

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

CASE NO:

In the matter between:

THE ESTATE AGENCY AFFAIRS BOARD

Applicant

and

CONSTANTIA SECTIONAL TITLE MANAGEMENT (PTY) LTD First Respondent

and

QUINTIN BROWN

Second Respondent

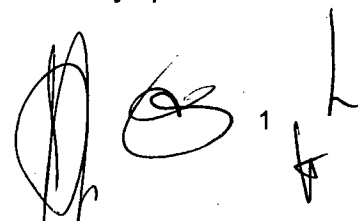
AFFIDAVIT

I, the undersigned

MATTHEW LEE NICHOLLS
(ID number: 670306 5839 089)

do hereby make an oath and state:-

- 1 I am an adult male and a director of Pasco Risk Management (Proprietary) Limited (Pasco), a South African incorporated company whose principal place of business is Building 2, Silver Point Office Park, 22 Ealing Crescent, Bryanston..
- 2 The facts contained herein are true and correct and within my personal



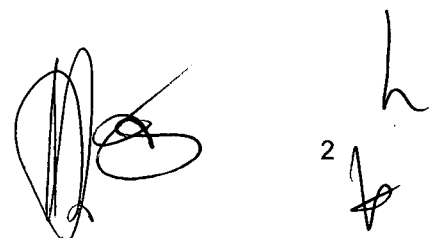
knowledge. To the extent that the facts are not within my personal knowledge, those facts have been relayed to me by various individuals who are identified herein. Where advice is referred to herein, such advice has been provided by attorneys and counsel and is accepted as correct. I am also known as George Nicholls.

3 I am duly authorised to depose of this affidavit as the Chief Executive Officer of Pasco.

INTRODUCTION

4 Pasco is a company with limited liability, incorporated in terms of the Companies Act 61 of 1973, providing risk management services, forensic investigations and advisory services.

5 On 17 March 2011, the Applicant received a "whistle blowers" report alleging fraud and other irregularities in respect of the First and Second Respondents (hereinafter the Respondents). A copy of the whistle blower's report is not annexed hereto in light of the confidential nature of the report and the serious allegations contained therein which have not been substantiated as yet. A copy of the report will be available for the Respondents if they request it and to the Court at the hearing, if required. The allegations contained in the whistle blowers report are set out in paragraph 12 below.

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- 6 Pursuant to receipt of the anonymous "whistle blowers" report and on 17 March 2011, Mornay Crouse, Grant Jacobsohn, Marcus Coetzee, Cindy Nicholls, Joe Heshu, Aysha Patel and I, from Pasco were appointed as inspectors by the Applicant in terms of Section 32 A of the Estate Agency Affairs Act, 112 of 1976, (hereinafter "the Act") to investigate the affairs of the First Respondent for compliance with the Act and the Financial Intelligence Centre Act, respectively. (Attached as GN1).
- 7 The First Respondent is a company with limited liability, incorporated in terms of the Companies Act 61 of 1973 (registration number 1994/010377/07), with the Second Respondent as its only director, acting as an estate agent *inter alia* rendering and advertising, the services of collecting or receiving money payable by persons to or on behalf of a developer or a body corporate, as defined in the Sectional Titles Act of 1971, in respect of units and proposed units, as defined in the Sectional Titles Act, and the letting and hiring of immovable property (hereinafter the "Services") under the name and style "Constantia Sectional Title Management". An extract taken on 14 April 2011 from the First Respondents website confirming their advertising of "rental units" for letting is annexed as GN11(1).
- 8 In as far as the Second Respondent is concerned; he is a 35-year-old male South African citizen with South African ID number 7607035077085. His listed residential address is 5 The Palms, Constantia Kloof, Florida, Johannesburg, Gauteng. He is the sole director and is also the controlling mind of the First Respondent, a large South African sectional title management agency. He is the decision maker in the company and all decisions that we have witnessed have



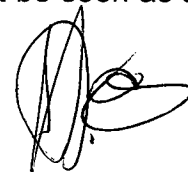
been made by him alone.

9 The preliminary investigations have noted that the various clients, being the various body corporates of the section title schemes and more specifically the individual unit owners, deposit their funds and levies into the centralised trust account controlled by the Respondents. There are literally several hundred of these unit holders that deposit funds into the trust account of the Respondents each and every month. Rentals collected would also be deposited to the First Respondent's trust account as a collection on behalf of the owner.

10 The Second Respondent is, additionally, listed as a member or director of the following entities:-

- 10.1 No 37 Waterval Estate Cluster CC;
- 10.2 Professional Advertising CC (in de-registration);
- 10.3 E B Shelf Investments Number Ninety (Pty) Limited (in de- registration);
- 10.4 Qboets 777 Trading CC (in de-registration);
- 10.5 Cestleigh Trading (Pty) Ltd (in de-registration);
- 10.6 Eden Moon Trading 89 CC (in de-registration);
- 10.7 CSTM Rentals CC;
- 10.8 Coronado Trading 150 CC;
- 10.9 Sleepy's Mattress and Bedding Warehouse CC (in de-registration);
- 10.10 CSTM Finance CC (in de-registration);
- 10.11 CSTM Sectional Title Management CC;

11 It is stressed that this affidavit details only certain of the pertinent issues that have been found so far. What is set out herein should not be seen as a complete



report on all evidence, findings and transgressions. Most areas of this report can be amplified further if the information that was repeatedly requested from the respondents is furnished to us. The current report is issued in the interests of drawing the attention of the Board to the issues detailed below as expeditiously as possible, such as to enable the Applicant to take such action as is appropriate without delay occasioned by the inclusion of further examples and evidence at this time.

WHISTLE-BLOWER ALLEGATIONS

- 12 The whistle-blower alleged in an anonymous report, referred to above, inter alia, that :
- 12.1 very serious irregularities in respect of the First Respondent's trust account;
 - 12.2 that the Second Respondent was using the First Respondent's trust account to "fund his lifestyle as well as manage the business [of the First Respondent]" and had used in the region of R 20 000 000 of trust monies in this regard;
 - 12.3 that expenses for Body Corporates administered by the First Respondent were not being paid;
 - 12.4 that the Second Respondent is not registered as an Estate Agent although he is holding himself out as the principal of the First Respondent;
 - 12.5 that the First Respondent's trust account is in overdraft on occasion and that cheques drawn thereon had been returned by the bank.
- 13 The preliminary limited scope investigation of the allegations involved an analysis

of the limited and incomplete bank account statements collected from the premises of the First Respondent, the limited and incomplete electronic data that was forensically imaged and the records held by the Applicant pertaining to the First Respondent. The findings as for now all therefore appear and flow from the limited documentation we have obtained. The verification of the misuse of trust funds was achieved on 11 April 2011 after paper copies of the Respondents trust account statements and the First Respondents books of account were made available to the inspectors.

INITIAL PRELIMINARY INVESTIGATION

14 The trust account identified by the whistle-blower has been verified to be a trust account. This fact was also confirmed by Gerrit Van Schalkwyk, the Financial Manager of the First Respondent to Mornay Crouse (Crouse). Crouse specifically confirmed with Van Schalkwyk that Nedbank account number 1983038040 is the first respondent's trust account. When Crouse asked for the print-outs of the first Respondent's trust accounts, the print-outs that were received on 11 April 2011 were the bank statements from this account. It is further evident from details contained upon bank statements obtained and from the First Respondent's financial information all of which designate this account (Nedbank account 1983038040) as the First Respondents trust account. This is also the account into which the numerous monthly levy payments from sectional title unit owners are paid. I refer below to this account as the Trust account.

15 Transactions contained upon the bank statements of the trust account were cross




referenced with accounting transactions contained within the books of account of the First Respondent, denoted in the First Respondent's accounts as "trust account". The account identified by the Whistle-blower is the account into which the monthly payments made by the unit holders in the respective sectional title schemes, are received.

16 The inspectors from Pasco commenced their inspection of the First Respondent on 23 March 2011 by visiting the First Respondent's premises. The reason and purpose of the visit were explained to the Second Respondent and Cindy Nicholls, a duly appointed Inspector, requested certain specified records, files and documents. She also advised that the inspectors wished to make forensic images from the Respondents accounting system and e-mail correspondence of *inter alia* the Second Respondent and his personal assistant, Melanie. This process required that the inspectors IT specialist first "export " the data to be copied to a temporary location from which it is forensically copied onto a blank computer hard drive.

17 The export of the data for forensic imaging of certain hard drives and system commenced after which Cindy Nicholls received a telephone call from Ms Marcelle Zachas, an attorney representing the Respondents. Ms Zachas advised that she was instructed by, the First Respondent and that no data was to be copied by the Inspectors as it may contain privileged information.

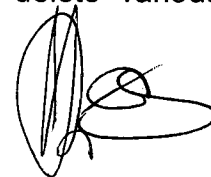
18 Cindy Nicholls referred Ms Zachas to Crouse who was also one of the Applicants inspectors and is also Pasco's internal legal advisor. Ms Zachas repeated to Crouse that the data being copied may contain privileged information. Crouse



questioned Zachas as to how information was to be identified as privileged before actually looking at the data. Crouse also explained that, in the event of finding any privileged information, it will not be used and would be put aside without being accessed. The clear intention was to convey that the inspectors had no interest in any documentation that they were not entitled to and would respect privilege. Ms Zachas was not satisfied with the reply and stated that a Court order prohibiting the inspectors from taking the images will be sought urgently if copying of the data continues.

19 Ms Zachas arrived at the premises of the First Respondent shortly thereafter and met with Cindy Nicholls. Ms Zachas challenged the inspectors' right to collect and inspect the electronic data and told the inspectors to cease with the imaging of the data. Cindy Nicholls phoned Crouse at which time Crouse advised that the inspectors are to continue with the forensic imaging of the data. This advice was given based on the provisions of *inter alia* section 45B of the Financial Intelligence Centre Act.

20 Cindy Nicholls instructed the continuation of the process and the forensic imaging of computer data resumed. On continuation thereof, the inspectors observed that data which was specifically requested prior to commencing with the forensic imaging (email communications of the second respondent and his personal assistant), had been deleted from the computers concerned, during the brief suspension of the imaging. The inspectors subsequently determined that an IT consultant of the First Respondent, a certain Johan Bodenstein, was the only other person that had access to the system and had logged onto the First Respondent's server remotely during this disruption and commenced to delete various files



containing data that was considered pertinent and relevant to the inspection.

- 21 The inspectors identified the remote connection to the server during the forensic imaging process and took action to disconnect the external connection to the Respondent's computer server to preserve the remaining data files. The deletion of files requested by the inspectors was a deliberate action that was taken to obstruct and hinder our efforts to obtain that data. This resistance has continued and the inspectors have not been able to access all the documentation that is required in an unobstructed manner, as more fully set out below.
- 22 The inspectors objected strenuously to this interference and members of the South African Police Force were called to assist the inspectors execute their powers and to ensure that no further obstructive behaviour was encountered.. Cindy Nicholls, advised Ms Zachas that this behaviour was most likely an offence in terms of the Act. Ms Zachas responded by requesting that, should the First Respondent make the deleted data available, the inspectors not prefer charges for obstruction.
- 23 Upon collection of the computer data, Ms Zachas insisted that the copied data should not be accessed. An arrangement was made with her that the data images, which were properly sealed and marked, would not be opened and accessed until 30 March 2011. The Second Respondent had advised the inspectors that he had a lot he wished to discuss with them and was available to meet the inspectors on such date.
- 24 This request to meet with the Pasco inspectors was initiated by the Second Respondent, through Ms Zachas. The purpose of the meeting would have been to



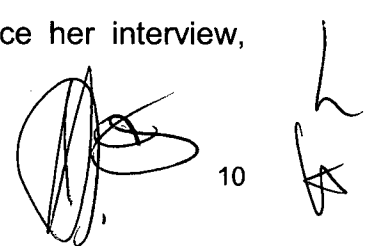
provide Pasco with extensive information that the Second Respondent supposedly had in his possession and was of importance to the inspectors for purposes of their inspection and to make submissions. The Second Respondent advised the inspectors that he had a lot of information he wished to share with the inspectors.

25 This meeting did not take place. I was instead informed on 29 March 2011 telephonically by Ms Zachas that the Second Respondent and Ms Zachas were not ready and available to meet with me on the 30th of March 2011.

26 The inspectors, including Crouse, proceeded to arrange meetings with four employees of the First Respondent who the inspectors believed could assist with the investigations. These employees excluded the Second Respondent, as Pasco had been informed that the Second Respondent would be unable to meet with the inspectors at that stage. These meetings were set-up with the employees personally on 29 March 2011, and the employees of the Respondent agreed to meet with the inspectors on 30 March 2011. This meeting also did not take place.

27 Shortly before midnight and at 23h51 on 29 March 2011, an email was received from Ms Zachas informing Pasco that the time afforded before the meeting with the employees of the First Respondent is unreasonable and insisting that the interviews be suspended for a reasonable period in order for the employees to obtain legal advice. The letter is attached as GN2.

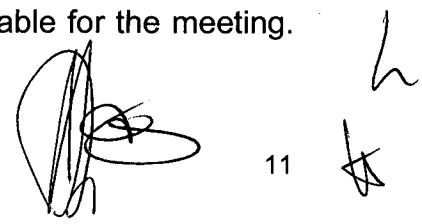
28 When the inspectors visited the First Respondent's offices on 30 March 2011, Crouse and I invited an employee, Rita Ferreria, to commence her interview,

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whereupon Ms Zachas who was present, interrupted the conversation and advised the employee not to speak to the inspectors. Crouse asked the employee whether Zachas represented her, to which Ferreria answered "No". Zachas confirmed that she held no mandate for the employee. Zachas then advised the employee to retain her own attorney. Crouse enquired if Zachas would follow the same procedure with each employee, to which Zachas answered "yes". It was noteworthy that Ms Zachas held no instruction from the employees, had not indicated any desire or need to obtain legal representation and had (and would certainly not ever have been) been denied representation if it was asked or required by the employees. Consequently, the interviews were postponed until Friday, 1 April 2011 to give such time to make arrangements if they required. Once again the interviews did not take place on this occasion.

29 When the inspectors visited the First Respondent's premises on 1 April 2011, the employees did not have legal representation. Crouse had a discussion with the Second Respondent on his invitation, at which time the Second Respondent undertook to send Pasco the details of each employee's attorney in order for Mr Crouse to contact them to arrange interviews. The Second Respondent, again, advised Crouse that he wanted to meet with the inspectors to discuss the information he wished to tender to us, an offer which was accepted by the inspectors.

30 To this end Mr Crouse agreed with the Second Respondent that, subject to confirmation, such a meeting would be held on Monday 11 April 2011, at which time the Second Respondent said he will be ready and available for the meeting.

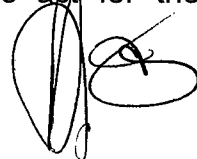


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Again this meeting never took place.

31 Instead, a letter from BDK Attorneys advising that they were the Second Respondent's newly appointed attorneys was received on the morning of the 11th of April 2011. This letter stated that the Second Respondent had appointed Mr Claasen of that firm to represent him and that Mr Claasen was unavailable to meet at 14h00 on 11 April 2011 as arranged. The letter went on to suggest that their client, the Second Respondent would not subject himself to interrogation without the inspectors having first specified the information they required with reference to their powers in terms of the Act. This was a surprise as the Second Respondent had requested to meet with the inspectors to give them information he wished to give. The letter from BDK attorneys and our response are attached as GN3 and GN4 respectively. The attitude adopted by the Second Respondent was additionally frustrating given the undue delay of almost one month since the Second Respondent's initial offer to meet was tendered by him without any meeting taking place. Neither Pasco nor the inspectors had initiated the request to meet the Second Respondent. It was the Second Respondent who volunteered to share information with Pasco. Until we have analysed and evaluated the documents, records and books that have been requested and in our possession, we will not know what further information is required from him. It was the employees we wished to interview.

Another letter was received 11 April 2011 from yet another attorney, Fisher Roeland. This letter and our response are attached as GN5(1) and GN5(2) respectively. The letter from Fisher Roeland states that they now act for the First Respondent and its employees and that BDK attorneys act for the Second



Respondent in his personal capacity. It is not clear what role Ms Zachas now plays.

32 Following our response to Fisher Roeland another letter was received from attorneys Fisher Roeland on 12 April 2011, attached as GN6, wherein it is stated that they hold the view that their client is not an estate agent and as such is not subject to the provisions of the Act. This is yet another attempt by the First and Second respondents to obstruct and hinder the inspectors in the execution of their duties.

33 Attorney A.B. Scarrott having been instructed to respond to the letter from Zachas Attorneys, annexure GN2, addressed a letter to her on 12 April 2011, a copy of which is annexed hereto as annexure GN 6(1). This letter noted that the inspectors would begin accessing the information forensically copied from the Respondents and that the communications which Zachas had identified as being privileged (as noted in paragraph 2 of this letter) would be set aside and that Zachas would be invited to make submissions as to how these communications and documents should be dealt with. This letter noted further certain of the obstructive behaviour that had been encountered and that not all of the documentation copied could be privileged.

34 A response to this letter to Zachas was received on 13 April 2011, not from Zachas, but from attorneys Fisher Roeland. This response is annexed hereto marked GN 6(2) and effectively repeats the, incorrect, contention that the Respondents are not subject to the provisions of the Act. Scarrott's response is annexed hereto, marked GN6(3) and corrects the First Respondent's



misinterpretation of the legal position.

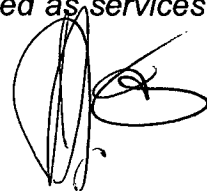

- 35 The effect of all these changes, requests for time, objections and division of attorneys by the Respondents is that the inspectors are finding it incredibly difficult to arrange meetings, interview staff and to access information required to fulfil our mandate from the Applicant. These tactics have also made the gathering of information a tedious and time consuming process.

STATUS AS AN ESTATE AGENT

- 36 The Companies office (CIPRO) records and the audited financial statements of the First Respondent, attached as GN7 and GN8 respectively, show the Second Respondent as the sole director of the First Respondent. The records held at the Applicant show that the Second Respondent does not hold a valid Fidelity Fund Certificate (FFC) for 2011. These facts were confirmed by Ms Portia Sali, a registration supervisor with the Applicant, in an e-mail attached as GN9, together with the Second Respondent's expired FFC which is attached hereto as GN10.

- 37 Section 26 of the Act requires that both the company which is an estate agent, which is the case here, and each director of the company must hold valid FFC's. As the Second Respondent does not have a valid FFC and as he is the sole director of the First Respondent, the Respondents are prohibited from performing any acts as an estate agent in terms of Section 26 of the Act.

- 38 Government Notice GNR 1485 of 17 July 1981, attached hereto as GN11, provides that *"the services in the Government Notices below, were specified as services for*

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the purposes of Section 1 " Estate Agent " (a)(iv) of Act 112/ 1976... collecting or receiving money payable by any person to or on behalf of a developer or a body corporate in terms of the Sectional Titles Act in respect of a unit or proposed unit". I have verified that this is precisely the service which the Respondents are rendering. I am advised and accept that in the circumstances the Respondents are clearly subject to the provisions of the Act and that consequently both the First and Second Respondents are required to hold valid FFC's in terms of Section 26 of the Act if they are not to fall foul of the prohibition contained in Section 26 of the Act. The definition of conduct that would define a person or company as an "estate agent" in section 1 of the Act also includes in part (a) (ii) and (iii) of the definition of Estate Agent, the letting or hiring of property, the collection of rentals and advertising these services. I refer to annexure GN11(1) in this regard as well as annexures GN6 and GN6(2) confirming that the First Respondent offers the Services.

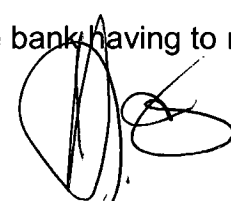
39 I have analysed the limited and incomplete documentation received during our inspections that relate to the First Respondent's trust account, as well as transfers between that trust account and various other accounts. The objective of such analysis was to determine whether there were any irregularities regarding the use of trust fund money. This was to verify the very serious allegations made by the whistle-blower and to ensure compliance of both Respondents with the Act. The investigation also reviewed business interests, assets and financial standing of the respondents using publicly available information sources.

INITIAL FINDING

40 I was able to determine by reference to the First Respondent's trust account 1983038040 bank statement, attached as GN12, that on the 17 January 2011, the trust account was overdrawn by an amount of not less than R1, 381,542.17 (One Million Three hundred and Eighty-one Thousand Five hundred and Forty-two Rand and Seventeen cents) narrated as entry 'A' on the statement. Further examples of dates where the credit balance on the trust account reflect a negative balance are attached with GN12. These deficits in the Respondents' trust account are alarming and show clearly that the Respondents are not managing their trust account properly and in accordance with the prescribed statutory provisions. Whether there are further examples of Respondents' trust account being overdrawn is not known at this time and will be ascertained as the Inspectors continue their investigations.

41 I was able to determine by reference to the First Respondent's trust account 1983038040 bank statement, attached as GN12 that on the 18 January 2011, cheques numbered 43396, 43398, 43391, 43402, 43400, 43397, 43401, 43389, 43390, 43407 and 43387 totalling an amount of R575 149.35 (five hundred and seventy five thousand one hundred and forty-nine rand and thirty five cents) were returned by the bank with the reference "refer to drawer" as narrated by entries B1 to B11 respectively.

42 I was able to confirm the allegations contained within the whistle-blower report that pertained to the trust account being operated in overdraft and the non payment of numerous cheques due to insufficient funds held in the trust account. The overdrawing of the Respondents' trust account resulting in the bank having to return



trust cheques constitutes an irregularity. The Estate Agency Affairs Act makes it clear that the money held in trust does not form part of the assets of the agency (section 32(8)), that the trust money shall be retained by the estate agent in that account until the estate agent is lawfully entitled to it, or instructed to make payment there from to any person (section 32(2)(e)) and that an auditor of an estate agent must annually declare in a report to the EAAB in terms of section 32(4) of the Act that the total amount standing to the credit of the trust banking account was sufficient to cover the trust balances. The nature of the provisions of the Act and of any trust account is such that a trust account should not be in a negative balance.

43 I reviewed the accounting records for the First Respondent that were received on 1 April 2011 by Crouse in response to his request for accounting records of the First Respondent. This became meaningful on 11 April 2011 when we received the print outs of the First Respondents trust account.

44 The files with the accounting records contained a chart of accounts and listed all general journal accounts used to record the financial transactions of the First Respondent. I noted that a separate set of accounts for the trust account had not been maintained, as required by the Act, but instead trust account transactions had been included in the books of account of the First Respondent. This is in contravention of Section 32(3)(a) of the Act.

45 I focused upon two general journal accounts of the First Respondent; 8200/001 – the general journal loan account for the Second Respondent and 8901/000 – the general journal account for the Respondents trust bank account.



- 46 These accounts reflect transactions for the periods shown, in the case of :
- a. 8200/001 – the general journal loan account for the Second Respondent, the transactions where the Second Respondent effectively borrows money from or lends money to the First Respondent and
 - b. In the case of 8901/000 – the general journal account for the Respondents trust bank account, the transactions on the First Respondent's trust account.

I did this after the discovery that loans by the First Respondent to the Second Respondent were reflected in the First Respondent's financials as having been paid to the Second Respondent from the First Respondent's trust account. There were a considerable number of such transactions including repeat monthly payments made from the First Respondent's trust account to settle sizeable ongoing monthly obligations of the Second Respondent.

- 47 I attach hereto the contents of account 8200/001(reflecting loans between the First and Second Respondent) for the period 1 March 2010 to 28 February 2011 as GN13. The loan account of the Second Respondent contained some one hundred and ninety nine transactions reflecting that the payments to the Second Respondent by way of loans from the First Respondent had been made from the First Respondent's trust account, denoted as 8901/000.

- 48 I was able to identify some of the corresponding entries in the time available, for those transactions denoted as 8901/000 on the trust bank statements, attached as GN14(1) to GN14(10) confirming that at least some of the payments to the Second



Respondent (reflected in the Second Respondent's loan account) were made from the First Respondent's trust account as indicated in the Second Respondents loan account.

49 It is improper that loans to the sole director of the First Respondent should be made from the trust bank account of the First Respondent. It is expected that any fees or income earned by the First or Second Respondent and payable to the First Respondent from the trust account should be paid and recorded in the revenue accounts of the First Respondent, (reflected in the First Respondent's financials as account 1000/000) and not the capital loan account of the Second Respondent.

50 As the transactions from the trust account are recorded as transactions in the company loan account of the Second Respondent, any such transaction is a loan by the First Respondent to the Second Respondent made from the proceeds of the trust account and must repayable to the First Respondent at some future date in time. Any such loans from a trust account to the individual operating that account is highly irregular, in these circumstances.

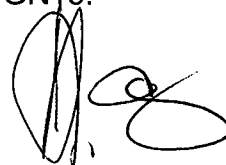
These aforementioned payments cannot be in the ordinary course of business. It is apparent from the fact that the Second Respondent's loan account reflects these loans that the loans are being made to the Second Respondent by the First Respondent. In the circumstances it is clear that the Second Respondent was not in fact a trust creditor entitled to the funds in the First Respondent's trust account. I refer again to the provisions of Section 32(2)(e) of the Act in this regard.

51 I was able to identify many examples, where loans from the First Respondent to its sole director, the Second Respondent, from the proceeds from the First Respondent's trust account. By way of example:-

51.1 The First Respondent's trust account 1983038040 bank statement, showed regular monthly payments of about R12, 000.00 (Twelve Thousand rand) from the First Respondent's trust account for a mortgage bond home loan. To illustrate these regular monthly payments from the First Respondent's trust account I attach as annexures GN15(1) to GN15(13) the First Respondents trust bank statements for the months of June 2010 and August 2010 to Dec 2011, and March 2011. As with all of the examples below, these are by no means the only months in which these payments occurred and as with the further examples below, these payments reflect in the Second Respondent's loan accounts thereby showing that they are payments to the Second Respondent, (made to his creditors).

51.2 Further, the First Respondent's trust account 1983038040 bank statement, showed that regular monthly payments of about R27,515.09 (twenty seven thousand five hundred and fifteen rand and nine cents) were made from the First Respondent's trust account for a BWM loan repayment. Again there are numerous examples of these payments, various of which are reflected on GN15.

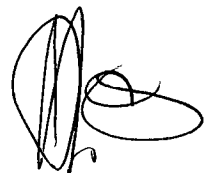
51.3 Further, the First Respondent's trust account 1983038040 bank statement, showed that regular monthly payments of about R50,441.46 (Fifty Thousand Four hundred and Forty One Rand and Forty Six cents) were made from the trust account for a RMB Private Bank repayment, reflected on GN15.



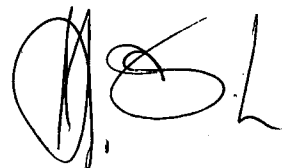
There are numerous further examples of transactions reflecting payments from the First Respondent's trust account which by their nature appear to be personal expenses, and are recorded as debits to the loan account of the Second Respondent in the First Respondent's accounting records. These additional examples are readily apparent even on the attached small sample of the trust bank statements attached hereto and from the close to two hundred payments reflected in the Second Respondent's loan account as payments originating from the First Respondent's trust account. A perusal of the Second Respondent's loan account and even the small sample of trust bank statements provide considerably more evidence of the foregoing.

52 The number and size of payments reflected in the trust bank statements as payments to Q. Brown is noteworthy. These payments amount to many hundreds of thousand rand. By way of illustration:

- 52.1 annexure GN 14.1 shows payments to the Second Respondent of R232,250;
- 52.2 annexure GN14.2 shows payments to the Second Respondent of R200,000;
- 52.3 annexure GN 14.3 shows payments to the Second Respondent of R150,000;
- 52.4 annexure GN 14.4 shows payments to the Second Respondent of R100,000;
- 52.5 annexure GN 14.5 shows payments to the Second Respondent of R200,000;
- 52.6 annexure GN 14.6 shows payments to the Second Respondent of R100,000;
- 52.7 annexure GN 14.7 shows payments to the Second Respondent of R100,000;
- 52.8 annexure GN 14.8 shows payments to the Second Respondent of R100,000;
- 52.9 annexure GN 14.9 shows payments to the Second Respondent of R200,000;
- 52.10 annexure GN 14.10 shows payments to the Second Respondent of R100,000.



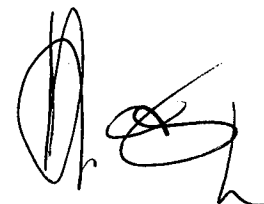
- 53 These are by no means the only payments shown as being made to the Second Respondent from the First Respondents trust account.
- 54 It is apparent from the above:-
- 54.1 That the Second Respondent operates as an estate agent and does not possess a valid FFC;
- 54.2 That The Second Respondent has utilised monies from the First Respondent's trust account (which are funds that by definition belong to the depositors and which are to remain in the trust account until they may be lawfully withdrawn) to pay personal expenses. These expenses include payments such as BMW loan repayments, home loan repayments, RMB private bank repayments, in addition to large sums of money paid to the Second Respondent directly;
- 54.3 That the First Respondent's trust account was in overdraft during the period under review; and
- 54.4 Various trust account cheques were returned to drawer as insufficient funds were available in the trust account to cover the payments.
- 55 The annual Financial Statements issued by BHB Accountants and Auditors for the year ending February 2010 state that the Second Respondent is the only Director of the First Respondent and reflects a loan liability for the First Respondent in favour of the Second Respondent for R356, 516.00. This amount



does not correspond to the Books of Account for the same year, which reflects a loan obligation of R10, 613,919.55. (See GN8 and GN13 respectively).

56 **INACCURATE REFLECTION OF TRUST MONEY AND FINANCIAL TRANSACTIONS**

- 56.1 In terms of section 30(1)(g) of the Estate Agency Affairs Act, an Estate Agent is under a legal duty to accurately reflect the state of affairs of all money received and expended in their trust account, or invested in a savings or other interest-bearing account on behalf of clients. The First Respondent operated a trust account, duly registered at Nedbank under account number 1983038040 (the "Estate Agent's Trust Account").
- 56.2 The Inspectors requested and eventually received the bank statements of the Estate Agent's Trust and Investment account for the purposes of conducting a forensic investigation. The findings of the investigation are limited by the circumstances explained earlier.
- 56.3 A review of the accounting system of the First Respondent did not yield any evidence to suggest that the First Respondent kept any separate accounting records for the estate agent's trust investment account. Equally, no accounting records were kept for the respective client accounts under management.
- 56.4 The above facts clearly demonstrate the misuse of trust money..



57 CONCLUSION


The Respondents:

- 57.1 are currently trading as estate agents in contravention of Section 26 of the Act;
- 57.2 trust account has operated in overdraft;
- 57.3 have had trust cheques returned whilst the trust account was overdrawn;
- 57.4 have used trust monies to pay for expenses of the Second Respondent


58 The facts contained in this, and other supporting affidavits, *prima facie* establish that the First Respondent and The Second Respondent committed contraventions of the: Estate Agency Affairs Act, Act 112 of 1976, the Trust Moneys regulations, Regulation GNR.1472 dated 29 July 1977, the Code of Conduct applicable on Estate Agents, Regulation GNR.3415 dated 24 December 1992, and the Conduct deserving of sanction, Regulation GNR.51 of 26 January 2001, by

- 58.1 Failing to accurately reflect the actual and true position of money held in the estate agent's trust account;
- 58.2 Failing to accurately reflect all the financial transactions of the estate Agency in respect of transactions from the books of account of both the estate agent's trust account and the First Respondent business account;
- 58.3 Failing to have the accounting records of the estate agent's trust account audited within four months after the year end, which is currently February;

59 This affidavit is not intended to be exhaustive in all aspects and I reserve the right



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to supplement it when necessary.

60 I have read the affidavit of Clive Ashpol and I confirm the correctness thereof in so far as it pertains to me.

Dated at Bryanston on this the 14 day of April 2011.

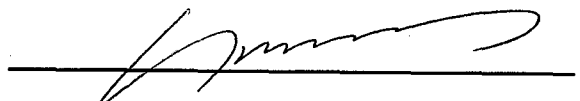
[Handwritten Signature]

Deponent

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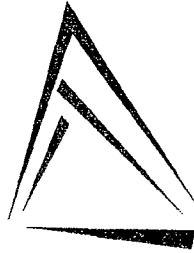
I HEREBY CERTIFY that the Deponent has acknowledged that he/she knows and understands the contents of this affidavit, which SWORN TO, and SIGNED before me at Bryanston on this 16th day of April 2010, the provisions contained in Government Gazette 1649 R1258 dated 21 July 1972 having duly been complied with.



COMMISSIONER OF OATHS

Craig Kraus
Admitted Attorney
Commissioner of Oaths (RSA)
Silver Point Office Park
22 Ealing Crescent
Bryanston 2021





ESTATE AGENCY AFFAIRS BOARD
OF SOUTH AFRICA

17 March 2011

TO WHOM IT MAY CONCERN

This serves to confirm that

**Mr Mornay Crouse, Mr Grant Jacobsohn, Mr Marcus Coetzee, Ms
Cindy Nicholls, Mr George Nicholls, Mr Joe Heshu, and Ms
Aysha Patel.**

(hereinafter referred to as "PASCO").

are hereby furnished by the Estate Agency Affairs Board with the requisite inspection authority in terms of Section 32A of the Estate Agency Affairs Act, 112 of 1976 ("the Act"), to conduct all such investigations as may be necessary to determine whether the provisions of the Act and the Financial Intelligence Centre Act 38 of 2001 (FICA) as amended are being, have been or were, complied with by **CONSTANTIA SECTIONAL TITLE MANAGEMENT**, and / or any estate agency firm practicing under the name and style of **CONSTANTIA SECTIONAL TITLE MANAGEMENT**.

PASCO is granted full authority to do all acts and undertake and perform all functions as are allowed by the provisions of section 32A of the Act read with the provisions of FICA for this purpose.

It is specifically recorded, in this respect, that section 32A of the Act provides as follows:

Powers of inspectors

(1) Any inspector furnished with inspection authority in writing by the board may conduct an investigation to determine whether the provisions of the Act are being or have been complied with and may, subject to subsection (5), for that purpose, without giving prior notice, at all reasonable times-

- (a) enter any place in respect of which he has reason to believe that-
 - (i) any person there is performing an act as an estate agent;
 - (ii) it is connected with an act performed by an estate agent;
 - (iii) there are books, records or documents to which the provisions of this Act are applicable;
- (b) order any estate agent or the manager, employee or agent of any estate agent-
 - (i) to produce to him the fidelity fund certificate of that estate agent;
 - (ii) to produce to him any book, record or other document in the possession or under the control of that estate agent, manager, employee or agent;
 - (iii) to furnish him, at such place and in such manner as he may reasonably specify, with such information in respect of that fidelity fund certificate, book, record or other document as he may desire;
- (c) examine or make extracts from or copies of such fidelity fund certificate, book, record or other document;
- (d) seize and retain any such fidelity fund certificate, book, record or other document to which any prosecution or charge of conduct deserving sanction under this Act may relate: Provided that the person from whose possession or custody any fidelity fund certificate, book, record or other document was taken, shall at his request be allowed to make, at his own expense and under the supervision of the inspector concerned, copies thereof or extracts therefrom.

(2) No person shall-

- (a) fail on demand to place at the disposal of any inspector anything in his possession or under his control or on his premises which may relate to any inspection;
- (b) hinder or obstruct any inspector in the exercise of his powers under this section;
- (c) falsely hold himself out to be an inspector.

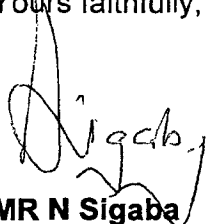
(3) Any inspector shall issue a receipt to the owner or person in control of anything seized and retained under this section.

(4) Any inspector who exercises any power in terms of this section shall, at the request of any person affected by the exercise of that power, produce the inspection authority in writing furnished to him in accordance with subsection (1).

(5) Notwithstanding anything contained in this section, the provisions thereof, excluding subsection (2) (c), shall not apply in respect of-

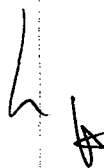
- (a) any attorney, member of a professional company or articled clerk, as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979), or any employee of any such attorney, member or company;
- (b) any premises from which such attorney or company conducts his or its practice; and
- (c) any book, record or document on such premises or in the possession or under the control of any person referred to in paragraph (a).

Yours faithfully,



MR N Sigaba

ACTING CHIEF EXECUTIVE OFFICER

From: "Marcelle Zachas"
To: Mornay Crouse
CC: David Middleton; Cindy Nicholls; George Nicholls; Hilton Ashford; Maddy Van Rensburgh; Mitchell Mackay
Date: 29/03/2011 23:51
Subject: RE: Constantia Sectional Title Management (Pty) Ltd

Dear Sirs,

Please see attached an URGENT correspondence for your perusal and reply.

 ZACHAS ATTORNEYS	Marcelle Zachas 1st Floor Moore House Riley Road Office Park 15E Riley Road Bedfordview Tel: 011 409 8035 Cell: +27 71 688 3718 Fax: 086 609 0454
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ZACHAS ATTORNEYS

1st Floor, Moore House,
15E Riley Road
Riley Road Office Park
Bedfordview, 2007
Postnet Suite 283
Private Bag x19
Gardenview, 2047
Tel: (011) 409-8035
Fax: 086 609 0454
Cell: 071 688 3718

E-mail: info@zachasattorneys.co.za

Our reference: Zachas/Z48
Date: 29 March 2011

Pasco Risk Management (Pty) Ltd

SENT PER EMAIL

URGENT!!

**RE: ESTATE AGENTS BOARD INVESTIGATION: CONSTANTIA SECTIONAL TITLE
MANAGEMENT (PTY) LTD**

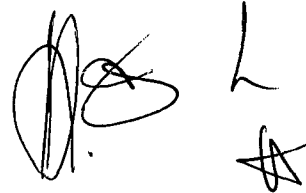
1. We write on behalf of Constantia Sectional Title Management (Pty) Ltd ("our client").
2. In previous correspondence we have advised you of the concerns that our client has in respect of your accessing data which may be of a privileged nature. We have sought from you an undertaking that you will not access any data that may be privileged as between attorney and client. These requests were flippantly rebuffed.
3. As you very well know, the documents and electronic images copied by you are of a voluminous nature. To this end it took you all of two days to copy the documents and electronic images during the raid at our client's premises on Wednesday, last.

PARTNER: Marcelle Zachas (LLB-WITS)
LITIGATION/COMMERCIAL ASSISTANT: Cristina Brandao

-2-

4. We have since endeavoured to scrutinise those documents and electronic images in order to ascertain which material may be subject to legal privilege. Given the voluminous nature of the seized items we have been unable to complete that process.
5. Since the events of Wednesday last we have repeatedly asked for you to allow us and our client time to investigate the matters complained of in order for our client to co-operate with you in the true sense of the word.
6. These reasonable requests have been met, quite disquietingly, with your advices on the 29th of March 2011 that you would commence with the interrogation of our client's employees on the 30th of March 2011, giving our client (and its employees) less than 24 hours notice to prepare for such interrogations.
7. The haste with which the investigation is being done leaves our client concerned about the objectivity of the investigation itself. On that subject matter, we wish to make it clear that our client, in any event, harbours grave concern that your objectivity is severally blinded by the commercial interest that you have in investigating the present matter, quite obviously, for monetary reward. That fact in itself casts much doubt on whatever your investigation may reveal or what you ultimately may say it to have revealed.

PARTNER: Marcelle Zachas (LLB-WITS)
LITIGATION/COMMERCIAL ASSISTANT: Cristina Brandao

Handwritten signatures and initials. On the left, a large, stylized signature. To its right, the initials 'L' and 'A' stacked vertically.

-3-

8. As you very well know, your investigation has the potential of exposing our client and its employees to criminal liability. It is trite in our law that every person (and entity) which is a suspect in a criminal investigation or an investigation that may lead to criminal liability, has the right to be represented by a legal practitioner of his/her/its choice throughout the process, which includes the investigation process and any interrogations conducted in connection therewith.

9. Our client and its employees have not had the opportunity to properly consult with attorney and counsel in this regard. In any event, the notice of less than 24 hours given in respect of the proposed interrogations is wholly insufficient to instruct attorney and/or counsel and to have attorney and/or counsel available to represent and assist our client and its employees in the interrogation process. We once again question the motive behind the apparent haste in which you seek to interrogate individuals.

10. We, therefore, insist that you allow our client and its employees a reasonable time to consult with its/their legal representatives to prepare for the proposed interrogations. In addition, that you liaise with us in respect of dates on which we and/or counsel will be available to represent our client and its employees during the interrogations.

PARTNER: Marcelle Zachas (LLB-WITS)
LITIGATION/COMMERCIAL ASSISTANT: Cristina Brandao



- 11. We have, in any event, advised our client and its employees of its/their right to be represented and of the unlawfulness of any refusal of such right.
- 12. We trust that sanity will prevail and that you will hold off the proposed interrogations for a reasonable period.
- 13. All our client's rights remain strictly reserved.

Yours faithfully,



MARCELLE ZACHAS.

PARTNER: Marcelle Zachas (LLB-WITS)
LITIGATION/COMMERCIAL ASSISTANT: Cristina Brandao





BDK
ATTORNEYS

GN3

David H Botha | Du Plessis | Kruger

Our Ref:
E.S. CLASSEN/QB/dd

Your Ref:

11 April 2011

Ms. Cindy Nicholls
Pasco Risk Management (Pty) Limited
1st Floor, Building 2
Silverpoint Office Park
22 Ealing Crescent
Bryanston
2021

PER FAX: 011 510 1805; and

PER EMAIL: cindyn@pascorisk.com

Dear Madam,

RE: CONSTANTIA SECTIONAL TITLE MANAGEMENT (PTY) LIMITED

1. We write on behalf of Mr. Quentin Brown.
2. Our client has provided us with a copy of your email of 8 April 2011, wherein you sought to arrange a meeting with him for today, the 11th of April 2011 at 14:00. We have also had regard to correspondence addressed to you by our client's erstwhile attorneys, Zachas Attorneys.

Established 1960

David H Botha, du Plessis & Kruger Inc · Reg No. 98/16549/21
VAT No. 404080012

*Directors: Pieter Jacobus du Plessis BA LLB, Jan Christoffel Kruger BA LLB
Roelof Cilliers Krause Blur LLB, Edward Stanley Classen Blur LLB
Consultants: Johannes Karel Schaefer Blur LLB, Ian Small-Smith Bproc*

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84 Market Street, Cnr Simmonds
PO Box 8013 Johannesburg 2000
Docex 243 Johannesburg

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