

**IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)**

CASE NO: 61790/12

In the matter between:

JENNIFER GRAHAM

First Applicant

MATTHEW GRAHAM

Second Applicant

And

**THE LAW SOCIETY OF THE NORTHERN
PROVINCES**

First Respondent

RONALD BOBROFF & PARTNERS INC

Second Respondent

RONALD BOBROFF

Third Respondent

DARREN BOBROFF

Fourth Respondent

AFFIDAVIT BY NATASCHA DA COSTA

I, the undersigned

NATASCHA DA COSTA

do hereby make oath and say that:

1. I am an adult female employed as senior bookkeeper by Ronald Bobroff and Partners Incorporated ("RBP") at 37 Ashford Road

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Rosebank Johannesburg. I have been employed in this capacity since January 2006.

2. I have read the affidavit by Van Wyk dated the 19 October 2012 filed in the above proceedings and have been requested by the attorneys representing RBP to comment on the affidavit insofar as I am in a position to do so.
3. The facts set out in this affidavit fall within my personal knowledge save where the context indicates otherwise.
4. Before I deal with the contents of her affidavit, it is necessary to explain my functions and role during the period when the deponent was employed with RBP i.e. since September 2010.
5.
 - 5.1 Prior to my employment by RBP, I am aware that Ms. Cathy Rodel was employed as the senior bookkeeper for some 18 years up to April 2005. Thereafter, RBP employed a number of bookkeepers none of whom were able to achieve the level of expertise and diligence as that of Ms. Rodel. There was no attempt to hire junior or inexperienced bookkeepers and in fact, I was tasked with trying to source a competent and experienced bookkeeper to assist me in the bookkeeping department. At no time was there any failure to properly meet the bookkeeping needs of the practice and I would put

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in whatever additional time was necessary to ensure that all bookkeeping matters were kept up to date.

- 5.2 At all times during my employment with RBP there was always another senior bookkeeper and at times an additional junior, as I was employed in a half day capacity. A number of these bookkeepers proved unsuitable or unreliable or could not cope with work volumes leading to a turnover in the bookkeeping department. During the absence of any particular bookkeeper for any period another bookkeeper would fulfill the function of the other.
6. In view of the length of my employment with RBP I have gained knowledge and understanding of virtually the whole spectrum of the bookkeeping Department of RBP and have ready access to Mr Andre Van Der Merwe, the Practice's longstanding auditor, for guidance and assistance. Further Legal Interact, which supplies the majority of Attorneys' bookkeeping software, provides immediate access to skilled bookkeepers and systems analysts for any assistance or queries I might have.
7. In particular it was my function to prepare and write out all cheques i.e. trust and business cheques for the firm during the period of employment of Van Wyk. Trust investments in terms of section 78(2) (A) of the Attorneys Act were also handled by me.

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8. At all relevant times during my employment with the Practice I and the other bookkeepers reported to directors Ronald Bobroff and Steven Bezuidenhout.
9. It was always my experience that the very best endeavours were made by the firm and in particular by Mr R Bobroff to employ competent and senior bookkeeping personnel and to encourage proper procedures and processes.
10.
 - 10.1 Van Wyk commenced employment with RBP Inc in September 2010 and her main function was to prepare VAT returns and generally to administer the creditors of the firm. The business creditors entailed the posting of the invoices onto the business account of the firm and the capturing of the information into the business accounting records.
 - 10.2 Business creditors entailed general creditors of the firm in respect of which the firm's business account had to be debited and payments made from the business account.
 - 10.3 This related to expenditure incurred with reference to the general administration of the firm. It also included creditors in respect of which disbursements were incurred during the course of mandates performed on behalf of clients.

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10.4 It was also the task of Van Wyk to complete cheque requisitions for purposes of the issuing of cheques. I then had to prepare the cheques in accordance with the requisitions.

11.

11.1 The accounting to clients i.e. the verification of accounts to clients that were prepared , and the payment of trust monies to clients after the settlement of matters upon funds received from the RAF fell within her day-to-day function.

11.2 The payment to creditors emanating from disbursements e.g. advocates and experts, incurred on behalf of a client during the performance of a mandate fell within her functions to the extent that she had to prepare the necessary cheque requisitions, whereafter I had to prepare and write out the cheques. I also had a good understanding of this function and the state of affairs as far as this is concerned.

12. The accounts to clients would normally be prepared under the supervision of the director or professional assistant who handled the file of a particular client. Disbursements i.e. in respect of medical experts, advocates, sheriffs were checked and verified by Van Wyk.

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13.

13.1 In view of my previous experience before I became employed as a bookkeeper with RBP, I gained a good understanding of VAT and income tax administration and general accounting procedures and principles although it was not part of my day-to-day function in the firm. Before my employment with RBP I was for a period of approximately 12 years responsible for the financial administration and bookkeeping of a private business, which involved all aspects of accounting including tax administration.

13.2 Since my employment with RBP in 2006 I have been exposed to and gained experience in all aspects of bookkeeping of an attorney's practice, and have also have available the ready assistance and guidance of the practice's auditors and Legal Interact, who are the suppliers of RBP's bookkeeping software, whenever I required same.

14. I proceed to comment on the contents of the affidavit of Van Wyk insofar as I am in a position to do so. Before I do so, I express the view that it is clear to me that she has done her very best to dishonestly seek to tarnish the firm, and portray it again dishonestly in the worst possible light by way of false, exaggerated and generalized statements.

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15. Ad paragraph 5

- 15.1 In view of the length of my employment with RBP taken together with my involvement through all the years with virtually every aspect of the firm's bookkeeping functions I am well able to state that I am unaware of any criminal conduct to which Van Wyk refers.
- 15.2 In view of the fact that I have been involved through the years with virtually all aspects of the bookkeeping function of the firm, I believe that I am in a position to state that I am unaware of any criminal conduct which the deponent refers to.
- 15.3 Any improper conduct emanating from the financial administration would have come to my knowledge either through direct knowledge or through talk among bookkeeping staff members.
- 15.4 Except for the recent complaint lodged by Mr. G van Niekerk of Discovery's attorneys Edward Nathan claiming to represent RBP former client Mr. Graham. I am not aware of any complaint against the firm or its directors since my employment commenced in 2006.

16. Ad paragraph 6

- 16.1 I am in a position to deny that there was any form of witch hunt. I can confirm, that because of a suspicion that confidential information of the firm was being given to outside third parties, in particular proxies

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of Discovery, and because the directors had to investigate the suspicion and possible sources of the problem, that polygraph testing was done once on bookkeeping staff members and selected other staff members who volunteered to undergo same.

- 16.2 I also voluntarily participated in this internal investigation and had no difficulty with it. I did however sense that Van Wyk became very anxious when the polygraph testing was to be done. It also came to my knowledge for the first time, subsequent to her dismissal, that she had 10 previous criminal convictions in respect of fraud by false pretences and had served a prison sentence. I certainly did not regard the investigation, which included polygraph testing, as a witch hunt.
- 16.3 On the day of testing and after Van Wyk had agreed in my presence to undergo same, when her turn came to be tested, she fled the office leaving her office keys with me and telling me that she would not return.

17. **Ad paragraph 7**

- 17.1 I deny that there were any serious and ongoing breaches in the practice financial administration as far as I am aware and I have at all times been intimately involved and aware of all the mandatory compliance requirements of an attorneys practice in this regard.

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- 17.2 At no stage did Van Wyk ever inform me that she had uncovered any failure by the practice and/or its bookkeepers to comply with the Attorneys Act, VAT Act, Companies Act and Income Tax Act. I am aware that SARS conducted an audit during August 2012. I have noted that this occurred consequent upon Van Wyk making certain reports to it on the 14 May 2012.
- 17.3 I am aware that Audits by SARS occur frequently in businesses and I did not regard such an audit as something that raised alarm. None of the Directors appeared concerned and Van Wyk and I were instructed by Ronald Bobroff and practice auditor Andre van der Merwe to co-operate fully. I accordingly assisted SARS employees as far as it was required to provide information requested by them during the course of the audit which was conducted in a cordial manner.
- 17.4 I am aware that Van Wyk, on her own initiative, created a hypothetical trust suspense account numbered 11521. This was not an actual bank account as such, but merely an information list identifying client matters where funds had been received into the practices normal 78(2) (a) trust account. Such amounts were in respect of particular finalized client matters and where payment of disbursements and amounts due to client had already occurred, and the balances in respect of each client were available for the debiting of a fee.

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- 17.5 All benefit of any interest earned on these funds, which at all times remained in the practices regular 78(2)(a) trust bank account went via the Law Society to the Attorneys Fidelity Fund, and no benefit whatsoever inured to RBP.
- 17.6 Ironically had RBP immediately debited all the fees to which it was entitled and the relevant trust to business transfer been effected, the practice would have been the recipient of the interest rather than the Fidelity Fund.
- 17.7 I am aware that the Practice has and continues to receive special recognition certificates from the Attorneys Fidelity Fund as an exceptional interest earner for the Fund.
- 17.8 So as to maintain a smooth cash flow, I would advise Van Wyk, shortly prior to the end of each month of the amount required by the practice to cover the practices running costs together with the drawings / salaries for the directors, and Van Wyk on the total amount of fees to be debited and transferred to trust to business from the control list created by Van Wyk, following normal business procedures.

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18. Ad paragraph 8

- 18.1 I deny the allegation that Ronald Bobroff distracts blame from himself by suggesting that his bookkeepers are at fault and that he is the author of accounting transgressions.
- 18.2 It is also untrue that Ronald Bobroff employed junior bookkeepers purposely and changed bookkeepers every 18 months to 2 years. On the contrary, he has sought to engage experienced bookkeepers and I have assisted in this endeavor.
- 18.3 It is true that Mr R Bobroff is a demanding employer who insists on work of the highest standard including accuracy, responsibility, competence and timeous completion of allocated tasks. Bookkeepers that could not cope with the workload and who repeatedly made errors realized that this was not acceptable to the directors and left of their own accord.
- 18.4 As already mentioned, I have been employed by RBP for 8 years and I am therefore in a position to state that the allegations of Van Wyk are simply false. Accounting mistakes do happen from time to time in any practice and when they were detected they were corrected. It is maliciously untrue to suggest that they were deliberate accounting irregularities created on instructions from Mr R Bobroff or any of the directors.

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19. **Ad Paragraph 9**

The contents of this paragraph are untrue. I am not aware of any boasting as referred to by Van Wyk.

20. **Ad Paragraph 10**

I am in a position to state that Van Wyk was not a meticulous bookkeeper. She made many mistakes. Many reversals had been done as a result of payments to medical practitioners that were duplicated. Unlike me, before and during the SARS audit, she became very nervous and even wanted to go home. In the result I was the person who had to liaise with SARS employees during the course of the audit.

21. **Ad Paragraph 11**

21.1 I am unaware that clients have been robbed as stated by her and I have little doubt, that if this were the case, given that RBP's client base comprises primarily literate and relatively sophisticated persons, such "robbery" would surely have been complained of by numerous clients during the almost 40 years the practice has existed. Significantly she never made any negative allegations against the practice to me during her period of employment.

21.2 As already stated all accounts that were prepared by the professional staff member responsible for the file, had to be checked and verified by the bookkeeping staff. I am aware that many RAF matters were

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done on a contingency fee basis, and in every matter there were written mandates signed by clients as I am responsible on conclusion of matters to verify this. Van Wyk was not privy to the fee mandates entered into with every client and she is not in a position to comment in the manner she does.

21.3 Bookkeeping staff had to post and debit fees, do the necessary accounting entries, and to prepare the issuing of cheques for monies due to clients and to process payment to creditors such as advocates and medical experts. In respect of last mentioned, invoices were received and payments made normally at the conclusion of the matter. During the past few years increasing numbers of experts have insisted on part or full payment upfront prior to the release of their reports and cheques are requisitioned and deposited in respect thereof.

21.4 Payment of monies due to clients were made strictly in accordance with the fee arrangement with the firm, and in this regard bookkeeping staff were instructed by the directors and/or professional staff of the amount of fees to be debited and the amounts of payments to be made to clients. Significantly, all client accounts had to be checked and signed off by Van Wyk who was also tasked with verifying and seeing to it that all services providers i.e. Counsel and experts were paid before files were designated for archiving.

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22. **Ad paragraph 14**

Christy de Beer only resigned from full time employment on – at which time she had been employed by the Practice for two years. She continued to be employed on a part-time basis for some time thereafter.

23. **Ad Paragraph 15**

23.1 It is correct that I am reflected on the letterhead of the firm as the internal accountant. Although I do not have any formal bookkeeping qualifications due to the extensive experience I have had as a bookkeeper both in business as also in attorneys practices, I am fully conversant with and competent in all legal bookkeeping requirements.

23.2 Chantal Jansen was not a young clerk as described by Van Wyk. She was a junior bookkeeper and did have less experience than I or Van Wyk. However, she left because she clashed with Van Wyk, was not prepared to accept instructions from Van Wyk whom she did not regard as competent and informed me that she did not trust Van Wyk.

24. **Ad paragraphs 16, 17 and 19.**

24. 1 To state that the financial records of the firm were in an "*absolute mess*" when she joined the firm is blatantly false. Most of the bookkeepers she refers to were in my view, all efficient and competent bookkeepers even if some found some difficulty in always coping with the work load at all times. If the financial records of the

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firm were in a mess as she portrays it, then it would not have been possible to write up the books every month and to balance the books on a monthly basis. This was and is one of my main functions and if the books did not balance, we would not have been able to carry out the month end procedures in accordance with the Practices' bookkeeping program.

24.2 I can state that the books of account were written up monthly and balanced. Bank reconciliations were done on a daily basis. The firm would not receive a clear audit annually and the directors issued with fidelity fund certificates if the books were not in order. Because of large volumes of transactions that were handled, there were a few occasions where the payment of creditors and disbursements e.g. advocates and medical experts had temporarily fallen behind for a short time. This was Van Wyk's responsibility

24.3 When Van Wyk was appointed, I took control of the issuing of cheques and the completion of cheque requisitions. Mr R Bobroff insisted that this urgently be attended to even if overtime had to be worked. Such back logs as existed thereafter improved. After Van Wyk was employed and due to the firms IT hard and software supplier discontinuing support for its "Lawplan" accounting software, the firm was forced to upgrade to from LAW PLAN to WIN LAW. This upgrade together with the incorporation of the NTRACK disbursement recovery

Mr.
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system enhanced the management of disbursement recovery and recordal.

25. **Ad paragraph 18**

I seriously doubt that Van Wyk is in a position to comment on the decision of any of the directors or professional employees in respect of the appointment of expert medico legal practitioners. I am aware that the Practice has various arrangements with its panel of experts ranging from complete contingency, to full up-front payment prior to the provision of any reports.

26. **Ad paragraph 19**

Advocates briefed by the practice are promptly paid their fees when due and it is the bookkeeping department's duty to see to it that this occurs as the directors do not routinely monitor Counsel's accounts.

27. **Ad paragraph 20**

27.1 The arrangement between Legal Billings Solutions (Pty) Limited owned by Mr Jerry Joubert was that his fees would become payable once the moneys due by Defendant's in respect of each party and party bill was recovered. He would debit the Practice a fee in respect of the drawing of bills only for control purposes and payment would only become due once the costs were recovered from the Defendant.

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27.2 I can confidently state that payments were made to Mr Joubert regularly as and when same became due. If an amount anywhere approximating that alleged by Van Wyk was due and payable, he would hardly have continued drawing bills for the Practice.

28. **Ad paragraph 21**

28.1. I am aware that the practice has varying arrangements with its service providers. These vary from full contingency agreements, with experts i.e. payment on successful conclusion of a matter and once all funds due have been recovered from the Defendant, to up front full payment in advance of services being rendered. Counsel are invariably paid in respect of all work other than trials in accordance with normal Bar rules and similarly with regard to trial fees. RBP had arrangements with some Counsel to pend trial fee payments until funds had been recovered from the Defendant.

28.2 It is wholly untrue to state that the firm had no risk or liability to doctors or advocates as Van Wyk was well aware that there had been a dramatic increase in the number of experts and counsel declining to accept any form of contingency arrangements and the practice routinely disburses amounts between R100,000 – R300,000 per month in respect of upfront and/or normal non-contingent payments in this regard. In the event of a matter proving unsuccessful RBP would have to carry all disbursements as well as the loss of a fee in respect of what is always many years of work. To this must be added the

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substantial costs inherent in the salaries of Directors, Professional staff, secretarial and support staff who work on unsuccessful matters.

29. Ad paragraph 22

- 29.1 It is incorrect to state that there was no proper filing system and that creditors were paid long after payment was due. There is and has throughout my period of employment always been a proper filing system, although Van Wyk was chronically behind in her filing. Because of some isolated and temporary backlogs to which I have already referred, it happened on occasion that payment to a particular creditor may have fallen into arrear.
- 29.2 This would invariably be detected in the normal course or when a query was raised by any creditor and the payment would immediately be made of the amount in question. Van Wyk was specifically tasked to ensure that all service providers were promptly paid in accordance with their particular contracts, and she would regularly boast that such payments had never been so up to date, prior to her employment with the practice.
- 29.3 Van Wyk is well aware that given the volume of transactions at RBP, as also no doubt at any other Practice of substance, it cannot and does not occur that immediately funds are recovered in a particular matter; service providers to the Practice receive payment as she puts it "forthwith". Normal bookkeeping procedures invariably result in

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matters being processed in an orderly sequence, usually on a weekly or bi-monthly basis. The attorney responsible for a particular matter would sit with Van Wyk to confirm the correctness of interim accounts, and amounts to be paid to service providers, as also the fee to be debited to the client.

30. **Ad paragraph 23**

- 30.1 It is patently false and absurd to allege as Van Wyk does, that business cheques were drawn for all the creditors but never signed, or that neither Darren nor Ronald Bobroff would sign the cheques. If this were so, no service providers would ever have received payment, would have swiftly refused to do further work for the Practice, resulting in the Practice grinding to a halt.
- 30.2 The normal procedure at RBP, is that once all funds due by a Defendant have been recovered, all service providers to whom moneys are due, are to be promptly paid. In this regard requisitions were completed and signed by Van Wyk for submission to the fee earners concerned for their counter signature.
- 30.3 These requisitions were/are processed by me on a daily basis and I would then write out the cheques in accordance with the requisitions and present same to any two of the three directors for signature. I have never experienced any refusal or delay on the part of any of the directors in signing cheques. Thereafter I would hand the cheques to

Me.
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Van Wyk whose duty it was to directly deposit these cheques into the service provider's account, and to see to it that the deposit slips were faxed to the service providers.

31. Ad paragraph 24 and 25

- 31.1 Van Wyk is well aware that the directors were concerned as to the dangers inherent in utilizing EFT payments. It is common knowledge that banks disclaim liability for fraudulent EFT transactions resulting in a partial or total depletion of a customer's account, unless the customer is able to prove that the fraud was perpetrated by the bank's staff or as a result of negligence on the part of the bank.
- 31.2 On the advice of the Practice auditors and on account of the very real risks inherent in the use of EFT transactions, the directors decided to rather continue utilizing cheques in respect of all payments, save for salaries. In this way the only avenue for fraud would relate to forged signatures on Practice cheques, in which event the bank would have to bear the loss.
- 31.3 Further, given that EFT transactions would normally be done in bulk, making payment of service provider accounts in respect of each client by cheque facilitates proper control of such accounts and of proving payment thereof, with regard to queries received from service providers in the normal course of business.

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32. **Ad paragraph 26**

It is inaccurate to state that there was any "mess" with respect to the experts and the advocates. Van Wyk is exaggerating the position. As already mentioned they were some temporary backlogs which were soon rectified. It is correct that after the resignation of Chantel Jansen, (due to her distrust of and refusal to work with Van Wyk), Van Wyk became responsible for the processing of VAT returns and the administration of staff payroll.

33. **Ad paragraphs 27 and 28**

I have no knowledge of the financial administration and affairs of SAAPIL and cannot comment.

34. **Ad paragraphs 31 – 35**

I was not privy to the events described in these paragraphs and therefore cannot comment.

35. **Ad paragraph 36**

35.1 Again Van Wyk seeks to tarnish RBP. I am aware that she was requested to work through certain files.

35.2 It can and did occur in a few isolated instances that one of the previous bookkeepers might have archived a file without seeing to it that every service provider had been paid or that the fee instructed by the attorney to be debited was so debited. This would not have prejudiced

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the client in any way and in the normal course bank account reconciliations would pick this up and any service providers affected paid. In either event, Van Wyk was required to monthly reconcile the accounts of all service providers with client files and it was her responsibility to see to it that any unpaid accounts where funds had been recovered should be paid.

36. Ad paragraph 37

The files in respect of the 70 names furnished by Discovery were reviewed by the various attorneys in RBP's office who dealt with various of these files. As far as I can recall the majority of these files were clients of Mr Bezuidenhout.

37. Ad paragraphs 38 and 39

In the course of my employment I deal with the client files of all the Directors and Professional staff. I am unaware of any significant difference between the client files of Steven Bezuidenhout and Darren Bobroff both of whom maintain their client files in good order and which I always found to be up to date and properly finalized for archiving.

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38. **Ad Paragraph 40**

I am aware that Mr Ronald Bobroff, as senior director, maintains an oversight role and regularly attends consultations between clients and various attorneys employed by the Practice. He also requires Professional staff to attend regular meetings to discuss latest developments in the law and procedure applicable to the work which the Practice specializes in.

39. **Ad paragraphs 41 – 43**

I have noted what Van Wyk has alleged. I very much doubt what she says is true, as given that we had a close and good working relationship she would, in my opinion, definitely have reported to me what she alleges had occurred.

40. **Ad paragraphs 44 and 45**

40.1 I deny these allegations which are a distortion of the way in which the Practice dealt with the practical difficulty of accurately capturing photocopying charges whilst the Practices electronic Equitrack system malfunctioned.

40.2 The Practice printers were fitted with an electronic device which automatically by reference to the client's file number billed the client ledger with all photocopying and printing done in the client file. When the system ceased functioning sometime in 2009, it was not possible

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to have it repaired as there was a dispute between the patent holder and the South African agent.

40.3 Accordingly staff were instructed when a matter was finalized to do a physical copy count then to be multiplied by the Practice's per page copy rate and the client debited accordingly. Notwithstanding that most files, including as they did, numerous and voluminous expert reports, the directors took a policy decision to limit the photocopying charges in any particular matter to a maximum of R15,000. Both Van Wyk and her predecessor neglected to charge VAT on the photocopying charges, probably because the electronic system had done so automatically and once Dynatrac was installed this again occurred. The situation with regard to these disbursements has been regularized with SARS.

40.4 The above situation prevailed for less than a year until Nashua, the supplier of the Practice printers, secured the rights to the Dynatrac program, which enabled direct electronic capture and billing of photocopying and which was then installed on the Practice printers.

41. Ad paragraph 46

It is wholly untrue that there was any generalized or other problem in the bookkeeping department or that disbursements were in a terrible state. This simply yet a further attempt by Van Wyk to create atmosphere via sensational untruths.

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42. **Ad paragraph 47**

Van Wyk's allegations are simply not true. Postage is captured from vouchers. Telephone calls were captured by Equitrac and now by Dynatrac and the only problem area was the extensive copying which was not captured during the year or so that Equitrac did not function. I repeat which I have said in paragraph 43 above.

43. **Ad paragraphs 48 - 49**

It is correct that Attorney Pippa Farraj earns commission on fees debited by her in respect of work done. She at no stage voiced any complaints to me in respect of the debiting of clients in respect of photocopying done in client files during the short period that the Practice was without an electronic photocopying capture and billing system.

44. **Ad paragraph 50**

The real reason for the resignation of Chantel Jansen was not as stated by the Van Wyk, but in truth and as I was informed by Chantel because, she was not prepared to work with Van Wyk, whom she regarded as incompetent and whom she said she did not trust.

45. **Ad paragraphs 51**

45.1 I am unaware of the alleged communication between Ronald and Darren Bobroff had with Van Wyk regarding Advocate Khan. I can

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however confirm that Advocate Khan was and remains an important member of the Practice's team of Counsel, and that he has and continues to receive large volumes of instructions from RBP.

45.2 Further Advocate Khan has for years and currently regularly calls at our offices to consult with clients and the Practice's attorneys including Darren Bobroff with whom he obviously has a good relationship given that Darren Bobroff continues to brief Advocate Khan extensively.

46. **Ad paragraph 52**

I have no knowledge as to whether or not Advocate Khan is or has been investigated by the Johannesburg Bar Council as alleged. I am aware from emails sent to all Counsel briefed by the Practice on 20 February 2007 warning them against accepting other briefs for dates on which they had already been briefed.

47. **Ad paragraph 56**

I have no knowledge of these allegations which I understand are dealt with by Ms Stein.

48. **Ad paragraphs 57 – 58**

I have no knowledge as to whether what Van Wyk alleges in paragraphs 57 and 58 actually occurred, but I regard it as inconceivable given my close and cordial relationship with Rachelle,

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that she would not have reported to me doing what Van Wyk alleges she did.

49. **Ad paragraph 59**

49.1 The instructions which Van Wyk alleges were given to "the staff" are patently absurd and a figment of her imagination. Given that the consultation room made available to Van Niekerk receives such a high amount of natural light, it would be nonsensical and would serve no purpose to remove light bulbs from that room.

49.2 I similarly cannot understand why reducing the number of chairs in the room would have any negative impact on Van Niekerk, who I would imagine is only able to sit on one chair at a time, and he was not accompanied by any assistant.

49.3 I am aware that Mr R Bobroff instructed receptionist, Ms Liza Boucher, to see to it that the office tea lady included Mr Van Niekerk in her morning and afternoon tea rounds, and that she should also enquire from Mr Van Niekerk as to whether the office messenger should also purchase lunch for him when doing so on behalf of other RBP staff members.

50. **Ad Paragraphs 60 and 61**

I have no knowledge of this.

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51. **Ad Paragraphs 62 – 67**

51.1 I am not in a position to comment on the contents of these paragraphs but I am able to state that I am aware that Ms De La Guerre is a member of Discovery Health and that she is represented by Attorney A Millar of Norman Berger and Partners. I am also aware that such firm of attorneys have come to represent a number of other Discovery members against the Practice and that they have recently been appointed to Discovery's panel of attorneys.

51.2 I have no knowledge of the allegations regarding Advocate Khan but I am aware that Advocate Khan was paid all amounts due to him and has taken issue with the allegations made against him by Messrs Berger and Millar in a complaint lodged with the LSNP.

52. **Ad paragraphs 71 – 72**

52.1 There was in my view no reason for anyone to be perturbed about the manner in which the accounting of the practice was done. Certainly the directors of RBP and in particular Mr Ronald Bobroff were insistent that correct procedures be followed and that Van Wyk and I should feel free to seek guidance and assistance at any time from practice auditor, André Van Der Merwe and/or Legal Interact, the suppliers of the Practice Bookkeeping program. Again Van Wyk attempts to portray the practice in a false and negative light. In my view the only source of unhappiness regarding the bookkeeping

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department was her and after she left the employ of the practice, all staff became markedly happier.

- 52.2 Van Wyk informed me that she wanted to resign as she received a better offer from another Attorney namely Attorney M de Broglio. She thought that she was going to get more money. She then said that she had decided to stay on because De Broglio subsequently retracted his offer to her.

53. **Ad paragraph 73**

- 53.1 I am unaware of any irregularities in relation to VAT in the Graham file and Van Wyk never reported any such to me. Van Wyk seeks to paint a picture of mass staff resignations when in fact the contrary is the case. The vast majority of RBP employees have been with the Practice for lengthy periods including many who have been so employed for decades and others for more than a decade. Staff turnover is, in my opinion, exceptionally low having regard to the large amount of churn which Personnel Agencies have described to me on those rare occasions where I have needed to recruit staff for RBP.

- 53.2 The three staff members who resigned were a candidate attorney, who was involved in an amorous relationship with a certain advocate.

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53.3 The second RBP resignee was a professional assistant who had been studying corporate law during her articles and secured employment with a firm doing commercial work. She left on most cordial terms

53.4 The third resignee was a candidate attorney who having completed her articles left the firm on the basis that she needed to undergo major surgery and indeed I understand she did in fact do so.

54. Ad paragraphs 74 – 80

Save for noting that Van Wyk inexplicably refused to remedy an error in the posting of the fee in the Graham matter despite being instructed to do so by the practice auditor, I am not in a position to comment further on the contents of these paragraphs.

55. Ad paragraphs 81

It is correct that all funds received for and on behalf of clients are held in the practices trust account and the interest earned thereon and paid to the Law Society has repeatedly been recognized by the Attorneys Fidelity Fund which has awarded the firm exceptional interest earner certificates.

56. Ad paragraph 82

The allegation of frequent cashed cheques or fictitious disbursements being issued to enable the partners to take money out of the practice is false. I am responsible for the writing of all cheques save on those

A handwritten signature in the bottom right corner of the page, appearing to be 'DM' or similar initials.

rare occasions where I am absent due to illness. Further, I do all the cheque postings, filing and bank reconciliation and I would be the first to know if what Van Wyk alleges to have occurred, had so occurred.

57. Ad paragraph 83 and 84

57.1 The allegations in these two paragraphs are untrue and a figment of Van Wyk's imagination. There was no discussion with her as alleged or at all and I have no knowledge of any report allegedly prepared by Christy De Beer and I have never seen same prior to perusing Van Wyk's affidavit. If the report was in fact prepared by Christy I certainly dispute that she told me about anything other than her concern regarding the Pombo cheque, or that I had ever said to her that "I know about everything" or that I had told her that "had suspicions for a while".

57.2 Further I deny that I was upset or shocked, although I was irritated that she had created a fuss about something for which she was solely responsible as I explain more fully hereunder.

57.3 I do recall that sometime mid 2009 Christy De Beer, then one of the bookkeepers employed by the Practice, had queried with me a certain business cheque drawn on the account of client F Pombo. I asked her if she had debited the fee to which she replied she had not.

Mo.
DM

57.4 She never raised the Pombo matter or any other concerns as to any bookkeeping issue not being done strictly in accordance with normal procedures, during the ensuing eleven months during which she remained employed as the Practice's full time bookkeeper. She similarly did not raise any issues during the further period of five months that she was employed part time after leaving the Practice's full time employ during June 2010.

57.5 Whilst being employed part time she attended to the monthly VAT returns, VAT journals and reconciliations, monthly salaries, leave reconciliations, PAYE, SDL and UIF returns, IRP 5's, calculation and payment of Trust interest to the Law Society and Fidelity Fund Applications.

58 Ad paragraphs 85, 86.1, 87.2 and 87.3

58.1 None of the original cheques referred to in these paragraphs can be found in the Practice records and I suspect that Van Wyk has stolen them.

58.2 I am aware that the cheque referred to in 86.1.4 payable to A Lubbe was in respect of a temporary secretary, and that the cheque referred to in 86.1.6 was travelling expenses payable to client C P Ndlovu.

58.3 The business cheque referred to in 87.2 in the amount of R115,599.04 was to have been preceded by her debiting a fee in the same amount, which she said she had omitted to do.

*Me -
Don*

58.4 Given that the client files relating to the other cheques referred to by Van Wyk were destroyed three years post finalization in the normal course of practice, as also that the cheque counterfoil stubs and other records relating to such matters would also have been destroyed in the normal course five years having elapsed; I am unable to comment in respect thereof.

59 **Ad paragraph 86, 87, 88, 89, 90, 94, 98.2, 98.3, 94, 98.2 and 103**

59.1 Van Wyk seeks to attribute some sinister motive to the procedure adopted and which in fact was created by her with respect to the management of cash flow and fee debits in the practice. On receipt of funds due from a defendant in a matter, disbursements are settled, clients paid and accounted to and the amount of the fee to be debited recorded.

59.2 Given that RBP's cash flow exceeded its monthly practice needs, Van Wyk suggested and created a control list which she designated as a suspense account number 11521. This was not a separate trust bank account as such but simply a recordal of client matters as they became finalized and in respect of which moneys were available in trust against which to debit a fee.

59.3 It must be emphasized that these monies were at all times were held in the practices current 78(2)(a) trust bank account, and that all

ml.
dm

interest earned on such monies were paid on an ongoing basis to the Law Society. No benefit whatsoever accrued to RBP consequent upon any delay in the debiting of a fee to which the practice was entitled. The contrary was in fact the case and Van Wyk's ill-advised initiative has been terminated.

- 59.4 Towards the end of each month I would inform Van Wyk of the amount required that month to cover Practice overheads inclusive of director's drawings and salaries. Van Wyk would then obtain authorization from Mr R Bobroff or Mr S Bezuidenhout as to the amount of fees to be debited over and above that required to meet Practice overheads, and she would then effect an appropriate debit so that the amount in question be transferred in the normal way from the practices current trust account to the business account.
- 59.5 This was purely a cash management initiative instituted by Van Wyk, (since discontinued after her dismissal), and I am unaware of any benefit to the practice as a consequence of same. On the contrary had the practice immediately debited all fees from available funds and transferred this to business, the practice would have had the benefit of such monies which could have been invested, for the benefit of the practice, rather than the funds remaining in trust and all interest earned thereon being paid to the Fidelity Fund. The substantial interest so paid to the Fidelity Fund has resulted in the Practice

pb.
201

receiving certificates of recognition as an exceptional contributor to the Fidelity Fund, on a number of occasions.

60 Ad paragraph 91

60.1 It is not correct that clients were only paid via Trust cheques as it did and does occur that clients are given an advance from the business account due to lengthy delays encountered in recovering damages and costs from the Road Accident Fund.

60.2 Further Van Wyk clearly seeks to tarnish Ronald and Darren Bobroff by a negative implication, where she alleges that "(Steven Bezuidenhout always ensured that Discovery and Medical Aids who were due a refund were paid- the same is not true for Darren and Ronald Bobroff)".

60.2.1 In the first place Ronald Bobroff did not during Van Wyk's employment ever personally handle client matters and it would therefore never have occurred that he would have been required by any client to effect payment to any medical aid.

60.2.2 In the second place I am aware that many of Mr Bezuidenhout's clients, who are Discovery members, have declined to reimburse Discovery and Van Wyk's allegations to the contrary are untrue.

ab.
dm

61 Ad paragraphs 92 and 93

61.1 I have already mentioned that it is incorrect to state that the business bank statements ran into between 40 and 60 pages. There were many payments because of the volumes of the transactions. There is nothing sinister about this. Her suspicion that it was deliberately designed to obfuscate payments is untrue. It was my duty to do the reconciliation of bank accounts and to keep the file with the cheques in number and date order in a cupboard in my office. There was nothing untoward about this.

61.2 Funds that were transferred from the trust account to the business account were in respect of fees that the firm was entitled to. These transfers occurred in a regular manner. There is no prohibition as far as I am aware that business cheques issued cannot be made payable to cash or bearer. However that was not the norm as most business cheques issued were crossed. On occasion the partners requested business cheques to be made out in cash which again is not in itself irregular. Only trust cheques may not be made out in cash or bearer.

62 Ad paragraphs 94 – 95

As previously stated the nominal client list 11521 was Van Wyk's creation at her instance and suggestion. Further fees were properly debited monthly to meet practice overheads, drawings and salaries. There was nothing sinister in this whatsoever and in fact Van Wyk's

AKG
DM

implementation of the so-called suspense account caused the practice significant financial loss.

63 Ad paragraph 96

I discovered before the SARS audit that Van Wyk previously neglected to ensure that the final accounts given to clients bore the description "tax invoice" etc. as is required. VAT was accounted for in statements to clients but it was the duty of Van Wyk issue and produce tax invoices. She and I discussed her omission with the practice auditor, Mr Andre Van Der Merwe, who issued instructions that the position be rectified and that Van Wyk should ensure going forward that all accounts contained the appropriate wording etc.

64 Ad paragraph 97

I am aware that Van Wyk received a series of emails from SARS late July 2012 advising that it was to conduct a VAT and income tax audit on the practice and a lifestyle audit on the directors. Van Wyk professed surprise at this but the directors and the practice auditor informed her and I that apparently SARS were conducting routine audits on attorneys in general, and it certainly did not seem to me that the directors were in any way concerned. The rest of Van Wyk's allegations herein are untrue.

sb.
Dm

65 Ad paragraph 98

65.1 I have already explained that the nominal account list in respect of finalized matters were monies that were available for fees and that this nominal account was Van Wyk's creation. No instruction was ever given to me, nor as far as I am aware to Van Wyk, should that VAT not be charged to clients on photocopying charges or paid over to SARS. My understanding from Van Wyk was that this was correct as these were "internal disbursements", not disbursements to third parties which included a VAT component.

65.2 In either event as I have previously stated and as is factually correct, no benefit whatsoever ensued to the directors of the practice, as all the monies listed in the nominal client list 11521 were in the practice trust account and interest thereon was paid to the Attorneys Fidelity Fund. The generalized statement that fees were only taken from trust to business long after matters were finalized is incorrect. In most cases a period of three months would be the norm within which time additional disbursements could come to light requiring an adjustment in the fee to be charged before same was debited.

66 Ad paragraph 99

I dealt with questions raised by SARS as far as I was able to do so, and I am unaware of any amount of R 98 million that is not accounted for. I truly believe that this is impossible and untrue. Nothing of the

Ad.
Dm

sort came to my knowledge and it would surely in the normal course have come to my knowledge if this was correct.

67 Ad paragraph 100

The contents of this paragraph are false. Van Wyk knew from the outset about the Zunelle account. It is completely false that this account was used to *launder* money. It was an account in the normal business ledger of the firm comprising practice business funds and all interest earned thereon was properly accounted for in the firm's audited financial statements as income and its tax returns. I deny that I had any so-called *fight* with Ronald Bobroff about this account or any other issue.

68 Ad paragraphs 101 – 102

68.1 The Zunelle account was a trust investment account in terms of section 78 (2) (A) created for the benefit of the firm and the directors to whom the funds ultimately belonged. Monies from the business account of the firm were properly transferred to this trust investment account after the appropriate debits had been passed and all correct procedures followed.

68.2 Because it was a 78(2) (A) trust investment account the interest on this account was for the benefit of the trust creditor (the firm) and not the attorney's fidelity fund. It is correct that the funds from this account were invested with Investec Bank and Standard Bank and there was

no attempt on the part of the directors to conceal the funds or the accounts from either Van Wyk or I both of whom administered this account. I believe it was highly unlikely that they would have done so if they believed there was anything improper in what was being done, and in fact I am aware that all interest earned on these funds were fully declared as part of the practice's income. It is malicious speculation on the part of Van Wyk to state that the account was not approved for purposes of the Financial Intelligence Centre Act.

69 Ad paragraphs 103 – 106

The funds housed in the Zunelle account emanated from fees debited and any interest earned thereon was as stated aforesaid disclosed as forming part of the practice's income. The funds did not belong, as Van Wyk would suggest, to Ronald and Darren Bobroff but to the practice, and indirectly to all three directors in accordance with their shares in the practice.

70 Ad paragraphs 107 – 109


I am not in a position to comment on the contents of these paragraphs.

71 Ad paragraphs 110 – 119

71.1 I have commented herein before on the polygraph testing, and what I understood the reason for it was, namely that there was a suspicion that confidential information of the firm was being given to outside third parties. As already stated the firm was perfectly entitled to

Nb.

conduct an investigation and I was fully prepared to co-operate with this investigation. It was clear to me that Van Wyk became very anxious at the time. After having agreed to undergo testing at the same time I did, she suddenly only agreed to do so if attorney P Farraj, whom she accused as being the source of the leak, would first be tested.

- 71.2 After attorney Farraj had been tested and Van Wyk's turn came to be tested, she fled the office after handing me her keys and stating that she would not return.
- 71.3 I deny that there was any attempt to alienate any staff from Van Wyk or that any particular attempts were made to make life difficult for her. In fact RBP staff members were not pleased with the manner in which they were treated by Van Wyk. It is correct that the testing took approximately half an hour and it is in fact correct that both the Pippa Farraj (a professional assistant) and I amongst others underwent the tests. I am aware that Van Wyk was subsequently suspended and thereafter dismissed after a disciplinary enquiry and finding by an independent Chairperson that she had failed to disclose when applying for a position involving trust or at any time thereafter that she had been convicted on no less than ten counts of fraud by false pretences and had served a term of imprisonment. I am also aware that Van Wyk had failed to disclose these convictions to two other firms of attorneys by whom she was previously employed.
- 

71.3 I was unaware at the time that she had 10 previous criminal convictions for fraud by false pretences and had served a term of imprisonment, and this information subsequently came to my knowledge. I have no knowledge about the facts and circumstances that led to her appointment. I have previously also mentioned that Van Wyk made numerous mistakes and I personally had to correct her on a number of occasions during her employment. In this regard I wish to attach as Annexure "A" a print out of an email exchange between Van Wyk and myself during October 2010 as also an email exchange between former RBP bookkeeper Chantel and Mr R Bobroff, Annexure "B". These errors occurred a month after she was employed. I would not have expected a senior and experienced bookkeeper to make such elementary errors mistakes of the kind she made and this prompted me to seek to correct her.

72 In so far I have not dealt with any specific aspect in the affidavit of Van Wyk it should not be regarded as an admission of the correctness of the contents thereof.

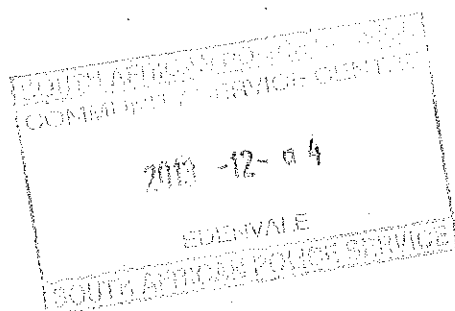


N Da Costa

Mb.
DM

Edenvale

Thus signed and sworn before me at JOHANNESBURG on this 04 the DECEMBER day of 2013, the deponent having acknowledged that she knows and understands the contents of this affidavit and has no objection to taking the prescribed oath which he/she considers binding on her conscience.



[Signature]
CAPTAIN
COMMISSIONER OF OATHS
[Signature]

17
[REDACTED]

Ronald Bobroff

From: Natascha da Costa <natascha@bobroff.co.za>
Sent: 08 October 2010 12:37 PM
Subject: FW: CEGLIA 10155

From: Natascha da Costa [mailto:natascha@bobroff.co.za]
Sent: 08 October 2010 12:37 PM
To: 'Bernadine'
Subject: CEGLIA 10155

B,

Please take care with your preparations of the requisitions. They need to be 100% accurate. I am picking up a couple of inconsistencies ie. Incorrect Payee names, accounts numbers not accurately recorded eg. In the matter of Ceglia, you have requisitioned the whole amount to be paid to Mendelowitz to the control account. I checked and established that you were correct in identifying that the deposit was not paid, however did not notify me that the amount captured in the control account excludes the deposit, therefore the requisition breakdown should read:-

950291 – 6450
10155 – 1000

We are trying to process the work in the quickest way possible given the enormous volume so I am relying on you to do the preparation and be 100% accurate to the smallest detail.

Also, please remember to fill in your name and the file handler in the space provided " requisitioned by":

Thanks.

53
"B"

Ronald Bobroff

From: Accounts <accounts@bobroff.co.za>
Sent: 06 December 2010 10:55 AM
Subject: Re: Instruction given to Junior from Senior

I'm sorry but if she wants to determine who is "stealing paper" then she must do this little exercise of her on her own. This way she'll see exactly what people are trying to tell her, they consume a lot of paper a day by making bundles etc. The amount of mistakes that Tash and myself is picking up on your senior bookkeeper it's unbelievable. So sorry, in my eyes I will not see her as my senior. She's supposed to be the payroll administrator but last month couldn't even put staff salary slips in envelopes. ATTENTION TO DETAIL, ACCURACY AND SEEING TO SOMETHING AS LITTLE AS PUTTING SALARY SLIPS IN ENVELOPES (this is supposed to be private, the last time I check) is just as important in an accounts department. In future if she wants to implement new rules I would appreciate it if she can at least discuss it with me first.

Thank you for your reply, now I know where I stand.

----- Original Message -----

From: ronaldb@bobroff.co.za
To: Accounts ; Bernadine ; Natascha Da Costa
Sent: Monday, December 06, 2010 10:29 AM
Subject: Re: Instruction given to Junior from Senior

You are doing fine but of course Bernadine is the senior Bookkeeper and it is important to work with her and to follow her requests.

R B

Ronald Bobroff
RONALD BOBROFF & PARTNERS INC
The Medical Malpractice & Personal Injury Law Specialists

Sent via my BlackBerry from Vodacom - let your email find you!

From: "Accounts" <accounts@bobroff.co.za>
Date: Mon, 6 Dec 2010 10:05:15 +0200
To: <ronaldb@bobroff.co.za>
Cc: <bernadine@bobroff.co.za>
Subject: Re: Instruction given to Junior from Senior

Mr Bobroff

Please tell me now if the position I signed on for is junior and that Bernadine is my senior, because this is the first time I'm getting the memo from her! The last conversation me and you had in your office is that I must not feel threatened by her being here and that you were pleased with my performance.

If this has changed please tell me now so that I know where I stand.

Chantal

----- Original Message -----

From: Bernadine
To: ronaldb@bobroff.co.za
Cc: 'Chantal Jansen'