

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
(HELD AT BLOEMFONTEIN)

Case No SCA: 20366/2014
Court *a quo* (GP): 61790/2012

In the matter between:

**RONALD BOBROFF & PARTNERS
INCORPORATED**

First Applicant

RONALD BOBROFF

Second Applicant

DARREN BOBROFF

Third Applicant

and

JENNIFER GRAHAM

First Respondent

MATTHEW GRAHAM

Second Respondent

**THE LAW SOCIETY OF THE NORTHERN
PROVINCES**

Third Respondent

THE ROAD ACCIDENT FUND

Fourth Respondent
(Intervening Third Applicant
in the Court *a quo*)

APPLICANTS' SUPPLEMENTARY AFFIDAVIT

SIGNED AT JOHANNESBURG ON THIS THE 22nd DAY OF SEPTEMBER
2014.

clerk

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**TO: THE REGISTRAR OF THE SUPREME COURT
OF APPEAL
BLOEMFONTEIN**

AND TO:

EDWARD NATHAN SONNENBERGS

First and Second Respondents' Attorneys

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Received copy hereof on __ September 2014

For: First and Second Respondents' Attorneys

**IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
(HELD AT BLOEMFONTEIN)**

**SCA CASE NO: 20366/2014
COURT A QUO: 61790/2012**

In the matter between:

RONALD BOBROFF & PARTNERS INC

First Applicant

RONALD BOBROFF

Second Applicant

DARREN BOBROFF

Third Applicant

and

JENNIFER GRAHAM

First Respondent

MATTHEW GRAHAM

Second Respondent

**THE LAW SOCIETY OF THE NORTHERN
PROVINCES**

Third Respondent

ROAD ACCIDENT FUND


Fourth Respondent

SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

STEPHEN BEZUIDENHOUT

do hereby make oath and state as follows:

1. I am a director of the first applicant and I am authorised to depose to this affidavit on behalf of the applicants.
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2. The facts set out in this supplementary affidavit fall within my personal knowledge, save where the context indicates otherwise and are to the best of my belief both true and correct.

3. I am advised that the applicants do not have a right to file a supplementary affidavit in response to the respondents' replying affidavit, unless this Honourable Court permits the acceptance of this additional affidavit. I submit that it is in the interest of justice to permit this brief affidavit, dealing with new matter and facts pertaining to the main issues in dispute.

Ad the answering affidavit of George van Niekerk

4. The applicants' case is that the order made in paragraph 3 ("**the offensive order**") is over broad and not sustainable by reference to the issues in the application. This order is an abuse because it entitles not the applicants, but Discovery Health, represented by Mr van Niekerk, to pursue a personal agenda against the applicants.

5. In paragraphs 26 and 27 of Mr van Niekerk's affidavit resisting the application for leave to appeal to this court, Mr van Niekerk seeks to exclude and downplay the role of Discovery Health by referring to the applicants' case as "*the apparitional role of Discovery Health and its "vendetta" against them*" and "*the prolix references to Discovery Health, and the hauntings of prejudice contended for by Ronald Bobroff & Partners Inc ("RBP") and the Bobroffs*". Mr van Niekerk's case, in his own words, is that "*Discovery Health is not a party to this litigation – directly or indirectly*";

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6. I submit that Mr van Niekerk is wrong and misleading the court. First, to the knowledge of Mr van Niekerk in the court *a quo*, it was the Law Society which made the telling point that Mr van Niekerk is not acting in the interest of the applicants, but was pursuing a case for Discovery Health.
7. Secondly and subsequent to the judgment being delivered on 15 April 2012, Discovery Health addressed a letter to RBP's clients on 13 May 2014, a copy of which is attached hereto marked "SB1". I pray that the contents of "SB1" be considered by this Honourable Court in support of my contentions.
8. I point out to this court that despite diligent enquiries on my part from colleagues, who conduct significant personal injury practices in Gauteng, a similar letter to that of "SB1" has not been sent by Discovery Health challenging other attorneys who have utilised common law contingency fee agreements.
9. RBP has publicly decried Discovery Health's failure to disclose to its members the implications of its Rule 15.6.1 which contains exclusions entitling Discovery Health to refuse its insured members and their dependents any medical care which is due "to the act of another" unless the member agrees at his or her risk and cost to claim on Discovery Health's behalf against the alleged wrongdoer for repayment of all medical costs paid by Discovery Health for the member's treatment. RBP has contended that this is in contravention of the provisions of the Medical Schemes Act and materially prejudices the interests of the members of Discovery Health.
10. I also wish to draw to the attention of this Honourable Court the fact that at the hearing of the application to the Court *a quo* for leave to appeal on 30 June 2014,



the head of Discovery Health's Road Accident Fund Medical Costs Recovery Department, Mr Jeffrey Katz, told me and my partners, Ronald Bobroff and Darren Bobroff, the following:

"Don't waste your time with appeals. We are going to destroy you all".

11. In these circumstances, I pray that the court permits the receipt of this additional affidavit.



STEPHEN BEZUIDENHOUT

THUS DONE AND SIGNED BEFORE ME AT **JOHANNESBURG**_THIS **22nd** DAY OF **SEPTEMBER** 2014, AFTER THE DEPONENT DECLARED THAT HE IS FAMILIAR WITH THE CONTENTS OF THIS AFFIDAVIT AND REGARDS THE PRESCRIBED OATH AS BINDING ON HIS CONSCIENCE AND HAS NO OBJECTION AGAINST TAKING THE SAID PRESCRIBED OATH. THERE HAS BEEN COMPLIANCE WITH THE REQUIREMENTS OF THE REGULATIONS CONTAINED IN GOVERNMENT GAZETTE R1258 DATED 21 JULY 1972 (AS AMENDED).



COMMISSIONER OF OATHS

FULL NAME:

ADDRESS:

DESIGNATION:

YOLANDA STEFFENS
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
149 OXFORD ROAD
ROSEBANK, JOHANNESBURG
REPUBLIC OF SOUTH AFRICA

"SB1"



13 May 2014

Dear Sir or Madam

UNLAWFUL CONTINGENCY FEES

We have been advised that you were previously a client of the firm Ronald Bobroff and Partners. As you may be aware, there has been significant media attention on this firm, in particular with regards to the manner in which it levied fees on its clients.

In the recent Constitutional Court matters of SAAPIL v The Minister of Justice and De La Guerre v Ronald Bobroff and Partners, Ronald Bobroff and Partners' common law contingency fee agreements with its clients were declared unlawful. The effect of these judgments is that a number of former clients of Ronald Bobroff and Partners have probably been severely overcharged.

The extent of the overcharge depends on what a reasonable fee would have been for the legal work actually performed by Ronald Bobroff & Partners in each particular matter. As an illustrative example: In the recent High Court case of Bitter NO v Ronald Bobroff & Partners, it was suggested that the fee charged by Ronald Bobroff & Partners amounted to 25 times that which they would ordinarily have been entitled to.

Should you wish to have the fee charged to you by Ronald Bobroff & Partners assessed, we suggest that you contact Ronald Bobroff & Partners directly and request the firm to provide you with a detailed statement of account for work actually performed. Alternatively, you can employ the services of another attorney to contact Ronald Bobroff and Partners on your behalf.

For your further information we attach the judgment of Bitter NO v Ronald Bobroff and Partners where Justin Bitter was successfully represented by Anthony Millar of Norman Berger and Partners Attorneys.

Should you require any further details, please feel free to contact Discovery Legal Services per return e-mail on legal_services@discovery.co.za.

Yours faithfully,

Discovery Legal Services

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Discovery Health (Pty) Ltd Registration number: 1997/013480/07