others* 2013 (6) SA 59 *(*KZP*)* ad para [37].

lawyer's fiduciary duties to his client terminates when their professional relationship comes to an end.[5]

[6] The only duty that survives the termination of the legal representative's mandate, is the duty to preserve the confidentiality of information imparted to him through his professional relationship with a former client.[6] There is therefore no absolute rule that precludes a legal representative from acting against a former client.[7] In order to obtain an interdict to preclude a former representative from acting against him or her, the client (the applicants) must provide evidence and show that:[8]

a) The applicants had a previous attorney-client contract with the respondents;
b) Confidential information of the applicants was imparted or received in confidence as a result of that contract;
c) That information remains confidential;
d) That information is relevant to the matter at hand; and,
e) The interests of the present client of the respondents are adverse to those of the former clients.

[7] Only once these facts have been proved, does an evidential burden shift to the legal representative to show that there is no risk to the former client if the legal representative acts in the matter. A court will restrain a legal representative from

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[5] See *Prince Jefri Bolkiah v KPMG (a firm)* [1999] 1 All ER 517, referring to the decision in the Court of Appeal in *Rakusen v Ellis, Munday and Clarke* [1912] 1 Ch. 831, where Lord Millet stated: "*Where the Court's intervention is sought by a former client, however, the position is entirely different. The Court's jurisdiction cannot be based on any conflict of interest, real or perceived, for there is none. The fiduciary relationship which subsists between the solicitor and client comes to an end with termination of the retainer. Thereafter the solicitor has no obligation to defend and advance the interests of his former client."* See also the decision in *Netcare Hospitals (Pty) Ltd v KPMG Services (Pty) Ltd* [2014] 4 ALL SA 241 (GJ) at para [76].

[6] *R v Van Hulsteyn, Feltham and Ford* 1925 AD 12 at para [21] to [22].

[7] *Wishart supra* at para [50]. See also *Netcare Hospitals supra* at para [82].

[8] *Wishart supra* at para [39] (cited with approval in *Netcare supra* at para [89]).

acting against a former client where there is a significant risk of disclosure, or misuse of information which belongs to the former client.[9] While the risk need not be substantial, it must be a real one, and not merely fanciful or theoretical.[10] A court will not likely disqualify a legal representative because the effect of doing so would be to deprive the current client of his right to freely choose his own counsel. A client whose legal representative is disqualified loses not just time and money, but also the benefit of the legal representative's specialized knowledge of the case.[11]

[8] The applicants submit that they have demonstrated "beyond any doubt" that confidential information, which is also privileged, was imparted to Ms Steyn and to Clarks Attorneys whilst the applicants were represented by them in the divorce proceedings. Ms Steyn is now employed by Billy Gundelfinger Attorneys, the same attorneys who have always represented and continue to represent Mrs L in the self-same divorce proceedings. It is submitted that the applicants have an unqualified right to the protection of such confidential and privileged information and that the applicants have a well-founded apprehension of harm that the confidential information has been or will be compromised by virtue of the employment of Ms Steyn by Billy Gundelfinger Attorneys. It is submitted that the only viable remedy available to the applicants is an interdict as prayed for in the Notice of Motion and that the applicants have made out a case which justifies the granting of a final interdict.

[9] The applicants submit that even if the court finds that the applicants failed to meet the standard of proof as set out in paragraph 6 above,[12] the court has, as a

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[9] *Wishart supra* at para [26] with reference to *Bolkiah* at 237 F- G.
[10] C. Hollander QC and S. Salzedo QC, *Conflicts of Interest*, 5th Edition (2011) page 128.
[11] *Moyane v Ramaphosa* (82287/2018) [2019] ZAGPPHC 573 (11 December 2019).
[12] *Wishart supra* ad para [39].

matter of public policy, an inherent jurisdiction to control the conduct of its own officers so as to ensure the due administration of justice and the integrity of the judicial process. It is submitted that the court should exercise its discretion in favour of the applicants and interdict Mr Gundelfinger from further representing Mrs L in the divorce proceedings.

[10] The questions raised in this matter are complex. I was referred to only two reported cases in South Africa that have dealt with all of the issues raised in the present matter: *Wishart and Others v Blieden N.O. and Others*[13], a judgment penned by Gorven J, and the Supreme Court of Appeal judgment in the same matter, *Wishart and Others v Blieden N.O. and Others.*[14] It is for this reason that the applicants and respondents have not only referred the court to the principles governing these issues in the South African Law, but also to English Law and Australian Law.

**CONFIDENTIAL INFORMATION**

[11] As stated, the basis of the applicants' application for an interdict is the right to protection of confidential information. In the seminal judgment of the House of Lords in *Prince Jefri Bolkiah v KPMG (a firm) supra,*[15] Lord Millet summarized the position as follows:

> "*Accordingly, it is incumbent on a Plaintiff who seeks to restrain his former solicitor from acting in a matter for another client to establish (i) that the solicitor is in*

[13] 2013 (6) SA 59 (KZP).
[14] [2014] 4 ALL SA 334 (SCA); 2020 (3) SA 99 (SCA) (19 September 2014); 2020 (3) SA 99 (SCA).
[15] *Prince Jefri Bolkiah v KPMG (a firm)* [1999] 1 All ER 517. Quoted with approval in *Wishart and Netcare* supra and in the Supreme Court of Appeal in *Wishart and Others v Blieden N.O. and Others* 2020 (3) SA 99 (SCA).

*possession of information which is confidential to him and to the disclosure of which he has not consented and (ii) that the information is or maybe relevant to the new matter in which the interest of the other client is or may be adverse to his own. Although the burden of proof is on the Plaintiff it is not a heavy one. The former may readily be inferred; the later will often be obvious. I do not think that it is necessary to introduce any presumptions, rebuttable or otherwise, in relation to these two matters. But given the basis on which the jurisdiction is exercised, there is no cause to impute or attribute the knowledge of one partner to his fellow partners. Whether a particular individual is in possession of confidential information is a question of fact which must be proved or inferred from the circumstances of the case."*

[12] It is not disputed that Ms Steyn received confidential information from Mr L whilst she was employed at Clarks Attorneys. This is clear from the compilation and execution of many court documents and notices in the divorce matter, coupled with the fact that her name appears on many notices, documents, correspondence, emails and WhatsApp exchanges.

[13] The main issue and bone of contention between the parties is the following: the respondents contend that the applicants failed to furnish particularity and specificity of the confidential information sought to be protected and as a result they failed to establish that the confidential information alleged to have been imparted or reasonably apprehended to be imparted to Mr Gundelfinger, is still confidential and relevant to the subject matter of the issues in the divorce proceedings. The respondents say so, for the following reasons: firstly, Mrs L, on Mr L's own version, is already in possession of all the relevant information pertaining to the divorce action; secondly, Mr L "bared his soul" to Mr Gundelfinger in a series of five meetings held

directly between them; and thirdly, at the time that the interdict is sought, Ms Steyn no longer possessed confidential information, i.e. information that has not been communicated to others or has not become common knowledge in the divorce proceedings by, *inter alia,* the delivery of pleadings, affidavits, notices, and discovery affidavits. Each of the reasons are dealt with below.

***Information in possession of Mrs L***

[14] Mrs L was provided with the following information, by Mr L, which information pertains to the pending divorce proceedings:

a) annual schedules setting out his assets and their location. These included his offshore accounts and his South African assets;

b) the password ("R"), which enabled her to access a file stored on a computer used by Mr L, which file was designated "Vehicle Service Mileage Registration Licence Schedule". This file reflected Mr L's schedule of assets, as updated from time to time, so that in the event of his death, his mother and Mrs L would have knowledge of the whereabouts of his assets;

c) details relating to his local assets and their whereabouts, stating that the Plettenberg Bay property was owned by the Trust and a Gowrie property was owned by a company, the shares of which were held by a Trust, and the matrimonial home situate at [ . ..] was owned by C (Pty) Limited and that she had "a put option" on its shares;

d) details relating to the manner in which he structured the affairs of C (Pty) Limited so as to avoid the payment of Capital Gains Tax;

e) details relating to the manner in which he had “contrived” loans in favour of the Isle of Man Assurance situated in the Isle of Man in order to enable the proceeds from the sale of the property registered in the name of C (Pty) Limited to be remitted offshore to an account controlled by him;

f) repeated advice that it was unwise to invest in South Africa and wise to be "tax efficient" and to have healthy foreign reserves;

g) information in regards the insulation of the South African property-owning companies and Trust from the payment of Capital Gains Tax and any future claims that might arise against him from creditors and particularly SARS, and that he had created “fictitious” debts;

h) information that the Plettenberg Bay property purchased by the [….] Trust had been paid for by him from his offshore assets, although he had “contrived” a loan from his sister so that he could repatriate to his offshore accounts the proceeds derived from the sale of that property;

i) information that Mr L had bank accounts and share trading accounts in Switzerland and that he held foreign bank accounts;

j) information that he had made her a joint signatory on certain of the foreign bank accounts;

k) information of the banking account maintained at Absa Bank Limited, which account was held in his sister's name;

l) information relating to the source of the funds which were from time to time credited to the Absa account, with the indication that such funds were used to maintain Mr L's and her lifestyle;

m) a caution in relation to the Absa account;

n) an undertaking that in order to provide her with financial security, he would transfer his shares in A2 CM SA (Pty) Limited ("AA") to her, which shares were held notionally by A2 I Limited (incorporated in the Isle of Man) ("A2"); that he would give her 50% of the offshore assets and that he would establish an Isle of Man pension fund for her at Saxo Bank in respect of which she would be the sole signatory;

o) an undertaking to pay her an amount equivalent to what he had gifted a person by the name of Alison Hind, namely the sum of R2,4 million;

p) an undertaking to give her control over the Absa Bank account;

q) a share transfer form dated 11 July 2016, signed by him which transfer form made provision for the transfer of 74 100 shares in AA to her;

r) an undertaking to establish an overseas pension fund for her as part of a financial settlement, arranging for a meeting to be held by them with advisers of “Opes”, an overseas pension fund;

s) an undertaking that as part of a settlement his business A2, would pay an amount of US$ 3 000 000,00 held in Saxo Bank, Denmark into her pension fund; information relating to his strategy in the divorce proceedings, stating that he would move his assets (most of which were not held in his own name to impede visibility, but where held in the name of Trusts), that he would always be one step ahead of her in the litigation, that he would lead her on a wild goose chase looking for his assets, that he would ensure that she would eventually run out of funds to pursue the litigation against him; that he would force her to capitulate and that he would place his assets in living annuities because they would not form part of his estate in determining the accrual;

t) advice that she would receive nothing from him unless it was on his terms;

u) an intimation that she could not subpoena documents from entities outside the

Republic of South Africa and this had been confirmed to him;

v) advised her that he owned AA and A2.

[15] It is clear from the information set out in the paragraph above that Mrs L had acquired substantial knowledge of the assets of Mr L (whether held in his own name or nominally on his behalf), their location and his liabilities, both real and fictitious, well before Ms Steyn joined Mr Gundelfinger in practice.

[16] It is also important to note, that Mr L conceded that Mrs L knew about his financial and business affairs, including the extent of the accrued matrimonial estate. In ground 22 in his application for leave to appeal the order granted by Makume J[16] he stated the following:

> *"22. The learned Judge failed to give due weight to the fact that the applicant (Mrs L) knows all about the respondent's proprietary affairs, including his business affairs, the extent of the accrued matrimonial estate, the assets, their whereabouts and their values and hence there is no likelihood of the respondent (Mr L) concealing assets from the applicant (Mrs L)."*

[17] Mr L, does not dispute that Mrs L has all this information (except that he created fictitious loans or contrived loans), but contends that Mrs L's averment that she has comprehensive knowledge of his confidential financial and other affairs, is contradicted by what she alleged in other affidavits that have been filed. In the Rule 43 application for a contribution to costs dated 19 September 2019, Mrs L

[16] An *ex parte* order granted on 17 November 2016 by Makume J interdicting Mr L from, *inter alia*, transferring any assets owned by him or his nominees or in the name of Trusts, pending the outcome of Part B of the same application.

complained that it was necessary for her to obtain a large amount for contribution to costs to enable her to conduct an extensive international forensic investigation to uncover the full extent of Mr L's affairs. It is submitted that it is clear that she would not need to purport to do conduct such an investigation if she in fact has the knowledge that she purports to hold.

***Meetings between Mr L and Mr Gundelfinger***

[18] During the period July 2017 to December 2017, Mr Gundelfinger had 5 meetings alone with Mr L spanning some 8½ hours in an attempt to settle the then burgeoning dispute. These meetings took place with the knowledge of Mr L's erstwhile attorneys and counsel, Advocate Morison SC, albeit that they were opposed thereto.

[19] The applicants contend that all those meetings were held on a without prejudice basis in the genuine and *bona fide* attempt to reach a resolution of the divorce proceedings. Any and all statements made by Mr L during those meetings were privileged and on a without prejudice basis. It is submitted that Mr Gundelfinger is not entitled to use or apply any of the information or knowledge conveyed to him during those meetings and it is, from a legal point of view, as if those meetings never took place. The applicants therefore apply to strike out all without prejudice matter from the respondents' answering affidavit.

[20] The nature of the relief sought in this application, the requirements for the granting thereof, and the facts said to underpin it, raise the following question: Should without prejudice discussions, in a *bona fide* attempt to resolve a dispute, be allowed and be admitted into evidence, for the limited purpose of demonstrating that

matters, said to be confidential, have by virtue of their disclosure ceased to hold that character?

[21] In considering the question, a number of competing public policy considerations become relevant, namely:

a) Discussions designed to achieve and promote the settlement of a dispute, without resort to litigation; is privileged and not open to disclosure;[17]

b) A client who has retained the services of a solicitor is entitled to prevent the disclosure of confidential information which he may have imparted to the solicitor, provided only that such information has remained confidential;[18]

c) A solicitor should otherwise be entitled to act for clients of his choice and concomitantly clients should be able to select representation of their choice.[19]

[22] This holds the implication that as a matter of public policy an attorney ought not to be deprived of acting for clients of his choice, and concomitantly a litigant ought not to be deprived of representation of his choice, where there is no need to interdict the disclosure of confidential information, because the information (which is the subject of the interdict) has been shared during without prejudice discussions, and may in any event, subject to exceptions, not be used against the party disclosing the information.

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[17] *Naidoo v Marine & Trade Insurance Co Ltd* 1978 (3) SA 666 (A) at 674A-B; *KLD Residential CC v Empire Earth Investments* 17 (Pty) Ltd 2017 (6) SA 55 (SCA) at paras [19]-[29].
[18] Re A Firm of Solicitors [1995] 3 All ER 482.
[19] *Re A Firm of Solicitors* [1997] Ch.1 *Fruehauf Finance Corporation Pty Ltd v Feez Ruthning (a firm)* [1991] 1 Qd R 558 at 566.

A further implication arises: it would be contrary to public policy to prevent an attorney from representing a client on the basis that that attorney has acquired confidential information in relation to an adversary of that client, in circumstances where such information has previously been disclosed to the very same attorney.

[23] An application for injunctive relief in those circumstances would be tainted with fraud and it cannot be in the public interest that an attorney should be restrained from acting for a client of his own choice (and concomitantly for the client to choose representation of her own choice) in circumstances where no legal foundation in law justifies a restriction of those fundamental rights. As stated, the rule which prevents the disclosure of discussions which have taken place between protagonists in a *bona fide* attempt to settle a dispute is subject to exceptions. Thus, and just as public policy impels the admission of disclosures made in "without prejudice" discussions which have taken place in [20] a *bona fide* attempt to resolve a dispute are admissible in evidence to establish an act of insolvency, or to interrupt prescription. It must necessarily impel the admissibility in evidence of disclosures of that nature for the limited purpose of demonstrating that what an applicant claims to be confidential for the purpose of founding injunctive relief which, if granted, would severely impact on the rights of others, is no longer confidential because it has been disclosed. To contend otherwise would be to promote conduct *in fraudem legis*, designed to secure relief in circumstances where there is no entitlement thereto.

[24] Mr Gundelfinger submits that during the course of these meetings, Mr L provided him with extensive knowledge into Mr L's affairs. In his answering affidavit Mr Gundelfinger sets out in great detail the information that Mr L provided to him.

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[20] *Naidoo v Marine & Trade Insurance Co Ltd* 1978 (3) SA 667 (AD) at 667 A-D; and 681 B-D; *Absa Bank Ltd v Chopdat* 2000 (2) SA 1088 (W) at 1094 at F; *Lynn & Main Inc v Naidoo and Another* 2006 (1) SA 59 (N) at para [30]; *Absa Bank v Hammerle Group* 2015 (5) SA 215 (SCA).

[25] It is not necessary for purposes of this judgment to repeat the information provided to Mr Gundelfinger, suffice to say that it ranges from providing information relating to the nature and composition of Mr L's estate, the value thereof in approximately the sum of R234 000 000,00 (two hundred and thirty-four million Rand), his control and ownership of AA and A2, and his tax position. During these meetings he also advised Mr Gundelfinger that he had consulted a forensic accountant, Professor Harvey Wainer who had told him that, subject to the dwelling (being erf [ . . .]) being an excluded asset, and subject further to him being able to establish that the commencement value of his estate included the Peregrine shares referred to the Antenuptial Contract, Mrs L's accrual claim would not exceed R50 000 000,00 (fifty million Rand). But, despite that, he accepted that his liability to her was R100 000 000,00 (one hundred million Rand) and that he would pay that amount.

[26] This court has been appointed to case manage the divorce matter and to deal with interlocutory applications, if and when they arise, in order to get the matter trial ready. This court will therefore not preside over the divorce trial. In the circumstances, the disclosures made by Mr L to Mr Gundelfinger, are admissible in evidence to demonstrate that much of the information, which Mr L alleges Ms Steyn holds, does not constitute relevant confidential information and can consequently not be relied upon to found an entitlement to the injunctive relief sought by the applicants.

The application to strike out must consequently fail.

***Is the confidential information imparted to Ms Steyn relevant to the subject matter of the issues in the divorce proceedings?***

[27] The applicants allege that Raath initially fulfilled the role as the applicants' main associate attorney at Clarks Attorneys. In approximately February 2017, Raath left the employ of Clarks Attorneys, and Ms Steyn then became the main point of contact at an associate level. She would, in that capacity, perform "the lion's share" of the work. It is alleged that Ms Steyn, in relation to the divorce proceedings, was involved in the preparation of a substantial portion of the correspondence to Billy Gundelfinger Attorneys and was copied on and involved in practically all correspondence during 2016, which continued when she took over from Raath in 2017. This continued until the cessation of the applicants' relationship with Clarks Attorneys on 22 January 2019.

[28] It is alleged that Ms Steyn was integral to the giving of instructions in relation to the drafting of pleadings, the formulation and preparation of affidavits, and that she served as the main go-between with the applicant’s counsel, Advocate Morison SC, as "meeting organiser" and attended all meetings with him. She advised the applicants in relation to the preparation of the discovery affidavits and the schedules thereto, and exercised her own judgment in collaboration with Clark and Advocate Morison SC, and in consultation with Mr L, to determine which items of correspondence were obliged to be discovered and which were privileged. She was provided with privileged and confidential information relating to Mr L’s affairs and the companies of which he was a director, namely AA. A2, which latter entity administered the A2 […] ("[….]").

[29] It is alleged that she was furnished with privileged and detailed instructions pertaining to Mr and Mrs L’s relationship and the reasons for the breakdown of the marriage as well as issues relating to Mr L's contact with the children born of the marriage, including the payment of maintenance in respect of Mrs L and the minor

children. She was furnished with privileged and detailed information and instructions in relation to the conduct by Mrs L of her highly profitable interior decorating business and the strategies employed by Mrs L to conceal her earnings and Mrs L's failure over her lifetime to register for income tax and the implications thereof. She was involved with Clark in practically every aspect of the strategic planning for the conduct of the divorce proceedings and was provided with confidential and privileged documentation in relation to many of the elements of (if not practically all of the elements) relating to all matters pertinent to the divorce proceedings.

[30] It is alleged that Ms Steyn was the person who dealt with the filing of practically all notices and documents in the course of the divorce proceedings, and in fact signed almost every, if not all, court documents filed by Clarks Attorneys after February 2017.[21] She advised the applicants under high level supervision from Clark and Advocate Morison SC on the following matters: (a) the supplementary discovery process, and the timing involved in such; (b) the resolutions and the signature thereof; (c) extensions of time from both the plaintiff's and the defendants' sides; (d) disclosure of bank statements for discovery purposes; (e) Trust and trustee matters, and the signature of resolutions relating thereto; (f) auditor involvement, letters of authority, completion of audit and accounting matters; (g) policies in relation to [….]; (h) draft documents of various types, including draft affidavits and court notices; guiding the applicants through the signature, commissioning and serving of affidavits, and following up on fee payments; (i) documentation relating to the possible settlement of the divorce proceedings and other agreements relating thereto; (j) the need to ensure that settlement agreements should be properly drafted by lawyers and not by laypersons; (k) the strategy for the timing and presentation of settlement and other agreements, and involvement in the prospective arranging of a

[21] Ms Steyn signed the following court documents: (a) the first and second applicants' notice of intention to defend dated 26 March 2016; (b) the third applicant's notice of intention to defend dated 17 April 2018; (c) Mr L's notice in terms of section 7 of the Matrimonial Property Act, 88 of 1984 ("the Act") dated 18 May 2018; (d) the applicants' notice of bar dated 8 June 2018; (e) Mr L's notice in terms of Rule 35(1), (6), (8) and (10) dated 20 July 2018; (f) the notice of withdrawal dated 23 January 2019.

meeting of all parties for this purpose; (l) Mrs L's bank statements and the analysis thereof, utility bills and financial disclosures; (m) payments to be made to Mrs L, proof of payments in that regard and documentation pertaining thereto; (n) parenting plans, and advising Mr L on the children's holidays and time allocation regarding the contact with the children shared between Mr L and Mrs L; (o) matters which had been raised by Mr L in WhatsApp communications which he had with Clark. She was the person who, under the high level supervision of Clark and Advocate Morison SC, dealt with an application to compel further and better discovery until the mandate of Clarks Attorneys had been terminated. She was the author of, participated in, or was a recipient of extensive correspondence of a party and party nature. It is alleged that after an *ex-parte* application was granted against Mr L, Ms Steyn was engaged extensively (with Raath) in the court proceedings by attending court on the return day of the matter. The matter ran over a period of four days, during which she received extensive confidential and privileged instructions, documents and input from Mr L. She was copied in on innumerable e-mails, which passed between Mr L and Clarks Attorneys, and became part of a WhatsApp group which was established between Mr L, Clark and Advocate Morison SC for the purposes of communications between them in the divorce proceedings.

[31] The applicants allege that on 23 November 2016 at 09h15, Mrs L took Mr L's backpack containing his laptop from the former matrimonial home, to the offices of Billy Gundelfinger Attorneys and returned it later that day at around 13h00. Mr L suspected that Mrs L had accessed confidential information on the laptop and arranged for the laptop to be submitted for a full forensic investigation and analysis. In summary, the forensic investigation found that the laptop had been transported in a Range Rover vehicle to the offices of Billy Gundelfinger Attorneys, and whilst at the offices of Billy Gundelfinger Attorneys, the laptop was connected to the internet using the WIFI network of Billy Gundelfinger Attorneys. It is alleged that a great many privileged, private and highly confidential e-mails, files, documents and records were

hacked and downloaded, which included various documents which were password protected and encrypted; privileged correspondence between Mr L and Clarks Attorneys, highly sensitive and confidential information of the clients of the [….], including their banking details and share trading accounts. It is alleged that access was obtained to Mr L's accounts, data, emails and confidential information in various cloud based platforms such as Gmail, Google Drive and Google Docs, Dropbox and Adobe. Numerous documents were downloaded from these platforms.[22]

[32] The applicants allege that after the data theft incident had come to the attention of Mr L, Ms Steyn and Raath were fully briefed regarding the nature of the confidential and privileged information that had allegedly been accessed and stolen during the course of that incident. Many of the confidential and privileged items were discussed with Ms Steyn, and Mr L provided her with instructions and information in relation thereto. Ms Steyn and Clark were also provided with the new unique passwords which Mr L had established after the data theft incident.

[33] Arising from the aforegoing, the applicants contend that Ms Steyn became privy to practically all exchanges that he had with Clarks Attorneys. It is submitted that the interactions between Mr L and Ms Steyn were frequent, intense and often lengthy with them communicating telephonically, on e-mail, in meetings at Clarks Attorneys and in meetings at counsel's chambers. It is contended that Ms Steyn was "the main foot soldier for the matter" and was fully and intimately involved in all aspects of the matter, becoming "imbued with the full extent of the confidential and privileged knowledge relating to practically every aspect of the divorce proceedings".

[34] Ms Steyn, in response to the allegations, filed a confirmatory affidavit in support of Mr Gundelfinger's answering affidavit and filed a supplementary affidavit in answer to Mr L's replying affidavit. She states that she had to reconstruct the work

[22] The "data theft incident" is the subject of a pending legal proceedings instituted by Mr L against *inter alia* Billy Gundelfinger and Mrs L.

she performed on behalf of the applicants whilst in the employ of Clarks Attorneys, as the applicants refused to allow her to peruse the notes which she compiled whilst acting for the applicants, as well as the fee notes rendered by Clarks Attorneys to the applicants on account of work performed on their behalf. In these affidavits her role, which she discharged on behalf of the applicants whilst in the employ of Clarks Attorneys, was explained. What follows is a summary of her involvement and engagements with Mr L in the matter.

[35] Ms Steyn stated that she attended a consultation with Clark, Advocate Morison SC and Mr L, during which consultation the details of a settlement proposal Mr L wished to make to Mrs L was raised, debated and agreed upon. This consultation represented her first interaction with Mr L. She attended a round-table settlement meeting (together with Clark and Mr L) held at the offices of Mr Gundelfinger. She attended a further two consultations with Advocate Morison SC, Clark and Mr L, during which consultations Mr L furnished instructions in relation to the proposed plea and counterclaim in the action. These instructions were embodied in those documents and filed of record in the proceedings. During the course of the consultations, Clark, Advocate Morison SC and she were instructed that Mrs L was not a registered taxpayer, that she had earned income from an interior decorating business, which income had been invoiced through C (Pty) Limited, that Mrs L had a substantial liability to SARS and that she was insolvent because of this liability. These matters were recorded in both the plea and counterclaim drawn and settled by Advocate Morison SC. Mr L, moreover, on that occasion spoke of the relationship between

AA, A2 and [….], although she cannot recollect the contents of that discussion other than Mr L stating that he was not a shareholder in any one of these entities, which matter was incorporated in Mr L's plea and counterclaim.

[36] Ms Steyn states that she accompanied Clark, Mr L and Mrs L, to a consultation held with Advocate John Peter SC for the purpose of considering the

position of the trustees of the [….] Trust in South Africa in relation to Mrs L's particulars of claim and, more especially, whether the Trust should be separately represented in the proceedings. She assisted Clark after Raath had left the employ of Clarks Attorneys. She communicated with Mr L by way of e-mail, WhatsApp and telephonically, in relation to the following matters: contact with the children; reminders relating to the payment of maintenance; the drafting and editing of a parenting plan; the provision of documents for discovery; the furnishing of advice to Mr L of the administrative steps which had been taken, such as the filing of his discovery affidavit, the service of a notice of bar and the receipt of Mrs L's notice in terms of Uniform Rules of Court 35(3) and (6); the following up with Mr L of the payment of his account; the arrangement of meetings with counsel and liaising and communicating by e-mail with Mr L, wherein he was advised of the dates, times and places of consultations, but then only to the extent that this had not been attended to by Clark. She states that she assisted in the drafting of Court Notices; the arranging of dates and times for meetings and advising the attendees accordingly; the following up on the payment of invoices/payment of trust deposits, the facilitation of the provision of travel consent affidavits to enable the children to travel abroad; and communicated to Mr L complaints and/or requests relating to the payment of interim maintenance. She received the details of Mr L's estate from either Clark or Mr L, such having been provided by Mr L on an Excel spreadsheet which Mr L had prepared. From the Excel spreadsheet Clark was able to compile Mr L's response in terms of Section 7 of the Act.

[37] Ms Steyn states that she had one telephonic conversation with Mr Gundelfinger regarding the provision by Mrs L of consent for the children to travel overseas. She attended to matters peripheral to the divorce proceedings, such as those relating to household and motor vehicle repairs, the allocation of holiday periods between Mr L and Mrs L and travel consents. She drafted a standard discovery affidavit for Mr L in both his personal capacity and his capacity as a

trustee, doing so from documents provided by Mr L. She advised Mr L of the requirements of Rule 35 of the Uniform Rules of Court relating to his obligation to make discovery. In the ordinary course she would have advised him of the nature of the documents to be discovered to prove or disprove the issues which would arise at the trial, identifying documents such as bank statements, credit card statements, those relating to loan accounts, those required to establish the identity and value of assets and liabilities and those which demonstrated the accrual of income, including tax returns and assessments.

[38] A settlement meeting was held with Mr Gundelfinger at which meeting an offer of settlement was made on behalf of Mr L. Ms Steyn states that consequently, whatever may have been decided upon at the meeting, was no longer confidential. The instructions which Mr L furnished Advocate Morison SC and Clark at the two meetings attended by Ms Steyn, were incorporated in the pleadings filed of record and thus no longer retained the character of confidentiality. The advice which Advocate Peter SC furnished to Mr Gundelfinger was given effect to in the plea and, here again, no confidentiality can legitimately be said to attach thereto. She stated that the e-mail, WhatsApp and telephonic interactions between Mr L and herself were largely confined to matters of a routine nature and it is difficult to conceive what matters of confidence might have arisen during the course thereof. Similar considerations apply to the other peripheral matters which Ms Steyn attended to on behalf of Mr L, including the single telephonic conversation which Ms Steyn had with Mr Gundelfinger. The work performed by her in relation to discovery and the advice which she furnished in regard thereto was standard and routine in nature. Ms Steyn states that she had no involvement in the urgent *ex-parte* application and the "data theft incident" and her involvement in the divorce proceedings was *“intermittent, peripheral, related primarily to the parenting plan, her presence at the meetings referred to above, and drafting of the first applicant’s initial discovery affidavit and also included administrative functions.”*

[39] The respondents contend that the suggestion by Mr L in the founding affidavit that Ms Steyn disclosed the existence of the password "R" and the existence of the so-called "Vehicle Service Mileage Registration Licence Schedule" to Mr Gundelfinger is demonstrably wrong. The information was known to Mr Gundelfinger (and through him Advocate Woodward SC) prior to 23 November 2016, and thus almost four years before Ms Steyn entered the employ of Mr Gundelfinger.

[40] As stated, in addition to the answering papers, Mr Gundelfinger and Ms Steyn have delivered affidavits in reply to the new matters raised by Mr L in his replying affidavit, including his reliance on approximately 300 additional WhatsApp messages and correspondence.

***Did the applicants discharge the onus?***

[41] The decision whether to grant the relief sought by the applicant is subject to two well-known principles of South African law, the one being procedural in nature and the other substantive. As to the former, the *locus classicus* is the matter of *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [23] which dealt with the impact of disputes of fact on the determination of relief which is sought in motion proceedings. The principles enunciated therein are trite. The principles in question were formulated by Corbett JA, (as he then was), in the following manner:

> "*Secondly, the affidavits reveal certain disputes of fact. The appellant nevertheless sought a final interdict, together with ancillary relief, on the papers and without resort to oral evidence. In such a case the general rule was stated by Van Wyk J (with whom*
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> *De Villiers JP and Rosenow J concurred) in Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd 1957 (4) SA 234 (C) at p 235 E-G, to be:*

[23] 1984 (3) SA 623 (A) at 634D-635C.

*".... where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order.... Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted....."*

*It seems to me, however, that this formulation of the general rule, and particularly the second sentence thereof, requires some clarification and, perhaps, qualification. It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances, the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact (see in this regard Room Hire Co. (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd, 1949 (3) SA 1155 (T), at pp 1163-5; Da Mata v Otto, NO, 1972 (3) SA 585 (A), at p 882 D - H)".*

[42] It is therefore well established than when approaching the question of final relief in the face of a dispute of fact the court must determine the matter on the basis of the respondents' version, even in relation to matters where the respondents might bear the evidential burden or onus. As to the matter of substance, it must be remembered that what the applicants seek is final interdictory relief. The requirements therefor are clear and uncontroversial, namely "a clear right, injury actually committed or reasonably apprehended, and the absence of similar protection by any other ordinary remedy".

[43] As previously indicated, one of the elements of the right foundational to the relief sought by the applicants is that the information which it is said was imparted in

confidence to Ms Steyn, whilst in the employment of Clarks Attorneys, remained confidential and relevant to the subject matter **at the time** Ms Steyn entered the employ of Mr Gundelfinger (my emphasis). The respondents contend that it is clear from all the facts set out in the papers, that Ms Steyn was the recipient of very little confidential information and that any such confidential information which she may have received – (a) has lost the attribute of confidentiality; (b) is forgettable; (c) and has no bearing on what the real issues are in the divorce proceedings. It is submitted that the applicants failed to produce any evidence that Ms Steyn holds any confidential information relevant to the subject matter and most certainly nothing by way thereof which she can call to mind. The respondents further contend that the applicants should have identified the confidential information sought to be protected with sufficient particularity and specificity, in order to meet the standard required for such relief.

[44] As to the identification of confidential information necessary to found relief such as that in the case under consideration, the authors Hollander QC and Salzedo QC in their work "*Conflicts of Interest*[24] summarizes the position as follows:

> "*The authorities, both in this jurisdiction and in particular in Australia, have focussed on the extent it is necessary to define the confidential information in question with particularity. In England, the starting point is that where a party seeks to prevent the disclosure of confidential information, it will usually be incumbent on him to identify precisely what the confidential information in question is. This is often difficult in a conflict of interest case, where the claimant may have good grounds for suspicion but little concrete evidence or recollection as to what confidential information may have been provided to the professional. Sometimes relief will be refused simply on the ground that the lack of particularity is a fatal deficiency, other cases are less strict. An example of the harsh approach is that adopted by Lightman J. in Mannesmann v*

[24] C. H.ollander QC and S. Salezedo QC, *Conflicts of Interest*, 4th Edition (2011) at page 156 to page 158.

*Goldman Sachs (unreported, November 18, 1999). The claimants sought to identify the confidential information on which they sought to rely. The judge said that the information relied upon could not be categorised as confidential information, but even if it were, by referring to it in open court, it had lost any confidentiality it might once have possessed and thus could not be relied upon."*

[45] As to the degree of specificity required to imbue material as constituting confidential information, Drummond J, in the General Division of the Federal Court of Australia in *Carindale Country Club Estate Pty Ltd v Astill and Others*[25] held that it is a basic requirement, before material will be recognised as having the character of confidential information, that the information in question must be identified with precision and not merely in global terms. The court stated that this requirement is insisted upon even though it may necessitate disclosing to the court the very information the confidentiality of which it is sought to preserve by the action. This requirement has its foundation in the need for the court to be able to frame a clear injunction, should relief against misuse of confidential information be granted. The court held:

*"... But the requirement goes to a matter more fundamental than that: see Independent Management Resources Pty Ltd v Brown [1987] VR 605 at 609: The more general the description of the information which a plaintiff seeks to protect, the more difficult it is for the court to satisfy itself that information so described was imparted or received or retained by a defendant in circumstances which give rise to an obligation of confidence."*

[25] (1993) 115 ARL 112.

[46] In *Re A Firm of Solicitors*[26] in regard to the standard of proof required to establish the confidentiality of information which may have been imparted to a solicitor, Lightman J said the following:

> "*On the issue whether solicitor is possessed of relevant confidential information: (a) it is in general not sufficient for the client to make a general allegation that the solicitor is in possession of relevant confidential information if this is in issue: some particularity as to the confidential information is required: See Bricheno v Thorp, Jac 300 and Johnson v Marriott (1833) C&M 183. But the degree of particularity required must depend upon the facts of the particular case, and in many cases identification of the nature of the matter on which the solicitor was instructed, the length of the period or original retainer and the date of the proposed fresh retainer and the nature of the subject matter for practical purposes will be sufficient to establish the possession by the solicitor of relevant confidential information. (b) It may readily be inferred that confidential information is imparted to members of the firm having the conduct of the client's matter. Such information may, however, be imparted to other members in the course of partnership meetings or social meetings of members of the firm: See In Re A Firm of Solicitors [1992] Q.B. 959, 978c. (c) The court attaches weight to the evidence of the solicitor as to his state of knowledge and whether he has received confidential information, in particular where there is no challenge to his integrity and credibility: See R v Mullett (1817) 4 Pr, 353 (solicitor); See In Re A Solicitor (1987) 131 S.J. 1063, per Hoffman J and Pavel v Sony Corporation, 12 April 1995 (barrister)."*

[47] In my view, there are three important principles enunciated in *Re A Firm of Solicitors*, referred to above. Firstly, in general, it is not sufficient to make a general allegation that a solicitor is in possession of relevant confidential information if this is in issue: some particularity as to the confidential information is required. Secondly,

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[26] [1997] Ch.1 at 10 E-H.

the degree of particularity required depends upon the facts of the particular case. In this regard the identification of the nature of the matter on which the solicitor was instructed, the length of the period or original retainer, the date of the proposed fresh retainer, and the nature of the subject matter are important factors to be considered. Thirdly, the court attaches weight to the evidence of the solicitor as to his state of knowledge and whether he has received confidential information, in particular where there is no challenge to his integrity and credibility.

[48] Lightman J[27] also dealt with the question of when confidential information may legitimately be said to no longer hold that attribute. He held that confidential documents and information passing between attorney and client, like any other confidential information communicated to anyone else, subsequently ceases to be confidential. It may become common knowledge or at least known to an opponent in the course of a trial and that some information may be memorable and some eminently forgettable. The judge also recognized that it makes common sense that not all confidential information acquired by a legal representative will remain in the mind of the legal representative or be susceptible of being triggered as a recollection after the lapse of a period of time. He stated that*:*

> "*For the purpose of the law imposing constraints upon solicitors acting against the interests of former clients, the law is concerned with the protection of information which (a) was originally communicated in confidence, (b) at the date of the later proposed retainer is still confidential and may reasonably be considered remembered or capable, on the memory being triggered, of being recalled and (c) relevant to the subject matter of the subsequent proposed retainer. I shall refer to information that satisfies these three qualifications as 'relevant confidential information'."*

[27] *Re A firm of Solicitors* [1997] Ch. 1 at 9G-10B.

[49] In *Halewood International v Addleshaw Booth and Co*[28], Neuberger J said that it is not enough that the information was confidential at the time the former client communicated it to the solicitor. If for any reason it subsequently ceases to be confidential information, it is not to be treated as confidential information for the purpose of the requirements.

[50] With these principles in mind, I will now turn to the specific facts to establish whether the applicants have discharged the onus.

[51] Ms Steyn became a senior associate of Clarks Attorneys in November 2017. Clark, however, was the attorney that mainly dealt with Mr L's matter and Ms Steyn assisted Clark, more so, after Raath left in 2017. Mr L terminated his mandate with Clarks Attorneys on 22 January 2019. Ms Steyn left Clarks Attorneys in July 2020, approximately eighteen months after Mr L terminated his mandate. Ms Steyn has therefore been uninvolved in the divorce matter for a lengthy period of time.

[52] The degree of particularity required will depend on the facts of a particular case. It is generally not sufficient for an applicant to make a general allegation that the attorney is in possession of **relevant** confidential information if **this is in issue** (emphasis added). The more general the description of the information which an applicant seeks to protect, the more difficult it is for the court to satisfy itself of the relevant confidential information that should be protected. This requirement must be insisted on even though it may necessitate disclosing to the court the very information sought to be protected. Ms Steyn had set out, in quite some detail, the extent of her involvement in the divorce proceedings. The applicants have not made the slightest attempt to identify, with the necessary degree of specificity, the

[28] [2000] P.N.L.R 788 (199) at page 5.

information which they contend was confidential. In the specific circumstances of this case, it is a fatal deficiency. Moreover, the applicants have not attempted to demonstrate that the information imparted to Ms Steyn remained confidential and, if so, might legitimately be said to be memorable and not forgettable. The failure to do so, in the specific circumstances of this case, is also fatal to their application, more especially in light of the knowledge which Mr L imparted to Mr Gundelfinger; the knowledge which Mr L imparted to Mrs L; the knowledge said to have been gathered from the alleged data theft; the knowledge gained from documents obtained as early as in 2016; the knowledge encapsulated in the pleadings and documents filed of record in the divorce action, including Mr L's response in terms of section 7 of the Act; the Financial Disclosure Statement recently attested to by him under oath; the tender made by him pursuant to Rule 34 of the Uniform Rules of Court; his affidavit of discovery; the affidavits in the two Rule 43 applications; Mr L's further and better discovery after notices were served in terms of Rule 35(3) and (6); and from the documents received to subpoenas *duces tecum* issued by Mr Gundelfinger.

[53] This is exacerbated by the following: the remaining issues in the divorce action are confined and limited to: the solvency (or lack of solvency) of Mrs L and its impact on the provisions of the Antenuptial Contract concluded between Mr L and Mrs L; the identification of the composition of each party's estates for the purpose of determining the accrual; and the income and expenses of each of the parties relevant to the determination of Ms L's claim for maintenance, postulating that Mrs L's accrual claim fails.

[54] The lever arch file of correspondence referred to in Mr L's founding affidavit as well as the WhatsApp messages contained in the founding affidavit and the recently introduced WhatsApp messages and emails relied upon by the applicants in their replying affidavit to refute Ms Steyn's contentions, do not in fact support Mr L's allegations and take the matter no further. An analysis thereof reflects that Ms Steyn's involvement in the matter was of a routine, intermittent and peripheral nature.

[55] To be treated as confidential, the information must still be confidential at the time that injunctive relief is sought, i.e. it must not have been communicated to others or otherwise have become common knowledge; must reasonably be considered remembered and not eminently forgettable or capable on the memory being triggered of being recalled, and must be relevant to the subject matter of the subsequent proposed instructions. Recognition must be afforded to the fact that not all confidential information acquired by a solicitor will remain in the mind of the solicitor or be susceptible of being triggered as a recollection after the lapse of a period of time. In none of the examples given by the applicants, is there any indication which may be gleaned, on a reasonable basis, why the information remains confidential and relevant. Whatever confidential information Ms Steyn may have obtained in relation to Mr L whilst in the employ of Clarks Attorneys does not constitute relevant confidential information in that it had long since become known through the information as set out above. Any residual confidential information which may not have become known as aforesaid is, on any realistic appraisal, forgettable and has become forgotten by Ms Steyn.

[56] The applicants' application for a final interdict must therefore fail at the most fundamental level, for they have not established that the right foundational to the relief sought by them was extant at the time Ms Steyn entered the employ of Mr Gundelfinger.

[58] As the applicants had failed to discharge the onus, the evidential burden to show that there is no risk to Mr L if Mr Gundelfinger continues to act for Mrs L, did not shift to the respondents. But, in case I am wrong on the first issue, it is appropriate to consider whether there is a real risk of disclosure or misuse of relevant confidential information in the possession of Ms Steyn and whether effective and reasonable measures are in place to eliminate the risk.

**IS THERE A REAL RISK?**

[58] In *Bolkiah supra*,[29] in relation to the degree of risk Lord Millet that it is of the highest importance to the administration of justice that a solicitor or other person in possession of confidential and privileged information should not act in any way that might appear to put that information at risk of coming into the hands of someone with an adverse interest and that the court should intervene unless it is satisfied that there is no risk of disclosure. The risk must be a real one, and not merely fanciful or theoretical. But it need not be substantial.

[59] In relation to the adequacy of protective measures designed to preserve the confidentiality of information Lord Millet said:

> " *There is no rule of law that Chinese walls or other arrangements of a similar kind are insufficient to eliminate the risk but the starting point must be that, unless special measures are taken, information moves within a firm. In MacDonald Estate v Martin 1990 77 D.L.R. (4th 240, 269) Sopinka J. said that the court should restrain the firm from acting for the second client "unless satisfied on the basis of clear and convincing evidence that all reasonable measures have been taken to ensure that no disclosure will occur." With the substitution of the word "effective" for the words "all reasonable" I would respectfully adopt that formulation."*

[60] The applicants contend that information barriers are generally considered entirely inadequate in the case of small firms due to obvious practical limitations. The respondents disagree. In support of their argument the respondents rely on three cases emanating from English law where injunctive relief was in issue in situations where a single individual moved from a firm which had represented a particular client

[29] at 236H-237B.

to another firm which sought to represent that client's adversary in a related matter. The first is the matter of *Re A Firm of Solicitors*[30] wherein the following was stated:

> *"Adopting that test, what is the position in this case? The firm have put all the documents relating to the earlier inquiries and actions in special store. There seems to be no risk of leakage of those. The staff and personnel who are handling the present litigation are not those who were concerned in the earlier cases. But in view of the complexity of the issues in all the cases, the reasonable man knowing of the overlap could not be confident that in the course of the present case some inadvertent revelation might not take place, caused perhaps by the awakening of a memory or by someone consciously or unconsciously availing himself of information which had in the past been obtained from A & A and other members of the firm. He might well not appreciate the origin of the information, but the risk is there. There is no analogy to be drawn from the two-man firm in Rakusen's case to a large firm of 107 partners and obviously a correspondingly large staff of executives and other employees. The reasonable man would recognise the existence of a risk of use of the earlier information no matter what steps the firm had taken to protect it."*

[61] The second case is *Halewood International v Addleshaw Booth & Co*[31], which involved an application for injunctive relief by an importer of wine and the proprietor of a trade mark (Halewood International) who had been represented by a solicitor, Mr

Andrew R, who was then in the employ of a firm of solicitors known as Gordon, Wright and Wrights. Halewood International in that litigation sought to restrain a competitor from using a similar name to that used by it in marketing its products.

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[30] [1992] 1 All ER 353 at 369E-G.
[31] [2000] P.N.L.R 788 (1999) at pp 4-5.

During the litigation Mr R entered the employ of ABC, a substantial firm of solicitors with 93 partners. ABC commenced acting for a consortium against Halewood International which then sought injunctive relief against ABC on the basis that in light of the knowledge which Mr R had obtained while acting for it at Gordon, Wright and Wrights, it was not right for ABC to be acting against Halewood on behalf of the consortium. Despite the establishment of an information barrier, the Lower Court upheld the injunctive relief which had been sought. This was reversed on appeal on the basis of an undertaking by Mr R not to disclose confidential information of Halewood International which he might have gathered and his total isolation from any involvement in the litigation between the consortium and Halewood International. During the course of his judgment, Neuberger J dealt with the relevant legal principles which in part are as follows:

> *“As I understand Prince Jefri's case, the court must ensure that there is no additional risk to the client. It must be satisfied that barriers are in place which are effective to prevent ... disclosure of confidential information. The crucial question is 'will the barriers work?'. If they do, it does not matter whether they were created before the problem arose or are erected afterwards. It seems to me that all Lord Millett was saying was that Chinese walls which have become part of the fabric of the institution are more likely to work than those artificially put in place to meet a one-off problem. Nor do I accept Mr Pollock's suggestion that only a barrier which prevents direct or indirect contact, both socially and professionally, is acceptable." .....*
>
> *.....(g) Once the former client shows that the solicitors have relevant confidential information the evidential burden is on the solicitors to show that they fall within the exception is heavy....*
>
> *..... (h) The requirements and the exception are connected to the extent that, if the former client establishes only a relatively weak case that the requirements are*

*satisfied, then when considering whether or not the solicitor falls within the exception, that is a factor that can be taken into account."*

[62] The second case the respondents rely on is the case of *Koch Shipping Inc v Richards Butler (a firm)*[32] which involved a situation where a single individual moved firms. Ms Peaston acted for Koch whilst a partner of Jackson Parton. She thereafter moved to the firm of Richard Butler who were acting against Koch in an arbitration relating to a particular ship. Koch sought to interdict Richard Butler from continuing to act in the arbitration. Undertakings were given by Ms Peaston not to communicate at all with any person at Richard Butler working on the arbitration. Richard Butler and his professionals working on the arbitration also furnished undertakings. She was housed on the 10th floor of the building occupied by Richard Butler and the professionals working on the arbitration were on the 11th floor giving rise to a degree of physical separation. A court of first instance granted injunctive relief in favour of Koch but this was overturned by the Court of Appeal which placed significance on the fact that only one individual was involved which materially affected the risk of inadvertent disclosure. On this score, Tuckey LJ at para 5.3, said as follows:

"*I think there is a danger inherent in the intensity of the adversarial process of courts being persuaded that a risk exists when, if one stands back a little, that risk is no more than fanciful or theoretical. I advocate a robust view with this in mind so as to ensure that a line is sensibly drawn."*

[63] The applicants contend that Mr Gundelfinger's practice is a small one (there are only three qualified attorneys), thereby heightening the potentiality of abuse. It is submitted that Mr Gundelfinger himself has disclosed that he has not been attending at the office for several months due to medical treatment that he has been receiving.

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[32] [2002] Lloyd's P.N. 603.

That leaves Ms Steyn as one of only two attorneys that are physically in the offices. It is contended that the respondents have failed to set out sufficient facts to show that there are effective measures in place for the enforcement of any form of "information

barrier".

[64] As stated previously, Mr L terminated the mandate of Clarks Attorneys approximately eighteen months prior to Ms Steyn entering the employ of Mr Gundelfinger. There is no real suggestion that Ms Steyn had since then had any involvement in the proceedings between Mr L and Mrs L. On the version of Mr Gundelfinger and Ms Steyn, she has had none. On leaving the employ of Clarks Attorneys, Ms Steyn took no documents relating to the matter between Mr L and Mrs L and she has had no access to the e-mail and WhatsApp messages which passed between her and others in relation to that matter. On leaving Clarks Attorneys, Ms Steyn signed a confidentiality agreement. It was further a basis of the employment contract concluded by Mr Gundelfinger and Ms Steyn that Ms Steyn would not be involved in the litigation between the applicants and Mrs L and certain other matters. Ms Steyn states that she has had no involvement in the divorce proceedings. Mr Gundelfinger and Ms Steyn have also furnished appropriate undertakings.

[65] Mr Gundelfinger's office is comprised of eight people in total and, other than the receptionist Mrs Bezuidenhout, each has a separate office. Mr Gundelfinger states that his members of staff have been instructed not to provide Ms Steyn with any documents relating to the litigation between Mr L and Ms L or to discuss anything with her in regard thereto. Mr Gundelfinger conducts what has been described as a "small practice" and such information of Mr L which might still have

retained its confidential nature is reposed in a single person. The documentation relating to the proceedings between Mr L and Mrs L are separately stored in a boardroom which is kept locked and to which Ms Steyn has no access, neither physically or electronically. Mr Gundelfinger states that he conducts his practice from his home and since Ms Steyn entered his employ he has only attended the office on a single occasion for the purpose of a meeting, which meeting did not involve the participation of Ms Steyn.

[66] The applicants attack the efficacy of the information barrier that has been put in place with regard to two particular aspects. Firstly, Ms Steyn was admitted onto the CaseLines system for this specific matter on or about 6 July 2020, within a few days of her joining Billy Gundelfinger Attorneys. The applicants contend that this demonstrates that she was involved in the divorce proceedings at least for the period from 6 July 2020 to 17 August 2020 when she was removed from CaseLines, "coincidently" the same day of the date of expiry of the demand directed to Mr Gundelfinger by Fluxmans Attorneys to withdraw as attorneys of record on behalf of Mrs L. Secondly, it is submitted that Advocate Woodward SC, during the course of the recent case management meeting[33]: (a) understated the standing of Ms Steyn when employed by Clarks Attorneys, and (b) allegedly overstated the period during which Ms Steyn had been employed by Mr Gundelfinger. Thirdly, Mr Gundelfinger is said to have advised Advocate Woodward SC of the R password and the existence of the "Vehicle Service Mileage Registration Licence Schedule" which information he must have obtained from Ms Steyn which he subsequently passed on to Advocate Woodward SC. Fourthly, the applicants contend that the version given by Mr Gundelfinger and Ms Steyn is expressed by Mr Gundelfinger in the answering

[33] Judicial case management meeting held via MS Teams on 25 August 2020 between Windell J and the legal representatives acting on behalf of the parties.

affidavit as if he is in the position of Ms Steyn. It is submitted that not only is it wholly inappropriate for Ms Steyn to fail to give her own evidence in her own name directly, but furthermore, it is clear that Mr Gundelfinger and Ms Steyn have discussed each and every allegation, and no doubt all the underlying facts relating thereto, between them. This is the very "evil" that the application seeks to prevent.

[67] The respondents state that the invitation sent to Ms Steyn to join in on CaseLines in the matter was done inadvertently and that of the five invitations which Ms Steyn received on email to CaseLines, she responded to only one and then only because of a "slip of the finger". The respondents further contend that it cannot be suggested that Advocate Woodward SC deliberately engaged in a subterfuge in order to promote the interests of the respondents and the allegation made about the password has been shown to be false. As far as the answering affidavit is concerned it is submitted that, as direct parties, Mr Gundelfinger and Ms Steyn both have an interest in the proceedings. Ms Steyn disclosed to counsel verbally and in writing her involvement in the divorce proceedings when employed by Clarks Attorneys. That involvement was incorporated into one answering affidavit, deposed to by Mr Gundelfinger, setting out the extent of her involvement on behalf of the applicants which was necessary since the nature of that involvement lies at the very heart of the matter. There is nothing which Ms Steyn told counsel and which is incorporated into Mr Gundelfinger's answering affidavit which by any stretch of the imagination can be classified as relevant confidential information.

[68] As stated in *Halewood International supra*, despite all that is set out in the papers, the crucial question is, will the barriers that Billy Gundelfinger Attorneys have put in place work? This issue must again be approached on the basis of the rule in

*Plascon-Evans.* There is no reason to doubt Ms Steyn's and Mr Gundelfinger's version that: a) since joining Billy Gundelfinger Attorneys Ms Steyn has had no involvement in the proceedings between Mr L and Mrs L and b) that reasonable information barriers have been put in place to avoid any risk. Given this, the applicants can only assail the efficacy of the information barrier established by Mr Gundelfinger by contending that Mr Gundelfinger and Ms Steyn have perjured themselves. Any suggestion to that effect is otiose and unsustainable.

[69] In my view, the smaller the firm, the less likelihood of the disclosure eventuating. I am satisfied that the respondents have discharged the evidential burden in demonstrating the establishment of an effective and reasonable information barrier designed to ensure that such confidential information of Mr L which Ms Steyn may possess is not disclosed or misused, whether by design or inadvertence.

**INHERENT JURISDICTION**

[70] The respondents invite the court to exercise what is referred to in Australia as the court's inherent jurisdiction to *"control the conduct of its own officers so as to ensure the due administration of justice and the integrity of the judicial process*." In *Geelong School Supplies (Pty) Ltd v Dean*[34]*,* the court restrained a solicitor from acting in a matter based on the inherent jurisdiction approach. Young J held that the leading English case of *Bolkiah supra* did not exclude such approach and he

[34] [2006] FCA 1404.
[35] [2005] NSWSC 1181

followed the test of Brereton J in *Kallinicos and Another v Hunt & Others*.[35] Brereton J in *Kallinicos* explained the approach in the following manner:[35]

- *"[T]he court always has inherent jurisdiction to restrain solicitors from acting in a particular case, as an incident of its inherent jurisdiction over its officers and to control its process in aid of the administration of justice…*
- *The test to be applied in this inherent jurisdiction is whether a fair-minded, reasonably informed member of the public would conclude that the proper administration of justice requires that a legal practitioner should be prevented from acting, in the interests of the protection of the integrity of the judicial process and the due administration of justice, including the appearance of justice…*
- *The jurisdiction is to be regarded as exceptional and is to be exercised with caution…*
- *Due weight should be given to the public interest in a litigant not being deprived of the lawyer of his or her choice without due cause…*
- *The timing of the application may be relevant, in that the cost, inconvenience or impracticality of requiring lawyers to cease to act may provide a reason for refusing to grant relief….*
- *The inherent jurisdiction of the court is discretionary."*

[71] In *Wishart supra,* Gorven J, in deciding whether to develop the common law to include the inherent jurisdiction approach, referred to the matter of S*pincode (Pty) Ltd v. Look Software (Pty) Ltd and Others,*[36] where Brooking JA discussed the basis of the approach. He was quoted as follows:

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[35] *Kallinicos* at para [76].
[36] [2001] 4 VR 501.

"*Since the earliest days of attempts to prevent solicitors from acting against their former clients it has been recognised as a basis — I use the indefinite article advisedly*

*— of the jurisdiction is that which the Court has over solicitors as its officers. Sir Samuel Romilly, for Lord Clinton, said that there were two heads of jurisdiction: irreparable injury which supports an injunction and in addition the general jurisdiction over an officer of the Court."*

*'There is a good deal of authority for the view that a solicitor, as an officer of the court, may be prevented from acting against a former client even though a likelihood of danger of misuse of confidential information is not shown."*

[72] Gorven J found that the applicants had not established sufficient facts to apply the inherent jurisdiction approach. He stated that the only basis of which he was aware on which the Australian courts have invoked this jurisdiction relates to the possibility of confidential information being misused where no fiduciary duty concerning that information exists; or if it is known that confidential information was disclosed but the applicant is unable to establish what that information might be.[37] Gorven J concluded that, even if the inherent jurisdiction approach formed part of our law, the applicants did not make out a case for its application in that matter. He did not, however, exclude the possibility that this may be appropriate in different circumstances.

[73] On appeal in the matter of *Wishart and Others v Blieden N.O. and Others*[38], the Supreme Court of Appeal, summarized the issue on appeal as follows:

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[37] *Cleveland Investment Global Ltd v Peter Evans* [2010] NSWSC 567.
[38] 2020 (3) SA 99 (SCA) at para [33].

*"[33] Recognizing that the lawyers had no such confidential information, as the high court found, the appellants argued nonetheless that this court should develop the common law so as to ensure that as a matter of public policy, and in the interests of the administration of justice, it is improper for a legal practitioner to act against a person who had an interest in an entity for whom the practitioner had previously acted. They contended that this court should follow the development of the law in other jurisdictions which have recognized the principle that a lawyer should not act against a person who has had a close connection, or close convergence of interests, with a former client of the lawyer."*

[74] In deciding this issue, Lewis JA, recognized that *Bolkiah* was silent on the question of the court's inherent jurisdiction in so far as the administration of justice is concerned, but that it could not have been the intention of the court to abolish it; considered and quoted, with approval, the principle in *Kallinicos*; recognised that the inherent jurisdiction should be exercised with circumspection, and recognised that countervailing considerations relating to a client's right to choose his or her legal practitioner and the latter's right to choose a client, are important factors to be taken into account. The court quoted extensively from the leading English work on conflicts of interest, *Conflicts of Interest,*[39] wherein it was pointed out that the inherent jurisdiction to restrain lawyers from acting in the interest of the administration of justice in England has been limited to cases *'where the lawyer has had a longstanding*

*professional relationship with one party but then seeks to act on the other side, where the lawyer will or may be a material witness, or where he is acting against one of two former joint clients on a matter related to the joint retainer".* The court

[39] *Supra* footnote.

specifically referred to the Chancery Division of the Queen's Bench in England in *Halewood International supra*[40] in which the principle was endorsed by Neuberger J, after referring to a client's right to impart information confident that it shall remain confidential, and not used against him subsequently, in which it was said:

> *'It is wrong not to overlook the countervailing factors, however. There are the rights of the professional adviser to act subsequently for whatever party chooses to instruct him, and the right of third parties to instruct whatever professional advisers they choose. These countervailing rights also have a public interest dimension, as does the right of the former client.'*

[75] Lewis JA concluded that, on the specific facts of that case, even if they were to find that our law has such an inherent jurisdiction, *"we are still dealing with parties who were not themselves clients of the lawyers. And so the appellants' cause of action is yet one more step removed."*[41]

[76] The applicants contend that the facts *in casu* justifies the recognition of the inherent jurisdiction approach in South Africa, and justifies an injunction against Billy Gundelfinger Attorneys from further representing Mrs L in the divorce proceedings against Mr L. The respondents argue, with reference to *Bolkiah*, and *Halewood International,* that it is doubtful whether the English Courts will, by virtue of their inherent jurisdiction in relation to the administration of justice, restrain a solicitor from acting in a matter at the instance of a former client in circumstances where the abuse or potential abuse of that client's confidential information does not arise. It is further

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[40] [2000] P.N.L.R. 788 at 791.
[41] 2020 (3) SA 99 at para [40].

submitted that our Courts, with reference to *Wishart*[42], have not seen the need to exercise its inherent jurisdiction on that basis. The respondents contend that should such inherent jurisdiction however exist, there are a multitude of countervailing factors which militate against the grant of the relief sought.

[77] The facts of this matter are distinguishable to the facts that confronted the Supreme Court of Appeal in *Wishart*. In that matter the court was considering the extension of the conflict of interest principle to "quasi-clients", namely — the directors of the companies and not to restrict the prohibition only to the companies themselves, who had been the actual clients. On the facts of the present matter, there is no requirement to "extend" the application of the principle: the applicants (particularly Mr L) were the direct clients of Clarks Attorneys (Ms Steyn). Mrs L is the direct client of Gundelfinger Attorneys who now employs Ms Steyn. Our courts have always had inherent jurisdiction over the officers of Court. In the normal exercise of this discretion, this court, as a matter of routine, admits legal practitioners to practice and similarly, removes such legal practitioners. As a matter of public policy and in the interest of the administration of justice, I have no doubt, that the facts in the present matter justifies the recognition of the inherent jurisdiction approach in our law.

[78] Applying the test as proposed in *Kallinicos* the question is would a reasonably minded person in possession of all the relevant facts consider the judicial process and due administration of justice to be threatened if Mr Gundelfinger continue to act

[42] *Wishart and Others v Blieden N.O. and Others* 2013 (6) SA 59 (KZP) at para [57] and *Wishart and Others v Blieden N.O. and Others* 2020 (3) SA 99 (SCA) at paras [37] and [40].

for Mrs L in the divorce proceedings? For this to be the case, the applicants must show that, if Mr Gundelfinger continues to do so, this will prejudice the applicants.[43]

[79] The applicants contend that the employment of Ms Steyn by Mr Gundelfinger was always avoidable. It is the voluntary and deliberate act of the respondents that has led, gratuitously to the situation in which Mrs L now finds herself. It is contended that it is completely illogical to suggest that the applicants should be the ones bearing the prejudice that may arise from an entirely extraneous act of Mr Gundelfinger and Ms Steyn in concluding an employment relationship, over which the applicants had no say at all. The effect of the contentions in relation to so-called "counterveiling considerations" is to lay at applicants' door, the "prejudice" that Mrs L's own attorney has caused her and of which Mr Gundelfinger now complains. Public policy could never entertain such a result. Mrs L is perfectly at liberty to and able to obtain alternative legal representation.

***The freedom to act and the retention of confidence***

[80] In the matter of *In Re A Firm of Solicitors supra*[44], Lightman J dealt with the interrelationship between the freedom of a solicitor to act for a client and the need to retain the confidence of a client at as follows:

> "*The law regulating the freedom of a solicitor who, or whose firm, has at one time acted for a client subsequently to act against that client reflects the need to balance two public interests. First there is the interest in the entitlement of that client to the fullest confidence in the solicitor whom he instructs and for this purpose that there shall be no risk or perception of a risk that confidential information relating to the client or his affairs acquired by the solicitor will be disclosed to anyone else."*

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[43] *Wishart supra* at para [55].
[44] [1997] Ch. 19B-C.

[81] On this score, a legal representative should not too readily be disqualified from acting for a new client who wants his services for it is in the public interest that the services of legal representatives should be freely available.[45]

[82] The following countervailing considerations are of application in the case: Mr Gundelfinger has the freedom to act on behalf of clients of his choice, which freedom he exercised prior to Mr L engaging the services of Clarks Attorneys. Mrs L has the freedom to appoint legal representation of her choice, which freedom she similarly exercised prior to Mr L engaging the services of Clarks Attorneys. Mr Gundelfinger has acted for Mrs L for at least six years and is still acting for her, devoting many hundreds of hours to her cause. The applicants do not only seek an order interdicting Billy Gundelfinger Attorneys from representing Mrs L, but also from, briefing, advising, sharing information, knowledge or documents with any attorney appointed by Mrs L in the divorce proceedings. Should the interdictory relief be granted, the time devoted by Mr Gundelfinger to Mrs L's cause will be lost. Mrs L states that her financial position is such that she will effectively be deprived of representation.

[83] Ms Steyn's involvement with Mr L was limited and peripheral. I have already found that whatever confidential information may have been imparted by Mr L to Ms Steyn, such has either been disclosed or forgotten. Ms Steyn has had no involvement in the pending divorce action for at least eighteen months and an effective information barrier has been established to obviate any inadvertent disclosure of confidential information.

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[45] See *Fruehauf Finance Corporation Pty Ltd v Feez Ruthning (a firm)* [1991] 1 Qd R 558 at 566; *MacDonald Estate v Martin* (1990) 77 DLR (4th) 249 at 270 and *Carindale Country Club Estate Pty Ltd v Astill and Others* 115 ARL 112 at 119.

[84] The prejudice that Mrs L would suffer if Mr Gundelfinger is interdicted from further representing her in the divorce proceedings, compared to any possible prejudice the applicants might suffer is not comparable. The inherent jurisdiction of the court to grant such relief is discretionary and should be exercised only in exceptional circumstances and with caution. I am satisfied that a reasonably minded person in possession of all the relevant facts would not consider the judicial process and due administration of justice to be threatened if Mr Gundelfinger continue to act for Mrs L in the divorce proceedings. In the circumstances, it is not in the public interest to disqualify Mr Gundelfinger from continuing his services to Mrs L.

**THE CODE OF CONDUCT PRESCRIBED UNDER THE LEGAL PRACTICE CODE**

[85] The applicants contend that the Code of Conduct that is prescribed under the Legal Practice Act No 28 of 2014 sets out a standard of ethical conduct to be observed by legal practitioners:

*"3. Legal practitioners, candidate legal practitioners and juristic entities shall—*

*3.1 maintain the highest standards of honesty and integrity;*

*3.2 uphold the Constitution of the Republic and the principles and values enshrined in the Constitution, and without limiting the generality of these principles and values, shall not, in the course of his or her or its practice or business activities, discriminate against any person on any grounds prohibited in the Constitution;*

*3.5 refrain from doing anything in a manner prohibited by law or by the code of conduct which places or could place them in a position in which a client's interests conflict with their own or those of other clients;*

*3.6 maintain legal professional privilege and confidentiality regarding the affairs of present or former clients or employers, according to law..."*

[86] The applicants submit that the wording of clause 3.5 regulates not only actual conflict but extends the scope to circumstances where there "could" be a conflict of interest situation. Interwoven into the application of the test prescribed by the Code of Conduct is the requirement to maintain *"integrity"* and the express obligation to "*maintain legal professional privilege and confidentiality regarding the affairs of present or former clients or employers, according to law."* It is contended that this standard is quite obviously and patently lacking from the conduct of Mr Gundelfinger and Ms Steyn in relation to the undoubted conflict of interests between the applicants and Mrs L who are adversaries in the same suit.

[87] In *Supasave Retail Ltd v Coward Chance (a firm) and Others; David Leigh & Co (Lincoln) Ltd v Coward Chance, (a firm) and Others*[46] Sir Nicholas Browne-Wilkinson V-C dealt with the weight and cogency which fell to be attached to rulings of the Law Society:

"*The Law Society's relevant committee having refused to express a view itself pending this hearing, I think I should make it clear that I am not at this hearing concerned with questions of the rules of the Law Society or the etiquette of the profession. As I understand it, that is a matter for the profession itself to regulate. To the extent that the rules of etiquette are inconsistent with and do not comply with the general law, then they would obviously be improper. But it is a common feature of professional rules that they impose a higher duty on the members of the profession than does the law itself. It seems to me in this case that I am concerned with legal obligations, not the obligations imposed by professional rules of conduct laid down by*

[46] [1991] 1 All ER 668 at 672F.

*the Law Society. Nothing that I say in this case should be taken by expressing any view of them beyond saying that, as a purely personal opinion, I find the rules that have been laid down sensible and good. That is not a finding of law; merely an expression of opinion. My job is simply to say whether, in law, in the circumstances that have happened, Dibb Lupton Broomhead & Prior can with propriety, in the absence of the consent of the Marks defendants and possibly Coward Chance and Mr Airey, continue to act for the*

*liquidators."*

[88] The applicants' reliance on paragraph 3.5 of the Code is, misplaced. The Code does not create a substantive rule of law. There is no merit in this argument.

**CONCLUSION**

[89] The applicants have not made out a case for the relief sought, and it consequently falls to be dismissed.

[90] In the result the following order is made:

90.1 The application is dismissed with costs, which include the costs of two senior counsel.

**L. WINDELL**
**JUDGE OF THE HIGH COURT**
**GAUTENG LOCAL DIVISION, JOHANNESBURG**
***Electronically submitted therefore unsigned***

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 21 December 2020.

**APPEARANCES**

| | |
|---|---|
| Attorneys for the applicants: | Fluxmans Attorneys |
| Counsel for the applicants: | Attorney K.J. van Huyssteen |
| Attorneys for the respondents: | Tshabalala Attorneys, Notaries and Conveyancers |
| Counsel for the respondents: | Advocate G. Farber SC |
| | Advocate J. Woodward SC |
| Date of hearing: | 9 October 2020 |
| Date of judgment: | 21 December 2020 |