

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case No.: SS11/2010

In the matter between:

THE STATE

And

RUDOLPH MACHIEL VISAGIE

Accused

Heard: 11, 13, 18, 19, 20 April 2011, 3, 4, 5, 9, 10, 11, 17, 30, 31 May 2011, 1, 2, 3, 7, 8, 9, 13 June 2011, 14 November 2011, 1 and 2 February 2012, and 5 March 2012.

Court: Acting Judge J I Cloete

Delivered: 23 April 2012

JUDGMENT

CLOETE AJ

[1] The accused, who was unrepresented almost throughout the trial, faces eight counts, namely two of fraud (alternatively theft), two of contravening s 424 of the Companies Act No 61 of 1973 (*"the Companies Act"*), three of contravening s 218(2)(a) read with sections 218(1) and 441(1)(d) of the Companies Act, and one of contravening regulation 10(1)(c) read with regulations 1 and 2 of the Exchange Control Regulations promulgated in terms of s 9 of the Currency and Exchanges Act No 9 of 1933. The

provisions of s 51(2)(a) of the Criminal Law Amendment Act 105 of 1997 are applicable to the first count of fraud (alternatively theft).

[2] It is common cause that during the period October 2006 until December 2007 (hereinafter referred to as "*the relevant period*") the accused conducted the business of debt consolidation and the extension of home loan finance throughout the Republic of South Africa through the Rudco Management Company (Pty) Ltd and later the Rudco Finance Company (Pty) Ltd (for the sake of convenience these two companies shall be referred to as "*Rudco*"). The aforementioned business products were aimed at individuals who were not credit worthy and who as a result would not have qualified for credit at other credit extending institutions. The particular individuals to whom these products were marketed were thus consumers who already had high-risk financial exposure or who had creditors demanding payment and may have been facing legal action from these creditors. The accused solicited business from debt-ridden consumers via agents on a national basis. He also later during the relevant period marketed and solicited investment for the purchase of property or estate development franchises through an entity, C-Shell 464 (Pty) Ltd trading as The Intel Property Group ("*Intel*").

[3] It is also common cause that during the relevant period the accused was the sole director and shareholder of Rudco Management Company (Pty) Ltd. He was also the sole shareholder of Rudco Finance Company (Pty) Ltd and one of its two directors. The other director was Genevieve Wyeth (now Bloomfield) who was appointed on 26 February 2007 and resigned on 28 August 2007. The accused together with his former co-accused and

son, Llewellyn Visagie, and the late Khay Syed-Eusuph were directors of Intel (despite the accused's allegation that he resigned as a director at some stage, documentation obtained from the Registrar of Companies does not bear this out). Another entity, Comugrande Properties CC (hereinafter referred to as "*Comugrande*"), was registered on 4 October 2006. Llewellyn Visagie was the sole member of this entity as from 16 May 2007.

[4] The principal offices of both Rudco and Intel were situated at 37 Strand Street, Cape Town. The registered office of Comugrande Properties CC was situated at Unit K2, Centurion Business Park, Bosmansdam Road, Milnerton, Western Cape.

[5] In essence the state's case is that during the relevant period:

5.1 As a consequence of misrepresentations made by the accused and/or employees and/or agents on his instructions, clients of Rudco deposited R9 258 507.91, and potential investors of Intel deposited R493 120, into the bank accounts of these entities.

5.2 The accused failed to apply the funds so deposited in accordance with the express mandates of these clients and investors, and in fact appropriated the sum of R9 148 287.43 in respect of Rudco clients and R493 120 in respect of Intel investors directly contrary thereto. Included in these amounts is a total sum of R3 915 646 (comprised of R3 488 656 in respect of Rudco and R426 990 in respect of Intel) which it is alleged the accused appropriated directly for his personal benefit and/or which were applied to business expenses on his specific instructions. Also

included is the sum of R2 345 531 from the Rudco accounts which the accused applied to refunds to clients and/or payment to clients' creditors by using the funds of other clients for this purpose.

- 5.3 The fraud (alternatively theft) alleged by the State does not lie in the *quantum* of the amounts appropriated by the accused for his own personal benefit and/or business expenses; it lies in the intentional misrepresentation of financial backing and the intentional misappropriation of the funds paid. It is for this reason that the State relies on fraud (alternatively theft) in a total of approximately R9.6 million in respect of both Rudco and Intel, coupled with reckless trading as provided for in s 424 of the Companies Act.
- 5.4 In addition the accused was precluded from being appointed or acting as a director of any company or taking part, directly or indirectly, in the management of a company due to his previous conviction for theft as provided in s 218 of the Companies Act.
- 5.5 Lastly, the accused breached regulation 10 of the Exchange Control Regulations by entering into a transaction in which he exported the sum of R377 650 (comprised largely of client and/or investor funds) out of the Republic of South Africa to Sierra Leone without the permission of the Treasury and under the guise of gift allowances.

[6] Before turning to the evidence it is necessary to deal with the accused's lack of legal representation as also certain procedural aspects which were raised and dealt with during the trial.

[7] After a previous postponement at the request of the accused the trial was scheduled to commence on 11 April 2011. At the commencement of the trial Mr Fisher appeared on behalf of the accused and informed the court that the sole purpose of his presence was to apply for a postponement of the matter. He acknowledged that he had been informed approximately 8 to 10 days prior thereto that the State would vigorously oppose any such application.

[8] The reasons submitted by Mr Fisher in support of the application for postponement were the following:

- 8.1 The accused had instructed him that he was not in a position to pay the fees of private counsel; and
- 8.2 The only other avenue available to the accused to pursue was the appointment of counsel by the Legal Aid Board. Mr Fisher advised the court of his instructions that the accused was only informed in February 2011 that he could appeal the refusal of the Legal Aid Board to appoint counsel to represent him, but that he had "*not fully understood the position*".

[9] Mr Fisher acknowledged that opportunities to obtain legal representation had been afforded to the accused in the past and that the State could not be expected to wait indefinitely to proceed with prosecution. He advised however that the accused had informed him earlier that morning that there was now a "*remote possibility*" that he would be able to obtain private funding, but he was unable to advise the court of when this funding might be forthcoming. He proposed that the court postpone the matter for a few days in order to enable the accused to pursue this avenue, alternatively to appeal against the refusal of the Legal Aid Board, and if he was successful that the trial then be postponed for a more "*substantial period*" (a matter of months) to enable counsel for the accused to prepare for trial.

[10] Mr Fisher was candid with the court that no new developments had taken place concerning legal representation for the accused since the proceedings on 25 August 2010 when the court had directed that no further postponements would be granted and that the matter would proceed to trial on 11 April 2011, save for his (i.e. Mr Fisher's) presence in court to apply for a postponement on behalf of the accused. He also conceded that whether the accused could now secure funding was nothing more than a remote possibility.

[11] Mr Fisher informed the court of his instructions that the accused was in fact not prepared for trial, since, according to the accused, being in custody made it difficult to prepare for trial and documentation had been mislaid.

[12] Ms Valley-Omar who appeared for the State opposed the application. She pointed out that the offences date back to 2006 to 2007 and that the court should bear in mind that the recollection of witnesses could become less clear with the passage of time. She stated that this was the second occasion on which witnesses had had to be *subpoenaed*, and that the cost involved in securing the attendance of these witnesses at trial was substantial (approximately R50 000.00). She submitted that the accused had not only had ample time to obtain legal representation but also to prepare for trial.

[13] She pointed out that insofar as the application for legal aid by the accused was concerned, it had been refused by the Legal Aid Board on the basis of the financial information disclosed in his application by the accused himself. She referred the court to the report furnished by the Legal Aid Board in terms of s 3B(2) of the Legal Aid Act No 22 of 1969, in which the reasons why legal aid had been refused were set out. This report had previously been made available to the accused. She informed the court that the trial was initially set down for hearing on 2 August 2010 and that by 27 July 2010 not only had hard copies of all relevant documents been furnished to the accused but that prior thereto electronic copies of such documents had been furnished to his previous legal representatives on three separate occasions.

[14] Ms Valley-Omar also informed the court that the accused had stated in previous proceedings that he had perused the relevant bank statements and that he had prepared a defence. She stated that the accused had never informed the court on any previous occasion that documentation in his possession had been mislaid as a result of him being in

custody, and that this was not even raised by the accused at the pre-trial conference held on 11 February 2011.

[15] Having considered the provisions of s 342A of the Criminal Procedure Act 51 of 1977 (*the Act*), I concluded that the reasons advanced by the accused in support of a further application for a postponement were without merit. Firstly, it is clear from the report of the Legal Aid Board that the accused applied for legal aid on 21 July 2010. He was consulted whilst in custody at Pollsmoor Prison on 23 July 2010 to complete the Constitutional Means Test, as a consequence of which his application was refused. On 26 July 2010 the court ordered Legal Aid South Africa to provide a report as envisaged in s 3B. The Legal Aid Board in its report recommended that legal representation at State expense should not be made available to the accused in that, *inter alia*, he exceeded the means test “*by millions*”. Reference was also made to the accused having the right to appeal against the decision of the Legal Aid Board.

[16] In the proceedings on 25 August 2010 the accused informed the court that he did not have funds available to him to secure private legal representation but that he had “*reached an agreement*” with his erstwhile legal representative concerning future representation. He further confirmed that he had been placed in possession of all relevant documentation in order to enable him to prepare his defence. The court specifically informed him on that occasion that no further postponements would be granted.

[17] The minute of the pre-trial conference held on 11 February 2011 records that (a) the accused appeared in person as legal aid had been refused; and (b) a report had been provided by the Legal Aid Board in that regard. It was also recorded that the State had supplied the accused with hard copies of all documentation that it intended to adduce in evidence and that these hard copies had been provided to the accused at the end of July 2010 (in addition to electronic copies of such documents being provided to the accused's erstwhile attorneys on three previous occasions). It was further recorded that the accused had confirmed that he would conduct his own defence and that the trial would proceed on 11 April 2011.

[18] The accused knew that he was entitled to appeal the decision of the Legal Aid Board, as the report in terms of s 3B states precisely that. The accused is a businessman and it is difficult to accept that he would not have understood that he had the right to appeal, in addition to which the accused had previously had two separate legal representatives who, if faced with the accused's instructions that he was unable to afford private legal representation, would no doubt have informed him of his rights regarding legal aid, including the right to appeal against the decision of the Legal Aid Board.

[19] I accordingly found that the completion of the proceedings was being unreasonably delayed by the accused and it was for this reason that I refused his application for a further postponement. However, and in order to nonetheless eliminate any possible prejudice to the accused, and notwithstanding his dilatoriness, I afforded him a further period of two

days in which to finalise the preparation of his defence. The accused through Mr Fisher then informed the court that he would use these two extra days to prepare for trial.

[20] The trial was accordingly postponed until 13 April 2011.

[21] At the commencement of the proceedings on 13 April 2011 the accused requested the court to stand the matter down until 11h00 as he required this time to ascertain from his attorneys whether they had indeed been placed in funds which he had arranged to be paid to them. I accordingly adjourned the matter until 11h00. On resumption of the proceedings the accused informed me that no funds had in fact arrived in his attorney's trust account, and the proceedings thus commenced without the accused having legal representation.

[22] Ms Valley-Omar informed the court that the State had made available to the accused a copy of the indictment together with copies of all applicable law pertaining both to the proceedings and the handing in of documentation. This was confirmed by the accused.

[23] In response to a question from the court, Ms Valley-Omar confirmed that the State would be relying on the minimum sentencing legislation in the event that there was a conviction in respect of count 1 of the indictment, and the indictment was amended accordingly. I explained the minimum sentencing provisions (as set out in s 51(2) of the Criminal Law Amendment Act 105 of 1997) to the accused. The accused confirmed that he

understood. The accused was also advised of his rights prior to the State putting the charges to him.

[24] The accused pleaded not guilty to count one (both the main count and the alternative count), count 2, count 3 (both the main count and the alternative count), count 4 and count 8. In respect of counts 5 to 7, the accused indicated that he did not fully understand these counts, and I accordingly entered a plea of not guilty in respect of each of such counts on his behalf. Certain formal amendments were also made to the indictment with the consent of the accused.

[25] Once the accused had pleaded, I enquired whether he wished to make a statement setting out the basis of his defence. The accused indicated that he thought that he would now like to, but that he was not in a position to do so there and then and required a few days for this purpose. As it was not entirely clear whether the accused had previously been advised of his rights in terms of s 115 of the Act, and further having regard to the fact that the accused was unrepresented, I postponed the matter until 18 April 2011 to enable the accused to prepare a statement in terms of s 115. I also requested the State to furnish the accused with the list of admissions sought by it in order that he could, during the period of the postponement, consider the same before the resumption of proceedings on 18 April 2011.

[26] The matter was then postponed to 18 April 2011.

[27] At the resumption of proceedings on 18 April 2011 the accused informed the court that he had obtained legal advice to the effect that he should not make any statement in terms of s 115 of the Act, and further that he should exercise his right to remain silent as to the formal admissions sought by the state. This was duly noted. The State thus proceeded with its witnesses and I informed the accused of his rights and duties in respect of the cross-examination of these witnesses. The accused confirmed that he understood.

[28] Throughout the state's evidence, I informed the accused of his rights and duties in respect of cross-examination of witnesses after each witness had given evidence in chief. On each such occasion, the accused again confirmed that he understood.

[29] The State called 36 witnesses. They comprised of a cross-section of former clients of Rudco and investors in Intel, former employees, agents and business associates of the accused, Mr Bruce Schenk of the financial services company Real People, Colonel Scholtz of the Operational Intelligence Analysis Centre, Crime Intelligence in the Western Cape, Mr Tsepo Edgar Mokgawa, an investigator in the Financial Surveillance Department of the South African Reserve Bank, and the accused's son and former co-accused, Mr Llewellyn Visagie.

[30] In addition the State adduced certain evidence relating to the company and close corporation records of Rudco, Intel and Comugrande respectively, together with relevant bank statements and bank records in terms of s 212 of the Act.

[31] One of the State witnesses was Genevieve Wyeth who was called as a witness in terms of s 204 of the Act. She testified after her rights had been explained to her in accordance with s 204.

[32] The accused testified in his own defence and called no other witnesses. It should be noted however that he initially indicated that he wished to call a number of witnesses. His rights in terms of s 179(3)(a) and (b) of the Act were thus fully explained to him. The registrar elected to defer to the court any rulings on whether the witnesses which the accused initially indicated that he wished to call to testify in his defence were necessary and material for this purpose. The proposed witnesses were thus considered by the court in some detail and in respect of most of them, the accused then indicated either that he no longer wished to call them, or that he was not able to furnish sufficient information concerning their particulars and whereabouts in order to enable them to be subpoenaed. With regard to the others, and after considering the submissions made by both the accused and Ms Valley-Omar, I ruled that none were material and necessary for the accused's defence. I did however direct the registrar in terms of section 186 of the Act to issue a subpoena *duces tecum* for service on Mr Ryno Engelbrecht, one of the liquidators of Rudco, and afforded both the accused and Ms Valley-Omar the opportunity to provide me with a list of any documents which they required Mr Engelbrecht to produce when he testified. Ms Valley-Omar subsequently indicated that she did not require Mr Engelbrecht to produce any documents. The accused provided a list of documents and these were included in the subpoena *duces tecum* served on Mr Engelbrecht. Mr Engelbrecht then also subsequently testified.

[33] At the close of the state's case the accused applied for his discharge in terms of s 174 of the Act in respect of all counts save for those relating to the contraventions of s 218 of the Companies Act (i.e. counts 5 – 7) and regulation 10(1)(c) of the Exchange Control Regulations (i.e. count 8). The accused's application for a discharge was refused since I was satisfied that there was indeed evidence presented by the State upon which a reasonable person acting carefully might properly convict the accused (see *inter alia* *R v Herholdt* 1956 (2) SA 722 (W) at 722H and *S v Heller* (2) 1964 (1) SA 524 (W) at 541G).

[34] In light of the concessions and admissions made by the accused during the course of his own testimony I do not intend to deal in detail with all of the evidence of all of the witnesses, but rather to summarise the material aspects that emerged during their testimony.

[35] Tyrone Africa testified that he had been approached by the accused to consider a prospective business deal. At that stage the accused intended that Rudco would provide motor vehicle finance to non-creditworthy consumers. Africa had extensive experience as a banking consultant and financial administrator. He owned his own business, Business Data Solutions. Africa expressed interest in the product which was to be called Rudco Motor Vehicle Solutions. It was apparent that consultants would be needed to market the product. Africa introduced the accused to Wyeth (who was seeking employment) and the accused employed her, initially at least, to assist in marketing and sales.

[36] Put simply, what was envisaged is that the client would have to pay a deposit of R1 500, of which R300 was a once off non-refundable administration fee. This fee would be retained by Rudco irrespective of whether the client qualified for vehicle finance or not. The balance of R1 200 paid by the client would be allocated on account of the monthly instalments due once the finance was approved. After 6 months a car dealership would be approached and a vehicle purchased by Rudco. The client would then pay the monthly instalments due on account of the purchase price to Rudco. If the finance was not approved the particular client would be refunded the R1 200 portion of the deposit. It was for this reason that Africa advised the accused that two separate bank accounts would have to be opened, one for business income and expenses and the other for client funds.

[37] The accused told Africa that he had been blacklisted and was thus not able to open or operate a bank account. It was then agreed that Africa would open the bank account in the name of the Rudco Management Company. For sake of convenience this account will be referred to as the FNB 2264 account. Africa was the sole signatory on this account from 12 October 2006 when it was opened until it was closed on 27 December 2006 when the business negotiations between Africa and the accused came to an end. Africa testified that the negotiations came to an end after the accused appeared to abandon his proposed vehicle finance product and replaced it with a debt consolidation product. Africa and his five co-members of Business Data Solutions carefully considered the proposed debt consolidation product. After having made their calculations they decided that it appeared to be a pyramid concept and they did not see how it could work. Although the accused was adamant that it was not a pyramid concept but rather what he called a '*network*' Africa and

his business partners remained unconvinced, even when the accused told Africa that there would be a capital injection or financial backing, the source of which he could not disclose. It was at that point that Africa and his business partners withdrew from the negotiations and closed the FNB 2264 account. Approximately R65 000 was paid by clients into the FNB 2264 account from 16 October 2006 until the account was closed on 27 December 2006. When the account was closed all clients were refunded at Africa's instance.

[38] In his cross-examination of Africa the accused did not dispute that he had informed Africa that he would be receiving financial backing for his debt consolidation product. He focused rather on what he contended was Africa's lack of understanding of how his scheme would work and in particular that it was not a pyramid scheme.

[39] Wyeth testified that the accused explained the debt consolidation model to her. Again, a non-refundable administration fee would be charged to a client. The client would thereafter pay stipulated monthly instalments for a fixed period – called '*the disciplinary period*' – in order to prove his/her commitment and ability to pay. Upon expiration of the disciplinary period Rudco would settle the client's creditors and the debts so settled would be consolidated into one amount, to be repaid by the client to Rudco, again in monthly instalments over a stipulated period. In this way the clients would ultimately only have one creditor, namely Rudco. Wyeth confirmed that she was initially employed as a sales consultant by Rudco. She was paid commission on each successful client application. She was not paid a salary.

[40] On the instructions of the accused she opened a business account on 19 December 2006. I will refer to this account as the FNB 909 account. The account was opened as '*G.Wyeth trading as Rudco Management Company*'. Wyeth was the sole signatory on the account but on the accused's instruction she provided him with the debit card for this account. The accused appointed Wyeth as his co-director of the Rudco Finance Company (Pty) Ltd on 26 February 2007. Wyeth had previously worked for Old Mutual as a sales representative. She had never held the position of a director of a company before. She had never worked in financial services. This did not appear to concern the accused who told her that he trusted her. She was tasked with the administrative side of the business while the accused was the driving force. Once she was appointed as director she received a salary of R15 000 per month in addition to which Rudco paid her monthly bond and motor vehicle instalments.

[41] Wyeth opened a second bank account on instruction of the accused on 29 May 2007 at Standard Bank. I will refer to this account as the Standard Bank 7114 account. The account was opened by Wyeth in the name of the Rudco Finance Company (Pty) Ltd and again Wyeth was the sole signatory on the account. Wyeth explained that the accused had informed her that he was blacklisted and it was for this reason that the bank accounts needed to be opened in her name. She was not aware of his previous conviction for theft. Wyeth confirmed that, again, although she was the sole signatory on the Standard Bank 7114 account, the accused held the debit card.

[42] Wyeth explained the purpose of the FNB 909 account and the Standard Bank 7114 account as follows:

'...both of them were basically for funds to come in from the clients. Essentially the second one was, we were going to phase out the old one because it was in my name but this was the company trading, the Rudco Finance Company.'

[43] Wyeth testified that she was informed by the accused that there was financial backing for Rudco in the marketing and business of its products. The accused told her that both Unibank and Real People would be investors or financial backers.

[44] Wyeth confirmed that the only funds which flowed into the FNB 909 account and the Standard Bank 7114 account were those of Rudco clients. All business expenses were paid from these accounts, including all operating expenses. There was no separation between client funds and administration fees. There was no computerised or similar system in place other than a Nedcash debit order system. All transactions were recorded manually. Although Wyeth held the passwords for internet banking she was only authorised to make payments on the accused's instructions. In her words:

'Even though I had the passwords, I alone had it, I always acted on the instructions of Mr Visagie'.

[45] Wyeth testified that all cheques were written out and signed on the instruction of the accused. On one occasion she was instructed to sign a blank cheque that was made out to the accused's fiancée at the time, Lynn Verhoog. Wyeth identified certain cheques bearing her signature. These included cheques for payment of various business expenses from client funds, including salaries, and also a payment to a political party. Since the debit

cards for both accounts were in the possession of the accused all withdrawals from those accounts by way of debit card were made by the accused himself.

[46] Wyeth testified that notwithstanding the agreed terms of the clients' express mandates she was only permitted to contact their creditors (which clients were told would occur about three months into their disciplinary period) on the instructions of the accused. In most instances she was not authorised to contact the creditors concerned and was only instructed to do so by the accused when clients started to query why their creditors had not been paid, notwithstanding the expiry of the disciplinary period. In response to certain questions by Ms Valley-Omar, her evidence was as follows:

'So when the people started asking questions and getting angry, that was when I got the instruction to pay some of their creditors – Who was in the frontline when all of these complaints came in, did Mr Visagie deal with irate clients? Who dealt with irate clients in the office? – Mostly myself and Julie Duminy, ja. – Did you address Mr Visagie on the fact that clients were getting irate? Did you ask questions about financial backing and about paying creditors? – I did. He said: Do not worry, you just make sure you do your job. That's what I was told. – So you acted on Mr Visagie's instructions really? – That's right.'

[47] Wyeth said that as far as she was aware Rudco had no audited financial statements, nor did it have an auditor.

[48] Wyeth testified that the accused made all key appointments of staff at Rudco.

[49] According to Wyeth the complaints started streaming in from clients in approximately March 2007. These complaints escalated over the ensuing months. When

she became concerned about the lack of inflow of funds into the Rudco account she took it up with the accused. She said that:

'Mr Visagie said that he's basically going to work on the numbers. In other words, he was going to try and get in as much home loans as he could, an initiation fee of R5 000 plus VAT and he said if we get in a certain amount of people to buy into this we won't need any backing from anybody else. – So there was no financial backing but Mr Visagie was working on numbers here? – Yes that's what I found out in time, yes.'

[50] It was at this point that Wyeth approached Rudco's legal advisor, Kim Armfield, who advised her to resign as director, which Wyeth did on 13 August 2007. Wyeth said that the accused threatened her after he had found out about her meeting with Armfield. According to Wyeth he said:

'...if I decide to go ahead with anything or spill the beans in that way he would make sure that I suffer for the rest of my life. Those were his exact words to me.'

[51] Wyeth left Rudco during October 2007 after ensuring that the FNB 909 account was closed on 9 October 2007. She removed herself as sole signatory on the Standard Bank 7114 account on 12 October 2007 when, according to bank records, she was replaced by the accused as the sole signatory on that account. When Wyeth left Rudco, she was saddled with a Vodacom account of R38 000 relating to a contract that she took out in her name for Rudco on the instructions of the accused.

[52] When Wyeth left Rudco, Gayle Lannen took over most of her duties, including banking. Wyeth testified that the internet passwords for the Standard Bank 7114 account were handed over to Lannen.

[53] Wyeth confirmed, with reference to the bank statement analysis tendered in evidence, that an amount of R2 345 531 had been refunded to clients from the FNB 909 account during the period when she was the sole signatory on that account. When asked on what basis clients were refunded she replied:

'Initially it was clients that came in demanding their money back, but when the NCR [National Credit Regulator] investigation started happening, Mr Visagie informed us that debt consolidation is no longer going to be a product and we would refund as many as we could, refund their money back to them.'

[54] When asked how she had felt about utilising client funds for purposes other than for which they were paid she replied:

'Initially I didn't really think there was anything wrong with it, because like I said he [the accused] always spoke about how he had funds coming in, there were investors. Every time I approached him, he had the same story until the time where he said he is not going to get any of these investors to help him. He is going to go with something called the Rudco Home Loan with the initiation fee and with that money he was going to settle all the accounts. And that's – to me – that just didn't make sense, because how can you settle accounts and run a business on other people's money. I mean I even knew that, and that's when I started, ja, getting myself out of the company.'

[55] When asked whom she perceived to be the driving force behind Rudco, i.e. *'....who called the shots, who ran the business, who made key decisions and took decisions regarding how funds and particularly the clients' money was disbursed largely?'* she replied *'I would definitely say Mr Visagie and on many occasions he told he that this was his ship and he is the captain of it.'*

[56] In her cross-examination Wyeth confirmed that she had attended a course in February 2007 to qualify as a debt counsellor. She stated however that she did not believe that this had provided her with the necessary training to fulfil her responsibilities as co-director of Rudco. She denied that she had paid an amount of R100 000 to a prospective landlord of Rudco contrary to the specific instructions of the accused. She confirmed that save for a debit order accounting system the only other system in place was a manual one. She was asked by the accused '*As enige iemand uitbetaal was en ek wou die informasie gehad het, hoe het jy die informasie vir my bekom?*' and she replied '*It was in the file, the client's file. We manually had to go fetch the file and show you.*' The accused then said '*Dit was een van my sterk punte. Ek het geglo dat 'n file system is 'n beter backup system as rekenaars. Is dit nie so nie?*' and she responded '*If you say so.*'

[57] It was clear from Wyeth's testimony that she was neither qualified nor sufficiently experienced to have assumed the position and duties of a director. The impression which I gained was that the accused saw her as a soft target who would be capable of easy manipulation. She was entirely under his influence and believed what he told her. It is to her credit that when the reality of the situation finally dawned on her she sought advice and followed that advice, which was to resign. Her naivety and trust in the accused placed her at risk of prosecution. I am satisfied that on a consideration of her evidence as a whole she was an honest witness whose version was not shaken in cross-examination.

[58] Gary Govender testified that he is a bookkeeper by occupation although he has no formal tertiary qualifications. He was introduced to the accused by Africa. He was

appointed as Rudco's bookkeeper by the accused. He confirmed that Rudco had no auditor and that his duties were limited to completion of Rudco's VAT returns. The accused and Wyeth provided him with documentation and information to complete the VAT returns but despite request he was never provided with crucial source documents such as Rudco's bank statements and had to rely on the information and documentation provided to him by them. At a later stage he was instructed by the accused to prepare a schedule of Rudco's income and expenditure for the period 1 October 2006 to 31 July 2007, again without proper source documentation being provided by the accused. He was informed by the accused that this statement was required for submission to the National Credit Regulator. He was referred to the income statement which he had prepared (Exhibit F1) and confirmed that it purported to reflect Rudco's income and expenditure for the aforementioned period.

[59] Govender testified that the income and expenditure statement prepared by him for the National Credit Regulator was not compiled in accordance with sound business principles. He said that he advised the accused that it was necessary for Rudco to appoint an auditor. The accused told him that he (i.e. Govender) should make the necessary enquiries, which he did. Govender introduced the accused to the proposed auditor. He confirmed however that the accused did not appoint this person, nor any other auditor to his knowledge. Govender's evidence was uncontested since the accused chose not to cross-examine him.

[60] Shanaaz Stevens testified that she was previously employed as a sales consultant at Capitec Bank. She was in financial difficulties and was introduced to the accused as she was interested in his debt consolidation product. He subsequently offered her employment as a receptionist which she accepted because she would be receiving a higher salary. She commenced employment with Rudco on 1 December 2006. In January 2007 her duties were extended to loading clients' details onto the Nedcash debit order system in order to facilitate payments by these clients from their respective banks into the Rudco accounts. The system would generate a summary of these payments on a monthly basis. Stevens said that her employment with Rudco was terminated in approximately October 2007 when she was retrenched. Her understanding was that she (and others) were retrenched because Rudco was being investigated by the National Credit Regulator. After she was retrenched the accused called her into his office and informed her that she had been retrenched in error. She continued in her employment with Rudco for approximately a month thereafter, loading details of clients of Rudco's home loan consolidation product (which she referred to as *'the bond switch'*) onto the system. She then left Rudco's employment permanently.

[61] When asked whether she suspected at any stage that there were irregularities in the way in which Rudco operated, she replied:

' – In a way we – when I started there, it was within the six months the client will get paid their debtors, whatsoever, and I mean many a times when I used to ask Genevieve as well when are you paying the clients out, I mean, some of them paying eight months already some of them are paying ten months. I mean, the clients used to come and furiously sitting there waiting for Rudi, but I mean the minute they go into Rudi's office they come out, they happy, you know, and I used to

ask Genevieve: When are you paying the creditors? When are you paying them? And then she used to say she's waiting on Rudi to authorise and that's it.'

[62] When asked if she knew whether Rudco had any financial backing she replied that the accused would tell her that this was indeed the case. However she did not know who the financial backers were.

[63] In cross-examination the accused did not dispute that he had told Stevens that Rudco had financial backing. It was put to her that certain clients had made enquiries about non-payment of their creditors prior to expiration of the initial disciplinary period. Stevens was unable to cast any direct light on this. She replied that she herself did not deal directly with client queries but referred them either to Wyeth, the accused or one Anastasia who was also in the employ of Rudco.

[64] Jeremy Marillier testified that he is an economist by profession and that he holds a B.Comm Honours degree as well as a Masters Degree in Business Administration. He met the accused in early 2007. He wished to enquire about obtaining finance to purchase a motor vehicle. During that meeting it emerged that Marillier was well acquainted with the provisions of the National Credit Act and that he would be able to assist Rudco in securing provisional registration in terms of that Act.

[65] The accused also explained the debt consolidation product to Marillier. He said:

'My understanding of the product of the debt consolidation is that you would first – there would be a six month payment...a deduction for six months from your salary...with a view so that Rudco can

build up a payment profile of you. Then only after the six months they would begin to settle your creditors and pay your debts...they get the accounts of the creditors and then transfer and settle on an apportionment basis the accounts over a period of time.'

[66] The accused subsequently requested Marillier to assist in the compliance aspects relating to temporary registration with the National Credit Regulator. He said:

'That involved getting the actual application form. I was assisted by Deneys Reitz Attorneys because it was a technical process. To fill in the application form you need to have your financials and detailed information. I did that. That application form was submitted to the National Credit Regulator and I think a few weeks later they did issue us with a temporary NCR.'

[67] When asked if he had enquired about whether there was any financial backing for Rudco he replied that the accused had told him that Real People would be a substantial financial backer. At a later stage the accused also said that international investors would come on board.

[68] Marillier was initially appointed by the accused for a period of one month on a consultancy basis whereafter he was appointed on a permanent basis as chief operations officer in approximately February 2007.

[69] Marillier testified that from the outset he was concerned about what he called *'the lack of capitalisation of the business'*. He could not understand how the business was to be funded on a sustainable basis. He was not able to see any proof that Real People was indeed an investor. He was also not informed of who the international investors were. Another major concern pertained to the systems employed by Rudco. He said *'If you run a*

financial services company you need a level of sophistication in terms of your staff that you employ, especially on the financial side, given you're working with public money. That was a big concern to me.'

[70] Marillier testified about the tensions between himself and Wyeth since in his view she demonstrated a lack of understanding of her duties as a director, in particular her fiduciary duties in terms of the Companies Act. He said *'There was basically zero understanding of that and that was a problem for me, because as operations officer I need to account. I need to submit reports with the NCR whether it's audited or that. And if there is no – from a director level you don't put in systems, whether it's proper auditing or proper business banking accounts, you know, for separate aspects of the business, you are going to have a problem in terms of accountability and reporting to the National Credit Regulator. And that absolutely wasn't there, so you had this big one account where masses of money went into... then it became a bit questionable...you couldn't distinguish what belonged to whom...A client will sign up, ok? The debit order will be deducted...so the money will come in, but it's into a single account, so you will have all these hundreds of monies coming in into a single account. There wasn't a company...expense account that you handle for staff for salaries or...'*

[71] Marillier said that he established that Rudco's overheads were being paid from clients' funds. It was at that point, in his words, that *'...then obviously red lights started to go off, ja, big time'*.

[72] Marillier also testified that when he questioned the accused's business model the accused complained about his lack of confidence in him. In Marillier's view the accused's scheme was a quasi-pyramid scheme without any financial backing. He was never provided with access to proper source documents and that impeded his functioning as operations officer. He was dismissed by Wyeth in April 2007 following yet another disagreement between them about her capabilities.

[73] It is also apparent from Marillier's evidence that clients of Rudco were already complaining about non-payment of their creditors when he was still employed there.

[74] Marillier's evidence on these material aspects was not seriously challenged in cross-examination by the accused. The accused rather focused on his own interpretation of the National Credit Act. This was irrelevant since it was common cause that due to Marillier's intervention Rudco secured provisional registration with the National Credit Regulator in approximately March 2007. The accused during his cross-examination also explained how he believed that his business model was superior to that of registered banking institutions in South Africa.

[75] Kim Armfield (an attorney who specialises in debt counselling) testified that she was introduced to the Rudco debt consolidation product when she attended a presentation at the offices of a colleague, Sophia Smith, in approximately March or April 2007. The accused was at the presentation.

[76] Armfield understood the product to be the only one available on the market. She was informed that there would be an initial disciplinary period of six months instalments whereafter Rudco would pay the client's creditors in full and Rudco would then become the client's only creditor.

[77] Armfield was friendly with Juliana Duminy, who was employed by Rudco at the time to train agents and staff on the proper completion of client application forms. Armfield said that Duminy began to rely heavily on her professional advice to assist her in the course of her duties. It was shortly after she attended the presentation that the accused approached her to become Rudco's attorney.

[78] As far as financial backing for Rudco was concerned Armfield said that at the presentation which she attended the accused was asked about financial backing. She testified that *'Mr Visagie said at that time that he was involved in a Unibank Group and when the Unibank Group disbanded they owed him big time and that they were his backers. The people that were involved in the Unibank Group, they owed him.'* When asked if he explained how he was involved in the Unibank Group she replied *'He didn't say, he was a bit evasive with regards to which capacity, he just said that they – he did them a big favour when they were disbanded and that they owed him and that they would back him.'* She said that no other particular financial backing was mentioned. It was only when the National Credit Regulator had begun to investigate Rudco that she was informed by Wyeth that Real People were in fact the financial backers.

[79] Armfield testified that she only became aware that business and personal expenses were being paid from clients' funds when Wyeth approached her for advice in August 2007. At that stage the National Credit Regulator had already begun its investigation. It was also at that stage that she became aware that clients' creditors were not in fact being paid.

[80] Armfield explained her duties as Rudco's attorney as follows:

'My first and most important duty was to get the contracts in order, that is to draft the contracts. As I say they had a very flimsy contract which was really wholly insufficient for any agreement let alone a debt consolidation, so the first duty was to get the contracts in order, see to it that they were compliant with the National Credit Act.'

[81] Armfield testified that she was not aware that the accused had a previous conviction for theft. She explained that if she had known this to be the case she would have advised him that he was not permitted to be a director of a company. She only became aware of the accused's previous conviction after the intervention of the National Credit Regulator.

[82] When asked who she considered to be the driving force behind Rudco and the marketing of its products she replied *'Hundred percent Mr Visagie'*. As to Wyeth's involvement in Rudco, she said:

'It was clear that – even from the beginning – she was a figurehead in the company. Every question that was ever posed to Genevieve could never be answered. She always had to revert to Mr Visagie, she never made a decision, she couldn't come to a decision. If you needed her to make a decision, she could never arrive at any decision without having to first revert to Mr Visagie.'

[83] Armfield testified that she too was inundated with calls from irate clients of Rudco.

She said:

'I was being inundated with it and I was trying to get answers myself as to what was going on. Mr Visagie would blame his staff continually, always, it's always his staff's problems.'

[84] Armfield said that Rudco did not even have a rudimentary accounting system in place and that after the National Credit Regulator began its investigation records had to be constructed manually from manual client files. She explained it as 'chaos'.

[85] Armfield confirmed that she had met with Wyeth at the latter's request during approximately August 2007. Her evidence was as follows:

'What was the thrust of that conversation and what was your eventual advice after that conversation? – The thrust of the conversation was that we met outside of the office and she said to me: Kim, there's no money.'

What did she mean there was no money? – She said: There is no money in the account, the banking account.

Did alarm bells ring then for you? - ...Yes of course, of course, because I know there's supposed to be money available for your expenses...for running a business...there's supposed to be capital. So what she was saying is that there was no capital and that there was no monies there to pay the expenses, that in fact the consumers were paying...not just to pay the creditors, which was the ultimate goal...but also...to pay...monthly expenses.'

[86] Armfield said that she confronted the accused the following day. He became angry and informed her that Wyeth did not know what she was talking about. It was at that point that the accused told Armfield that there was indeed financial backing. She said:

'...he told me that there is investors and he could get a cheque written out tomorrow for R2 million or whatever he wanted. So he was irate because he was being attacked and he was being accused of something that, I would imagine, according to him, was just ludicrous, that there is definitely money.'

[87] When asked if she believed the accused she replied:

I absolutely did believe him, I couldn't conceive of there not being any money or backers or investors, it was inconceivable.'

[88] Armfield confirmed that she advised Wyeth to resign as director. Armfield testified that *'I said to her she didn't know the first thing about being a director. She didn't know what a fiduciary duty is even with regards to a directorship and a company, she didn't know anything about rights and obligations towards the company'*. Armfield however explained that her advice to Wyeth was more out of concern for Wyeth herself who appeared to be entirely out of her depth. Armfield could not believe that the accused would not have proper financial backing and she was reassured after her meeting with him the following day. She said *'I really believed Mr Visagie that he had investors and that they would come in and rectify the situation.'*

[89] When asked about the essential terms of Rudco's contracts with its clients, she explained in some detail how there appeared to be no uniform policy. The disciplinary period changed; the amount of the once off administration fee changed; and the problems were exacerbated by Rudco agents who did not seem to understand how to complete the documentation correctly. Armfield testified that agents were not given any proper training.

Agents were allowed to appoint sub-agents but no training was provided by Rudco for these sub-agents.

[90] When asked who introduced the aforementioned changes Armfield replied that it was the accused who changed his mind on a regular basis. She confirmed that Rudco's contracts stipulated that it was the accused who represented Rudco and was authorised to sign the contracts on Rudco's behalf, although it appears that Wyeth would sometimes sign these contracts on the accused's behalf as well.

[91] Armfield testified that shortly before the launch of the bond switch product she was instructed by the accused to retrench certain of Rudco's staff. This was at about the same time when she had the meeting with Wyeth which resulted in the latter's resignation from Rudco. Armfield continued to act as Rudco's attorney until shortly before it was closed down by the National Credit Regulator.

[92] During his cross-examination of Armfield the accused confirmed that it was Rudco's responsibility to ensure that its agents were complying with Rudco's requirements, but claimed that it was the responsibility of the agents to ensure that their sub-agents did so. He then agreed that the ultimate responsibility for compliance by these sub-agents nonetheless lay with Rudco.

[93] The accused put to Armfield that the reason for the chaos that she had described was the volume of applications being received by Rudco head office from agents

throughout South Africa. A number of these applications were not properly completed and had to be returned. Armfield replied:

'...I understand that but what I am saying is that – and what I've said that the chaos came in when there was no system – look, if there's systems in place, even if you have the files and applications coming in that had been processed...you should be able to identify. If proper systems are put in place you should very easily obviously identify okay, the application hasn't been completed properly, it must come back to the agent to be completed, record is made of that. So what I am saying is that there were never any systems put in place. One would expect especially...considering that if one is receiving a thousand applications a month, you've got to have systems in place otherwise it is chaos.'

[94] The accused pressed Armfield about what he considered to be Rudco's adequate manual system and put it to her that, whatever problems had arisen, these were to be laid at the door of the agents and/or employees due to the volume of applications which streamed in. He also said that it was not possible to have had a proper computerised system in place from the outset for – as he put it – the simple reason that certain clients cancelled before they had made any payments. Armfield disagreed and said that *'...I do believe that you have to have from the very outset a system in place and you have to anticipate that there is going to be maybe an influx of applications. Especially with that product that was much needed in the market, you had to anticipate certain things. It was prudent of you to anticipate certain things. And where do we start nowadays? With the computer with a basic accounting system...something should have been put into place.'*

[95] The accused then referred to the investigation by the National Credit Regulator which had commenced in about June 2007. Armfield recalled that instructions had been given to employees of Rudco to capture data using computers since there were to be

refunds made to clients. Armfield also recalled having to attend a meeting with the accused at the National Consumer Tribunal in order to apply for an extension of time to refund clients. The accused pointed out to Armfield that it was at the same meeting that Rudco was instructed to cease with its debt consolidation product and also that all clients had to be repaid. Armfield agreed. She in turn reminded the accused that he had asked for her advice as to whether he should oppose the National Credit Regulator's instruction or whether he should adhere thereto. Armfield had told him to adhere.

[96] Armfield attended a second meeting at the National Consumer Tribunal without the accused. He was ill. It was at that meeting that the National Credit Regulator confirmed its instruction and fined Rudco the sum of R1 million. The accused claimed that Armfield had not informed him about the fine which he only learned about at a later stage. Armfield was unable to recall whether she had informed the accused about the fine but said that it would have been strange for her not to have informed him thereof.

[97] The accused asked Armfield to confirm that ultimately there were insufficient funds in Rudco to refund all of its clients. Armfield agreed.

[98] Juliana Duminy testified that she met the accused through Sophia Smith. They were both agents for a debt administration company and shared office space. The accused met with them to explain his debt consolidation product.

[99] The accused subsequently appointed Duminy as a trainer in March 2007. She found Rudco's application forms to be rudimentary and approached Armfield to assist her in drafting a more sophisticated document. Her impression of the general state of administration, paperwork and data capturing was that *'It was in a mess.'*

[100] Duminy was involved in training agents both locally and throughout South Africa. She testified about the number of complaints she received from agents who were generally confused and frustrated by the lack of proper systems and documentation. She confirmed Armfield's evidence that essential terms were regularly changed by the accused. She also confirmed that many clients became irate when, despite the expiry of the disciplinary periods contained in their contracts, their debts were still not consolidated and settled.

[101] Duminy was informed by a Johannesburg agent, Karen Fick, during approximately June 2007 that she had been notified by Rudco that its debt consolidation product was being terminated and would be replaced by a bond switch product. Duminy was taken aback. She approached the accused and conveyed her concerns and those of the agents to him. His response was that he had financial backing from Real People and that *'The investors, they are looking at numbers.'* He later told her that Real People now wanted to charge interest and that he was not prepared to *'go that route'*.

[102] Duminy was retrenched in September 2007 after she had been informed by the accused's son Llewellyn Visagie that she would not be required any longer as a trainer

due to the advent of the new bond switch product. Duminy confirmed that she had relied heavily on Armfield's guidance and advice in the course of her duties.

[103] When asked about her impression of circumstances at Rudco Duminy said

'There were a lot of changes done. You were not notified of it. Agents would come in. You would speak to the agents on your knowledge and what you knew and you would explain to them and they would come in very upset. They would go in the office with Mr Visagie and they would come out and you would see a different person. They would look at you like there is something wrong with you or you did not know what you are talking about or – the others. So even when I was told that I was going to be retrenched, mentally I was actually prepared.'

[104] When asked about her impression of Wyeth she replied that *'Genevieve only did what she was instructed to do...by Mr Visagie.'*

[105] In his cross-examination of Duminy the accused focused on her apparent lack of understanding of the detail required in Rudco application forms. Duminy was indeed confused about certain aspects. She also appeared not to understand the meaning and import of some of the ancillary documents which the clients were required to understand and sign.

[106] The accused did not challenge Duminy on her clear lack of training and experience. He also did not put to her that she had received any training from Rudco. In fact she said *'We were not trained. We were informed.'* It was clear from his cross-examination that there had indeed been changes introduced by him to essential terms of the contracts, in particular the disciplinary period. His questioning only served to highlight

Duminy's lack of appropriate qualifications and experience for her position at Rudco. The impression that I gained was that Duminy had been thrust into a senior position at Rudco without having received proper training and without having been kept properly informed of changes to clients' contracts. These factors simply served to exacerbate her difficulties in fulfilling her most important function which was to train Rudco agents throughout South Africa. It is also clear that she was expected to obey the accused's instructions without question and that when she finally did question the happenings at Rudco she was fobbed off by the accused and ultimately retrenched.

[107] Gayle Lannen testified that she had previously worked at another company with the accused's then fiancée Lynn Verhoog. She was appointed by the accused as his personal assistant at Rudco with effect from the beginning of September 2007 and after the National Credit Regulator had commenced its investigation. She was informed that her duties would be those such as taking his telephone calls, organising his diary and appointments, his travel arrangements and the like. After she was appointed she was furnished with the internet password to the Rudco Standard Bank 7114 account and placed in charge of Rudco's banking. She paid salaries and other business expenses from the Standard Bank 7114 account. She testified that by that stage deposits were also being made by clients of Intel into the Standard Bank 7114 account. Llewellyn Visagie also had the password for internet banking on this account. The accused held the debit card for the account.

[108] Later Lannen and certain other staff members were instructed by the accused to compile a spreadsheet from manual client files reflecting each client's surname and initials; client number; amount paid by the client; amount already refunded; amount to be refunded; and a refund date if applicable. Lannen testified that notwithstanding the investigation by the National Credit Regulator the accused informed her that Rudco could continue trading *'because the certificate would be coming or being issued for Rudco at any time'* and that it was *'business as usual'*.

[109] Lannen said that she and other staff at Rudco had to face distraught and angry clients who were demanding refunds. Several of these clients threatened them with bodily harm.

[110] Lannen said that the spreadsheet to which I have referred was used as a reference base when it came to processing refunds. She and another employee, Arizona de Vries, were tasked with processing client refunds.

[111] When asked how it was determined which clients would be refunded she replied: *'...based on urgency or whether they've been into the office and were threatening us...what used to happen is, Rudi was, at the time, very seldom in the office and we used to have to meet with these people and obviously go through their situation with them and they would tell us it was urgent. I would then contact Rudi telephonically, or make a note of when I saw him in the office to please discuss with him, so that we could urgently refund these people. So in terms of the people that got refunded, I would say it was based on whether they actually came into the office and threatened us, I would then say to Rudi look we're under a lot of pressure, we need to obviously give them some indication that we do intend to refund them, and then he would say to me yes or he would say to me no.'*

[112] Lannen was referred to the spreadsheet which she had prepared (Exhibit E-1). She explained that from manual records she was able to ascertain that R3 867 676.83 had been paid into Rudco's account. Of that amount only R263 839.33 had been refunded during her three months of employment with Rudco, leaving a balance still to be refunded of R3 621 809.22.

[113] When asked whether clients' funds were ever transferred from the Rudco Standard Bank 7114 account to any other company accounts Lannen replied that the accused instructed her to transfer funds from the Rudco account into the bank account of Comugrande (which, as I have said, was a close corporation of which Llewellyn Visagie was the sole member as from 16 May 2007). The accused informed her that the funds were to be transferred to the Comugrande account for Intel's benefit. She said *'So if Rudco wasn't going to trade, then Intel...was going to continue.'*

[114] Lannen also testified that the accused had told her about a gold dust transaction in which he was engaged with one Daphne Maarman and which would, according to the accused, double his investment so that the proceeds could be used for refunds to debt consolidation clients. She was told by the accused that there was a shortfall in the amount that he was required to pay for the transaction. She accordingly withdrew R22 000 from her personal bank account and handed it over to the accused's son Llewellyn Visagie to make up the claimed shortfall. She was subsequently repaid this amount.

[115] Lannen also said that she was instructed by the accused to transfer about R250 000 from the Rudco account to the account of Daphne Maarman's company, USADC Import-Export International (Pty) Ltd.

[116] Lannen said that after Rudco had been closed down the accused hosted a lunch in the Strand for her, Llewellyn Visagie and two others. She said '*...he informed us at the time that he would be continuing with Intel...and that we were the staff he would continue with. At that lunch he gave me cash to pay salaries over to the staff.*' She estimated that the cash paid to her by the accused was between R35 000 and R45 000.

[117] When asked who was the driving force behind Rudco and Intel Lannen replied '*To my knowledge it was Rudi. I dealt exclusively with Rudi...it was Rudi's vision.*'

[118] In cross-examination Lannen confirmed that Wyeth had started the refund process and that after she left Lannen was instructed to continue with the refunds. The accused did not take issue with Lannen's evidence that he was the person who determined whether a client would be refunded or not, nor with her evidence about how such refunds were determined.

[119] Bruce Schenk testified that he is the joint managing director of Real People which has its principal office in East London. He explained that Real People is a diversified financial services company with five primary divisions, namely unsecured consumer credit,

the purchase and collection of distressed debtor book, education, retail financial services and credit management. Real People has about 50 branches throughout South Africa.

[120] Schenk did not know the accused, nor did he recognise him. He testified that he had only read about Rudco in the press and on the website MoneyWeb when allegations about mismanagement at Rudco began. Real People had never invested in Rudco and had never had any dealings with the accused. He could verify this as he had been an executive director of Real People since 2001, was in charge of credit at the company and sat on its executive committee. As a result all new initiatives were brought to his attention prior to being tabled for discussion by the executive committee. In addition Real People had checked its records in order to establish whether any of its loan agents or branches were or could be linked to Rudco. It had also conducted a review of its IT system. No record could be found of any dealings whatsoever between Real People and Rudco.

[121] When asked whether Real People would in any event have been interested in becoming a financial backer of Rudco (given its business of debt consolidation, vehicle and home loan financing) Schenk replied that vehicle and home loan finance would have been a new area for Real People which they had not considered. The business of Real People was smaller consolidation loans granted through their branch network, and not on an agency basis and not by loan agents.

[122] In cross-examination the accused first claimed that he was well acquainted with Real People and that he had travelled a fairly long path with some of its senior employees.

He asked Schenk to nonetheless confirm that he did not know the accused. Schenk again confirmed this to be the case. The accused then apologised to Schenk, claiming that he had never implied that Real People was involved in any manner with Rudco and that he was sorry that Schenk's time had been wasted by him having to testify. He said '*....ek het u naam nerens genoem nie, ek nie Real People geimpliseer nie, so ek vra verskoning dat u tyd, volgens my, gemors is om hierna te kom om 'n verklaring af te lê. So ek het geen verdere vrae nie.*'

[123] Yvette Fourie, Heidi Naude, Sophia Smith, Karen Fick, Samier Satar, Vicilachee Govender, Frank Venter, Moegamat Fakier and Ian Dornen were all appointed as Rudco agents. Fourie, Naude and Venter marketed the debt consolidation and bond switch products; Smith, Fick, Govender and Fakier marketed the debt consolidation product; and Satar and Dornen marketed the bond switch product. Fourie, Satar and Dornen also later became Intel agents.

[124] Fourie testified that the accused had told her that Rudco had financial backing in the form of Real People (the major backer, represented by Bruce Schenk) and J Arthur Brown, and that Absa Bank had also expressed an interest therein. The accused subsequently informed her that he wished to have no further involvement with these backers since he did not want to be owned by them.

[125] Fourie explained her understanding of how the debt consolidation product worked. She testified that despite the stipulated disciplinary period of 6 months this was not

adhered to by Rudco. She also said that the accused changed the zero interest rate chargeable to clients to 6%. Fourie was also a debt consolidation client herself. She paid about R15 000 to Rudco but her debts were not settled. When she pressurised the accused for payment, he refunded her the amount of R14 444.36.

[126] Fourie explained how the bond switch product worked. In order for a client to switch his or her bond from an existing bondholder to Rudco he or she would be required to pay what was called an initiation fee of R5 700. Once that fee was paid the client's application would be submitted to attorneys appointed by Rudco in Pretoria who would settle the balance owing to the existing bondholder. The bond would then be switched to Rudco. Clients were required to continue servicing their existing bonds until the switch was made.

[127] When asked about her general impression of the office administration at Rudco she said *'No I thought it was terrible, I wasn't impressed with it at all, I've never seen anything like it ... there were a lot of files that couldn't always be found, there were different contracts, so people would sit with several contracts on their desks, there would often be papers that would go missing, it just didn't look like a bank, or any financial ...'*. When asked whether there was a system in place she replied that *'... there was hardly any system in place and that's why we all got involved to try and get a system in place'*.

[128] Fourie said that she compiled an instruction manual for Rudco agents. She said that she was not the author of the manual but that *'I took a lot of information that was given*

to us in bits and pieces and I compiled it together into one document, in an order that could be understood more easily, by laymen'. She testified that this was necessary since '... people were confused as to exactly what they needed to do, and because of the chaotic paperwork, if we gave them a manual then perhaps they would find a structure and they would be able to bring files that were complete and that they can be processed quicker'. She explained her reference to 'people' to be 'the agents out there...and then also even the staff internally sometimes didn't know what was exactly required with each application, so there were a lot of comebacks, and with this document I was hoping or we were hoping to eliminate a lot of the comebacks'.

[129] Fourie also testified about her involvement with Intel. She said that *'Initially it was to create a brand for them because I come from the advertising industry and I created their brand and their logos...'*

[130] Fourie subsequently attended one of Intel's launches. She was informed that Intel would sell franchises nationally and that franchise holders would be exclusively permitted to market home loan finance to purchasers of immovable property at an interest rate of 6%. Rudco would provide the funding to Intel for this purpose. The cost of a franchise was R250 000 and payment of a 10% deposit of R25 000 was required. The balance would be paid in instalments.

[131] During cross-examination she was asked whether she had been prejudiced as a result of being a debt consolidation client of Rudco. She replied that when her application

for debt consolidation had been completed she approached her creditors and arranged with them to reduce her monthly payments since she had been informed by Rudco that they would be settled in full after 6 months. After the disciplinary period of 6 months had elapsed her creditors pressed her for payment. Since no payments were forthcoming from Rudco she found herself in a position in which she had accumulated further arrears. Due to these arrears she was unable to retain her vehicle.

[132] When asked about the general competency of Rudco agents she replied that her impression was that they were not always clear on what it was that they should be doing. She said *'...they didn't always understand the product because they were allowed to go out before training and when they were given training they didn't have anything structured to take with them to remember exactly, but they would come back to the office and then they would have to sit there and complete it with Julie or with somebody but then most of the time there would be documentation missing and then they would have to go back to the client to go and fetch more and it would just delay the process, and then they would come back again and then they would look at the thing again, oh there's another document missing and then they would do, so in other words the whole application was delayed by days and weeks because the agent wasn't clearly given a list and say when you come back we want all of this.'* She explained that this applied equally to debt consolidation and bond switch products. The accused then questioned Fourie at length about her own client application form, claiming that it was incomplete since recent bank statements had not been attached. He claimed that Fourie was partly responsible for the so-called chaos at Rudco's office. This she denied. The accused then insisted that there was no chaos at the

office and to the extent that there had been any problems, this was entirely due to the agents concerned.

[133] Fourie's evidence that the accused had told her that Rudco had financial backing was not challenged by him.

[134] Naude testified that she was keen to become a Rudco agent as she moved in circles where people needed debt consolidation. She drove down from George to meet with the accused but he was not available and she met with his son Llewellyn. The latter immediately arranged for Naude to have a training session with Duminy in order for her to obtain an agent number to market the debt consolidation product and later the 6% home loans when these became available. Naude understood how the debt consolidation product worked and knew that in order to have access to the 6% home loans she would have to purchase a franchise from Intel. She confirmed having been informed that Rudco would provide the finance for Intel.

[135] She visited Rudco a second time when she met with the accused and signed her contract. She pertinently asked him about Rudco's financial backing. He replied that he could only reveal this to key personnel at the right time but did say that it would be from an overseas source.

[136] Naude confirmed that the cost of an Intel franchise was R250 000. She paid the deposit required. She then attended an Intel launch where she received a membership certificate. The accused and his son Llewellyn were speakers at the launch.

[137] Naude testified that she was a registered estate agent active in the market but was attracted by the 6% loans and the fact that they would exclusively be available to Intel agents. The accused assured the attendees at the launch that financing would be forthcoming for the Intel product from the proceeds of gold dust transactions. How these were to be financed she did not know.

[138] Naude also testified that she procured five or six bond switch clients. However the loans never materialised and all of these clients lost the R5 700 which each had paid. When she confronted the accused about this he blamed the National Credit Regulator which, according to him, was conducting a 'witch hunt' against him. He said that documentation had to be amended and monies could not be refunded until the debt consolidation clients were refunded.

[139] Naude testified that she too had never been refunded her deposit paid to Intel. She had expended about R180 000 to equip an office in George. The loss which she suffered was however more than purely financial as her reputation in the property market was shattered.

[140] During cross-examination the accused apologised to Naude for the loss that she had suffered and said that he would have liked to refund her had he been able to do so. He then asked her who she believed had breached the contract between herself and Intel and she replied that in her view Intel had done so.

[141] Naude was not challenged about her evidence pertaining to the accused's representation of financial backing. Her evidence that her franchise clients had not been refunded was also not challenged.

[142] Smith testified that when she became acquainted with Rudco she was engaged in the business of placing persons under administration orders for Keystone Financial Services. One of her clients told her about Rudco and she went to Rudco's offices to make enquiries. There she met the accused who explained the products to her, being debt consolidation, vehicle finance and home loans.

[143] When she enquired whether Rudco was registered with the National Credit Regulator she was informed by Duminy that its application for registration was pending. She testified that on a number of occasions she had asked the accused whether Rudco had any financial backing or independent investors and he replied that he had financial backing from overseas investors. He later told her that the financial backer was Real People, although she was not to mention this to anyone.

[144] Smith said that she attended a training session presented by Wyeth at which the accused also explained the Rudco products. After she became a Rudco agent she procured just under 200 clients. She testified that 99% of these had their applications to Rudco approved. When asked about the training provided by Wyeth she replied *'Basically the product was explained to us...the application form was so simple right at the beginning that I didn't need much training...because...I came from the administration side...The couple times I went in with the application forms, they explained to me more or less how it worked so I didn't go for 3- or 4- hour training as such'*.

[145] When asked to give her impression of how the Rudco office was run she replied *'I was not too happy with the administrative procedures, but there again I wasn't too concerned'*. When asked to explain she said that she struggled to get payment of her commission and that clients complained that their creditors were not being settled. She testified that she attended on Rudco's offices on behalf of these clients. She spoke directly to the accused who assured her that payment would be made. This assurance notwithstanding Smith said that she was not aware of a single client of hers whose debts had been settled in full. She was also not aware of any client who had been refunded.

[146] Smith also testified about the changes made by the accused to essential terms of the client contracts. These included the length of the disciplinary period and the interest rate chargeable.

[147] When asked who was the driving force behind Rudco she replied that it was the accused.

[148] In cross-examination Smith confirmed that she was not aware of any of her clients whose debts had been paid in full by Rudco. She ceased being an agent for Rudco when she became aware of this. She said *'Ek was ontsteld that my kliente nie betaal was nie, en ook nie, ook geen poging aangewend was dat hulle gaan begin afgelos te word nie, want elke keer as ek ingekom het en gevra het wanneer gaan dit betaal word, was daar elke keer vir my gesê, volgende week. Hulle het altyd vir my 'n datum gegee, wanneer dit sal gedoen word, en dit was nooit gedoen nie'*. When it was put to her that some of her clients' disciplinary periods had not expired by August 2007 (when she left) she replied that she was also influenced in her decision by the negative press reports on Rudco at that stage. The accused then confirmed that Rudco had ultimately been placed in liquidation by the National Credit Regulator.

[149] Fick testified that she had attended a Rudco launch in Isando hosted by the accused. At the launch the accused explained the Rudco products and she was impressed and decided to become a Rudco agent. She set up an office in Boksburg at a cost of R1.8 million. When Rudco was closed down she was unable to recover any portion of this amount.

[150] Fick explained that the Rudco product that attracted the most clients initially was debt consolidation since in her words *'Die voertuigfinansiering het platgeval binne die*

eerste paar maande omrede dit problematies was’. Later the bond switch product became popular. Fick testified that she procured about 300 debt consolidation applications although not all of these applications were approved by Rudco. She also procured some 50 prospective bond switch clients. None of the applications for the bond switch clients were approved.

[151] When asked if she had a record of how many debt consolidation applications had been approved she replied that there were not many since *‘...dit was ’n aanhoudende baklei gewees, en dan stuur hulle vir Julie-hulle af onder toe, want ons papierwerk is nie reg nie, en dit en dat en die ander ding, en dan ewe skielik, ... kom daar so ’n ou briefie deur, hierdie een is nou goedgekeur. Wel, as jy raamwerk vat, kom ons sê 10% het hy gesê is goedgekeur, maar mens weet ook nie of dit rêrig goedgekeur was nie...die goed het die heelyd verander...dan werk dit so, en dan sê hy nee, dit het nie so gewerk, ek het uitdruklik gesê dit werk so.*’ When asked to explain who had issued these differing instructions Fick replied that they were issued by the Cape Town staff of Rudco on the instruction of the accused. When asked who was the driving force behind Rudco she replied that it was definitely the accused.

[152] Fick testified that none of the creditors of her debt consolidation clients were ever paid by Rudco. She and her staff had to deal with irate clients to whom they were unable to provide any explanations.

[153] Fick said that she was present on three occasions when other agents asked the accused about Rudco's financial backing. She said that *'Hy het rêrig waar half gek geraak as 'n mens vir hom daai ding vra. Jy moenie hom dit vra nie, jy moet vir hom vertrou en jy moet saam met hom die pad stap'*. However when pressed the accused informed those present that the financial backing was to come from a gold dust deal and that Eschel Rhodie, Absa Bank and Real People were also involved.

[154] By September or October 2007 Fick could no longer cope with the irate clients and she and her partner Johan flew to Cape Town to meet with the accused. He informed them that he was now going to focus on the Intel venture since the debt consolidation product was simply causing chaos. He then offered them the opportunity to invest in a business deal to import sugar from Brazil. They would be required to invest R200 000. They declined. After their meeting with the accused Fick decided to close her office in Boksburg.

[155] In cross-examination Fick confirmed that she had not spent R1.8 million to set up the Boksburg office at Rudco's insistence. When asked if the training material provided by Rudco was sufficient she replied that to her knowledge there was no training material provided. It was put to her that the contract terms were amended as a result of the requirements of the National Credit Regulator. She replied that that was only what she had been told by the Cape Town office of Rudco. Her evidence about the proposed sugar import deal was not seriously challenged although the accused put to her that it was only something that they had talked about at that meeting and that it had been proposed, not by

him, but by Johan. This was denied by Fick who was adamant that it had been proposed by the accused.

[156] Satar, an accountant by profession from Pietermaritzburg, testified that he was also involved in the property market. He became aware of Rudco through others in the property industry and contacted the late Khay Syed-Eusuph who, as I have said, was a director of Intel, but who Satar understood to be a manager at Rudco at the time. The product which interested him most was Rudco's bond switch product which marketed home loans at 6%, a rate well below that offered by commercial banks.

[157] Satar was asked whether he knew if Rudco had any financial backing for the product. He replied that *'We enquired as much as we could, there was no genuine evidence given to us, but we were made promises by the directors that yes they did have financial backing for it.'*

[158] Satar later attended the Intel launch in Cape Town where the accused explained how the franchises would work. Satar testified that a franchise cost R250 000 and that he had negotiated with Llewellyn and Syed- Eusuph to obtain two franchises for the Pietermaritzburg Midlands and Durban South regions. He duly paid the deposit of R25 000 in respect of each franchise to Intel. He also paid two initiation fees of R5 700 each to Rudco for the bond switch product in respect of two home loans that he had. Satar accordingly paid over a total of R61 400 to Rudco and Intel.

[159] Satar testified that he was initially informed by Syed-Eusuph that Intel's funding was *'international'* but that she did not wish to provide any detail. Satar then spoke to Llewellyn Visagie who informed him that funding had been secured and that *'we would learn all about it in due time'*. When Satar attended the Intel launch in Cape Town the accused told him (and others present) that *'the money was going to be obtained from gold dust purchases in Africa being sold somewhere in Europe...'*. However no actual details were made known.

[160] Satar said that he understood that his two existing mortgage bonds would be cancelled within 30 days at which point the bond switch to Rudco would take place. When that did not happen he started making enquiries but, it appears, could not get a clear answer from Llewellyn Visagie and could not make direct contact with the accused.

[161] Satar said that in addition to himself two of his clients also paid the initiation fee of R5 700. Although he had marketed Rudco's product extensively through his database, in his words *'We put a hold on the rest'* of the clients, of which there were many, when he came suspicious. Satar said that in addition to the amount of R61 400 which was never refunded to him, he lost credibility and it seriously affected his business. He said *'...after Rudco there are a great many people who we were dealing with who wanted to have nothing further to do with us. We were misled, and we misled, apart from my two clients we misled other people who fortunately didn't get, there wasn't financial damage done, but there was other damage done, and for us in terms of our banking, lending and overall credibility in the market place there was serious damage done'*.

[162] Satar was asked who he perceived to be the driving force behind both Rudco and Intel. He replied that it was the accused *'because he represented himself as being the spearhead of the organisation'*.

[163] In cross-examination the accused focused on Intel's so-called breach of contract and suggested that it had been open to Satar to cancel his contract with Intel. Satar replied that although that had been open to him there appeared to him to have been no point in pursuing civil litigation against Intel and/or the accused since by that stage the accused was already under investigation by the National Prosecuting Authority. The remainder of Satar's evidence was not challenged.

[164] Govender testified that she was a consultant and later area manager for Rudco in Durban. Since she was an estate agent she was interested in Rudco's home loan or bond switch product. She attended a presentation in Durban hosted by Syed-Eusuph and the accused. The 6% interest rate offered on the home loan product sounded almost too good to be true. That is why Govender wanted to know if Rudco had any financial backing. When the accused informed those present that Rudco was *'very well financed'* Govender concluded that there was no need to make further enquiries in this regard.

[165] Govender marketed not only the bond switch product but the debt consolidation product as well. She received some training on the debt consolidation product from Duminy. Govender experienced the processing of client applications by the Cape Town office as very slow. It was for this reason that she and her son travelled to Cape Town in

May 2007 and visited Rudco's office. When asked what she found when she arrived she replied *'I found the setup very authentic. There was a receptionist, there were consultants, there was a boardroom, there was a manager's office, and there was a, I presume, a CEO's office, because [the accused] was there. The atmosphere was very amicable. It was a working atmosphere. There was no reason to suspect anything...'*

[166] Govender testified that despite her visit to Cape Town the processing of client applications by that office did not improve. She became concerned when she began to be questioned by clients as to why their creditors were not being settled. She referred queries of bond switch clients to the Cape Town office since, in her words *'I didn't have any knowledge about the bond switches...'* Queries from debt consolidation clients were taken up by Govender with the Cape Town office, variously with administrative staff, a receptionist, Duminy and sometimes Wyeth. Govender's attempts to communicate directly with the accused were mostly unsuccessful and she gained the impression that he had delegated this to Wyeth. Govender testified that she became aware of the intervention of the National Credit Regulator when one of her clients informed her of this. Govender said that when her enquiries to the Cape Town office were not satisfactorily addressed she contacted Armfield. Armfield assured her that Rudco was *'quite liquid'* and that she was waiting for a directive from the National Credit Regulator. Govender testified that in good faith she then advised her clients to continue to pay Rudco their instalments. Had she known the true position she would not have advised them to do so because she would then have been deceiving them. When further communications by Govender to Rudco's Cape Town office went unanswered she decided to contact the National Credit Regulator.

She asked the National Credit Regulator to intervene on behalf of her clients. She said that her reputation in the market has suffered as a result of her involvement with Rudco.

[167] Govender's evidence was unchallenged since the accused declined to cross-examine her.

[168] Venter testified that the accused was well known to him. They had worked together some years ago selling funeral policies. At the time when he became involved with Rudco he was working at First National Bank in the mortgage loan department. He was nominated to attend a Rudco seminar in Sea Point. The seminar was hosted by the accused.

[169] Venter explained that under discussion at the seminar was Rudco's bond switch product, offering an interest rate of 6%. Venter subsequently secured a bond switch client but his application was not approved by Rudco. His involvement with Rudco was brief and did not endure for more than about a month.

[170] Venter was asked whether he had ever enquired from the accused about financial backing. He replied that he had and that the accused had informed him that he could not reveal the source of the financial backing since he had signed a confidentiality clause. Venter did however understand from the accused that there was financial backing. Venter testified that his bond switch client had paid the R5 700 initiation fee. He did not know whether the client had ever been refunded.

[171] Venter also testified that the accused was the driving force behind Rudco.

[172] In cross-examination Venter was challenged by the accused about his understanding of the bond switch product. However Venter's evidence that the accused had represented that Rudco had financial backing, that the accused was the driving force behind Rudco and that Venter's client had paid Rudco an initiation fee of R5 700 was not challenged.

[173] Fakier testified that he procured between 50 to 60 debt consolidation and bond switch clients for Rudco during the 8 month period that he was a Rudco agent. He explained that during that period the disciplinary period stipulated in the Rudco contracts was changed three times. He became suspicious when his clients began complaining that their creditors were not being settled notwithstanding the expiry of their disciplinary periods. He took up his concerns with Marillier and established that the National Credit Regulator had intervened.

[174] Fakier said that the accused was the driving force behind Rudco. When asked if he knew whether Rudco had any financial backing he replied '*We were told that they were getting financed by some international group or something*' by the accused. Two of Fakier's clients were Kim Toefy and Louise Fortune. I will refer to these clients again later in this judgment.

[175] In cross-examination the accused focused on commissions paid to Fakier by Rudco. This evidence was not relevant. The accused also put to Fakier that Toefy had claimed that she had paid Fakier cash intended for Rudco and insinuated that Fakier had misappropriated these monies. Fakier denied any misappropriation. He said that at times clients would pay cash to him and that he would then pay this over into Rudco's account. The accused also questioned Fakier in some detail about Toefy's application to Rudco, since, in the words of the accused *'Dit was groot controversy in ons kantoor gewees omtrent hierdie kliënt'*. He questioned the veracity of Toefy's creditor schedule annexed to her application. It emerged however that this schedule was in fact attached to an application completed by Toefy during April 2007 and that Fakier had not attended to the completion of that application. He had only attended to the completion of an earlier application in December 2006 which had been accepted by Rudco. It also emerged that the disputed application had in fact been completed by staff of Rudco's Cape Town office.

[176] The accused later put to Fakier that certain of Rudco's clients had complained that he had completed application forms which did not emanate from Rudco. Fakier replied that all Rudco business was concluded on Rudco documentation and referred to one of these documents as an example. The balance of Fakier's evidence was unchallenged.

[177] Dornen testified that he is the owner of Gravity Office Solutions. He was introduced to the Rudco bond switch product via one of his clients. He made contact with the accused who explained the product in more detail to him. He met with Fick in Boksburg and subsequently became a Rudco agent in his own right. Dornen also became a Rudco

client and paid initiation fees totalling R22 800 to switch four of his mortgage bonds. He procured 30 bond switch clients whose applications were submitted to Rudco. Only one of these clients paid the R5 700 initiation fee.

[178] Dornen said that he attended an Intel launch in Cape Town where the accused explained the Intel franchise concept. Dornen subsequently purchased an Intel franchise and paid the 10% deposit required of R25 000. At the Intel launch the accused informed those present that Rudco would raise the finance for Intel from a gold dust transaction in Sierra Leone. When asked if he remembered anything in particular about what the accused had conveyed, he replied:

'I think one thing that really bothered me was...his perception of his...business dealings being above the law of the country, where he made a statement in the V & A Waterfront that he is more powerful than the NCR and the NCR will not shut him down and he does not have to be registered. So I think all of us who came down, who had paid over 10% money, were all a little bit put back by that, that someone could make a statement that he is more powerful than the government, or a government institution.'

[179] Dornen testified that neither his bond switches nor his Intel franchise materialised. When he confronted the accused the latter promised to repay him. According to Dornen the accused told him *'I will repay you, just stand with me, we'll get through this, these guys won't squash me, I've got a plan.'* Dornen was not refunded any of the amounts which he had paid to Rudco and Intel.

[180] Dornen testified that the accused was the driving force behind both Rudco and Intel.

[181] In cross-examination the accused challenged Dornen on why he had not pursued his civil remedies against Intel when he was not refunded. He referred Dornen to an arbitration clause in his contract with Intel. However, in response to a question from the court the accused then confirmed that the arbitration clause had no relevance since he did not dispute that Dornen was owed the funds. The remainder of Dornan's evidence was not challenged in any material respect.

[182] Karen Bezuidenhout, Lindie Visagie, Thiriputasundri Raman, Kim Toefy, Louise Fortune, Martha Botha, Zainuneesa Ungerer, Pierre Abrahams, Belinda Botes, Lorraine Botha (formerly Swiegelaar) and Priscilla Abrahams were all Rudco clients. Ian Langridge was one of Rudco's bond switch clients and later purchased an Intel franchise. Jacques Gresse purchased an Intel franchise.

[183] Bezuidenhout resides in Gauteng. She testified that she had responded to a Rudco advertisement of its debt consolidation and bond switch products. At the time she and her husband had a mortgage bond with Standard Bank at an interest rate of 11%. The 6% interest rate offered by Rudco was thus attractive. Her debts totalled about R183 000.

[184] Bezuidenhout said that she approached a Rudco agent by the name of Daleen in Krugersdorp and made application for both products. She paid a single amount of R3 027.24 on 31 August 2007 directly into Rudco's Standard Bank 7114 account in respect of her application for debt consolidation. Bezuidenhout testified that her debts were never settled by Rudco and her bond switch application was not processed. She was

not refunded her payment and found herself even deeper in debt as a result of these events.

[185] In cross-examination the accused asked Bezuidenhout whether she had ever established that the Cape Town office had received her applications. She replied that she had made contact with the Cape Town office and had spoken to someone called Anastasia or Nastasia who had confirmed receipt thereof. Bezuidenhout's evidence that she had not been refunded what she had paid to Rudco was not challenged.

[186] Lindie Visagie also resides in Gauteng. She testified that she too had responded to a Rudco advertisement of its debt consolidation and bond switch products in a local newspaper. She approached Rudco's office in Boksburg and was assisted by one of the agents, Elmarie van Wyk. She was informed that her debt totalling about R290 000 would be settled by Rudco after the expiration of a 3 month disciplinary period. On 28 July 2007 she paid the administration fee of R750 directly to Rudco and thereafter made two payments in the amount of R1 975 each. After making these payments she was informed that Rudco was cancelling its debt consolidation product. She then instructed Rudco to retain the amounts she had paid on account of the R5 700 required for the bond switch initiation fee. Believing that her bond would indeed be switched to Rudco she gave notice of cancellation to the existing bondholder, Nedbank. However when she had still not received any feedback from Rudco despite numerous enquiries about progress on the finalisation of her bond switch, she contacted Anastasia Lakey by email on 27 November 2007. Her email read as follows:

'Dear All,

Hope that you all are fine because I do not get any answer, feedback or response from your offices.

This is rather urgent because we complete our bond switch documents and required that we pay the R5 700 and we already cancelled our bond at Nedbank. We want to use the refund of our debt reconciliation for the above amount and pay the difference to finalise the bond switch. We found that the refund is still outstanding according to our records which was promised for the 8th and then the 22nd November 2007.

Please can you transfer that amount into our bond switch account or let us know what is going on as a matter of urgency.'

[187] On 29 November 2007 Rudco responded to this email as follows:

'Sorry you've been kept in the dark. The repayments are being done. I have requested Gayle to keep back R5 700 for your bond switch.

You should not cancel your bond with your bank. Let the process run its normal course. This always places pressure on everyone and is not necessary.

I will get back to you on what Gayle says about the refunds. They may have been done by the time she gets this e-mail.

Kind regards

Yvette'

[188] Lindie Visagie confirmed that despite the aforementioned communication from Rudco she did not receive any refund nor did the bond switch to Rudco eventuate. In addition none of her creditors were settled as a consequence of which she found herself to be even deeper in debt.

[189] In cross-examination the accused focused on Lindie Visagie's apparent lack of understanding of the contents of the application forms. He did not challenge her evidence

that she had been promised a refund by Rudco as late as 29 November 2007, nor did he challenge her evidence that no such refund had been paid.

[190] Raman resides in Durban. She testified that she had responded to a Rudco advertisement of its debt consolidation product in a local newspaper. Her debts totalled about R180 000. She approached a Rudco agent, Phyllis Pillay. Pillay arranged to meet her at MacDonald's restaurant in Umhlanga. She subsequently also met with Pillay at her office in Durban. Although Pillay was an agent for Rudco, her office had no Rudco signage. Pillay told Raman that she would have to pay a non-refundable administration fee of R750 plus instalments of R1 449.23 per month for the duration of the disciplinary period. Raman could not remember what Pillay had informed her about the length of the disciplinary period. She was referred to proof of the payments that she had made on 27 August 2007 of the administration fee and first instalment. She confirmed that these were paid directly into Rudco's Standard Bank 7114 account. She duly completed the application form.

[191] Raman testified that she heard nothing further from either Pillay or Rudco. About a month later she sent a telefax to Pillay requesting that the amounts paid by her be refunded immediately. She explained as follows:

'When we made the deposit that was actually asked by Rudco ... Phyllis ... mentioned that if I didn't make the instalment I wouldn't get the loan, so I needed to do it urgently because there were more people waiting ... and the first come first served basis ... and further when we made the payment and when I phoned her she wasn't answering her phone, she never ... responded to any of my calls ... so you know I was a bit worried.'

[192] Raman said that she did not receive any response nor was she able to locate Pillay. She was also not refunded the amount that she had paid.

[193] In cross-examination the accused put to Raman that Pillay had never worked for Rudco. However he did not challenge Raman's evidence that she had paid monies into the Rudco Standard Bank 7114 account.

[194] Toefy resides in Cape Town. She testified that she too had responded to a Rudco advertisement of its debt consolidation product in a local newspaper. She contacted the given telephone number and Amien Fakier came to see her. Amien Fakier and Moegamat Fakier (to whom I referred earlier) are the same person. When explaining the product he mentioned a two month disciplinary period before her creditors would be paid and that a R500 administration fee was payable. She was advised to discontinue payment to her creditors. Toefy completed the application with Fakier's assistance. He then submitted it to Rudco. She was thereafter required to resubmit her application since Rudco had certain queries. On 16 January 2007 Toefy received a letter from Rudco, signed by Wyeth on behalf of the accused, confirming that her application for debt consolidation of R126 559.54 had been approved. However during May 2007 she was informed that she had to resubmit her application again. By that stage she had paid the administration fee of R500 by cheque plus 5 monthly instalments of R1 804.66 by debit order to Rudco.

[195] Toefy said that despite payment of her instalments only two of her debts were paid. She contacted Fakier who referred her to Rudco's head office. She spoke to various staff members but could not obtain any clarity. She said *'I constantly phoned the office to find out what's going on, and then it was explained to me that there's a 3 month probation period and certain documents wasn't completed correctly and I need to come in and sign. Which I did do. I also emailed Rudi directly, explaining the situation'*. She testified that the accused had confirmed that he would *'sort out the matter for me'* but that this was not done. She estimated that she had paid over about R12 000 to Rudco. After receiving no satisfaction from Rudco and having fallen further into arrears with her creditors, she eventually contacted the National Credit Regulator to lodge a complaint.

[196] Toefy was referred to an email which she had addressed directly to the accused on 5 June 2007 in which she advised him of her disappointment in the service that she was receiving from Rudco. Her email continued as follows:

'I don't know what to think any more. My previous email, you haven't responded to as well. I do understand that you are busy but I applied and I am paying for a service that I just don't get any answers to. Yesterday I spoke to Anita and she told me that all payments are stopped till further notice and cannot give me a reason for it or even a date when creditors will be paid! I phoned again this morning and Anastasia told me the same. All I want is an explanation as to what is happening with my file. This is my 7th month and I was initially told that by the end of April all of my accounts would be settled. Then it was the end of May. To date only two of my accounts have been paid.

Please could you respond to me... I am just looking for answers. I need to know what is going on. I am really in a panic about my situation because this process is setting me back further and further. I would really appreciate some answers.'

[197] Toefy testified that the two debts which were settled by Rudco on her behalf were two African Bank loans totalling just under R28 000.

[198] In cross-examination Toefy denied that Rudco had contacted her to resubmit her application for the third time. She said that she had only learned of it when she telephoned Rudco's head office to enquire why her creditors had not been paid. She confirmed that it was Fakier who had initially told her that her application had been approved, that there was a 2 month waiting period and that by the end of January 2007 her accounts would be settled. The accused put to Toefy that the reason why she had cancelled her contract with Rudco was because she had telephoned that office 15 times on 25 May 2007. Despite the somewhat nonsensical nature thereof, she replied *'I never cancelled because I phoned the office 15 times. I cancelled because you get no answers from your office. You get promises that aren't fulfilled'*. The accused also claimed that it was in fact Toefy who instructed Rudco which of her creditors should be settled at what time, and that Wyeth had informed him of this. This had not been put to Wyeth during her testimony and she had not given any evidence to that effect. In any event this was denied by Toefy. The accused also disputed Toefy's version about the disciplinary period, claiming that it had always been 6 months. However in response to questions by the Court he was unable to explain why the African Bank loans had been settled by Rudco within the 6 month disciplinary period.

[199] Fortune resides in Cape Town. She testified that she too had responded to a Rudco advertisement of its debt consolidation product in a local newspaper. Fakier was again the Rudco agent concerned. He came to see her at her home in order to complete

the application form. She was required to pay an administration fee of R510 and monthly instalments of R1 849. She was told by Fakier that there would be a disciplinary or probation period of 3 months after which all of her debts would be settled by Rudco. She would then be responsible for payments to Rudco only.

[200] After the expiration of the 3 month disciplinary period her creditors were not paid. She then attended on Rudco's Cape Town office during April 2007 and spoke to Anastasia. The latter informed her that her creditors would be settled by the end of that month.

[201] Fortune testified that her creditors were however still not paid by the end of April 2007. She and her husband then attended on Rudco's office during May 2007 to make enquiries. They were again referred to Anastasia who told them that the disciplinary period had been extended to 6 months. They were not satisfied and approached the accused directly. When asked what the accused told her she replied *'Well, he went through the paperwork and then he said to us that I should have been sorted out already ... and he said it would be sorted out'*. By June 2007 Fortune's creditors had still not been paid. She was told to return to Rudco to re-apply for debt consolidation since Anastasia had told her that Rudco now had a *'whole new system'*. She again attended on Rudco's office in June 2007 for this purpose. On 16 June 2007 she received a letter from Armfield advising that her debt consolidation application would not be approved since her husband had become unemployed in the interim. She was advised that her payments would be refunded to her at the end of June 2007.

[202] Fortune said that at the end of June 2007 she had not received any refund from Rudco. Her husband again attended on Rudco's office. He had words with certain of the staff members and told them that he was not going to leave until he received proof that the refund would be made. Fortune testified that her husband sat at Rudco's office for about 4 to 5 hours. Because he refused to leave, staff at Rudco eventually gave him proof that Fortune would be refunded. She was indeed thereafter refunded.

[203] Fortune testified that on Rudco's advice she had stopped paying her creditors in about December 2006 and as a consequence thereof found herself to be even more indebted than she was when she approached Rudco. When she had initially applied for debt consolidation her debts totalled approximately R132 000.

[204] In cross-examination Fortune testified that she had paid five monthly instalments to Rudco. However the accused was adamant that she had only paid four instalments since there was no proof of a 5th payment. He then claimed that because she had paid less than what Rudco had refunded her she was in fact indebted to Rudco. The accused also claimed that the letter dated 22 January 2007 (Exhibit AD4) approving Fortune's debt consolidation application had not emanated from Rudco, although it bore Rudco's letterhead and in response to a question by the Court the accused confirmed that it bore his signature. He nonetheless persisted in claiming that he doubted the origin of the aforementioned letter.

[205] Botha resides in Cape Town and testified that she had communicated with a Rudco agent, Jason Hewitt, after being shown a pamphlet advertising Rudco's bond switch product by a work colleague. She too was attracted by the low interest rate of 6%. At the time she had a mortgage bond with Standard Bank and was paying interest thereon at the rate of about 12 or 13%. Hewitt emailed her the application form. Botha and her husband completed it. Hewitt then collected it from their home.

[206] Botha confirmed that she was required to pay the initiation fee of R5 700 which was paid directly into Rudco's Standard Bank 7114 account. Although the application was completed in her late husband's name, Botha also signed it since they were married in community of property at the time.

[207] Botha said that Rudco had procured the cancellation of her mortgage bond with Standard Bank. She became suspicious when she noted from correspondence from Rudco that the accused was reflected as the sole director but that no mention was made of shareholders and the like. She thereupon instructed her bank to cancel her debit order with Rudco. Botha confirmed that she was not refunded the initiation fee of R5 700 paid by her to Rudco.

[208] In cross-examination the accused referred Botha to the spreadsheet which had been compiled by Lannen reflecting refunds paid and to be paid to clients. He put to Botha that since her name did not appear on Lannen's spreadsheet she must have already been

repaid. This Botha denied. The accused did not however dispute that Botha had paid the initiation fee to Rudco.

[209] Ungerer resides in Cape Town. She testified that she came across Rudco on the internet site Gumtree in May or June 2007 and contacted Caroline Murray, a Rudco agent, regarding its debt consolidation product. Ungerer and her husband met with Murray at the latter's home when the product was explained to them and they completed the application form. Ungerer paid the administration fee (which she was informed was R750) on 1 August 2007 into Rudco's FNB 909 account.

[210] Ungerer said that she was informed by Murray that there would be a disciplinary period of 3 months and that Rudco would settle all of her creditors within 6 months, whereafter Rudco would become her sole creditor. However she only paid one instalment since her debit order was cancelled. She could not recall why. Ungerer tried to contact Rudco to obtain a refund, to no avail. She then contacted Murray who told her that she was not sure what was going on. Eventually Anastasia made contact with her and asked for written confirmation of her request for a refund. On 3 October 2007 she addressed a letter to Anastasia asking Rudco to refund both the administration fee and the first instalment paid. Ungerer confirmed that she did not however receive any refund from Rudco.

[211] None of Ungerer's evidence on these aspects was challenged in cross-examination.

[212] Pierre Abrahams resides in Cape Town. He testified that he first learnt about Rudco from a work colleague. As he was interested in Rudco's bond switch product, he contacted Venter, who, as I have said, was a Rudco agent. Venter assisted him in completing his application. Abrahams testified that his application was approved. He was informed that he had to pay an initial '*transfer fee*' of R5 700 but that a total of R13 000 in fact had to be paid. Since Abrahams only had R10 000 available in his bank account, Venter advised him to withdraw it, to pay the R5 700 first for the '*transfer fee*' and that he (i.e. Venter) would revert to Abrahams when he was required to pay the balance.

[213] Pierre Abrahams testified that despite his payment which was made into Rudco's FNB 909 account the bond switch never materialised. After 2 months when nothing had transpired his wife made enquiries at Rudco but was unsuccessful. He was not refunded the initiation fee paid.

[214] The accused declined to cross-examine Abrahams and his evidence was thus unchallenged.

[215] Botes lives in Cape Town. She testified that she was introduced to Rudco's debt consolidation and bond switch products in 2006 through friends who worked with her husband. She approached Michelle Gordon, a Rudco agent, who assisted her in completing applications for both products. She was advised that she would have to pay an initiation fee of R400 for the debt consolidation product and R700 for the bond switch product. There was to be a disciplinary period of 3 months during which she had to pay

instalments to Rudco. Gordon told her and her husband to stop paying their creditors and to only pay the instalments to Rudco, which they duly did in a total amount of amount of about R3000. As I understood Botes' evidence, the primary reason for approaching Rudco was that she and her husband wished to have renovations done to their home. By limiting their monthly outgoings and obtaining a reduced interest rate on their home loan, this would be possible. Initially Botes approached Rudco for a second bond to fund the renovations but was informed that Rudco did not offer second bonds.

[216] Botes said that after the 3 month disciplinary period elapsed and her creditors had not been settled, she and her husband approached Rudco directly. They had established that Gordon was no longer working for Rudco. They met with the accused who proceeded to draw on a white board *'to explain how things would work'*. He advised them that it would be in their interest to sell their home, settle their existing bond, and then purchase a larger home with the assistance of a Rudco home loan. They followed his advice. The accused sent one of his agents to inspect their home in Protea Village, Brackenfell. The property was subsequently sold through Premium Properties for about R700 000. However the new home loan never materialised. Botes testified that because she had not paid her creditors on Rudco's advice she fell into arrears and had to make extra loans. She has been unable to afford to purchase another property. Her current rental exceeds her previous monthly bond instalment with Absa Bank by almost 3 times that amount. She cannot afford her rental. She has also had to surrender her children's study policies since she could no longer keep servicing her debts as a result of the arrears which had accumulated when her debt consolidation never materialised. Botes was referred to a spreadsheet (Exhibit W13)

reflecting that she had paid a total of R25 089.87 to Rudco. She was not refunded any portion thereof. She testified however that she had been informed by Wyeth that some of her creditors had been paid although she was never provided with details or any confirmation thereof.

[217] The accused cross-examined Botes at some length about the details contained in her applications to Rudco. Botes confirmed that she had paid the administration fee of R400 to Gordon and not to Rudco. The accused put to Botes that it was in fact she and her husband who had decided to sell their home. This she denied, reiterating that this had taken place on the advice of the accused. It emerged that Premier Properties (also referred to by the accused as Premier Estate Agents) had been represented in the transaction by the late Syed-Eusuph. The accused claimed that he had requested Syed-Eusuph to value the property and to advise Botes on what decision should be made. Botes confirmed that Syed-Eusuph had attended at the property for this purpose but was clear that the latter then reported back to the accused. She said *'We had to first sell. You were strict on that. You said we had to first sell our house to be able to obtain another bond because we cannot pay two bonds at once. That was your answer. We did that'*.

[218] The accused also put to Botes that she had been refunded an amount of R12 666.80. This appeared from a previous statement that she had made to the investigating officer. Botes then replied that she had appropriated that amount on account of the arrears on her motor vehicle payments which had accumulated by that stage. She had not been in arrears with her motor vehicle payments at the time when she applied to

Rudco for debt consolidation. The accused then claimed that Botes was also refunded the balance of her payments, since she was a priority client. He was not able to provide any documentary proof that she was refunded. Botes again denied that she was refunded in full.

[219] Lorraine Botha (formerly Swiegelaar) resides in Cape Town. She testified that she had responded to a Rudco advertisement of its debt consolidation product. She applied for debt consolidation through Sophia Smith on 28 May 2007. Her application was approved and she paid the administration fee of R750. Smith explained to her that the disciplinary period was 6 months during which she had to pay instalments but that by the fourth month her creditors would be paid and from then on her only creditor would be Rudco.

[220] Botha paid a total of R4 843.54 (including the administration fee) by debit order into the Rudco account. This was done by way of two payments, the first on 1 July 2007 and the second on 1 August 2007. When she did not receive any feedback from Rudco she started making enquiries. On 6 September 2007 she wrote to Rudco requesting an immediate refund. She did not receive any response and she thereafter attended on Rudco's Cape Town office on several occasions. She spoke to Wyeth and someone called Ruwain. By that stage she had read an article in a newspaper concerning the intervention by the National Credit Regulator. She confronted Ruwain. She testified that *'he said it was just bad publicity and everything was fine. And then after a month or so I went back, and they said but they are going to refund all the people, and they were busy working through the files. I actually went through – I just barged in, through to the back office and they*

showed me a whole stack of blue files, and they said all those files are being worked through, and by the end of October everybody would be refunded'. Botha was however not refunded.

[221] In cross-examination the accused focused on the detail contained in Botha's application to Rudco and claimed that the format of the Rudco application and that used by Smith were different. In response to a question by the Court the accused claimed that due to the intervention of the National Credit Regulator changes had to be made to Rudco documents in May or June 2007. He also claimed however that the letter confirming approval of Botha's application for debt consolidation had not emanated from Rudco but was a document generated by Sophia Smith. This Botha denied, stating that she had collected the aforementioned letter herself from Rudco's Cape Town office. She said *'They gave it to me. They didn't fax it, they didn't post it, they gave this to me in person at the Cape Town office'*. Botha's evidence concerning her payments to Rudco and that she was not refunded was not challenged.

[222] Priscilla Abrahams lives in Cape Town. She testified that she received notification of Rudco's bond switch product by way of a text message from a broker. A friend then told her that he was able to refer her to Jason Hewitt and she made an appointment to see him. She was informed by Hewitt that Rudco did not offer second bonds and decided to switch her existing bond from Absa Bank to Rudco. She completed the application and it was submitted. In approximately November 2007 she was notified by Rudco that her application had been approved and that she was required to pay the initiation fee of

R5 700. She duly paid this amount into the Rudco Standard Bank 7114 account. She was advised that she had to cancel her mortgage bond with Absa Bank. There were certain outstanding documents which she had to provide. She attended on the Rudco branch in Table View for this purpose. When she arrived, the branch was closed. Two days later a report appeared in a national newspaper, implicating Rudco in mismanagement and fraud. At that stage she had not yet cancelled her bond at Absa. She was not refunded the initiation fee which she had paid.

[223] The accused declined to cross-examine Priscilla Abrahams and her evidence was thus not challenged.

[224] Langridge lives in Cape Town. He testified that he responded to an advertisement for Rudco's bond switch product which was displayed on a board next to a road in Table View. He contacted Rudco's agent, Jason Hewitt, whose telephone number appeared on the advertisement. He too was attracted by the interest rate offered by Rudco and wished to switch his mortgage bond to Rudco from Absa Bank. He completed an application and paid the initiation fee of R5 700. However the bond switch did not materialise and his enquiries at Rudco's Cape Town office proved fruitless. On one of these visits he spoke directly to the accused who informed him that *'Dit was nog nie reg gewees vir die switch nie'*. He accepted this. He subsequently made further enquiries but was never able to obtain a clear answer.

[225] Langridge said that he later attended an Intel launch and thereafter purchased two franchises, one for the Knysna region and the other for the West Coast region. He understood that Intel's finance would be provided by what he referred to as *'the mother company, Rudco...'*. Langridge testified that he, Hewitt and Gresse then decided to operate the two franchises jointly. Langridge personally contributed R37 500 towards the cost of these two franchises.

[226] Langridge also said that at the Intel launch the accused informed those present that funds would be raised from a gold dust transaction. His understanding was that the accused was the driving force behind Rudco and that Llewellyn Visagie fronted Intel. When asked about the relationship between Rudco and Intel he replied *'Ja, natuurlik dit is indirek dat dit Pa en seun, dit is dieselfde tipe, dit is net 'n vleuel van die maatskappy'*.

[227] Langridge testified that the Intel franchises did not materialise either and that he was not refunded any portion of the amount that he had paid.

[228] During cross-examination nothing of relevance emerged other than Langridge's confirmation that he had been attracted by the 6% interest rate offered by Rudco. The balance of Langridge's evidence was not challenged.

[229] Gresse resides in Cape Town. He testified that Langridge had told him about Rudco's bond switch product. He accompanied Langridge to the Intel launch. He understood that the accused was in control of Rudco. Gresse confirmed that he became a

business partner of Langridge and Hewitt to operate the Intel franchises. He personally paid R12 500 towards the cost thereof. He recalled that he made out a cheque to Rudco for this amount.

[230] Gresse confirmed that the accused had represented at the Intel launch that funds would be raised from a gold dust transaction somewhere in Africa.

[231] Gresse also confirmed that the Intel franchises did not materialise. It then came to his attention that the National Credit Regulator was investigating what he referred to as the Rudco group. He and Langridge then met with the accused at a restaurant in Bloubergstrand. He told them that he was engaged in another project, upgrading RDP houses and that as soon as the project was completed he would be able to pay them. However neither he nor Langridge were ever repaid.

[232] In cross-examination Gresse conceded that he may have paid the sum of R12 500 to Intel and not Rudco. The rest of his evidence was not challenged.

[233] Llewellyn Visagie confirmed that he is the son of the accused. He testified that he was involved in the business of both Rudco and Intel. During 2010 he pleaded guilty in terms of a plea agreement on charges of theft relating to both Rudco and Intel. As part of his plea agreement he undertook to testify as a State witness.

[234] Llewellyn Visagie completed matric and is currently a registered estate agent. He commenced employment at Rudco in April 2007 as a data capturer. He later became manager of the bond switch division. He also assisted Duminy in staff and agent training, including the compiling of training manuals and the calculation of agents commission. He was familiar with Wyeth and her role at Rudco. He was the sole member of Comugrande (the close corporation to which I referred earlier) from mid-May 2007.

[235] He was asked if the accused had informed him about whether Rudco had financial backing for its products. He replied that the accused '*het bekend gemaak dat Real People betrokke was, en dat daar ook oorsese beleggers was*'. The accused spoke about an amount of R110 million. At a later stage he became aware that the sole source of Rudco's funding was clients' money. He could not recall precisely when this was, but did recall that the accused then told him that he first wished to try to finance Rudco on his own before relying on outside investors.

[236] Llewellyn Visagie testified that for the duration of his employment at Rudco the contractual disciplinary period for clients was 6 months. On certain occasions he had to deal with client queries about their creditors not being settled. These queries coincided with the intervention of the National Credit Regulator. He testified that it was on the instruction of the accused that payment to client creditors was withheld. According to the accused, the reason for this was that there was a loophole in the National Credit Act. If due diligence requirements were not met by Rudco and clients' creditors were paid there was a risk that the clients' funds would be forfeited.

[237] Llewellyn Visagie said that the bond switch product was designed to lure existing mortgagees to switch to Rudco bonds which, as I have said, offered a substantially lower interest rate. The initiation fee was R5 700, allegedly as prescribed by the National Credit Regulator. Initially Rudco advised clients on the instructions of the accused to discontinue payment of their existing bond instalments. Rudco was subsequently instructed by the Financial Services Board that it was not permitted to furnish this type of advice to members of the public.

[238] Although there was considerable interest in the product, no bond switches eventuated since no financial backing was forthcoming and the National Credit Regulator intervened and instructed Rudco to stop marketing the product. Llewellyn Visagie also said that the accused held one of the Rudco bank account debit cards, but that he did not know how much the accused had spent or what the funds withdrawn were used for.

[239] He also explained about the gold dust transaction and in particular the involvement of Daphne Maarman and her sons Tyrone and Maltino Maarman. He said *'Daphne en Tyrone het Rudco kantore, of hulle het 'n kantoor daar gehad en ek het later uitgevind dat hulle in goud onderhandel, of handel. En dat Rudco so sal geld genereer, deur middel van die goud'*. The gold dust transaction was initiated between the late Daphne Maarman and the accused. Llewellyn Visagie confirmed that during November 2007 he, together with the accused and the two Maarman brothers, attended on Rennies at Canal Walk in order to remit cash through Bidvest Bank to Daphne Maarman and various persons on her behalf in Sierra Leone under the guise of gift allowances. The funds were Rudco client funds and

they were remitted on the instructions of the accused. Llewellyn Visagie confirmed that at the time he knew that the funds transferred were not gift allowances but were in fact intended for a gold dust transaction. The gift allowance declaration signed by him was for R27 993.20 which equated to 4000 USD. On two further occasions Llewellyn Visagie was instructed by the accused to draw cash from the Comugrande account and pay it over to Tyrone and Daphne Maarman, also for the gold dust deal. On the first occasion he withdrew R5000 and on the second R50 000. The funds had been transferred into his Comugrande account by Wyeth from one of the Rudco accounts.

[240] When asked about financial backing for the Intel product he replied that there was to be no external financial backing. He said that the funds would be raised from the sales of the franchises themselves and that there was no need for external financial backing since *'Jy het dit nie regtig nodig vir so 'n tipe besigheid nie, dit is koop en verkoop'*. He denied that it had ever been represented to potential purchasers that there would be outside financial backing.

[241] Llewellyn Visagie testified that he and the late Syed-Eusuph were initially the co-signatories on the Intel bank account held at Standard Bank. He later became the sole signatory on that account. He also confirmed that during November and December 2007 other transfers were made from the Rudco Standard Bank account to the Comugrande account, also held at Standard Bank. When asked why, he replied *'Op daardie stadium, ons het, my pa het geweet, almal het geweet van die NCR se ondersoek en ... hy was bang dat die rekening gevries word, dit was net voor jaar einde en daardie geld is in my*

rekening gesit. Ek het dit getrek, want hy kon nie in die bank ingaan om geld te trek nie, vir staff salaries en vir goud transaksies'. However Llewellyn Visagie had no personal knowledge of how the accused had appropriated the funds withdrawn on his instructions, all of which were cash withdrawals. Llewellyn Visagie confirmed that he knew that these funds were those of Rudco clients.

[242] In cross-examination Llewellyn Visagie confirmed that he was aware that both Wyeth and Lannen had also received payments from Rudco. He further confirmed that he was aware that both Wyeth and Lannen were afforded the opportunity to testify as State witnesses without being prosecuted. He was asked whether that option was made available to him and he replied that it was not. The accused did not challenge the balance of his evidence.

[243] Tyrone Maarman testified that he knew that his late mother and the accused had entered into a gold dust deal. The accused financed his financial contribution to the transaction using Rudco client funds. The plan was that the late Daphne Maarman would travel to Sierra Leone where she would purchase unrefined gold. She would then have it refined after which she and the accused would share the profit made thereon. The motivation for this gold dust deal was that the accused needed more money and at one stage had asked Tyrone Maarman if his late mother could *'lay her hands on about R3 million to R4 million'*. He told the accused to speak directly to his mother and he was later informed by her of the details of the transaction. He confirmed that the accused then

remitted some of the funds required by money gram in November 2007 to the late Daphne Maarman and various persons on her behalf in Sierra Leone.

[244] These money grams were sent on the instructions of the accused by Maarman himself, his brother Maltino, a Ralph Press, someone called Wanie and a Mr and Mrs Sondag. Llewellyn Visagie was also involved. All funds were remitted under the guise of individual gift allowances.

[245] Tyrone Maarman testified that he personally remitted R27 993.20 which equated to 4000 USD. Maarman then identified an invoice (Exhibit G2) sent to the accused personally on 11 September 2007 by Daphne Maarman's company, USADC Import-Export International Trade Division (Pty) Ltd, for payment for 50kg of gold dust in a total amount of 600 000 USD.

[246] In cross-examination the accused focused on extraneous issues which were largely irrelevant to the evidence given by Maarman in relation to the gold dust transaction. The accused rather effectively admitted his involvement when he challenged Maarman to confirm that he (i.e. the accused) could not have remitted the funds unlawfully without Maarman's assistance since, in his words, *'Jy het presies geweet hoe dit werk'*.

[247] The evidence of Maltino Maarman corroborated that of his brother Tyrone with regard to the transfer of funds by way of money gram under the guise of a gift allowance to

Sierra Leone. He confirmed having remitted the sum of R20 994.90 which equated to 3000 USD.

[248] During cross-examination Maltino Maarman's evidence in regard to the gold dust transaction and the transfer of funds to Sierra Leone was not challenged by the accused.

[249] Tsepo Edgar Mokgawa testified that he is employed as an investigator in the Financial Surveillance Department of the South African Reserve Bank. During November 2009 he was requested to investigate allegations made by Tyrone and Maltino Maarman relating to the funds remitted under the guise of gift allowances to Sierra Leone for the gold dust transaction. He confirmed that individuals require permission from the South African Reserve Bank to conduct commodity transactions outside of the Republic of South Africa. It is illegal to disguise such transactions as gift allowances. His investigations had revealed that no record could be found of permission having even been sought by the accused, the Maarman brothers or any others involved in the gold dust transaction for the funds to be remitted as gift allowances. He could also find no evidence that any funds were repatriated back to South Africa thereafter. Mokgawa confirmed that should the transactions be proven they would constitute transgressions of the exchange control regulations of the South African Reserve Bank and would attract criminal liability. He specifically referred to regulation 10(1)(c) of the Exchange Control Regulations which provides that no person shall, except with permission granted by the Treasury, enter into any transaction whereby capital or any right thereto is directly or indirectly exported from the Republic of South Africa. He also referred to regulation 22 thereof which provides that

every person who contravenes or fails to comply with any provisions of the regulations shall be guilty of an offence. Finally he testified that the fact that funds were remitted as gift allowances for what was actually a commodities transaction constituted a misrepresentation to the South African Reserve Bank.

[250] Mokgawa's evidence was unchallenged as the accused declined to cross-examine him.

[251] Lemmer Scholtz testified that he is a colonel in the South African Police Services based at the Operational Intelligence Analysis Centre, Crime Intelligence, Western Cape. He was previously employed as an analyst at the former office of the Directorate of Special Operations. He confirmed that he had performed an analysis and produced a report on the bank accounts of Rudco, Intel and other related entities (Exhibit B).

[252] The purpose of this report was to outline his mandate, the procedures performed and his factual findings in the investigation into the affairs of Rudco, the accused and associated entities and individuals.

[253] His mandate was to analyse information contained in the statements of six bank accounts and other source documents. These are referred to in more detail below. The procedure involved the identification of deposits and transfers from clients into Rudco and Intel accounts over the period 16 October 2006 to 29 March 2008 and the transfer out and disbursement of amounts from these accounts. It also involved the perusal of supporting

documentation, including the affidavits of witnesses and company and close corporation records obtained from the Registrar of Companies and Close Corporations. The witness affidavits included those of Wyeth, Lannen, Armfield, Marillier and the Maarman brothers. He was also tasked to identify payments made and salaries paid to specific individuals. His testimony as to his findings was as follows.

[254] The Rudco FNB 2264 account was opened on 12 October 2006. The sole signatory was Tyrone Africa. The account was closed on 27 December 2006. During the period 16 October 2006 to 27 December 2006 a total of R65 012.88 was deposited into this account. During the same period 23 cheques were issued on this account totalling R28 431.28, and 14 internet payments were made totalling R33 134.34. These internet payments related to the purchase by Rudco of office stationery and equipment and the payment of staff salaries.

[255] The Rudco FNB 909 account was opened on 19 December 2006. Wyeth was the sole signatory on the account. The account was closed on 9 October 2007. During the period 21 December 2006 to 9 October 2007 an amount of R7 141 911.60 was deposited into this account by way of cash and cheque deposits and magtape credits, as well as internet and netcash payments. During the same period amounts were paid out of this account totalling R7 087 495.43. Included in the latter amount were salaries and other amounts paid to Rudco's key personnel. The accused was paid R50 000. Armfield was paid R91 200. Wyeth was paid R158 457. Marillier was paid R94 000. Llewellyn Visagie

was paid R65 160.50. Salaries of other Rudco staff were also paid out of this account over that period in a total amount of R502 215.26.

[256] Over the same period amounts totalling R226 417.85 were also paid to the accused or to third parties for his benefit. There were further additional payments from this account for vehicle rental of R11 000, accommodation expenses at various hotels and the like of R16 138.15, office equipment and stationery of R99 107.88, rental of R259 242.54, air travel and related expenses of R14 308, advertising costs of R54 637.64, training costs of R33 495.80 and amounts that could not be specifically categorised but appear to have related to Rudco's business expenses of R157 776.02.

[257] In addition to the aforementioned, purchases were made with the debit card in the possession of the accused for clothing of R12 808.30, retail purchases of R10 653.88, furniture and household effects of R4 165.95, restaurants of R9 436.45 and entertainment and similar expenditure of R11 409.07.

[258] Over and above the foregoing, over the same period, cash withdrawals totalling R172 500 were made with the debit card in the possession of the accused. The spacial or geographical analysis of the location of the automatic teller machines accessed with the debit card revealed that these withdrawals took place in the areas of Bothasig, Century City, Edgemean, Milnerton, N1 City and St George's Mall. Scholtz testified that at the time the accused lived in the Bothasig/Edgemean area (to which Century City, Milnerton and N1 City are in close proximity) and confirmed that Strand Street in Cape Town (where

Rudco's Cape Town office was located) is in close proximity to St George's Mall. Scholtz also testified that 79 cheques were issued on the account totalling R557 626.80 but that only 18 cheques could be located during the course of his investigation. These 18 cheques totalled R102 412.03 and included a payment to the accused's former fiancée of R15 000 together with a payment to a political party of R7 000. It should be mentioned that Scholtz's report reflects the total amount of cheques issued from this account as being R117 412.03 but the payment to the accused's former fiancée had in error been duplicated. Scholtz thus confirmed the correct total to be R102 412.03.

[259] Also included in the amounts paid out or withdrawn from the FNB 909 account were '*refunds paid*' of R2 345 531 which, as I have said, the State alleges the accused applied to refunds to clients and / or payment to clients' creditors by using the funds of other clients for this purpose.

[260] Scholtz testified that the Rudco Standard Bank 7114 account was opened on 29 May 2007. Wyeth was the sole signatory on this account until 12 October 2007 when the accused became the sole signatory thereof. During the period 29 May 2007 until 8 January 2008 deposits were made into this account totalling R2 116 596.31. The amounts which flowed out of the account over the same period totalled R2 075 792.81.

[261] Included in the amounts which flowed out of the aforementioned account were salaries and other amounts paid to Lannen of R124 000, Llewellyn Visagie of R46 249.15, Armfield of R47 264.40, and salaries to other staff members of Rudco of R186 439.83.

Also included were payments for office equipment and stationery totalling R51 970.58, vehicle rental for the accused of R11 053.10, and miscellaneous payments relating to Rudco's operation costs of R73 912.83.

[262] Payments made with the debit card in the possession of the accused from this account included clothing of R7 686.10, retail purchases of R3 193.90, furniture and household effects of R1 733.80, restaurants of R2 645.87, and miscellaneous purchases of R1 720.43.

[263] Also included were cash withdrawals made with the debit card in the possession of the accused totalling R31 000. Scholtz testified that as with the FNB 909 account, the spacial or geographical analysis indicated that these withdrawals were made from automatic teller machines located in or close to the areas where the accused lived and worked.

[264] Also included in the withdrawals from the Standard Bank 7114 account were electronic transfers to USADC Import-Export International Trade Division (Pty) Ltd and Bidvest Bank in favour of the late Daphne Maarman totalling R377 650. These transfers were effected on 9 November 2007 and 20 November 2007.

[265] Also included in the withdrawals from the Standard Bank 7114 account were electronic transfers to the Comugrande account of which Llewellyn Visagie was the sole signatory at the time, totalling R226 000. These transfers were effected over the period

27 November 2007 to 6 December 2007. Accordingly an amount of R226 000 was transferred from the Standard Bank 7114 account to the Comugrande account in just ten days.

[266] Scholtz also testified that on 20 November 2007 four foreign exchange transactions were made to Daphne Maarman and related parties in Sierra Leone in a total amount of R109 761.30. This equated to 15 000 USD. The records showed that Llewellyn Visagie transferred 4 000 USD, Maltino Maarman 3 000 USD, the accused 4 000 USD and Tyrone Maarman 4 000 USD.

[267] Scholtz testified that Intel operated Standard Bank account no 070679126. This account was opened on 29 June 2007. During the period 31 August 2007 to 13 February 2008 deposits were made into the Intel account of R493 120. During the same period amounts were paid out of the account totalling R426 990.36. These included payments to Llewellyn Visagie of R41 601.27 and to the late Syed-Eusuph of R57 410.64. Payments or withdrawals made with the debit cards in the possession of the late Syed-Eusuph and Llewellyn Visagie totalled R322 978.45.

[268] Scholtz also testified that Comugrande operated Standard Bank account no 073073326. Llewellyn Visagie became the sole signatory on this account on 3 August 2007. An analysis of Comugrande's bank account statements confirmed the payments made from the Rudco Standard Bank 7114 account to Comugrande's account of R226 000 over the ten day period between 27 November 2007 and 6 December 2007.

[269] During cross-examination it emerged that the accused was in agreement that although he had no signing powers in respect of the other accounts he was the sole signatory of the Standard Bank 7114 account as from 12 October 2007. The accused questioned the accuracy of the allocation by Scholtz of certain relatively minor payments reflected on the bank statements. The accused did not directly challenge Scholtz's evidence that he (i.e. the accused) had been in possession of the debit cards for the Rudco FNB 909 account and Standard Bank 7114 account. He also did not dispute that the amounts and transactions reflected by Scholtz in his report as appearing on the bank statements of the relevant entities were incorrect. Accordingly Scholtz's evidence was, to all intents and purposes, unchallenged. The total of the amounts which the State alleges were misappropriated by the accused correspond with those reflected in the testimony and report of Scholtz.

[270] For sake of convenience and although he testified after the accused as a court witness, I now turn to the evidence of Ryno Engelbrecht, one of Rudco's duly appointed liquidators.

[271] Engelbrecht testified that during the course of his investigation into the affairs of Rudco he could find no record of any audited financial statements. Having scrutinised Rudco's bank accounts, he referred the matter to the former Directorate of Special Operations for investigation. He said *'The reason for that is the transactions looked strange on the bank account. ... The bank account was a strange bank account because it is not money of a client that would be paid into a trust account, it is money of a client that*

would be paid into a normal business account and those funds would be utilised for business expenses of Rudco and it will also be utilised to pay certain creditors but as I said we confirmed that those weren't Rudco's creditors, it was for instance a client's creditors...'

[272] He said that since the money was not held in trust for individual clients it was not possible to establish which client's funds were expended to pay which creditors. A further problem was that Rudco charged a management fee but, based on the liquidators' investigation, its monthly overheads exceeded that management fee *'whereby Rudco must then utilise part of the client's funds that was paid in to cover those expenses...'*

[273] Engelbrecht also testified that no dividend could be awarded to creditors and in fact there was a shortfall of R59 000. He said that a cash amount of R23 500 was found in Rudco's one bank account after that account was frozen pursuant to its liquidation. The only other assets which could be located were office furniture and equipment which were sold by public auction and realised the sum of R39 000. Engelbrecht also said that one creditor, namely Enzel 191 CC trading as Rudco South Cape had lodged a claim for monies allegedly advanced to Rudco in the sum of R155 595.16. That claim had not been investigated since there was no prospect of a dividend being awarded to creditors.

[274] In his questioning of Engelbrecht the accused claimed that he had never heard of Rudco South Cape. He asked Engelbrecht why he had not pursued claims against former clients of Rudco in accordance with the contracts that they had signed. Engelbrecht replied

that it was not possible to pursue any such claims since Rudco was not a registered financial institution. It was thus not legally entitled to receive monetary deposits from members of the public nor to make loans to them.

[275] I now turn to the evidence of the accused, who confirmed that he has no professional qualifications. He testified that during April 2006 he commenced business as an independent agent for a company called Clientele. This company marketed an insurance product and the accused's earnings were essentially based on commissions made on recruiting clients for the company. During the course of his business the accused became increasingly aware of how difficult it was for debt ridden or blacklisted consumers to obtain credit and/or loan finance. He said that he had personal experience of this as well, claiming that when he was divorced in 2005 his former wife had foisted the responsibility of settling her debts upon him, as a consequence of which he had been blacklisted.

[276] He said that it was later during 2006 that he came up with what he referred to as a '*goeie deurdenkte plan*' to assist these consumers, namely the Rudco products. He approached J Arthur Brown of Fidentia with his proposed model and testified that Brown '*was baie opgewonde*' (the involvement of Brown was raised by the accused for the first time in his evidence in chief). At that stage the Rudco model was intended to include a zero percent interest rate coupled with an administration fee payable monthly over the structured period for which Rudco would grant the loan finance. The accused informed Brown that his (i.e. the accused's) previous experience in selling insurance policies, and in

particular funeral policies, had shown that the imposition of a disciplinary period was an appropriate method to employ in order to identify consumers who were serious about fulfilling their financial obligations.

[277] On Brown's advice the accused approached an attorney who informed him that although he was not a specialist in the field he did not see any reason why the accused's proposal could not work. He did however caution the accused to obtain specialist advice on the matter. By all accounts the accused did not heed this caution but returned to Brown with the aim of arranging financial backing for the Rudco products. The accused suggested an amount of about R100 million and Brown apparently told him that he thought that this was a reasonable amount. According to the accused, Brown also suggested that Real People could be a potential backer. The other source of financing would be the administration fees and premiums to be paid by the clients once their creditors had been settled by Rudco.

[278] Without further ado, the accused commenced the Rudco business in about September 2006. He started off in a small office but after three months, as the demand for his products increased and clients streamed in, he moved Rudco to much larger premises.

[279] The accused testified that at the beginning of 2007 he was made, in his words, '*deeglik bewus*' about the National Credit Act No 34 of 2005. (It should be noted however that this Act came into operation on 1 June 2006, three months before the accused commenced business as a credit provider.) The accused set about securing the required

registration (as envisaged in sections 40 and 45 of the Act) and appointed attorneys for this purpose.

[280] The accused said that Rudco later secured a temporary registration number from the National Credit Regulator. Client application forms had to be revised in order to comply with the Act and attorneys were also appointed to attend to this. (It is noted that the appointment of attorneys for this purpose had not been put by the accused to any of the relevant State witnesses when they testified.) Clients then also had to re-complete their applications.

[281] The accused testified that the first tranche of funding from Fidentia was to have been paid during March 2007. He did not specify how much and by that stage Fidentia had apparently already been placed under curatorship. The accused said that he contacted Brown who told him that funds would be paid to Rudco within a few weeks from, in the words of the accused, *'oorsese geld waarvan die kurators nog nie weet nie'* and that he should make use of the *'premie-inkomste'* paid by Rudco clients in the interim. This the accused did.

[282] When funding was still not forthcoming the accused again approached Brown who then apparently suggested to him that he should consider what he referred to as *'commodity trading'* as an interim measure to raise funds. Brown arranged for the accused to be introduced to the late Daphne Maarman who explained to him how it would work. In

the words of the accused, '*Dit het goed gelyk*'. The accused however decided that an offshore commodity transaction was not an option that he wished to pursue at that stage.

[283] Despite the lack of independent funding, business proceeded as usual and the accused continued to make use of client '*premies*'. He said matters reached a point at which increased pressure was placed on Rudco to secure outside funding. He initially said that this coincided with the expiry of the disciplinary periods of a number of clients whose creditors now had to be settled (although according to the accused he had managed by then to settle client creditors in a sum of about R1.5 million to R1.9 million). It was at that stage – in August or September 2007 – that the proposed gold dust transaction with the late Daphne Maarman began to appear even more attractive. The accused had begun to realise that funding from Brown would not be forthcoming, despite the latter's alleged promises which apparently included an approach by Brown to Real People. He later contradicted his evidence in this regard. The accused said that he had indeed represented to others that Real People was to be a financial backer, but that when Brown's so-called promises came to nought, he set about using Rudco client funds – in November 2007 – to finance his share of the gold dust transaction.

[284] His subsequent testimony revealed however that the accused's primary motivation to raise funds at that stage was in order to refund Rudco clients on the instruction of the National Credit Regulator. He recalled that his financial contribution to the gold dust transaction was in the region of R500 000 which he confirmed that he paid over to the late Daphne Maarman. He said that no profit was realised from the transaction, nor were any

funds repaid since, according to him, Maarman appropriated the funds which he had paid to her for her own purposes.

[285] The accused also testified that during 2007 he and the late Syed-Eusuph decided to try to raise funding by marketing the Rudco bond switch product. Syed-Eusuph requested the accused to prepare a comprehensive proposal which she intended to present to a consortium of businessmen from India who had apparently expressed an interest. Meetings between the accused, Syed-Eusuph and these businessmen followed but during August or September 2007 Syed-Eusuph was diagnosed with cancer and the bond switch product ground to a halt.

[286] The accused said that Syed-Eusuph was also involved in the setting up and marketing of the Intel franchises. Both she and Llewellyn Visagie were qualified estate agents and thus suited to market this product as well as the Rudco bond switch product. It was decided that funds to Intel would be channelled through Rudco from overseas. It seems that the same consortium of Indian businessmen were similarly approached to provide funding for Intel. A further meeting was held with them during the week of 15 November 2007 for this purpose. The accused and Syed-Eusuph decided to inform potential investors at the Intel launch that funding would be forthcoming both from overseas and from the gold dust transaction and this is what they did.

[287] The accused also testified that he did not consider it necessary or appropriate to approach any of the recognised financial institutions in South Africa for assistance, even at

that stage. He spoke about a meeting which had previously taken place with certain senior officials of ABSA Bank who had apparently expressed an interest in a 'samesamewerking ooreenkoms' with Rudco. This was dismissed by the accused who feared that he would lose control of Rudco. He said:

'Ek het dit van die hand gewys op grond daarvan, en besluit dat Rudco moet op sy eie reg en sy eie naam, moet hy dit wat hy gesê het aan mense, moet hy kan gestand doen, en hy moet dit kan doen want, soos ons gesê het, "we help because we care".'

[288] The accused said that matters at Rudco went awry because clients did not understand the effect of their disciplinary periods and queried why their creditors had not been paid during such periods. He also blamed Rudco agents who allegedly misinformed clients when assisting them to contract with Rudco. In particular he blamed Toefy and other clients for lodging complaints with the National Credit Regulator which resulted in its intervention at Rudco. According to the accused the National Credit Regulator despatched Mark Whale to Rudco's office to investigate (it seems during June 2007). The accused said:

'Ek het aan mnr Mark Whale verduidelik. Ek het nooit geopenbaar dat Fidentia betrokke is, of dat Arthur Brown die persoon is wat die fondse beskikbaar sou stel nie; ek het net gesê daar gaan buitelandse fondse kom, en ek het wel genoem dat daar kontak sal wees met die Real People-groep, wat ook sal belangstel. En dit het ek gesê na aanleiding van die feit dat mnr Brown my telkemale verseker het dat hy met hulle sal praat, en dat hy my sal terugvoer gee. En soos tot ons verhouding vandag toe nog is, is mnr Brown nie 'n ou wat werklik sy woord hou nie. Maar in elk geval, ek het aangegaan met Rudco. Ek het geglo daar sal 'n oplossing wees. Ek het gaan seker maak, of gaan sit, en 'n alternatief gaan uitwerk om die berekening van premie-inkomste teenoor skuldbetaling, 'n faktor te bereken en te wys dat jy dit kan doen, soos wat ons dit noem in ons land... elke besigheid daar buite speel die "numbers game"... Dit is wat in die besigheidswêreld

bekend staan, deur middel van kontrakte, "you create money through thin air" as dit kom by kontrakte... dit was duidelik gewees dat jy dit met nommers kan oorkom as jy dit reg sou kry.'

[289] When asked to explain what he meant by '*premie-inkomste*' the accused said that these were payments by clients whose creditors had already been settled and which he estimated to be between R45 000 and R50 000 per month. This notwithstanding, the accused said that having made his calculations he approached Standard Bank during late September or early October 2007. He informed them that it appeared as if he was going to have a problem. I understand this to mean that his '*numbers game*' had not produced the desired result. The officials whom he met questioned him about the negative publicity which Rudco was receiving by that stage. He said '*Hulle het vir my gevra hoe gaan ek hierdie vure doodgeslaan kry, en ek het vir hulle gesê ek probeer my uiterste bes om vir eers alternatiewe befondsing te bekom*'. The accused said that he also told the officials at Standard Bank where he believed the responsibility for Rudco's woes lay (i.e. agents and clients) and that he was in the process of explaining all of this to the National Credit Regulator.

[290] The accused testified that after Wyeth's resignation as director he had also approached Standard Bank and told them that it was his former wife's fault that he had been blacklisted. Since he wished to proceed with the business of Rudco there was no alternative but for the bank to afford him sole signing powers on the Rudco Standard Bank 7114 account. This the bank did. When asked if he had ever informed the bank of his previous conviction for theft he replied that the bank had not asked him. He confirmed however that he had not disclosed this to the bank. The accused then explained at some

length why he believed that he had been wrongly convicted of theft and said *'So ek het dit regtig gesien maar as nie iets van vreeslik van belang nie, en ek het aangegaan met my besigheid'*. He claimed that after the National Credit Regulator had advised him that he was not permitted to be a director of a company he then resigned from Intel. However as I have said the company records obtained from the Registrar of Companies do not bear this out.

[291] The accused said that as far as he was concerned the only problem faced by Rudco was that the funding promised by Fidentia had not materialised. In his view there was no problem with Rudco's business model and the fine of R1 million imposed by the National Credit Regulator was nothing other than an attempt to make an example out of Rudco. He claimed that Mark Whale had in fact told him this. However the accused did not call Whale to testify.

[292] The accused said that as a result of the negative press publicity Rudco was faced with a flood of clients wishing to cancel their contracts. This caused chaos in the Rudco head office and resulted in client refunds having to be accelerated. The accused approached a number of third parties for financial assistance but due to the negative publicity no-one wanted to do business with Rudco.

[293] As I have said the accused then contradicted his earlier testimony that it only dawned on him in about August or September 2007 that Brown's promised funding would

not materialise. In response to a question by the Court he said that by April 2007 *'het ek al 'n gevoel gehad'* that this was going to happen.

[294] Despite his earlier evidence about the *'premie-inkomste'* the accused went on to testify that, in his view, once a Rudco client had signed a contract, all amounts paid by that client from that date became Rudco funds and Rudco was entitled to use those funds as it wished.

[295] During cross-examination the accused confirmed that at all material times he controlled all of the Rudco bank accounts notwithstanding that others had at various times been the signatories on such accounts. He confirmed that the Rudco business model and products were his creation and that he had appointed all key personnel. He confirmed that the viability of both the Rudco and Intel concepts was contingent upon external financial backing, although he unconvincingly sought to qualify this by claiming that such backing would only have been required in the early stages. I say that the accused was unconvincing in this regard since in his evidence in chief he had not only testified that his *'numbers game'* had shown that Rudco was not viable but also that Rudco would have been a success if Brown had not failed to fulfil what the accused alleged were promises of financial backing.

[296] When asked why he had relied on Brown's alleged undertakings in circumstances in which the Fidentia scandal had broken in 2006 and Brown had apparently been arrested in early 2007, the accused replied that one cannot believe everything that is reported by

the media. He also confirmed that he would have had no difficulty in securing financial backing for Rudco from hidden funds which he had been informed by Brown the Fidentia curators knew nothing about.

[297] The accused was asked why he did not rather pursue a legitimate form of financial backing, such as that apparently considered by ABSA. In response he insinuated that simply because an established institution is a registered financial provider, this did not mean that it is legitimate. He also wanted to retain sole control of Rudco and ABSA's proposal did not allow for that.

[298] The accused confirmed that he caused Rudco client monies to be withdrawn and/or transferred from the Standard Bank 7114 account for the gold dust transaction without having the right or permission from Rudco clients to do so. In his view however it was the right decision at the time since it had the potential to ultimately pay out refunds to Rudco clients.

[299] The accused admitted that he had represented to Rudco agents, employees and clients, that it had financial backing and that he had specifically mentioned Real People in this regard. He further admitted that this was a blatant contradiction to what he had put to Bruce Schenk of Real People when he had testified.

[300] The accused admitted that when financial backing was not forthcoming he used Rudco client funds for personal and business expenses contrary to their express mandate.

However he sought to qualify this admission by claiming that it was only 'technically' the case. When asked to explain he said *'Wanneer jy in die posisie is om 'n besigheid to bestuur dan is dit van die laaste besluite wat jy neem rakende dit...'*. He then further explained that in his view, when one is running a business, one of the last things that one concerns oneself with is whether it is correct or not to use funds which are the property of clients for one's personal and business expenses.

[301] When he was referred to the bank statement analysis prepared by Scholtz the accused confirmed that he utilised client funds as illustrated therein. He also confirmed that all funds which flowed into the Rudco accounts were client funds.

[302] The accused was referred to the testimony of a number of the State witnesses that Rudco had no proper system of accounting. He denied that this was the case, claiming that a manual system *'bly altyd die maklikste en die beste'*. He also commented that the manual system used in conjunction with the Nedcash debit order programme was sufficient since, in his words, *'Die wonderlike ding van die Nedcash debit order stelsel was die inligting wat jy van die mense wat dit geadministreer kon kry en daardie data was altyd beskikbaar'*.

[303] The accused was asked why he did not follow the advice of Tyrone Africa that separate bank accounts would have to be opened and conducted so that Rudco funds (in the form of administration fees) would be kept separate and distinct from client funds. The accused replied that he would have followed this advice if he had been in control of the

accounts. He then rather startlingly, in light of his previous admission that he was indeed in control of all of the Rudco accounts, sought to claim that initially it was Tyrone Africa who was in charge of Rudco's finances and that after he withdrew from Rudco the responsibility lay with Wyeth and Shanaaz Stevens. He said '*...ek was besig, ek was die meeste van die tyd nie in die Kaap nie, ek was besig met opleiding in Durban en Johannesburg*'.

[304] When he was asked why, despite advice from Tyrone Africa and Marillier that Rudco would not be viable without external funding, he nonetheless wilfully continued to conduct business, he replied '*Ek het op 'n dag tot dag basis gehoor dat daardie finansiering sal beskikbaar word*'. This directly contradicts his previous evidence that as early as April 2007 he realised that in all likelihood external financial backing would not materialise and that he in fact rejected all other proposals made to him (other than the gold dust transaction) since he was not prepared to lose an ounce of control over Rudco.

[305] The accused tried to distance himself from the manner in which the funds of Intel investors were expended. He claimed that he could not say how those funds were spent despite the evidence of the State witnesses which had directly linked the accused to withdrawals from the Intel account. It is also noted that the accused's attempt to distance himself from Intel contradicted his evidence in chief which showed that he was directly involved in both the setting up of Intel and the marketing of its product. His belated attempt to portray that the only link between himself and Intel was Rudco as the conduit for Intel funding is thus unconvincing. It is also common cause that the accused was appointed a

director of Intel on 8 June 2007 and that the bank statement analysis reflects withdrawals of investor or client funds from the Intel account subsequent to that date.

[306] Returning to the issue of the Rudco client refunds, the accused was asked whether he still felt that the manner in which the refunds were made was legitimate in the sense that Rudco had no financial backing and it did not know which client funds were being used to pay whom at the end of the day. The accused replied *'Dit het nie saak gemaak nie. Daar was 'n kontrak in plek wat geteken was deur die klient, wat geteken was deur Rudco, wat dit wettig gemaak het'*. He went on to concede however that there was no specific provision in the Rudco contracts to that effect. He also confirmed that he had never put to a single Rudco client who testified that they were aware that the moment they had contracted with Rudco whatever money they paid would become Rudco's money to do with as Rudco pleased.

[307] When it was put to the accused that he was using Brown as a scapegoat, he sought to place the blame squarely on Brown's shoulders, claiming that if the latter had not approved his business plan Rudco would never have got off the ground. After further questioning he eventually said that he accepted responsibility for what had happened at Rudco but persisted in his denial that he had exploited debt ridden consumers. He also refused to accept responsibility for the position in which his son Llewellyn Visagie had found himself, claiming that he had not approached his son to work at Rudco but that his son had in fact approached him. He then blamed the State for his son's criminal conviction.

[308] The accused then belatedly sought to challenge the bank statement analysis performed by Scholtz, claiming that the latter was incorrect in certain respects. When asked by the Court on what basis he now launched this challenge the accused repeatedly contradicted himself, first claiming that Scholtz had referred to bank accounts that he had nothing to do with, then that the documents made available to him were incomplete, then that his information was based on records which he had available when Rudco was still operating, then claiming that he had perused a report of the liquidators (which could only have been compiled after Rudco had closed its doors), and then finally claiming that he had not ever perused the relevant bank statements, despite him having been in possession thereof since mid-2010. In short the accused was unable to provide any verification as to why the amounts reflected by Scholtz in his report and his testimony were incorrect. This notwithstanding I offered the accused the opportunity over the lunch adjournment to peruse the bank statements to which he replied '*U Edele as die Staat voel hulle is reg dan is hulle reg. Ek gaan ook eet en ek kan dit nie in 'n uur en 'n half doen nie*'. He thus declined to make use of the further opportunity afforded to him. However it later emerged that the accused did not dispute the amounts reflected themselves but contended that some amounts allocated to his personal expenditure were in fact business expenses. He also claimed that at times others had made withdrawals from or purchases on the accounts with the debit cards in his possession, although he conceded that this had been on his instructions. It was also revealed that as late as October and November 2007 the accused was utilising Rudco client funds to purchase furnishings for Intel's office and to pay for certain expenses relating to the Intel launch.

[309] The accused then went on to confirm that he was the driving force behind Rudco. He also admitted that he should not have been registered either as a director of either of the two Rudco companies or Intel due to his previous conviction for theft.

[310] When asked *'am I correct that you have made an admission insofar as your conduct is concerned where you sent money out as a gift allowance whereas it was intended for a gold dust deal?'* he replied *'Ja, dis die opdrag wat ons gekry het, so ons het dit so gedoen, ja.'* He was then asked if he had arranged for the funds to be transferred for that transaction out of the Rudco Standard Bank 7114 account to which he replied in the affirmative. The accused also confirmed that he had used Rudco client funds to invest in the gold dust transaction after the instruction had been issued by the National Credit Regulator that clients were to be refunded.

[311] When challenged as to why the disciplinary period stipulated in Rudco client contracts was changed at Rudco's instance, the accused attempted to portray that this was in order to comply with the requirements of the National Credit Act but ultimately conceded that *'Toe dit aan die klient verduidelik is met die drie maande, was dit gebaseer op wanneer die geld beskikbaar sou wees aan die maatskappy. So alles wat ons gesê het en wat ons vorms gedruk het was gebaseer op wat sou toe gebeur het, wat toe nie gebeur het nie'.*

[312] I understand this evidence to mean that the extension of the disciplinary period had little or nothing to do with the requirements of the National Credit Act, but rather with the

accused's decision to tap into clients' funds for personal and business expenses when the alleged promised financial backing was not forthcoming.

[313] When asked why, in the full knowledge that financial backing was not to be forthcoming the accused then set about the business of Intel, he replied '*Soos ek reeds gesê het, deurlopend is daar geld belowe... as ek nie die stappe geneem het wat ek geneem het nie, sou die uitslag nie veel verskil het van wat dit nou is nie. Dit sou net 'n bietjie meer mense gewees het was gerefund is. Dis al.*'

[314] When asked how he determined which clients would be refunded the accused effectively admitted that it was those who were the most demanding.

[315] The accused then confirmed the payments made from the Rudco account to the Comugrande account, more particularly the amounts totalling R226 000 which both Llewellyn Visagie and Scholtz had testified about.

[316] As I have said, at the commencement of his evidence in chief the accused explained that he had acted as an independent agent for a company selling insurance products called Clientele. It later emerged during his cross-examination that Rudco agents were required to take out policies with Clientele in order that Rudco clients contracted by them could do so. This was one of the conditions of Rudco contracts, namely that if the client concerned had no other form of debt protection insurance, he or she was required to procure insurance through Clientele. The accused said that for each agent whom he

referred to Clientele he received a commission. He was however unable to explain how much he had received and over what period this had taken place.

[317] I now turn to consider the applicable legal principles and legislation relating to the charges faced by the accused, and to evaluate the evidence in the light thereof. Before doing so however it is useful to refer to what the Supreme Court of Appeal said in *S v Trainor* 2003 (1) SACR 35 (SCA) at 41b-c as to how the evidence should be evaluated:

'A conspectus of all the evidence is required. Evidence that is reliable should be weighed alongside such evidence as may be found to be false. Independently verifiable evidence, if any, should be weighed to see if it supports any of the evidence tendered. In considering whether evidence is reliable, the quality of that evidence must of necessity be evaluated, as must corroborative evidence, if any. Evidence, of course, must be evaluated against the onus on any particular issue or in respect of the case in its entirety.'

[318] The definition of the crime of fraud is the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another: see *C R Snyman: Criminal Law 5th Edition* at 531 and the authorities cited therein.

[319] As regards the legal requirement of intention, this takes three forms, namely direct intention (or *dolus directus*), indirect intention (or *dolus indirectus*) and *dolus eventualis*.

[320] Direct intention means that the person concerned is certain that he is committing the prohibited act or that he is causing the prohibited result. He does not regard the commission of the act or the causing of the result as a mere possibility. Indirect intention means that the prohibited act or result is not the person's goal, but he realises that if he

wants to achieve his goal, the prohibited act or result will of necessity materialise. A person acts with intention in the form of *dolus eventualis* if the commission of the unlawful act or the causing of the unlawful result is not his main aim but: (a) he subjectively foresees the possibility that, in striving towards his main aim, the unlawful act may be committed or the unlawful result may be caused; and (b) he reconciles himself to this possibility. Put differently, the person is reckless as to whether the act may be committed or the result may ensue. In a crime requiring intention it is sufficient for the State to prove beyond a reasonable doubt that the accused entertained any one of these forms of intention: see *C R Snyman* at 183-184.

[321] Insofar as potential prejudice as an element of the crime of fraud is concerned, this means that the misrepresentation, viewed objectively, involved some risk of prejudice, or that it was likely to prejudice: see *inter alia S v Heyne* 1956 (3) SA 604 (A) at 622E-F. The meaning of '*likely to prejudice*' is that there is a reasonable possibility that prejudice can be caused to another: see *Heyne* at 622F-G.

[322] Turning now to the evidence in respect of the two counts of fraud. The accused has admitted that during the relevant period he was the driving force behind Rudco. Indeed, the evidence of the relevant State witnesses and the accused's own evidence shows beyond a reasonable doubt that he was the mastermind who engineered the Rudco products. In addition the accused was the sole director and shareholder of Rudco Management Company (Pty) Ltd. He was also the sole shareholder of Rudco Finance

Company (Pty) Ltd and one of its two directors, although at certain times during the relevant period he was its sole director.

[323] The accused was also intimately involved in the development and marketing of the Intel product. Not only was he an active force in taking the Intel model beyond its conceptual stage, he was a full, if not the primary, participant in its launch and personally conducted its business. On his own version he also attended and actively engaged in meetings with proposed Intel financial backers. It was further at his instance that the gold dust deal transaction took place. The accused was also a director of Intel during the relevant period. Despite his protestations to the contrary he failed to adduce a single shred of corroborative or independently verifiable evidence to cast even a suspicion on the state's overwhelming evidence in this regard.

[324] The accused eventually admitted that he had represented to Rudco agents, employees and certain clients, and also to Intel investors and / or potential investors that both Rudco and Intel would receive extensive financial backing. In particular he ultimately admitted that he had represented that Real People would be a substantial Rudco financial backer, that foreign investment capital of about R100 million was available for Rudco's bond switch product, and that the Intel product would be financed by way of considerable foreign backing and the proceeds of a gold dust transaction.

[325] The accused also finally admitted that at the time of making the aforementioned representations none of the financial backing was in fact in place, and that he had

nonetheless proceeded with the business of both Rudco and Intel, apparently on the strength of assurances given to him by J Arthur Brown insofar as Rudco was concerned. His own evidence revealed that the meetings which had taken place with the consortium of businessmen from India regarding financial backing for Intel had never even developed into them making a concrete proposal in that regard.

[326] Further, and on the accused's own version, as early as April 2007 he strongly suspected that Brown's so-called assurances were not likely to materialise. This notwithstanding he continued to conduct the business of Rudco, even after the National Credit Regulator had intervened, until about December 2007 when it was finally shut down. Again, on his own version, he also represented to Mark Whale of the National Credit Regulator that financial backing would be forthcoming.

[327] The evidence of the numerous State witnesses to whom I have previously referred who were Rudco clients and Intel investors to the effect that they had relied upon the accused's representations concerning financial backing in contracting with Rudco and Intel and paying funds over to these entities was never challenged by the accused.

[328] The consistent, credible and reliable evidence of Tyrone Africa, Gary Govender, Wyeth, Stevens, Marillier, Armfield, Lannen and Llewellyn Visagie to the effect that the accused was in control of all Rudco bank accounts and that funds in these accounts were only disbursed on the instructions of the accused is accepted. The accused's belated attempt during his testimony to distance himself from the version of these State witnesses

must be rejected. He had not challenged the aforementioned evidence of these witnesses in any material respect when he cross-examined them. He admitted that he held the debit cards for these accounts which he himself utilised for purchases and withdrawals. He admitted that on occasion others had made withdrawals or purchases using these cards but only on his instructions. And on his own version he would not consider any kind of co-operative arrangement with third parties since he was not prepared to relinquish any measure of his control over Rudco.

[329] There is also the unchallenged evidence of Llewellyn Visagie that it was on the accused's instructions that transfers were made from the Rudco Standard Bank 7114 account to the Comugrande account, and that, again on the accused's instructions, the funds so transferred were appropriated in whatever manner was stipulated by the accused.

[330] Insofar as the Intel bank account is concerned, again, the evidence showed that the accused influenced how investor funds were appropriated.

[331] The accused admitted that all funds which flowed into the Rudco and Intel bank accounts were those of clients and / or investors. He himself had not injected any funds into these entities. On his own version, no external financial backing was ever forthcoming.

[332] The accused admitted that there was a co-mingling of client and / or investor funds in these bank accounts and did not seriously challenge the evidence of State witnesses

and Engelbrecht that there was no proper accounting, nor proper accounting system, nor for that matter auditors that had been appointed, nor any audited financial statements. In addition, no attempt was ever made, despite the unchallenged evidence of Tyrone Africa's advice to the contrary, to separate client funds from administration or initiation fees paid. As I have said, in cross-examination the accused claimed that he was too busy to have attended to this and that Wyeth and Stevens should have done so. This claim rings hollow. Firstly, there is no evidence to suggest that the accused ever issued an instruction to Wyeth or Stevens in this regard and it was never put to them in cross-examination. Secondly, this was raised by the accused for the first time during his own cross-examination and it flies in the face of the overwhelming body of evidence of the State witnesses that it was the accused and him alone who called the shots at Rudco.

[333] As to the expenditure of the funds in the Rudco accounts, the evidence in particular of Wyeth, Lannen, Scholtz and the accused himself shows beyond a reasonable doubt that client funds were appropriated by the accused on personal and business expenses directly contrary to the express mandate of clients. The accused did not dispute the *quantum* of the funds which flowed into and out of these accounts. As I have said his challenges were limited to whether the allocation by Scholtz of certain amounts as personal expenses were not in fact business expenses. Nothing of any relevance turns on this because the unchallenged testimony of the Rudco clients was that at no stage had permission been given to the accused to appropriate their funds on his personal expenses or Rudco business expenses.

[334] Most telling, in my view, was the accused's own testimony that despite the terms of the Rudco client contracts and the unchallenged testimony of Rudco clients to the contrary, any funds paid by clients after signature of their contracts became Rudco funds and could be appropriated as he pleased; and further that his least concern when it became clear to him that no financial backing would be forthcoming were the express terms of the mandates conferred upon Rudco by its own clients as to their own funds.

[335] As to the accused's evidence that he was '*robbing Peter to pay Paul*' in order to keep Rudco afloat in the interests of its clients, this evidence must be rejected. If this were the case, the accused would not have disbursed funds from the FNB 909 account for his direct benefit in the amount of approximately R376 000; he would not have utilised client funds from the FNB 909 account on business expenses such as salaries, commissions, vehicle rental, accommodation, furniture and stationery, office rental, travel expenses, advertising and training of approximately R1.9 million; he would not have appropriated client funds from the Standard Bank 7114 account for his direct benefit of approximately R69 000; he would not have disbursed client funds on business expenses such as salaries, furniture and stationery and transfers for the gold dust deal (which on his version related to Intel and not Rudco), together with payments to Comugrande for his ultimate benefit of approximately R1.1 million; and he would also not, on his own version, and as late as October and November 2007 have utilised Rudco client funds to purchase furnishings for Intel's office and to pay for expenses relating to the Intel launch. It also cannot be ignored that the uncontested evidence of Llewellyn Visagie was that the amount of R226 000 transferred from the Rudco Standard Bank 7114 account to the Comugrande

account on the accused's instruction over the ten day period between 27 November 2007 to 6 December 2007 (the dates being confirmed by Scholtz in his testimony and report), was because the accused feared that the Rudco bank accounts would be frozen.

[336] As indicated at the outset the State concedes that some clients' debts were settled and that some clients were refunded. This however does not detract from the fraud itself given that client funds were pooled.

[337] As to the funds disbursed from the Intel Standard Bank account the testimony and report of Scholtz (confirmed by the uncontested evidence of Llewellyn Visagie) show amounts paid out of that account during the relevant period for the personal benefit of the late Syed-Eusuph and Llewellyn Visagie as also for business expenses of Intel, totalling about R427 000.

[338] The largely uncontested testimony of the Rudco clients and / or Intel investors was that they suffered direct financial and other prejudice as a result of the misrepresentations of the accused. Debt consolidation clients whose debts were not settled after the expiration of the disciplinary period became further indebted to their creditors and ultimately lost the funds that they had paid over to Rudco. Bond switch clients testified that they never recovered the initiation fees paid by them. The evidence of Belinda Botes was that she lost her home and has never been able to obtain finance to enable her to acquire another property. Although the accused disputed certain portions of her evidence, the fact of the matter is that, even on his own version, the balance of the amounts paid by Botes

was never recovered. The unchallenged evidence of Intel investors was to similar effect. Again, it should be borne in mind that, at least as far as Rudco debt consolidation clients were concerned, the accused's target market was debt-ridden consumers who were already in financial difficulty.

[339] Having evaluated all the evidence in relation to the counts of fraud, I am satisfied that the State has proved beyond a reasonable doubt that the accused subjectively foresaw the possibility that in misrepresenting the true state of affairs of both Rudco and Intel to clients and / or investors and by appropriating the funds of these clients and / or investors contrary to their express mandate, he would be committing fraud and that he nonetheless reconciled himself to this possibility and proceeded regardless. I am also satisfied that the State has proved beyond a reasonable doubt that the accused in so doing caused actual prejudice to both Rudco clients and Intel investors.

[340] I now deal with the two charges faced by the accused of contravening section 424 of the Companies Act which makes provision *inter alia* for imposing criminal liability upon persons who conduct the business of a company recklessly or with intent to defraud. The offence of a section 424 contravention lies in being a party to the prohibited conduct. As set out in *Milton et al* South African Criminal Law and Procedure Statutory Offences Vol 3 Part 2 at I 1-34 a person who personally carries on the business of a company recklessly or with intent to defraud is such a party. In light of my findings relating to the counts of fraud I am satisfied that the State has proved beyond a reasonable doubt that the

accused, in personally conducting the business of both Rudco and Intel as set out above contravened the aforementioned statutory provision.

[341] Dealing now with the three charges faced by the accused of contravening section 218(2)(a) read with sections 218(1) and 441(1)(d) of the Companies Act, it is common cause that the accused has a previous conviction for theft. Section 218 provides that any person who is disqualified from being appointed or acting as a director of a company and who purports to act as a director or directly or indirectly takes part in or is concerned in the management of any company, commits an offence. One of the categories of persons who are disqualified from being appointed or acting as a director of a company in terms of section 218(1)(d)(iii) is a person who has at any time been convicted of theft and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding R100.

[342] It is common cause that during 1995 the accused was convicted of theft and that he received a sentence in excess of the penalty stipulated in that section. It is also common cause that the accused has not obtained the authority of the Court to again qualify as a director of a company or to participate directly or indirectly in the management of a company. I have already rejected the accused's evidence to the effect that he resigned as a director of Intel. There is no evidence before me that he ever resigned as a director of either Rudco Management Company (Pty) Ltd or Rudco Finance Company (Pty) Ltd. Of significance is the accused's evidence that he did not disclose to Standard Bank that he had a previous conviction for theft. He attempted unconvincingly to disclaim

responsibility for not having informed Standard Bank of this on the basis that the bank had not asked him. On a conspectus of all the evidence relating to the accused's conduct in both the business of Rudco and Intel, and having regard to the evidence of key personnel such as Marillier and Armfield, I find it highly improbable that the accused was not aware – as he belatedly claimed – that he was not permitted to be a director of these companies or to be involved in their management. In my view the State has proved beyond a reasonable doubt that the accused knew of his disqualification but chose to disregard it in order to pursue his fraudulent conduct.

[343] I now turn to the charge faced by the accused of contravening regulation 10(1)(c) read with regulations 1 and 2 of the Exchange Control Regulations as promulgated in terms of the provisions of section 9 of the Currency and Exchanges Act No 9 of 1933.

[344] The accused ultimately admitted that, without permission granted by the Treasury, he entered into a transaction whereby he exported capital from the Republic of South Africa for the gold dust transaction under the guise of gift allowances. The evidence of Mokgawa was that the aforementioned conduct constitutes an offence in terms of regulation 22 of the Exchange Control Regulations and this evidence is confirmed by the provisions of regulation 22 itself. The accused has thus admitted having contravened the relevant regulations in the respects that attract criminal liability. His admission is supported by the uncontested evidence of the Maarman brothers and Llewellyn Visagie who confirmed that the amounts remitted by them to Sierra Leone were on the specific

instructions of the accused. I thus find that the State has proved its case in respect of this charge beyond a reasonable doubt.

[345] In the result the unanimous judgment of this court is as follows:

1. On count 1, being the main count of fraud in respect of Rudco Management Company (Pty) Ltd and Rudco Finance Company (Pty) Ltd, the accused is found guilty.
2. On count 2, being the contravention of section 424 of the Companies Act 61 of 1973 in respect of Rudco Management Company (Pty) Ltd and Rudco Finance Company (Pty) Ltd, the accused is found guilty.
3. On count 3, being the main count of fraud in respect of C Shell 464 (Pty) Ltd trading as the Intel Property Group, the accused is found guilty.
4. On count 4, being the contravention of section 424 of the Companies Act 61 of 1973 in respect of C Shell 464 (Pty) Ltd trading as the Intel Property Group, the accused is found guilty.
5. On counts 5 to 7, being the contravention of section 218(2)(a) read with section 218(1) and 441(1)(d) of the Companies Act 61 of 1973, in respect of Rudco Management Company (Pty) Ltd, Rudco Finance Company (Pty) Ltd and C Shell 464 (Pty) Ltd trading as the Intel Property Group, the accused is found guilty.
6. On count 8, being the contravention of regulation 10(1)(c) read with regulations 1 and 2 of the Exchange Control Regulations promulgated

in terms of section 9 of the Currency and Exchanges Act No 9 of 1933, the accused is found guilty.

7. As to the testimony of Genevieve Wyeth (now Bloomfield) I am satisfied that she answered all questions put to her frankly and honestly, including those which might incriminate her. She is accordingly discharged from prosecution in respect of the offences of fraud (alternatively theft) or any competent verdict in respect thereof as well as those prescribed in s 424 of the Companies Act 61 of 1973.

A handwritten signature in cursive script, appearing to read 'J. I. Cloete', is written above a horizontal line.

J I CLOETE