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

REPORTABLE
Case number: 9415/2021

In the matter between:

EASIGAS (PTY) LTD	**Applicant**
and	
PENGUIN GAS (PTY) LTD	**First respondent**
CHRISTIAAN JOHANNES BOSMAN	**Second respondent**

JUDGMENT DELIVERED ON 16 MAY 2022

VAN ZYL AJ:

Introduction

1. An interim interdict was granted against the respondents on 13 August 2021, pending the hearing and determination of the relief set out in Part B of the applicant's notice of motion.

2. In terms of that order, the applicant was granted an interim interdict restraining the respondents from unlawfully filling liquefied petroleum gas (LPG") in the applicant's branded cylinders that bear the applicant's brand names "Easigas", Reatile" and "Reatile Gas". The respondents were also prohibited from unlawfully distributing LPG in the applicant's cylinders. The applicant was, in addition, granted an attachment order to uplift and retrieve its LPG cylinders from the first

respondent's premises.

3. The applicant now seeks the relief set out in Part B of hte notice of motion.

The applicant seeks final interdictory relief by means of motion proceedings

4. The applicant seeks final relief on motion, and thus the principle enunciated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at *634-635* applies: see *Tolgaz SA v Solgas (Pty) Ltd; Easigas (Pty) Ltd v Solgas (Pty) Ltd* 2009 (4) SA 37 (W) at para [21].

5. A final interdict may only be granted if the facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such order (*Afriforum and Another v Pienaar* 2017 (1) SA 388 (WCC) at para [20]).

6. An applicant for such an order must show a clear right; an injury actually committed or reasonably apprehended; and the absence of satisfactory protection by any other ordinary remedy ((*Setlogelo v Setlogelo* 1914 AD 221 at 227). Once the applicant has established the three requisite elements for the grant of a final interdict, the scope, if any, for refusing relief is limi3ted. There is no general discretion to refuse relief (*Hotz v University of Cape Town* 2017 (2) SA 485 (SCA) at para [29]).

7. Importantly for the purposes of the present matter, the respondents accept that the applicant has made out a case as far as the requirements of a clear right and no suitable alternative remedy are concerned. (This notwithstanding, the respondents emphasise that the applicant has instituted criminal proceedings against the respondents pertaining to their conduct prior to September 2020, and contend that those proceedings constitute a satisfactory alternative remedy in respect of the respondents' admitted past transgressions during September 2020.)

8. The respondents contend, however, for the purposes of the relief sought in Part B, that the applicant has failed to prove the requirement of the infringement of

its rights and/or a reasonable apprehension of such infringement.

9. I shall accordingly concentrate on this issue in the course of the discussion that follows.

The factual background

10. The applicant's allegations of unlawful conduct against the respondents arise from an inspection executed at Gordon's Camp and Gas in Beaufort-West in October 2020, in respect of the respondents' unlawful filling and distribution of applicant's' cylinders on 1 and 3 September 2020. The *ex parte* application was brought as a result.

11. It is to be noted that, prior to the investigation, on 3 July 2020, the applicant had sent a letter to the respondents demanding that they desist from filling, and distributing the applicant's cylinders. The letter fell on deaf ears.

12. It is common cause that the first respondent is not, and has never been, an appointed distributor for the applicant.

13. The applicant's private investigators discovered that the first respondent was unlawfully filling the applicant's branded cylinders with LPG gas and distributing the cylinders on a mass industrial scale while holding itself out as the applicant's distributor for the Southern Cape region.

14. Mr Esterhuyse, who is the owner of an outlet called Gordon's Camp and Gas in Beaufort West, confirmed in an affidavit that the first respondent has supplied his business with numerous LPG cylinders since 2018. He confirms that, since June 2019, the first respondent has supplied his business with branded LPG product cylinders of various sizes. The first respondent supplied him with 340 cylinders of various sizes bearing the applicant's brand name and logo during September 2020. He produced copies of the first respondent's invoices as proof of delivery of the cylinders.

15. Mr Nel, who is one of the applicant's licensed distributors in George, took 45 photographs evidencing hundreds of the applicant's branded LPG cylinders that were unlawfully filled, sealed and distributed by the first respondent and delivered to Gordon's Camp and Gas. Another of the applicant's licensed distributors in George, Mr Nagel, said that he accompanied Mr Nel when the latter took the photographs.

16. The investigators involved, Mr Myburgh and Mr Moolman, indicated that they had met with Mr Esterhuyse, Mr Nell and Mr Nagel in respect of the first respondent unlawful filling distributing of the applicant's cylinders, and obtained relevant information from them.

17. In November 2020 the applicant laid criminal charges with the South African Police Service against the respondents. These charges relate not only to the unlawful use of the applicant's property but also to various transgressions of the Pressure Equipment Regulations promulgated under the Occupational Health and Safety Act 85 of 1993. The criminal matter is currently pending. Insofar as the unlawful use of its property is concerned, the applicant's case in the criminal court is based upon the respondents' contravention of section 1(1) of the General Law Amendment Act 50 of 1956, which provides as follows:

> "*Any person who, without a bona fide claim of right and without the consent of the owner or the person having the control thereof, removes any property from the control of the owner or such person with intent to use it for his own purposes without the consent of the owner or any other person competent to give such consent, whether or not he intends throughout to return the property to the owner or person from whose control he removes it, shall, unless it is proved that such person, at the time of the removal, had reasonable grounds for believing that the owner or such other person would have consented to such use if he had known about it, be guilty of an offence and the court convicting him may impose upon him any penalty which may lawfully be imposed for theft.*"

18. The respondents effectively admit the contents of Mr Esterhuyse's affidavit (or, where they do not expressly admit material allegations, they do not deny them).

It follows that they admit to unlawfully filling the applicant's cylinders with LPG, unlawfully sealing the applicant's cylinders, unlawfully distributing, possessing, and handling the applicant's cylinders, unlawfully profiting at the applicant's expense and competing with the applicant in the LPG market, and unlawfully passing itself off as the applicant's distributor.

19. The allegations of the private investigators and the applicant's distributors are met with bare denials.

20. The respondents also admit to failing to adhere to the trade practices and customs in the LPG industry. They admit further that they have only conducted themselves lawfully after 3 September 2020. They admit that only from that date onwards they have been acting in strict compliance with the trade practices and customs prevalent in the LPG industry.

21. In terms of the interdict granted on 13 August 2021, the applicant was entitled to enter upon the respondents' premises with the assistance of the Sheriff, and inventory, attach and remove any cylinders belonging to the applicant. The order was executed on 7 September 2021, but no cylinders belonging to the applicant were found on the premises.

Issues of safety

22. The applicant has set in its founding affidavit a detailed explanation of the LPG industry in South Africa, the deposit system, reservation of ownership in cylinders, and the trade custom and practice regarding the exchange of cylinders.

23. The applicant also explains that the LPG industry is highly regulated by, *inter alia*, the Petroleum Products Act 120 of 1977 and the Pressure Equipment Regulations promulgated on 15 July 2009 in Government Notice R734 under section 43 of the Occupational Health and Safety Act 85 of 1993.

24. On the same day, under Government Notice R735, Health and Safety Standards were incorporated into the Pressure Equipment Regulations in terms of

section 44 of the Occupational Health and Safety Act, regulating transportable metal containers for compressed gas.

25. In 2008 the legislator introduced Safety Standard 9.5 of SANS 10019, setting regulations related to the persons competent to fill LPG containers as follows:

> *"9.5 Persons competent to fill containers*
> *No person shall fill a portable container with gas unless he is competent to fill containers with the gases he handles, and unless:*
> *(a) he is fully conversant with the relevant requirements of this standard;*
> *(b) he is satisfied that the container is fit for the intended purpose;*
> *(c) the container is not due for periodic inspection or testing: and*
> (d) *permission to fill the container has been granted by the owner of the container, in writing, except where the cylinder is owned by the end user. This requirement is for safety reasons since the cylinder containment history is an essential record reference for correct filling.*"

26. In this requirement in SANS 10019 was amended in September 2011 to refer to cylinders as "pressure receptacles". Clause 9.1.1 of the 2011 version of SANS 10019 now provides that "*permission to fill shall be obtained from the owner of the pressure receptacle in writing, except where the pressure receptacle is privately owned by the end user. This requirement is for safety reasons. The pressure receptacle containment history is an essential reference preference for safe filling*".

27. The Pressure Equipment Regulations and Safety Standards make provision for different types of inspections and safety tests of cylinders, including routine inspection, testing and repair, the changing of valves, restoring the external appearance of cylinders, and prohibiting the refilling of cylinders that are overdue for inspection and testing.

28. These measures are for obvious reasons of the utmost importance in the proper regulation of the industry in the interests of not only manufacturers and distributors but also the general public, and they have been recognised in various

decisions of courts in this country.

29. In *Tolgaz (SA) (Pty) (Ltd) v Solgas (Pty) (Ltd) and another; Easigas (Pty) Ltd v Solgas (Pty) Ltd* 2009 (4) SA 37 (W) at paragraph [28] it was accepted that major suppliers did not sell their cylinders to others, and that it was the practice that empty cylinders, once received by a supplier or distributor, was returned to the owner. This means that ownership of the cylinders was retained by entities such as the applicant.

30. In *Easigas (Pty) Ltd v Gas Giant CC* 2016 JDR 0780 (GJ) the court recognised at, paragraph [20], the importance of these regulations in the interests of safety: they ensure protection from teh dangeres inherent in the use thereof and places teh duty legaaly upon owners of cylinders, specifically distinguising between ownership by a primary supplier and an end user.

31. In paragraph [29] the Court held as follows: "*Above all the LPG market operates in a manner in which a deposit system and reservation of ownership in the cylinders subsists. It is evident that there is a visible notification on the cylinder that the applicant is the owner of its LPG cylinders and it has a clear right to prevent unauthorised filling and dealing with its cylinders. The applicant has a well-grounded apprehension of irreparable harm by losing incalculable revenue. No satisfactory remedy is available to the applicant.*"

32. In *Oryx Oil South Africa (Pty) Ltd v Mo Than Gas Corporation (Pty) Ltd* 2014 JDR 2462 (ECG) the Court considered the various applicable regulations and safety measures. It remarked as follows at paragraph [8]: "*If end users were to refill cylinders without the permission of the owner, that owner would have no way of monitoring the history of its cylinders*."

33. At paragraph [10], the Court discussed the exchange practice: "… *a supplier or distributor which receives cylinders belonging to another supplier, returns them to that supplier, and receives in exchange its own cylinders which the other supplier may have. … A distributor who provides an end user with a full cylinder belonging to a supplier on exchange is only permitted to do so with the authorisation of such supplier. The exchange system ensures that all cylinders and their fittings are on*

return to the owners inspected for damage or corrosion. If they are defective, they are repaired or discarded. The rotation of an owner's cylinders in the market allows owners to conduct the compulsory inspections."

34. And at paragraph [11]: "*One of the negative consequences of the exchange system is that an unauthorised distributor or filler can obtain the applicants' cylinders and unlawfully use them to supply LPG to the customers of that unauthorised distributor or filler. The unauthorised distributors do not incur the costs of providing their own cylinders and are able to undercut suppliers and distributors who operate legitimately*."

35. Issues of safety accordingly play a material role in the determination of these proceedings.

An injury reasonably apprehended

36. It is an oft-repeated refrain that an interdict serves to prevent present or future harm, and is not concerned with past invasions (*NCSPCA v Openshaw* 2008 (5) SA 339 (SCA) at para [20]).

37. In *Minister of Law and Order and others v Nordien and another* 1987 (2) SA 894 (A) at 896G the Appellate Division, as it then was, stated that "*a reasonable apprehension of injury has been held to be one which a reasonable man might entertain on being faced with certain facts. … The applicant for an interdict is not required to establish that, on a balance of probabilities following from the undisputed facts, injury will follow he has only to show that it is reasonable to apprehend that injury will result. … However, the test for apprehension is an objective one. … This means that, on the basis of the facts presented to him, the Judge must decide whether there is any basis for the entertainment of a reasonable apprehension by the applicant.*"

38. The apprehension of irreparable loss or infringement of rights must thus be proved as an objective fact based on substantial grounds (*Airoadexpress (Pty) Ltd v Chairman, Local Road Transportation Board, Durban, and Others* 1986 (2) SA 663

(A) at 673H-I, 680H, 682H-I). The facts grounding the applicant's apprehension must be set out to enable the court to judge for itself whether the fears are indeed well-grounded (*Mears v African Platinum Mines Ltd (1)* 1922 WLD 48).

39. If the infringement complained of is one that *prima facie* appears to have occurred once and for all, and is finished and done with, then the applicant should allege facts justifying a reasonable apprehension that the harm is likely to be repeated (*National Council of Societies for the Prevention of Cruelty to Animals v Openshaw supra at* para [22]).

40. The question is thus whether from the facts deposed to in the applicant's founding affidavit there is, objectively viewed, a reasonable apprehension of ongoing or future infringement of the applicant's rights that it seeks to protect.

41. The respondents contend as follows: The purpose of the *ex parte* application (Part A of the notice of motion) was stated by the applicant to be *"… to obtain permission to attach and preserve evidence which will serve as proof of the First Respondent's unlawful conduct regarding the filling and distribution of LPG cylinders belonging to the Applicant."* The *ex parte* application was thus premised on the basis that, at the time of its launch, the applicant had no real or even *prima facie* evidence of any wrongdoing on the respondents' part since 3 September 2020.

42. This is correct insofar as the respondents' conduct after 3 September 2020 is concerned, but does not assist the respondents in their denial that the *ex parte* application was necessary. At the time of the launch of the *ex parte* application, the applicant had the evidence of Mr Esterhuyse and of the private investigators, who indicated that the respondents had been conducting themselves unlawfully in relation to the applicant's LPG cylinders as discussed earlier in this judgment.

43. As the order had been granted *ex parte*, the respondents' version of events (largely an admission of their unlawful conduct) was not before the Court at the time and there was no indication that the respondents would undertake to cease their conduct in the future between being caught red-handed in September 2020 and the issue of the application in June 2021. In any event, in their answering affidavit the

respondents are careful to concentrate on the fact that no evidence of wrong-doing after 3 September 2020 has been discovered. They do not dwell on their conduct prior to that date.

44. The respondents contend, however, that Part B of the application is premised solely on applicant's alleged "*strong grounds for fearing that the First Respondent, acting under the control of the Second Respondent"* was hoarding large quantities of the applicant's cylinders, and its *"strong grounds to believe that it was unlawfully filling and distributing of such cylinders".*

45. The respondents say that, because it turned out that the applicant's "*strong grounds for fearing"* that the first respondent was hoarding large quantities of the applicant's cylinders, and its *"strong grounds to believe that it was unlawfully filling and distributing of such cylinders"* were unwarranted, as nothing untoward had been discovered prior or pursuant to the execution of the Part A order and the inspection of the first respondent's premises, it follows that the respondents have not been engaged in any infringement of the applicant's rights since 3 September 2020.

46. For this reason, the applicant is unable to provide any evidence of future unlawful conduct on the respondents' part vis-à-vis the applicant, and that should be dispositive of the relief that the applicant claims. The applicant cannot objectively have a reasonable apprehension of any ongoing or future infringement of the applicant's rights on the part of the respondents.

47. The respondents have undertaken in their answering affidavit not to repeat their past unlawful conduct: "*The company and I have since 3 September 2020 being (sic) acting in strict compliance with the trade practice and custom and shall keep doing so*".

Is the respondents' undertaking sufficient?

48. It has been stated that an undertaking not to commit a breach again may not be enough to prevent the grant of an interdict (*IRR SA BV v Tarita* 2004 4 SA 156 (W) 166H–167C). That case dealt with a restraint of trade, the breach of which had

been proven already. The Court was of the view that an ex-employee's undertaking after the fact to say that that she would not breach the restraint further than she had already done, did not prevent the grant of a final interdict.

49. In *Mcilongo NO v Minister of Law and Order and Others* 1990 (4) SA 181 (E) the Court held, at 186E-D, that each case would depend on its own facts and where the issue before the Court is as to whether an infringement of rights may again occur, the fact of an undertaking or assurance to the contrary may well be relevant, although not decisive. In that case an interim interdict was sought to prevent the appellant from being assaulted by the police. Despite strict instructions from within the police force to stop the abuse, the appellant received further threats thereafter. In the circumstances, the Court held that an undertaking from the police would probably be of little value, and would not provide the appellant with sufficient protection against the execution of those threats.

50. In *Condé Nast Publications Ltd v Jaffe* 1951 (1) SA 81 (C) at 86G-H, the Court held, in relation to a feared copyright infringement, that "*the applicant … has placed nothing before the Court from which the Court can conclude that the respondent's assurances are not bona fide and that he intends in the future again to infringe this copyright of the applicant. As stated in Maeder v Perm-Us (Pty.) Ltd., 1938 CPD 208 and by van der Linde in his Institutes 3.4.7, an interdict is not the proper remedy where there is no fear that the wrong formerly committed will be repeated. In this case I can see no grounds upon which there can be any apprehension that the infringement complained of will be repeated*."

51. *In Performing Right Society Ltd v Berman and Another* 1966 (2) SA 355 (R) at 357F-G the Court, in dealing with the copyright infringement of musical works where the defendant had given no undertaking not to repeat the infringement, stated that "*it seems to me that … if, in addition, the defendant has given a* bona fide *undertaking not to repeat the infringement, that is an important factor which will influence the Court in refusing an interdict*."

52. In the present matter, the applicant bases it fears on historical interactions with the respondents, who say that the incidents pertaining to September 2020 were

isolated occurrences and were explained by the respondents. Notwithstanding the absence of evidence implicating the respondents after 3 September 2020, the respondents have stated that they have since 3 September 2020 acted in strict compliance with, and have undertaken in their answering affidavit to continue to comply with, the trade practice and custom.

53. The respondents say that their denial of any unlawful and illegal conduct pertaining to the filling or distribution of the applicant's cylinders after 3 September 2020 in the absence of any evidence to the contrary adduced by the applicant, cannot on the application of the *Plascon Evans Paints*-principle be rejected but is to be accepted for the purposes of the adjudication of this application. *Plascon Evans*, however, is aimed at where there are genuine disputes of fact which cannot be resolved on the papers. Given the manner in which the respondents' have answered the applicant's allegations, I do not think that genuine disputes of fact exist in the present case.

54. Upon a consideration of the papers as a whole and the relevant case law, I am not convinced that the undertaking given by the respondents prevent the grant of an interdict against them.

55. Firstly, the respondents have conceded the unlawfulness of their conduct prior to 3 September 2020, which included, apart from their infringement of the applicant's rights, the breaching of numerous provisions in respect of the Pressure Equipment Regulations as promulgated in terms of the Occupational Health and Safety Act, and well as other applicable standards and regulations. Their conduct put the lives of the consumers who purchased LPG products from them at risk.

56. Their conduct also exposed the applicant, as owner of the cylinders, to the risk of being held liable under the various safety regulations and measures referred to earlier in the event of damage being caused by faulty cylinders or errors in the filling, sealing, handling and distribution of cylinders.

57. Secondly, there are many qualified allegations in the respondents' answering affidavit, namely that they have only acted lawfully since September 2020, or

adhered to industry customs or practices from that date. On their own version, the respondents admit acting unlawfully prior to September 2020 in respect of the applicant's LPG cylinders. The applicant has evidence that the respondent had traded unlawfully since 2019. The first respondent has been trading since 2015.

58. Thirdly, the applicant issued the respondents with a so-called "cease and desist" letter as long ago is 3 July 2020 in respect of the unlawful use of the applicant's cylinders. The letter was sent long before the private investigations into the respondents' conduct in September and October 2020. Despite being warned by the applicant to refrain from their unlawful conduct in July 2020 already, still caught *in flagrante delicto* in September 2020. This necessitated the launch of the *ex parte* application.

59. Fourthly, Mr Esterhuyse states under oath that the respondents, who are based in George, started supplying his business based in Beaufort West with very sizes of the applicant's branded cylinders in 2019. As mentioned earlier, it is common cause that the first respondent has never been a distributor for that the applicant. In other words, the respondents have been conducting their unlawful business since at least June 2019. In answering Mr Esterhuyse's allegations, the respondents do not deny them. Instead, they sidestep the issue, saying that "*as far as Mr Estherhuysen's (sic) allegation that the company had previously delivered applicant's gas cylinders, such allegation is unsubstantiated, and one would have expected some documentary proof in this regard*." Clearly, they do not deny these allegations and they do not take the court into their confidence by disclosing the source of supply of their LPG gas and cylinders.

60. Firstly, it is immaterial that the execution of the attachment order granted on 7 September 2020 did not result in additional evidence. That does not mean that the respondents have in fact stop unlawfully filling and distributing the applicant's cylinders. It only means that the applicant did not again catch them in the act (see *Oryx Oil South Africa (Pty) Ltd v Mo Than Gas Corporation (Pty) Ltd supra* at paragraph [38]).

61. In any event, the purpose of the attached order was not to obtain evidence: it

was to secure the applicant's stock from the first respondent's premises.

62. In the sixth place, the respondents are based in George. The admit delivering 340 cylinders to Gordons Camp and Gas in Beaufort West on 1 and 3 September 2020. This evidence indicates an operation on a regional basis and indicates further hat the respondents have the necessary facilities and infrastructure to fill, seal and distribute large amounts of cylinders in two deliveries over a large area.t

63. in the seventh place, it appears that the respondents did not care that they made money at the expense of and to the prejudice of the applicant. They saw nothing wrong in travelling from George to Beaufort West when making the two deliveries referred to. They do not explain why they did not refer the orders to the applicant, given that it has licensed distributors in George. They also did not make any attempt to notify the applicant of the orders. This is especially in concerning, given that the applicant reprimanded the respondents and warned them in July 2020 already to stop the unlawful filling and distributing of the applicant's LPG cylinders.

64. As to a reasonable apprehension of harm, in *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) the Court dealt with the nature of a "suspicion" (albeit in a criminal procedure context) at 814D-E: " … *the test is not whether a policeman believes that he has reason to suspect, but whether, on an objective approach, he in fact has reasonable grounds for his suspicion ….*"

65. Inferences may reasonably be drawn from the facts of a matter and an objective assessment of the facts as a whole (*Hülse-Reutter and Others v Gödde* 2001 (4) SA 1336 (SCA) at paragraph [14]:

> *"What is clear is that the 'evidence' on which an applicant relies, save in exceptional cases, must consist of allegations of fact as opposed to mere assertions. It is only when the assertion amounts to an inference which may reasonably be drawn from the facts alleged that it can have any relevance. … The inquiry in civil cases is, of course, whether the inference sought to be drawn from the facts proved is one which by balancing probabilities is the one which seems to be the more natural or acceptable from several*

conceivable ones. … While there need not be rigid compliance with this standard, the inference sought to be drawn, as I have said, must at least be one which may reasonably be drawn from the facts alleged."

66. It seems to me that on the basis of what has been stated above, including the respondents' admitted past unlawful conduct, their bare denials or evasive answers of material allegations made against them (including the failure to disclose the source of their cylinders when presented with the allegation that they had been using the applicant's cylinders since 2019), a pattern of behaviour has been established, and the applicant is objectively reasonable in harbouring the fear – reasonably inferred from those facts - that the respondents may again infringe its rights in the future.

67. In these circumstances, the respondents' undertaking is not sufficient to prevent the grant of interdictory relief against them.

Conclusion

68. I agree with the applicant's counsel that the remainder of the respondents' defences are without merit. They complain that the *ex parte* application was not urgent, despite the fact that it is clear from the notice of motion it had not been brought on an urgent basis. The applicant explained the events leading to the launch of the application and that it experienced difficulties with its correspondence attorney in enrolling the matter which was eventually only heard on 13 August 2021.

69. In the circumstances, the applicant is entitled to the relief sought.

70. In relation to paragraphs 5 and 6 of the notice of motion, it has been stated as follows in *Cerebos Food Corporation Ltd v Diverse Foods SA (Pty) Ltd and another* 1984 (4) SA 149 (T) at 164D-E:

"I deal first with the order for interim attachment of property in which a real or personal right is claimed. By this is meant rights under the common law, for example ownership or a right to delivery flowing from a contract, and

statutory rights, …

This is not a true Anton Piller remedy. For many years, the Courts have granted interim attachment orders where the plaintiff alleged an existing right in a thing and the only way in which that thing could be preserved or irreparable harm be prevented would be by the attachment thereof pendente lite. Morrison v African Guarantee and Indemnity Co Ltd 1936 (1) PH M35 (T); Loader v De Beer 1947 (1) SA 87 (W); Van Rhyn v Reef Developments A (Pty) Ltd 1973 (1) SA 488 (W) at 492."

71. It appears, from the case law involving interdictory relief between entities such as the present parties, that relief of this nature is frequently given so as to safeguard a successful party's interests (see, for example, *Oryx Oil supra* and *Tolgaz supra*). Given the background to this matter, I intend to follow suit.

Costs

72. Costs fall to be decided judicially in the exercise by the Court of a broad discretion in the strict sense of the concept. This is a matter where, in my view, the respondents' conduct and the manner in which they approached their opposition to these proceedings justify the grant of an order of costs on the scale of attorney and client.

73. This view is formed with reference to the extended meaning of "vexatious" referred to *Johannesburg City Council v Television and Electrical Distributors (Pty) Ltd and another* 1997 (1) SA 157 (A) at 177D: " … *in appropriate circumstances the conduct of a litigant may be adjudged 'vexatious' within the extended meaning that has been placed upon this terms in a number of decisions, that is, when such conduct has resulted in 'unnecessary trouble and expense which the other side ought not to bear (In re Alluvial Creek 1929 CPD 532 at 535)*."

Order

In all of these circumstances, it is ordered as follows:

74. The respondents or any one of them, and any servant or employee or other person purporting to act on their behalf, are interdicted and restrained from receiving or being in possession of more than 10 (ten) of any of the applicant's cyplinders at any point in time.

75. The respondents or any one of them, and any servant or employee or other person purporting to act on their behalf, are interdicted and restrained from from filling and distributing any of the applicant's cylinders.

76. Representatives of the applicant are permitted to attend at and to enter upon the premises of the first respondent or any other premises within the jurisdiction of this Court from which the respondents conduct business, on a weekly basis during normal business hours, and the respondents are directed to surrender and hand over to the applicant or any person duly authorised thereto by the applicant, any of the applicant's cylinders which can be identified as such and/or which carry the applicant branding, which are in the position of the respondents.

77. Failing compliance by the respondents with the terms of paragraph 76 above, the relevant sheriff (whomay be accompanied by a representative of the applicant) is directed to take possession of any of the applicant's cylinders which are found by the Sheriff in the possession of the respondents at any premises where the rspondents may be trading, or which are found by the Sheriff on any vehicle identified as that of the respondents or any one of them, or which is being used to convey any such cylinders for or on behalf of the respondents, either presently or in the future, and whether such cylinders contain liquid petroluem gas or not, and the Sheriff is authorised forthwith to hand these over to the applicant or the applicant's duly authorised representatives.

78. The respondents are ordered to return to the applicant all of the applicant's cylinders in their possession from time time.

79. The costs of this application, as well as the *ex parte* application brought on 13 August 2021, shall be borne by the first and second respondents jointly and severally, the one paying, the other to be absolved.

P. S. VAN ZYL
Acting judge of the High Court

HEARING DATE: 7 March 2022

Appearances:

For the applicant: W. H. Pocock, instructed by Yammin Hammond Attorneys

For the respondents: D. van der Merwe, instructed by Bailey Haynes Inc.