

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

Case No: 24281/04

In the matter between:

CORPCAPITAL LIMITED

Applicant

and

THE MINISTER OF TRADE AND INDUSTRY

Respondent

NICHOLAS JOHN FRANGOS

Intervening Party

And in the matter between:

NICHOLAS JOHN FRANGOS

Applicant

and

THE MINISTER OF TRADE AND INDUSTRY

First Respondent

CORPCAPITAL LIMITED

Second Respondent

AFFIDAVIT

I, the undersigned,

JOHN MEREDITH BELLEW

do hereby make oath and say that :

1. I am a duly admitted and practising attorney of the Transvaal Provincial Division of the High Court of South Africa, practising as such at all material

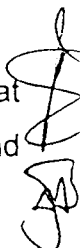


times as a partner of Webber Wentzel Bowens attorneys ("WWB"), at 10 Fricker Road, Illovo Boulevard, Johannesburg.

2. The facts herein contained are, unless the contrary appears from the context, within my personal knowledge, and are to the best of my belief true and correct.
3. I have read the affidavit of Michelle Lara Geissler, ("Geissler") filed herewith, ("Geissler's affidavit") and confirm the contents thereof insofar as they relate to me.
4. Unless otherwise stated, terms defined in the founding, replying or supplementary replying affidavits of Mr Nic Frangos ("Frangos) in this matter bear the same meanings in this affidavit.
5. I have acted as Frangos's attorney with respect to Corpcapital since July 2002. At that time Frangos was still a director of Corpcapital but was concerned about goings-on in the company and consulted me about his fiduciary duties. Given my long association with Frangos on this matter I am personally aware of its entire history, including all matters pertaining to the inspection. The purpose of this affidavit however is to place on record events leading up to and occurring at a meeting on 9 September 2002, at which I, Geissler and Myburgh were present. I will refer to that meeting as "the first process meeting".
6. The inspectors were appointed to conduct the inspection into the affairs of Corpcapital on 19 August 2003. I was notified of this by telefax which I received on 21 August 2003. With the consent of the inspectors, Geissler was designated as the primary point of contact between WWB and the inspectors.
7. As is stated in Geissler's affidavit, Myburgh contacted her some days prior to 9 September 2003 and requested a meeting to discuss the process of the inspection, (this meeting being the first process meeting). Geissler notified me of this request and the meeting was scheduled for 9 September.



8. A meeting was then held between Geissler and Frangos. Frangos requested Geissler to ask me to raise specific issues of process with Myburgh at the first process meeting. Prior to the first process meeting Geissler advised me of the issues that Frangos had discussed with her and which he wished me to discuss with Myburgh. In this regard I refer to paragraphs 4 to 6 of Geissler's affidavit. Frangos also spoke to me directly, prior to the first process meeting, about his concerns
9. The first process meeting was held on the morning of 9 September 2003. At the outset of that meeting Myburgh advised that he had had a preliminary opportunity to get to grips with the basic issues and with the evidence that had been provided to him by the Minister. This evidence included the material which had been submitted on behalf of Frangos to the Minister in applying for the inspection, namely submissions made by WWB on behalf of Frangos and the preliminary reports of Abrahams and Collett. Myburgh also advised that he had spent some time investigating the case law surrounding the conduct of inspections in terms of the Companies Act. On the basis of that case law he had concluded that there was no prescribed process to be followed and no prescribed rules of procedure. He stated that it was clear to him that it was for the inspectors to determine their own process. He wished to establish a process acceptable to Frangos and Corpcapital.
10. I raised with Myburgh the concerns that Frangos had had with the inquiry conducted by Payne. In particular I raised with him the fact that Frangos had insisted, as a condition of co-operating with the Payne inquiry, that he be given a right of rebuttal with respect to evidence led by or on behalf of Corpcapital. Frangos believed he had obtained that undertaking and that Payne had reneged on that undertaking. He therefore wanted to ensure that history did not repeat itself and that he would have an opportunity to comment on material evidence led before Myburgh.
11. Myburgh was sympathetic to the concerns I expressed. It was evident that he was concerned to ensure that the process of the inspection was fair and



above criticism. He stated that it was important for him personally, given the nature of his practice (which involves many arbitrations and commissions), that the process be seen to be fair. As he stated, his "reputation was on the line". He also stated that he did not want to get to the end of the inspection and find himself in the same position as Nigel Payne had found himself in – ie that the process he followed was attacked and the parties rejected the inspection.

2. Myburgh also indicated his preliminary view that the Corpcapital inspection would be somewhat different to most inspections conducted under the Companies Act because a lot of investigative work that would normally be undertaken by the inspectors had already been undertaken by Frangos and his experts, Collett and Abrahams.
3. Myburgh sought our consent to make available to Corpcapital the reports of Collett and Abrahams. (In this regard it is relevant to note that on 20 August 2003, Frangos, I, Lazarus and Trengove had met at the Grace Hotel in Rosebank to try and resolve the impasse between Frangos and Corpcapital. We advised Lazarus and Trengove that the inspection had been applied for, although at that time we were not aware that inspectors had been appointed. Lazarus and Trengove were provided with copies of the Collett and Abrahams reports on a confidential basis to see if this would persuade them to support the application for the inspection. The reports were made available to them on the basis that they should not be shared with the rest of the Corpcapital board. Hence Myburgh sought the consent referred to above).
4. Myburgh stated that he envisaged the process of the inspection as being one in which Frangos and his experts (including Abrahams and Collett) would be asked to comment on material evidence (especially evidence of a technical or accounting nature) given by Corpcapital, and vice versa. Thus, he stated, when he received a report dealing with a material issue he would refer it to us, and vice versa. He expressed the wish to make use of Collett



and Abrahams to obtain their views on material evidence given on behalf of Corpcapital.

15. I stated that the approach suggested by Myburgh addressed the essence of Frangos's concerns and was acceptable to us. I believed that the suggestion to allow both interested parties an opportunity to comment on material evidence was, whilst not ideal, a practical and reasonable manner in which to ensure that the inspectors obtained the views of interested parties on material issues. I indicated to Myburgh that we would accept this suggested process. As far as I was concerned this critical issue of process and fairness had been addressed and agreed. I believed that the inspectors would conduct themselves in the conduct of the inspection as Myburgh had agreed and undertaken to do at the first process meeting.
16. I reported back on the first process meeting to Frangos. The general view was that this critical issue of process had been addressed in an acceptable manner.
17. Up until September 2004 I was of the view that the inspectors had conducted the inspection in accordance with the agreement reached at the first process meeting. So, for example, the inspectors had made available for comment statements and reports of Jade Hamburger, Mark Mattison, Kevin Joselowitz, Garth Coppin and Peter Wilmot. They had also made available lever arch files containing information on Cytech. All reports of our experts were, to our knowledge, provided to Corpcapital for their comment. From time to time the inspectors requested legal or other submissions from Frangos and his advisers, including WWB. As far as I am aware, all of these were furnished to Corpcapital.
18. I had no reason to believe that any other experts, apart from those made known to us, had testified on behalf of Corpcapital. The first I knew of this was when Frangos called to my attention the comments of Lazarus in the media on 15 September 2004 – ie that Corpcapital had been cleared by a number of local and international experts whom he named and whom we had never heard of. Had I been aware that these experts had testified I



would have insisted that their evidence be made available for comment and rebuttal in terms of the agreed process.

19. Finally I wish to note that it is important to distinguish the first process meeting from a further meeting regarding process, which occurred once the inspectors had finished hearing evidence and which Corpcapital and Myburgh appear to have conflated. During late November 2003, Myburgh again called for a meeting with Geissler and myself. I will refer to this meeting as the "**second process meeting**". From my diary it appears that the second process meeting was held on 27 November 2004.
20. At the second process meeting Myburgh stated that the first phase of his investigation was complete. As before, he wished to set out and reach agreement on the way forward. He again advised that he had researched the case law. This indicated that a person against whom adverse findings could be made should be afforded an opportunity to comment on and rebut those findings before they were made final. He therefore proposed to provide each party with a list of possible adverse findings against that party, on which that party could make submissions. These possible adverse findings would be confidential to the person against whom they were made. After the affected person had had an opportunity to comment on and rebut the possible adverse findings they would be sustained or rejected. Again, this process was agreed.
21. The second process meeting did not govern the entire inspection process. It related only to the method by which the inspectors would deal with possible adverse findings and did not override the undertakings in relation to rebuttal given at the first process meeting. The Frangos application is not concerned with the possible adverse findings phase of the inspection.
22. Attempts by Wixley in his affidavit to conflate the two process must be rejected. Myburgh in his letter, Annexure TW35 to Wixley's replying affidavit, appears to make the same mistake. This aspect is dealt with further in Frangos's supplementary replying affidavit. I have read that




affidavit and confirm the correctness of its contents in so far as they relate to me.



JOHN MEREDITH BELLEW

Signed and sworn to before me at Johannesburg on this 7th day of March 2005, the deponent having acknowledged that the deponent knows and understands the contents of this affidavit.



COMMISSIONER OF OATHS

full names :
business address:
designation:
capacity:

KEBY KEBWABA
71 Sandalk ewe
JHB
inspector

FRANÇOIS POLISIEDIENS
DIST. OF STASIEKOMMISSARIS
2005-03-07
STATION COMMISSIONER PARKVIEW
SOUTH AFRICAN POLICE SERVICE

IN THE HIGH COURT OF SOUTH AFRICA
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CORPCAPITAL LIMITED

Second Respondent

AFFIDAVIT

I, the undersigned,

MICHELLE LARA GEISLER

do hereby make oath and say that :

1. I am a duly admitted and practising attorney of the Transvaal Provincial Division of the High Court of South Africa, practising as such at all material



times as an associate of Webber Wentzel Bowens attorneys ("WWB"), at 10 Fricker Road, Illovo Boulevard, Johannesburg.

2. The facts herein contained are, unless the contrary appears from the context, within my personal knowledge, and are to the best of my belief true and correct.
3. I was seconded from WWB to Mr Nic Frangos ("Frangos") for the duration of the ministerial investigation into the affairs of Corpcapital Limited ("Corpcapital"). It was communicated to inspector John Myburgh ("Myburgh") that I would be the intermediary between the inspectors and WWB in this matter.
4. Myburgh telephoned me and requested to schedule a meeting on Tuesday 9 September 2003 with myself and John Bellew ("Bellew") of WWB.
5. I consulted with Frangos prior to this meeting, on Monday 8 September 2005. A copy of my hand written notes of this meeting are attached as "MLG 1". Frangos requested that I address the following issues with Myburgh:
 - 5.1 Frangos' understanding was that he would have the opportunity to comment on Corpcapital's evidence where conflicting views arose. Nigel Payne ("Payne") gave the right of rebuttal to Frangos when he conducted his enquiry, but this right of rebuttal did not materialise. Frangos said that this aspect was important because there was a possibility that certain evidence from Corpcapital could conflict with evidence that he submitted;
 - 5.2 Frangos wanted to know what the process would be where he says "x" and Corpcapital says "y", because if it is the same document, the inspectors would have to decide which document is authentic. Frangos was concerned because we would not have seen the evidence put before Myburgh by Corpcapital and this is why the right of rebuttal was again important; and



- 5.3 Frangos said that Payne came to a different conclusion to the evidence that he put forward and he did not understand what evidence Corpcapital produced that made Payne come to certain conclusions. Frangos said that he was concerned that there is a possibility that there may be manufactured evidence and that Corpcapital could give Myburgh evidence that had not seen.
6. I met with Bellew immediately before the meeting with Myburgh on Tuesday 9 September 2003 to discuss Frangos' concerns with him so that these issues could be addressed at our meeting with Myburgh.
7. At the meeting with Bellew and myself, Myburgh said that the purpose of the meeting was to discuss processes and procedures for the inspection. Myburgh commented that his reputation was on the line and that he wanted to ensure a fair process. Myburgh stated that he was in the same position as Payne, and that he did not want to find himself in the position that Payne found himself in at the end of his enquiry where the process was challenged.
8. Myburgh said that there was no process laid down in South African law for this type of inspection and it was therefore up to the inspectors to determine the process to be followed. Myburgh explained that all material evidence that was submitted by one side would be passed on to the other side for comment and rebuttal. Specifically, Myburgh told us that the reports that had been prepared by Brian Abrahams and Collett & Collett would be given to Corpcapital for comment and rebuttal. It was therefore my understanding that while we would not have sight of all the evidence put before Myburgh, we would be given all material evidence and the opportunity to submit comment and rebuttal on that evidence.



10.

Michelle Lara Geissler
MICHELLE LARA GEISSLER

Signed and sworn to before me at Johannesburg on this ¹⁰22 day of February 2005, the deponent having acknowledged that the deponent knows and understands the contents of this affidavit.

Theo Buchler
COMMISSIONER OF OATHS

full names :
business address:
designation:
capacity:

THEO BUCHLER
COMMISSIONER OF OATHS
EX OFFICIO
PRACTISING ATTORNEY RSA.
1ST FLOOR
9 FRICKER ROAD
ILLOVO
TEL: (011) 772-8680

SEPTEMBER 2003

10 Wednesday 253-112 week 37

20

0700

0730 *upstanding & wld have opportunity to*
0800 *comment on their evidence while*
0830 *their is conflicting views.*

0900

0930 *Payne gave R & rebuttal*

1000

1030 *Ev. may conflict w/ NJF*

1100

1130 *if NJF says x } what process*
1200 *cc says y }*

1230

1300 *If same document, make decision.*

1330

1400 *We will not have seen ev put before myburgh*
1430 *by cc.*

1500

1530

1600 *came to diff concl. to NJF's ev.*

1630 *NJF doesn't uphold what ev made him come*
1700 *to certain concl.*

1730

1800 *NJF concern w/ manufactured evidence.*

1830

1900

give myburgh ev we haven't seen

JANUARY 2003	FEBRUARY 2003	MARCH 2003	APRIL 2003	MAY 2003	JUNE 2003
M T W T F S S	M T W T F S S	M T W T F S S	M T W T F S S	M T W T F S S	M T W T F S S
1 2 3 4 5	1 2	1 2	1 2 3 4 5 6	1 2 3 4	1 2 3 4 5 6
6 7 8 9 10 11 12	3 4 5 6 7 8 8	3 4 5 6 7 8 9	7 8 9 10 11 12 13	5 6 7 8 9 10 11	2 3 4 5 6
13 14 15 16 17 18 19	10 11 12 13 14 15 16	10 11 12 13 14 15 16	14 15 16 17 18 19 20	12 13 14 15 16 17 18	9 10 11 12 13
20 21 22 23 24 25 26	17 18 19 20 21 22 23	17 18 19 20 21 22 23	21 22 23 24 25 26 27	19 20 21 22 23 24 25	16 17 18 19 20
27 28 29 30 31	24 25 26 27 28	24 25 26 27 28 29 30	28 29 30	26 27 28 29 30 31	23 24 25 26 27
		31			30