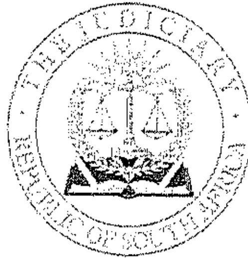


HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Not reportable

Not of interest to other Judges

CASE NO: **61790/2012**

In the matter between:

LAW SOCIETY OF THE NORTHERN PROVINCES	Applicant
and	
JENNIFER GRAHAM	First Applicant in the main application
MATTHEW GRAHAM	Second Applicant in the main application
RONALD BOBROFF & PARTNERS INC.	Second Respondent in the main application
RONALD BOBROFF	Third Respondent in the main application
DARREN BOBROFF	Fourth Respondent in the main application

JUDGMENT

MAKGOKA, J

[1] This matter arises from, and is a sequel to an order made by this Court on 15 April 2014. The order followed an application by the first and second applicants in the main application (the Grahams) for certain relief against the second, third and fourth respondents. The third and fourth respondents are attorneys and until very

recently, practised as attorneys and directors of the second respondent, a firm of attorneys incorporated in terms of the Attorneys Act 53 of 1979 (the firm). Mr Graham was a client of the firm in a damages claim, following the injuries he had sustained in a motor vehicle collision on 4 September 2006. For the sake of convenience, I shall refer to the third and fourth respondents as 'Messrs Ronald and Darren Bobroff". Where the context dictates to refer to them jointly with the firm, I shall simply designate them as 'the respondents'.

[2] Subsequent to the finalization of Mr Graham's claim, the Grahams lodged a complaint of overcharging against the respondents with the applicant (the Law Society) in June 2011. The Grahams became dissatisfied with the manner in which the Law Society dealt with their complaint against the respondents. They brought an application to this Court seeking, amongst others, that this Court should take over the Law Society's disciplinary enquiry or allow it to continue under the Court's supervision. That disciplinary enquiry was adjourned indefinitely, pending the determination of the application brought by the Grahams. The respondents made a counter-application, seeking an order that the Grahams be interdicted from interfering with the Law Society's disciplinary processes, and that the adjourned disciplinary enquiry be allowed to proceed.

[3] Among the documents submitted by the Grahams to the Law Society as part of extensive correspondence between their attorneys and the Law Society, following their complaint, was a report compiled by Mr Vincent Faris, a chartered accountant, which report is based on an extract from the accounting records of the firm. In that report, Mr Faris determined that the financial transactions recorded in the ledger accounts did not agree with what was reflected and accounted for in the accounting statements submitted to Mr Graham and another client of the firm. Mr Faris recommended that further investigations be conducted to establish the true position relating to the transactions that were suspect. He further formed an opinion, based on his observations and findings, that there was sufficient evidence of contravention of the Income Tax Act, the VAT Act, the Companies Act, the Attorneys Act and the Rules of the Law Society by the respondents, and that the possibility of contraventions of other legislation could not be excluded.

[4] Pursuant to the Graham's application and the respondents' counter-application, this Court (Mothle J) on 15 April 2015, made the order referred to in para [1] above, in terms of which the Law Society was to convene a disciplinary hearing against the third and fourth respondents within sixty (60) days of the order. The Law Society was also ordered to inspect the books of account of the firm, including its trust accounts, and compile a report within thirty (30) days of the order. For reasons which are not relevant for the present purposes, the deadlines ordered above could not be achieved, and the Law Society brought an interlocutory application seeking an extension of those deadlines. In response to the Law Society's application for extension, the Grahams launched a counter-application seeking the suspension of Messrs Ronald and Darren Bobroff from practising as attorneys pending the completion of the investigation and the report envisaged above, together with certain ancillary relief.

[5] In the meanwhile, two developments overtook the relief sought in the Law Society's interlocutory application for extension of the deadlines. They also affected somehow, the relief sought by the Grahams seeking the suspension of Messrs Ronald and Darren Bobroff. The first development is that, on 11 February 2016, the Law Society delivered a supplementary affidavit, deposed to by its Vice-President, in which it reported to this Court that the inspection referred to in the court order had been completed. The Law Society attached to its affidavit, two reports compiled by its inspectors. The inspectors had found that Messrs Ronald and Darren Bobroff had contravened various provisions of the Law Society's rules relating, among others, to the keeping of proper accounting records, and found that the duo had also overreached their clients.

[6] The inspectors also made, among others, the following factual findings:

1. The respondents retained a substantial amount of their fees in their trust banking account during the period prior to 11 December 2012. They failed to raise fees in several matters upon the finalization of their mandates. They instead transferred their fees to a suspense account by way of journal entries. This practice, the inspectors opined, defeated the primary purpose

of an attorney's trust banking account, and caused the firm's trust banking account to lose its identity;

2. The respondents invested a substantial amount of the firm's monies in a Section 78(2A) investment account which was opened under the name "Zunelle". "Zunelle" was, however, not reflected as a trust creditor of the firm. Monies invested in a Section 78(2A) investment account must first flow through the firm's Section 78(1) trust banking account, on the specific instructions of a trust creditor, the client of an attorney;

3. The respondents employed various tactics to unlawfully reduce the firm's income tax and VAT liabilities;

4. There was a substantial delay in effecting final payment to clients, and in some instances, clients complained that the firm failed to furnish them with final statements of account;

5. In one particular matter involving Mr Pombo, the client had alleged that the firm had failed to issue him with a final statement of account. The firm issued a business cheque in his favour. The cheque was however deposited into Mr Darren Bobroff's personal banking account. The report by the firm's former bookkeeper found that Mr Darren Bobroff had forged the signature of Mr Ronald Bobroff on the business cheque that was issued to Mr Pombo and that the said cheque was then deposited into Darren Bobroff's personal banking account. The monies due to Mr Pombo were only repaid to him two years later. The inspectors were unable to conduct a full inspection of Mr Pombo's account as they were advised that the file had been destroyed in accordance with the firm's policy relating to the retention of records. The relevant accounting records were, likewise, not available.

[7] The inspectors formed a view, as a result of the above findings, that Messrs Ronald and Darren Bobroff posed a risk to their trust creditors.

[8] On 23 February 2016, Mr George Van Niekerk, the attorney acting on behalf of the Grahams, deposed to an affidavit in response to the report of the Law Society referred to above, in which he seeks, among others, an amendment to the Grahams' notice of motion in the counter-application. The amendment sought to introduce a prayer for the issuing of a rule *nisi* calling upon Messrs Ronald and Darren Bobroff to show cause on a later date why their names should not be struck off the roll of attorneys. They also sought to introduce an alternative prayer empowering the curator appointed to administer the firm to conduct the inspection originally envisaged in the counter-application.

[9] The second development is the resolution by the council of the Law Society, on 3 March 2016, to apply to this Court for an order striking the names of Messrs Ronald and Darren Bobroff, and their co-director, Mr Stephen Bezuidenhout, from the roll of attorneys.[1] In this regard, on 11 March 2016, the Law Society, through its Vice-President, deposed to an affidavit in which the Law Society's decision was conveyed to this Court. The Vice-President of the Law Society further states that as a result of that resolution, the amendment sought by the Grahams, relating to the *rule nisi* referred to earlier, was no longer necessary. He also points out that the amendment is opposed on the basis that the Grahams have no standing to commence disciplinary proceedings. However, the Law Society does not oppose the amendments relating to the suspension of Messrs Ronald and Darren Bobroff and the appointment of a curator, pending the determination of its striking-off application.

[10] When the matter was called for argument before us on Monday, 14 March 2016, it was brought to our attention that on the Friday preceding the date of hearing, 11 March 2016, a letter was sent to the Law Society's attorneys by the respondent's attorneys, Taitz & Skikne Attorneys (Taitz & Skikne), in which the Law Society was informed that Taitz & Skikne had acquired the business of the firm (Ronald Bobroff & Partners Incorporated) and that a sale agreement was finalised on 11 March 2016. As a result of that, the Grahams brought an application to interdict the implementation of the sale agreement, to be determined with these applications.

[1] During argument, the application by the Law Society in this regard, duly issued in this Court under case number 20066/2016, was handed to us.

However, Taitz & Skikne indicated that they had not had an opportunity to consider the application. However, subsequent to the hearing, Taitz & Skikne Attorneys directed a letter to us, undertaking not to implement the sale agreement pending the determination of the Graham's application.

[11] Back to the Grahams' application. Despite their earlier differences as to how the complaints against the respondents should be dealt with, the Law Society and the Grahams' have narrowed their differences significantly. Thus is mainly due to the Law Society's resolution to apply for the removal of the respondents from the roll of attorneys. The Law Society and the Grahams now share a view that the respondents are no longer fit to remain on the roll of attorneys, and should be removed from that roll. It is only with regard to the procedure for such removal that their paths part. The Grahams seek an outright, summary removal of Messrs Ronald and Darren Bobroff from the roll of attorneys. The Law Society says that the removal should be at its instance in the pending application. Below is a brief exposition of the parties' position on the matter.

[12] Mr *Unterhalter* SC, counsel for the Grahams, persisted with the prayer that Messrs Ronald and Darren Bobroff be struck off the roll of attorneys, alternatively a *rule nisi* be issued, calling them to show cause why that order should not be made. In the further alternative, counsel suggested that the respondents be suspended, with a preservatory order regarding the firm's trust account, pending the determination of the applications by the Grahams and the Law Society to strike them from the roll of attorneys. As to the main relief, counsel contended that a separate application by the Law Society to remove the respondents' names from the roll is not necessary, and that its purpose is already catered for by the amendments sought to be effected to the Grahams' notice of counter-application. A separate application would require a different court to become seized of the matter, leading, in turn, to a duplication of work and a waste of judicial resources.

[13] Counsel further contended that the Law Society's application contains no new evidence, but simply repeats the evidence that is already before Court, which comprises, among others, the following: the Faris report referred to earlier; the

judgment of the Law Society's Investigating Committee, which recommended that the respondents should face ten (10) charges of unprofessional and dishonourable conduct arising from various complaints laid against the respondents with the Law Society; the inspectors' reports, whose findings are referred to above; two judgments of this court in terms of which Messrs Ronald and Darren Bobroff were: (a) found guilty by Matojane J of contempt of court; (b) found by Murphy J to have been obstructionist in the implementation of the order of Mothle J; the Grahams counter-application; as well as the Law Society's application for the striking off.

[14] Mr *Unterhalter* was keenly aware of the potential prejudice to the respondents as a result of the amendment to bring into consideration, a prayer to have their names removed from the roll of attorneys. This is so because the respondents have not, before 23 February 2016, been confronted with such a case. To counter this argument, counsel contended that such prejudice does not arise because the respondents have been afforded exhaustive opportunities to answer to the allegations levelled against them, despite which, they had deliberately elected to remain silent.

[15] On the other hand, Mr *Trengove* SC, for the Law Society, opposed the amendments sought by the Grahams, and in particular, that the respondents be struck off the roll summarily. He contended that deference should be accorded to the Law Society's separate application, which, according to him, was a more comprehensive one. Furthermore, it would be more efficient to have a separate application, rather than amending the existing application of the Grahams, which is beset with onerous procedural considerations relating to objections and opportunity to reply, which could lead to substantial delays. Substantively, Mr *Trengove* argued that the procedure for the summary removal of the respondents from the roll, as proposed on behalf of the Grahams, would infringe the trite *audi alteram* principle. Counsel reiterated that the respondents had been confronted with that possibility only on 23 February 2016, to which they are entitled to respond. Mr *Cassim* SC, for the respondents, largely aligned himself with Mr *Trengove*'s submissions and opposed the amendments sought by the Grahams to introduce a prayer for the summary removal of the respondents' names from the roll of attorneys.

[16] The transgressions which the respondents are accused of are of a very serious nature, indeed. I have already sketched a summary of the alleged transgressions. For the very reason that the allegations are so serious, and the repercussions for the respondents so far-reaching in the event they are found guilty of such transgressions, the respondents should be afforded a fair and adequate opportunity to respond to those allegations. They should be able to state their case in the normal manner. My view is informed by the simple dictate that even one against whom the evidence of wrong-doing seems overwhelming, there should be a fair and reasonable opportunity for them to meet those allegations in the ordinary manner.

[17] There is a further, more practical reason why the summary removal of Messrs Ronald and Darren Bobroff is inappropriate at this stage. Their co-director, Mr Stephen Bezuidenhout, is not part of the counter-application by the Grahams, i.e. the Grahams have not sought to have his name removed from the roll. He is, however, a respondent in the application by the Law Society, which seeks to have his name removed from the roll of attorneys, together with Messrs Ronald and Darren Bobroff. If the latter's names are removed from the roll on the Grahams' counter-application, the Law Society's application in respect of Mr Bezuidenhout would still have to proceed, resulting in a piece-meal disposal of the matter. I therefore take a view that the Law Society's application, to the extent Mr Bezuidenhout is a respondent in it, offers a more convenient avenue to deal comprehensively with all allegations pertaining to the firm and its directors. For the above reasons, I am not inclined to accede to the Grahams' request for summary removal of Messrs Ronald and Darren Bobroff from the roll of attorneys, or to issue a *rule nisi* against them.

[18] There was a general consensus among all counsel that in the light of the finding by the Law Society's inspectors that the trust creditors of the firm were at risk, Messrs Ronald and Darren Bobroff have to be suspended from practice pending the determination of the relief sought to have their names removed from the roll at the instance of the Grahams and the Law Society. That is the order I am inclined to make. However, the nature and extent of that order has been affected by yet another development in the matter. Shortly after we heard the matter and reserved judgment,

media reports surfaced, suggesting that Messrs Ronald and Darren Bobroff had left the country for Australia, allegedly in order to evade arrest by the Directorate For Priority Crime Investigation (the Hawks) in connection with alleged fraud involving the Road Accident Fund claims previously handled by them.

[19] That development, together with the alleged sale of the business of the firm referred to earlier, prompted the Law Society to conduct an investigation into the accounting records and practice of the firm. As a result of the findings pursuant to that investigation, the Law Society sought, on an *ex parte* and urgent basis, an order appointing its head: members affairs, as *curator bonis* to administer and control the accounts of the firm. The relief sought by the Law Society was granted by this Court (Mabuse J) on 24 March 2016. It is a detailed order, making provision for the appointment of a curator, vested with extensive powers associated with such appointment. It, in a way, takes care of part of what I would have ordered, in the event of suspension of the respondents. Obviously, that order does not address other pertinent issues raised in the present application, such as the sale agreement in respect of the firm, referred to earlier, in respect of which there is still a need to make an order.

[20] To sum up. Messrs Ronald and Darren Bobroff must be suspended from practising as attorneys, pending the determination of the applications to remove their names off the roll of attorneys. Most of the orders which would ordinarily have been made ancillary to the suspension, are catered for in the order of this Court made on 24 March 2014, referred to above. As a result, it is not necessary to include them in the order I am about to make. The Grahams' applications to amend their counter-application in order to introduce a prayer for the removal of the respondents from the roll of attorneys, should be granted, and the amended counter-application should be postponed, to be heard simultaneously with the Law Society's application for the same relief.

[21] What remains to briefly comment on is the urgent interdict application by the Grahams concerning the agreement selling the business of the second respondent to Taitz & Skikne. The latter had initially indicated that they needed an opportunity to

file an answering affidavit thereto. On 6 April 2016 the said attorneys wrote a letter to us, indicating that in the light of the recent developments, an in particular the fact that Messrs Ronald and Darren Bobroff had left the country, and the Law Society's urgent application culminating in the appointment of a curator, it was no longer necessary to file an answering affidavit to that application, as Taitz & Skikne are 'directly dealing with the appointed curator...' That might be the *de facto* situation, but the fact is that there is an application before us, which we must dispose of.

[22] The upshot of Taitz & Skikne's stance in electing not to file an answering affidavit, is that the application by the Grahams for an interdict in respect of the business sale agreement is unopposed. In my view, a proper case has been made for the relief sought. If not granted, the agreement has the potential to render any order of suspension nugatory. It might well be that the curator and Taitz & Skikne have come to some arrangement regarding client files, but a court order is necessary to give effect to the regulation of the client records purportedly sold to Taitz & Skikne.

[23] What is more, a careful regard to the order granted at the instance of the Law Society on 24 March 2016 shows that no specific mention is made of the business sale agreement and its implications. For the above reasons, and for completeness' sake, I deem it prudent to make an order in that regard. Accordingly, the application must be granted. The Grahams had initially sought an interim interdict with a *rule nisi* calling upon interested parties to show cause on a return date, why the sale agreement should not be declared unlawful and set aside. In light of the developments referred to above, it is no longer necessary to first issue a *rule nisi.* A permanent interdict is called for under the circumstances.

[24] With regard to the further conduct of the application by the Law Society, I do not deem it necessary to give directives in that regard. The normal time periods in terms of the Uniform Rules of Court would have applied. Should a need arise for case management of the application, the parties may approach the office of the Deputy Judge President for further directives. With regard to the hearing of the two applications (by the Grahams and the Law Society) a suggestion was made during the hearing of the present applications that this Court as presently constituted should

be seized of the applications, since the same issues arise in those applications as they presently are before us. The allocation of special motions is the prerogative of the Judge President and the Deputy Judge President, to whom we shall convey the proposition.

[25] Finally, the issue of costs. In my view, costs should be reserved for determination with the Graham's and Law Society's respective applications referred to above. The Court seized of that application would be best placed to make a costs order, having had regard to all the factors. One of the key points of disagreement between the Grahams and the Law Society (supported by the respondents) is that the Grahams have no *locus standi* to apply for the removal of the respondents' names from the roll of attorneys, except in the narrow circumstances referred to by Mothle J in paras 79 – 82 of his judgment. The Court seized of the applications would have to pronounce itself, among others, on whether those circumstances are present in this case, and even, whether the remarks by Mothle J represent the correct approach. Costs should therefore be reserved.

[26] In the result I make the following order:

1. The third respondent (Ronald Bobroff) and the fourth respondent (Darren Bobroff) are suspended from practising as attorneys and conveyancers of this Court pending the determination of the applications of the Law Society and of the first and second applicants in the main application (the Grahams) to strike their names from the roll of attorneys;

2. The order of suspension of the third and fourth respondents is subject to, and in conjunction with, the order of this Court granted under case number 24456/2016;

3. The third and fourth respondents are ordered to immediately surrender and deliver to the Registrar of this Court, their certificates of enrolment as attorneys and conveyancers;

4. In the event that the third and fourth respondents fail to comply with the preceding paragraph within two weeks from the date of this order, the sheriff of the district in which the certificates are located, is authorised and directed to take possession of the certificates and to hand them to the Registrar;

5. The second, third and fourth respondents, together with Taitz & Skikne Attorneys and Rael Zimerman are interdicted and prevented from implementing or effecting any transfers and deliveries (including but not limited to, transfers of moneys held by the second respondent in its business and trust accounts, and deliveries of client files and documents) pursuant to the sale of business agreement referred to above;

6. The second, third and fourth respondents, together with Taitz & Skikne Attorneys and Rael Zimerman, are ordered, within 24 hours of this order, to reverse any transfers and deliveries effected pursuant to the sale of business agreement referred to above;

7. All moneys, files and documents that were transferred and delivered to Taitz & Skikne Attorneys and/or Rael Zimerman, must be placed under the control of the curator appointed in terms of the order of this Court issued under case number 24456/2016;

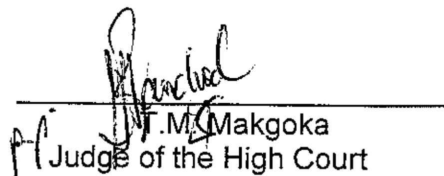
8. The Sheriff of this Court with the necessary jurisdiction is authorised and directed to do all things necessary to reverse any transfers and deliveries effected pursuant to the sale of business agreement referred to above, if the second, third and fourth respondents and/or Taitz & Skikne Attorneys or Rael Zimerman, should fail to do so within 24 hours of this order.

9. The application for the amendment of the Graham's counter-application dated 23 February 2016 in terms of which the Grahams seek to introduce a prayer for the removal of Messrs Ronald and Darren Bobroff from the roll of attorneys, is granted;

10. The counter-application launched by the Grahams (as amended) for the removal of the third and fourth respondents from the roll of attorneys, and the Law Society's application for the removal of the third respondent, the fourth respondent and Mr Stephen Bezuidenhout, from the roll of attorneys, are postponed *sine die*, subject to the directives by the Deputy Judge President with regard to the allocation of a date of hearing;

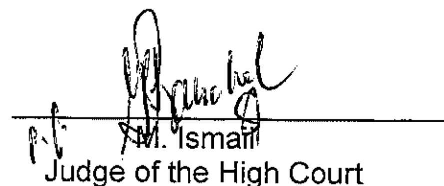
11. The applications referred to in para 10 above, shall be heard simultaneously on a date to be determined by the Deputy Judge President;

12. The costs of the applications are reserved for determination with the applications referred to in para 10 above.



T.M. Makgoka
Judge of the High Court

I agree



M. Ismail
Judge of the High Court

Date of hearing:	14 March 2016
Date of judgment:	26 April 2016
For the applicant:	Adv. W Trengove SC Adv. HJL Vorster
Instructed by:	Rooth & Wessels Inc., Pretoria
For the first and second applicant:	Adv. DN Unterhalter SC Adv. M Du Plessis Adv. J Mitchell
Instructed by:	Edward Nathan Sonnenbergs, Cape Town c/o Weavind & Weavind Inc, Pretoria
For the respondent:	Adv. NA Cassim SC Adv. H Khan Adv. V September
Instructed by:	Taitz & Skikne Attorneys, Johannesburg c/o Röntgen & Röntgen Inc., Pretoria