IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

(1) REPORTABLE: ***NO***
(2) OF INTEREST TO OTHER JUDGES: ***NO***
(3) REVISED:

Date: ***28th February 2020*** Signature: _____

CASE NO: 25911/2017

DATE: 28TH FEBRUARY 2020

In the matter between:

AIR & ALLIED TECHNOLOGIES CC	First Applicant
FURMAN, DARRYL N O	Second Applicant
WEINBREN, GREGORY PAUL N O	Third Applicant
WEINBREN, DEAN ADAM N O	Fourth Applicant
FURMAN, ROWAN JARED N O	Fifth Applicant

and

ADVANCED AIR CONTROL TECHNOLOGIES (PTY) LTD	First Respondent
HATTINGH, CARL GRANK	Second Defendant

Coram: Adams J
Heard: 14 November 2019
Delivered: 28 February 2020

Summary: Anton Piller order – requirements – necessity for evidence of *prima facie* existence of vital documents and materials – electronic searches – purpose of order not to give the applicant access to documents or material or to

search for evidence on which to base claim – not to be used to obtain early discovery

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ORDER

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(1) The *ex parte* Anton Piller application in this matter is hereby reconsidered in terms of Uniform Rule of Court 6(12)(c).

(2) The Anton Piller order granted by this court on the 18th of July 2017 is set aside and discharged.

(3) The first, second, third, fourth and fifth applicants, jointly and severally, the one paying the other to be absolved, shall pay the costs of the first and second respondents occasioned by their opposition to the Anton Piller application.

JUDGMENT

Adams J:

[1]. A central issue in this opposed application is whether an Anton Piller order should be confirmed or set aside.

[2]. This is an application for the reconsideration of an *Anton Piller* application and for the setting aside of the *Anton Piller* Order which was obtained in camera on an *ex parte* basis by the applicants on the 18th July 2017. The order, which was granted by Molahlehi J, permitted the applicants to inspect and search the business and residential premises of the respondents for the purposes of identifying and pointing out to the sheriff certain evidence, which was defined in the order as comprising:

'... ... the originals, or copies of, or extracts from the following information and documents, and to identity and point out to the Sheriff the following movable items:

7.1.1 the Design Air computer program;

7.1.2 the first applicant's server;

7.1.3 the first applicant's client information such as contract details, billing information, contact details, customer lists and customer files;

7.1.4 the first applicant's plans, bearing reference to the first applicant, of air filtration systems;

7.1.5 the first applicant's diagrams, bearing reference to the first applicant, of air filtration systems.'

[3]. The order also provided in the usual terms for the appointment of a supervising attorney and computer technologists to search and examine all electronic storage media in the possession of the respondent. In terms of the order these persons were to be given access to: '... ... the cellular phone/s of the first respondent and its employees, the desktop and laptop computer hard drive/s, computer/s and electronic storage device/s, including but not limited to memory sticks, computer disks, external hard drives, tablets, etc, in or at the aforesaid premises'.

[4]. The order granted was in line with the type of order that is granted where it is anticipated that the search will be directed primarily at electronically stored information. Clause 9 of the order permitted the making of copies and/or forensic mirror images of 'such document/s and/or information and/or copies thereof, as identified by the applicants' computer technologist as being documents and/or information and/or hardware of the nature or containing any information of the nature mentioned in paragraph 7.1 above'. Simirlarly, the applicants were also permitted to save electronically and to delete such documents and information. Importantly, the order authorised the sheriff to 'attach and remove' such documents and hardware mentioned in paragraph 7.1 of the order.

[5]. The order in favour of the applicants was not couched in the form of a *rule nisi*, as proposed by the Practice Manual of this division as a standard *Anton Piller* Order. Instead, what the order did was to provide for the respondents to apply to court on not less than twenty-four hours' notice to the applicants' attorneys for a variation or setting aside of the order. This is in fact what the respondents did in this matter when, simultaneously with the delivery of their answering affidavit, delivered notice of application to apply to this court

for reconsideration of the Anton Piller application and for an order setting aside the order.

[6]. As I have indicated, the applicants were permitted to make copies of the identified items found at the premises of the respondents, and they were also allowed to take possession, *via* the agency of the office of the sheriff, a server, which is the property of the first applicant.

[7]. In line with the general philosophy underlying an Anton Piller order and the legal principles relating thereto, the order itself foreshadowed the institution of further proceedings against the respondents. The further proceedings are identified in the order as follows:

'(15). That the Sheriff shall inform the respondents that this order does not dispose of all of the relief sought by the applicants and that the applicants intend to institute an application or action for *inter alia* vindicatory relief and/or interdictory relief and/or damages and/or relief in terms of the Copyright Act 98 of 1978 against the respondents, and that in terms of this order, such application or action is to be commenced by 18 October 2017. Simultaneously the Sheriff shall serve the notice of motion and explain the exigency thereof.'

[8]. The order furthermore provided that the costs of this application are reserved for determination in the further proceedings referred to in the aforegoing paragraph.

[9]. It is noteworthy and bears emphasizing that the further proceedings contemplated in the order never came to fruition. No legal proceedings by the applicants were instituted against the respondents by the 18th of October 2017. The only action instituted by some of the applicants was for a claim based on contract and which bears no resemblance to the action or application contemplated by the order. In that action the summons was issued on the 10th of March 2017 under case no: 39591/2017 by the second, third and fourth applicants, in their official capacities as duly appointed executors in the deceased estate of the late Milton Lawrence Weinbren, against the second respondent. The claim in that action is for a refund of the amount of R15 829 833, being the proceeds of the life policy issued by Old Mutual on the life of Weinbren.

[10]. The *Anton Piller* order was executed by the sheriff of this court and searches were conducted by the applicants as directed in the order at both the place of residence of the second respondent and the business premises of the first respondent on the 19th of July 2017.

[11]. On the 5th of September 2017 the respondents delivered their answering affidavit simultaneously with their notice in terms of Uniform Rules of Court 6(8) and 6(12)(c), in terms of which they gave notice to apply for a reconsideration of the *ex parte* application for the Anton Piller order and for a setting aside of the order itself. The applicants' replying affidavit was delivered on the 20th of October 2017.

The Facts

[12]. The first applicant, Air & Allied Technologies CC ('A & AT'), was engaged at all times material hereto in the business of designing, manufacturing, assembling, installing and maintaining of air purification equipment. One Mr Milton Lawrence Weinbren ('Weinbren') was the sole member, the sole proprietor and the controlling mind of the first applicant, which employed about thirty employees, including the first respondent, whose official designation in the company was that of manager.

[13]. On the 31st of October 2016 Weinbren committed suicide. His deceased estate is represented in these proceedings by the second to the fifth applicants, who are the joint executors of the said estate. The dispute which forms the subject of the litigation herein is in essence between the deceased estate, which obviously has an interest in the first applicant, and the respondents, who the applicants allege unlawfully interfered with that interest. After the death of Weinbren the second respondent commenced doing business in the first respondent what appears to be in direct competition with the first applicant.

[14]. It is the case of the respondents that, after the death of Weinbren, the first applicant was unable to carry on business mainly because it was for all intents and purposes insolvent, both legally and factually. This, according to the respondents, became apparent during November 2016. The second respondent, who happened to be a beneficiary on one of the life policies taken

out by the first applicant on the life of Weinbren, received the proceeds of that policy on the 1st of December 2016. This appears to be a bone of contention and somewhat of a thorn in the flesh for the heirs of Weinbren, who believe that the second applicant is not lawfully entitled to those proceeds. There is in fact pending litigation between the parties in which the deceased estate is claiming back those proceeds from the second respondent.

[15]. After the death of Weinbren an urgent meeting was convened on the 15th November 2016 between the second respondent, the second applicant and the auditor of the first applicant, who confirmed that the first applicant was insolvent and that it should stop trading. At the meeting it also became apparent that, from a cash flow point of view, the company was in dire straits and was unable to pay staff salaries which had fallen due on the 31st of October 2016.

[16]. The indications were also that the heirs of Weinbren were not interested in carrying on the business of the first applicant. At that stage the first applicant was engaged in seven incomplete air filtration projects and the interested parties, including the second respondent and the applicants were hopeful that funds could be raised to continue the business of the first applicant as a going concern. A business plan was adopted to ensure payment to essential suppliers and payment of the staff salaries with a view to complete the seven incomplete projects. As part of this plan the second respondent advanced to the first applicant an amount of R70 000 to settle the October 2016 salary bill.

[17]. On the 11th of November 2016, the second applicant, as the resident executor of the deceased estate, formally confirmed with the heirs that the first applicant was insolvent, and that a liquidator would need to be appointed. None of the heirs were at that stage interested in recapitalising the business of the second applicant.

[18]. By the 29th of November 2016 the attorney representing the deceased estate had advised the heirs and their representatives that the first applicant was in dire financial straits and that there were no prospects of the company being rescued as a business. The heirs of Weinbren, as I indicated above, as well as the executors showed no interest in the future of the first applicant and

contributed nothing as regards plans and ideas to revive the company. This left the second respondent with no alternative but to resign from the employ of the first applicant, which he duly did on the 1st of December 2016, which incidentally is the same day on which Old Mutual paid to the second respondent the proceeds of the life policy. Even after his resignation as a Manager from the first applicant, the second respondent continued to 'shepherd' the business of the first applicant, as he did up to that point, in anticipation of the appointment of a liquidator to the company.

[19]. On Friday, the 2nd of December 2016, the second respondent on behalf of the first applicant from his own funds paid the sum of R265 898,63 in respect of the November 2016 staff salaries. This payment he says he disbursed in the hope and on the understanding that he would at some point be reimbursed by either the deceased estate or the first applicant or by its liquidator. He also made arrangements with other suppliers, notably the Ekurhuleni Municipality and Telkom, so as to ensure that the company's business carries on running.

[20]. On Monday, the 13th of December 2016, another employee of the first applicant, one Jackie van Deventer, enquired from the executors as to the progress made in regard to the appointment of the liquidator and again bemoaning the dire finances of the company. The second applicant advised her that he had not had his appointment as an executor of the deceased estate formalised yet and was experiencing frustration with the attorney handling the affairs of the estate.

[21]. On 15 December 2016, the first of the first applicant's outstanding projects was completed. All income generated from these projects during November and December 2016 was deposited into the bank account of the first applicant.

[22]. On the 22nd of December 2016 the second respondent paid the staff salaries of the first applicant amounting in total to R202 874,70. By that time, no further arrangements were capable of being made for the payment of electricity and security services at the premises; or for Internet connectivity. The closing down of the business of the first applicant at that stage appeared to be

inevitable. On the 22nd of December 2016 the doors of the first applicant were closed for the Christmas period. The electricity had not been paid and neither had the security company. There was no prospect of the premises being secured. The second respondent, in light of the disinterest by the heirs and the executors of the deceased estate, resolved to protect the interest of the first applicant and to that end he made arrangements to move its moveable property off the premises for safekeeping.

[23]. The computers and printers of value were transferred to one Dave Stewart of FCA, the IT Company with which the first applicant had a supply agreement for the supply of IT products. The server and certain server related equipment the second respondent took with him to his new company, the first respondent, which he had form on the 1st of December 2016.

[24]. The balance of the property, consisting of furniture and customer records, was placed in the *XtraSpace,* a storage facility hired by the first applicant. There was already a large amount of the first applicant's property stored at this facility. Come the end of the year, the second respondent had closed the business of the first applicant. The only outstanding business was the completion and finalisation of the remaining filtration projects, which the second respondent intended, almost as a favour to the first applicant and its customers, intended completing though its new company, the first respondent.

[25]. As I indicated above, during the third week of November 2016, the second respondent commenced setting up the first respondent to conduct an air purification business. On 22 December 2016, the VAT registration for the first respondent was finalised and the second respondent received a SARS notification. At the start of the new year, the second respondent solicited key employees from the first applicant and poached them to the first respondent.

[26]. Through the first respondent the second respondent concluded the first applicant's outstanding projects for the benefit of first applicant.

[27]. On 10 January 2017, the second respondent paid the outstanding storage fee at XtraSpace and moved all the first applicant's property from the XtraSpace storage facility into the offices of the first respondent. He did this as

a favour to the first applicant and in order to limit the further expenditure that was being incurred by the first applicant. He also terminated the use of the XtraSpace facility. When the materials were delivered to XtraSpace, there was a large amount of old and unused materials that were stored there, including marketing brochures and files and other documents that were now very dated. *XtraSpace* would have sold or discarded whatever was left of the first applicant's property in the unit if it had been left behind.

[28]. All of this documentation and property was moved to the premises of the first respondent where it was placed wherever a suitable place for it could be found even though there was no prospect of using much of the items. For example, the first applicant's branded marketing material had no value to the respondents as they were trading under the name 'Advanced Air'. The second respondent retained the first applicant's materials for the purpose of handing it over to, or acquiring it from, the liquidators upon their appointment and them taking over the business of the first applicant.

[29]. During January 2017 the second respondent requested a valuation on the computer and printers from FCA. On 22 January 2017, the second respondent received the requested valuation. On 30 January 2017 FCA confirmed that the computers would be sorted out and sold once a liquidator had been appointed.

[30]. On Friday 10 March 2017 one Jackie sent an email to the executors regarding the computer equipment. This email did not have the correct email address for the second applicant and was not received by him. On Tuesday 14 March 2017 the second respondent received a valuation of the furniture. On Wednesday, 15 March 2017, the second respondent emailed a list of the first applicant's projects being handled by them to the second applicant. The second respondent detailed each of the projects and the savings that the completion of the projects will have for the deceased estate. All income generated through these projects during November and December 2016 was paid into the bank account of the first applicant, totalling R883 595.34.

[31]. During May 2017, the second respondent was telephonically advised by the second applicant that the executors' attorney would send a letter confirming the liquidation of the first applicant. On 4. July 2017, Jackie phoned the second applicant to enquire on the progress of the appointment of a liquidator to the first applicant. The second applicant advised that no liquidator had been appointed yet.

[32]. The remainder of the seven projects were completed by the first respondent on behalf of the first applicant between February and August 2017. It is the case of the respondents that by completing the projects on behalf of the first applicant, the first respondent had in effect saved the first applicant approximately R8 million. This amount is arrive at, according to the respondents, by doing a rough calculation of the damages claims which the first applicant would have faced from its customers based on breach of the supply agreements with the first applicant.

[33]. Throughout the time that these projects were being completed, and in order properly to do so, the second respondent required the information contained on the first applicant's server, which is mentioned the Anton Piller order as the one item to be located and removed from the premises of the respondents, including the customer and supplier contact details, the designs and manufacturing drawings, and the general arrangements drawings of the installations. The quotations, the contracts the physical order received from the client, operating manuals, maintenance manuals, data books, purchase orders placed on suppliers, email correspondence with customers, email correspondence with suppliers, technical data from suppliers, delivery & Invoice details in 2016 that were relevant to these projects was stored on the server and was required by the second respondent to complete the contracts.

[34]. The respondents contend that in completing the first applicant's projects, far from acting to its detriment, the second respondent was in fact doing it a huge favour by seeking to manage the affairs of the first applicant. All that they were doing, so the respondents contend, was to do some serious damage control on behalf of the first applicant and the deceased estate, for which they

applicants should be grateful. Nobody else, not the heirs and not the liquidators, were prepared to take responsibility for the sinking ship that was the first applicant. The second respondent treated those projects separately from the new projects undertaken by first respondent, and he had accounted separately for the money that was earned and paid, and the expenses that were incurred in carrying out the work on behalf of the first applicant.

[35]. The respondents' explanation for being in possession of the server and other computer equipment was that they required access to the system in order to complete, as a favour to the first applicant and the deceased estate of Weinbren, the incomplete projects. Had he been asked to return the equipment, so the second respondent stated, he would have done so immediately and handed it over to whoever would have completed these particular projects. In taking possession of the first applicant's property, he did not breach any confidentiality agreements and did not violate any principle of confidential information as he was acting in the interests of first applicant when doing so.

[36]. In the interim, the second respondent has been able to secure new contracts with many new entities, including no doubt clients previously on the books of the first applicant. The respondents contend that the second respondent was and is in no way prevented from competing with the first applicant even if it was still operational and fully functional, which, in any event, was not the case since the death of the Weinbren. The first applicant since then was not in business and, so the respondents argue, was not capable of being competed with.

[37]. The second respondent also submits that in rendering services to its new clients, the second respondent did not utilise any of the first applicant's confidential information. The second respondent in fact used the skill and expertise which he had acquired over the years in working in the air filtration industry. Even if first applicant was not defunct, it would not have had any propriety or protectable interest in such knowledge and skill which the second respondent had acquired over many years. It is also the case of the second respondent that he had not breached any fiduciary duty. If anything, in

completing the uncompleted projects of the first applicant, he had acted, so the second respondent contends, as if he had a fiduciary duty to the first applicant.

[38]. There has been no concomitant progress of the action foreshadowed in the Anton Piller proceedings.

The Law and its application in casu

[39]. In *Non-Detonating Solutions (Pty) Ltd v Dune and Another* 2016 (3) SA 445 (SCA) the requirements for Anton Piller relief were set out. The following was stated:

'[18] The use of Anton Piller orders in our law is now well established. The requirements that must be satisfied for the granting of such an order were summed up by Corbett JA in *Universal City Studios Inc v Network Video (Pty) Ltd*, as follows:

> 'In a case where the applicant can establish *prima facie* that he has a cause of action against the respondent which he intends to pursue, that the respondent has in his possession specific documents or things which constitute vital evidence in substantiation of the applicant's cause of action (but in respect of which the applicant can claim no real or personal right), that there is a real and well-founded apprehension that this evidence may be hidden or destroyed or in some manner spirited away by the time the case comes to trial, or at any rate to the stage of discovery, and the applicant asks the Court to make an order designed to preserve the evidence in some way....'

'[19] The purpose of Anton Piller orders is therefore to preserve evidence to be used in a forthcoming dispute. Such evidence must constitute vital evidence in substantiation of the applicant's cause of action.'

[40]. On the return day the test remains a strong *prima facie* case in respect of the cause of action and possession and apprehension on a balance of probabilities. (See *Friedshelf 1509 (Pty) Ltd t/a RTT Group and Others v Kalianji* supra

[41]. It is the case of the applicants that none of them were aware that the second respondent had commenced business through the first respondent or that the second respondent was completing first applicant's outstanding projects. The second respondent never sought the permission of any of the applicants to move the server or to use the server, never disclosed that he was

in possession of anything belonging to the first applicant and never contacted any of the applicants and offered to return the server or any of computer equipment in his possession.

[42]. The search and seizure had also produced four external hard drives referred in possession of the respondents, two of which were connected to the first applicant's server. These hard drives, so the applicants contend, contained the first applicants' confidential information and other protected computer programs, plan and diagrams that fell within the ambit of the Anton Piller Order. These hard drives were attached and removed, so the applicants submitted, inasmuch as they formed part of the server. The other two hard drives were attached and removed with the consent of the respondents, who conceded that it belonged to the first applicant.

[43]. I understand the respondents' case in this reconsideration application not to be for the return of any of the documents and items attached and removed pursuant to the order. The respondents for example accept that the server belongs to the first applicant, and therefore they have no qualms with it being returned to the applicants together with other information which was attached and which belongs to the first applicant. The respondents nevertheless ask that the Anton Piller order be set aside on the basis more fully set out hereunder.

[44]. It is settled law that serious irregularities in the execution of an Anton Piller order can render it susceptible to being discharged on a reconsideration thereof. (See *Audio Vehicle Systems v Whitfield and Another* 2007 (1) SA 434 (C) at paras 28, 29 and 60).

[45]. The onus resting on an applicant at the hearing of an *ex parte* Anton Piller application is a 'clear case' or an extremely strong *prima facie* case. (See *Anton Piller KG Manufacturing Processes and Others* (1976) 1 All ER 779, *Roamer Watch Co SA and Another v African Textile Distributors* 1980 (2) SA 254 (W).)

[46]. An Anton Piller search and seizure is an extremely invasive procedure and there are sound public policy reasons as to why an applicant should be

required to demonstrate a strong *prima facie* case (as opposed to a prima facie case) at the ex parte stage of the application.

[47]. In *Roamer* above at 272D Cilliers AJ stated:

'The applicant should make out a clear case against the party against whom the order is sought. I would not necessarily go so far as Ormrod LJ, who stated that 'an extremely strong *prima facie* case' should be made out by the applicant, but the respondent should not be exposed to attachment and removal of his documents, information and goods, on grounds which are speculative or fail clearly to make out a case for relief against the respondent. In particular, the applicant's case should not be entirely dependent on such evidence as may or may not be found in the respondent's possession: that would amount to a mere fishing expedition'.

[48]. The question arises as to how to approach the onus on a return day or a reconsideration of the application.

[49]. In my view there is no distinction to be drawn between the rehearing of an Anton Piller application on the return day where a *rule nisi* has been granted, or reconsideration thereof, in the absence of a *rule nisi*. The essence of the further hearing remains the same, and that is whether the initial order granted should remain in force pending the discovery process in the intended action to which the Anton Piller order relates, or whether the order should be set aside or discharged.

[50]. Proof of a balance of probabilities is required in respect of the remaining requirements for an Anton Piller order, namely: that the respondent has in his possession specific documents or things that constitute vital evidence and substantiation of the applicants' cause of action; and that there is real and well-founded apprehension that evidence might be hidden or destroyed.

[51]. Mr Vetten, Counsel for the respondents submitted that applicants sought to use the Anton Piller order as a quasi-vindicatory tool to recover possession of the moveable property. Paragraph 10 of the order permitted the Sheriff to attach and remove the server from wherever it was found.

[52]. It is well established that Anton Piller proceedings should not be vindicatory in nature or effect. The only basis for this claim is the first applicant's

assertion of ownership. This was unlawful. The Order should not have been sought or granted on these terms.

[53]. Furthermore, when regard is had to the terms of the order and what was sought, it is clear that the applicants sought to execute a fishing expedition for the purpose of obtaining early access to the information for the purpose of framing a cause of action (rather than that which is permitted, namely the search for particular documents for an already conceived cause of action).

[54]. The Order that was sought and obtained, granted the applicants immediate access to the product of the search and seizure, before the phase of discovery had been reached. This practice has been clearly deprecated and outlawed by the Supreme Court of Appeal as far back as 2004 in *Memory Institute 5A CC t/a SA Memory Institute v Hansen and Others* 2004 (2) SA 630 (SCA)

[55]. I therefore find myself in agreement with the submission made by Mr Vetten that *in casu* the Anton Piller Order sought and granted pursued ulterior objectives in a manner that is not permitted under law and falls to be set aside.

[56]. As regards, the strong prima facie case, the respondents contend that the applicants' intended action based on an infringement of a copyright is ill-founded for the following reasons. 'Design Air', so the respondents contend, was not a computer programme, but a file that operated as an *Excel* template. It was not a unique programme with a new or original character. The applicants do not even make the allegation that it is.

[57]. This file processed data using the computing power written into the Microsoft Excel programme. The information and formulas captured in the Excel spreadsheet are not the product of any design or origination by first applicant. It is information that is taught at tertiary institutions. The respondents therefore argue that the 'Design Air' template does not constitute a work eligible for copyright, or protection under the Copyright Act, 1978. I agree with this submission.

[58]. I am therefore of the view that there is no *prima facie* case under this heading.

[59]. The same applies to the case based on the breach of fiduciary duties. As a manager and employee of the first applicant, the second respondent owed the first respondent fiduciary duties. I am of the view that, given the manner in which the second respondent had shepherded the business of the first applicant when it was facing closure, it is difficult to see a cause of action. He paid the salaries of the employees of the first applicant for October, November and December 2016. This went beyond the call of duty. He arranged the affairs of the first applicant so that its contracts could be concluded, resulting in significant prevention of claims in the insolvent estate of the first applicant. Work was completed and creditors were paid. He safe-guarded the property of the first applicant and he reported and accounted to the persons whom he thought responsible for finalising the affairs of the first applicant.

[60]. I am furthermore of the view that the applicants did not comply with the second requirement for the Anton Piller order, namely that the evidence sought must be vital. The respondents must have been the only source of the evidence and the applicant was unable to obtain such evidence from any other person.

[61]. The applicants did not even attempt to address this requirement for the granting of the relief sought.

[62]. I also do not believe that the applicants have complied with the third requirement that being that they had an apprehension that the respondents would destroy any evidence. The applicants contend that because the respondents are not averse to unlawful conduct and are guilty of misappropriating the proprietary and confidential information and moveable property of the first applicant, there is a basis for a real fear that the respondents will seek to hide or destroy the evidence. There is no merit in this argument. As rightly pointed out by Mr Vetten, this contention flies in the face of the fact that the respondents were accounting to the second applicant and indicated that they would have cooperated with the liquidators once they were appointed.

[63]. The applicants therefore fail this leg of the test too.

[64]. In sum, on a consideration of all the competing allegations and contentions in this matter, I am of the view that the applicant has not shown a strong *prima facie* case. This conclusion seems to be strengthened by the fact that by the time this application was argued before me on the 14th of November 2019, the legal action contemplated in the Anton Piller order had still not been instituted.

Costs

[65]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

[66]. Applying this general rule, I intend granting costs in favour of the respondents.

[67]. The respondent's counsel urged me to dismiss the application with punitive costs. In the exercise of my discretion I do not intend awarding punitive costs.

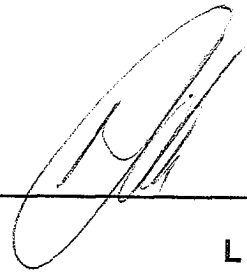
Order

Accordingly, I make the following order:-

(1) The *ex parte* Anton Piller application in this matter is hereby reconsidered in terms of Uniform Rule of Court 6(12)(c).

(2) The Anton Piller order granted by this court on the 18th of July 2017 is set aside and discharged.

(3) The first, second, third, fourth and fifth applicants, jointly and severally, the one paying the other to be absolved, shall pay the costs of the first and second respondents occasioned by their opposition to the Anton Piller application.



L R ADAMS
Judge of the High Court
Gauteng Local Division, Johannesburg

HEARD ON:	14th November 2019
JUDGMENT DATE:	28th February 2020
FOR THE APPLICANTS:	Adv L Hollander
INSTRUCTED BY:	Edelstein Farber Grobler
FOR THE RESPONDENTS:	Adv Dirk Vetten
INSTRUCTED BY:	Kasimov & Associates