

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

(REPUBLIC OF SOUTH AFRICA)

CASE NO: 15402/2011

In the matter between:

**THE ESTATE AGENCY AFFAIRS BOARD**

Applicant

and

**CONSTANTIA SECTIONAL TITLE MANAGEMENT (PTY) LTD**

First Respondent

and

**QUINTIN BROWN**

Second Respondent

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**FILING SHEET : SUPPLEMENTARY AFFIDAVIT**

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FILED BY:



**A B SCARROTT ATTORNEYS**

Attorney for Applicant

c/o HARRISONS ATTORNEYS

11 Pilrig Place

5 Eton Road

PARKTOWN

Tel: 011 463 7336 or Fax 011 463 2007

Ref: MR A SCARROTT

TO:

THE REGISTRAR OF THE  
ABOVE HONOURABLE COURT  
JOHANNESBURG

AND TO:  
CONSTANTIA SECTIONAL TITLE MANAGEMENT  
First Respondent

AND TO:  
QUINTIN BROWN  
Second Respondent

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MANAGEMENT (PTY) LTD**

First Respondent

and

**QUINTIN BROWN**

Second Respondent

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**SUPPLEMENTARY FOUNDING AFFIDAVIT**

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I, the undersigned,

**CLIVE MARTIN ASHPOL**

do hereby make oath and state that:

1. I am an adult male and I am the Executive Manager: Education and Training, employed by the applicant.
2. I am the deponent that deposed to the founding affidavit attached to the notice of motion initially launched against the first and second respondents. The first and second respondents filed an answering affidavit which will be dealt with fully



by me herein-below. The first and second respondents made a proposal which culminated in the agreement being made an order of court which I annex hereto marked "CMA1" and which is filed of record with this Court. In terms of that agreement:

- 2.1. the application was postponed *sine die*;
- 2.2. the costs of the application were reserved;
- 2.3. each party was given leave to file supplementary affidavits on a reasonable date, and on reasonable notice;
- 2.4. it was agreed that for a period of six months from the date of this Order, or any extended date, Laurence Moepi, a chartered accountant, would be entitled to perform the function of monitoring all transactions effected on the trust account, or any trust, savings, or other interest bearing account, of the first respondent referred to in Section 32 of the Estate Agency Affairs Act and operated by the first respondent. There were more detailed provisions and powers given to Moepi;
- 2.5. in addition, the inspectors appointed by the applicant were agreed to be given access to all and any books, records, or other documents to which they are entitled under the Estate Agency Affairs Act as inspectors as more fully provided in the agreement;
- 2.6. the inspectors undertook to comply with a particular section of the Estate Agency Affairs Act.



3. Accordingly, on the last occasion, on 19 April 2011, the matter was postponed. Since that date the inspectors appointed by the Estate Agency Affairs Board have attempted to continue with and to complete their inspection but have continued to be thwarted by the first and second respondents to the extent that it has become extremely difficult to perform their functions properly.
  
4. Perceiving the reality that ultimately the Estate Agency Affairs Board and its inspectors would get to the truth of the manner in which the affairs of first respondent were run by the second respondent and certain of its employees, including Gerrit van Schalkwyk, the Chief Financial Officer of the first respondent, the said Gerrit van Schalkwyk realised that it was best to co-operate with the inspectors. To that end, he has on an ongoing basis, but only very recently, begun co-operating with the inspectors to the extent that he has provided the inspectors with a full initial statement in which he details the very many irregularities being perpetrated by the second respondent within the books of account of the first respondent and in relation to trust and client call monies held for and on behalf of clients of the first respondent by the first respondent. A copy of his affidavit is annexed hereto marked "**CMA2**". This Honourable Court is referred to that affidavit in detail. It shows quite unequivocally that theft of trust monies is taking place and that the second respondent has abused, entirely, his position with regard to the trust monies whether in the globular trust account, or in the clients' call accounts, and that it is urgent that a curator bonis be appointed to administer all client monies under the control of the first respondent and that first respondent be deprived of its Fidelity Fund Certificate and thus be prevented from carrying on business until it can, on a return date, demonstrate that the allegations that I make and the facts

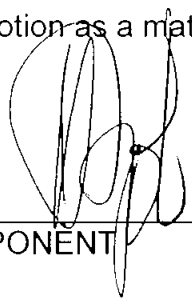


as unearthed by the inspectors and attested to by the former Chief Financial Officer are incorrect. I annex marked "CMA2" and "CMA3" respectively a further affidavit of van Schalkwyk as well as an affidavit of Matthew Nicholls.


5. In the circumstances an amended notice of motion has been filed in terms of which appropriate and adjusted relief has been sought.
6. It will be recalled that some of the central features of the opposition to the appointment of a curator bonis and to the relief sought that were put up in respect of the hearing that was to take place on 18 April 2010 were the following:
  - 6.1. An undertaking be given that the second respondent would appoint two estate agents to act as directors of the first respondent and that second respondent would resign. As can be seen from the affidavit of Nicholls, this has not been complied with.
  - 6.2. The allegation was made by the first respondent that the applicant has confused the trust bank account with accounting in respect of transactions on the trust bank account. In short, the second respondent held out to this Court that whilst money is quite clearly being used for private expenses of Quintin Brown were being paid out of the trust account, the accounting records showed that this money was due to the first respondent and therefore could validly be taken from the trust account. The affidavit of Nicholls and of Gerrit van Schalkwyk who is no less than the former Chief Financial Officer of the first respondent belies these assertions.

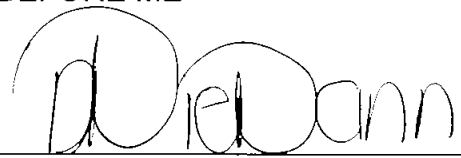


- 6.3. An undertaking was made to appoint KPMG to conduct a full forensic audit. This has not been done.
- 6.4. This Court was assured that the first respondent has kept separate accounting records of all monies deposited in its trust account and all monies invested in savings and other interest bearing accounts and that every trust creditor's funds are account for. The affidavits of the inspector - Nicholls and of van Schalkwyk belie this assurance given on oath to the Court.
- 7. In the circumstances, this Honourable Court is asked to read the affidavit of Nicholls and of Gerrit van Schalkwyk annexed hereto as if incorporated herein and to grant the relief sought in the notice of motion as a matter of urgency.

  
 \_\_\_\_\_  
 DEPONENT

Signed and sworn to at Johannesburg on this 19<sup>th</sup> day of May 2011 the Deponent having acknowledged that he know and understands the contents of this Affidavit, that it is true and correct to the best of his knowledge, that he has no objection to taking the prescribed oath and that the prescribed oath will be binding on his conscience.

COMMISSIONER OF OATHS  
 BY VIRTUE OF MY OFFICE AS A DULY  
 AUTHORISED REPRESENTATIVE OF FNB  
 HYDE PARK  
 CNR ALBURY ROAD & JAN SMUTS AVENUE  
 CRAIGHALL JOHANNESBURG 2000  
  
 .....  
 SIGNATURE

BEFORE ME  
  
 \_\_\_\_\_  
 COMMISSIONER OF OATHS

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IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

REPUBLIC OF SOUTH AFRICA

CASE NO. 15402/2011

In the matter between:

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Applicant

and

CONSTANTIA SECTIONAL TITLE MANAGEMENT  
(PTY) LIMITED

First Respondent

and

QUINTIN BROWN

Second Respondent

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SETTLEMENT AGREEMENT

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WHEREAS the applicant, the Estate Agency Affairs Board, has brought an application against the first and second respondents, being Constantia Sectional Title Management (Pty) Limited and Quintin Brown respectively;



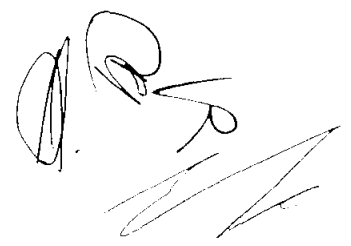
AND WHEREAS the relief sought was:

- 1 for an interdict against the first and second respondents from performing various acts which could constitute the conduct of an estate agent for so long as each respondent, estate agent, or person, or entity, referred to in the papers has not been issued with a Fidelity Fund certificate (as contemplated in Section 16, read with Section 1(vi) of the Estate Agency Affairs Act 112 of 1976; and
  
- 2 for a rule *nisi* appointing a curator *bonis* to control the trust account of the first respondent which rule *nisi* would operate in the form of an interim interdict.

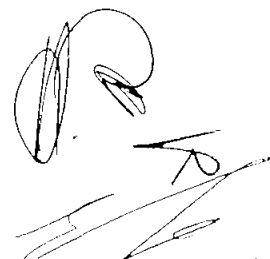
AND WHEREAS the parties have reached agreement as a manner of resolving the issues raised in the application, for the time being.

NOW THEREFORE the parties agree as follows:

- 1 The application will be postponed *sine die*.
  
- 2 The costs of the application will be reserved for consideration by another court, if necessary, at a later date.




- 3 Each party is given leave if it or he so wishes to file supplementary affidavits at a later date, and on reasonable notice.
  
- 4 For a period of 6 (six) months from the date of this order, or such extended period as the parties may agree upon, Lawrence Moepi, Chartered Accountant, shall be entitled to perform the function of monitoring all transactions effected on the trust account, or any trust, savings, or other interest bearing account of the first respondent referred to in Section 32 of the Estate Agency Affairs Act, operated by the first respondent and in particular, any transfers of monies out of, or deposits of monies into, any, or all, trust, savings, or other interest bearing accounts operated by the first respondent. To this end, the said Moepi shall have the power to access all records at any time that he so wishes and shall be entitled to demand on reasonable notice and in writing, and the first respondent and all employees, or agents, of the first respondent shall be obliged to cooperate with him in giving him access to all information in relation to the exercise of the above powers.
  
- 5 In addition, forthwith and without let or hindrance, the inspectors appointed by the applicant shall be given access to all and any books, records or other documents to which they are entitled in terms of Section 32 A (b) of the Estate Agents Affairs Act, as aforesaid and in particular, to all such accounting records as are referred to in Sections 29 and 32 of the Estate Agency Affairs Act, 1976, whether the records be in document form, or digitally recorded.

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- 6 The inspection will at all times comply with Section 32A(1)(b)(iii) of the Estate Agency Affairs Act.
- 7 In consideration for and as part of this settlement, the applicant undertakes by 16h00 on 20 April 2011, to provide the first and second respondents with a letter on its letterhead, the contents of which will reflect the contents of annexure "A" hereto.
- 8 The parties agree that this agreement be made an Order of Court.

SIGNED AT SANDTON THIS 19<sup>TH</sup> DAY OF APRIL 2011

  
A. B. SCHLOT

for: ESTATE AGENCY AFFAIRS BOARD


duly authorised

SIGNED AT SANDTON THIS 19<sup>TH</sup> DAY OF APRIL 2011

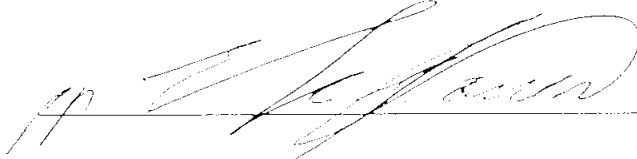
  
E. S. CLAASSEN

for: CONSTANTIA SECTIONAL TITLE MANAGEMENT  
(PTY) LIMITED

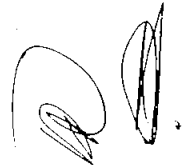
duly authorised

SIGNED AT SANDTON THIS 19<sup>TH</sup> DAY OF APRIL 2011

 E.S. CLASSEN

QUINTIN BROWN



## DRAFT LETTER

1. The Estate Agency Affairs Board ("the EAAB") received an anonymous complaint regarding the affairs of Constantia Sectional Title Management (Pty) Ltd ("CSTM"). In consequence, and on 17 March 2011, it commenced a regulatory inspection into the affairs of CSTM by the appointment of Pasco Risk Management (Pty) Ltd ("Pasco") as investigators on its behalf.
2. CSTM recognises the obligation of the EAAB to regulate the industry and welcomes the investigation.
3. Because part of the complaint relates to the administration of CSTM's trust account, the parties have agreed to the presence and involvement of an independent third party to monitor all transactions on the trust account from 20 April 2011.
4. The inspection under the auspices of Pasco will continue with the involvement and cooperation of CSTM.
5. There is at present no impediment to CSTM continuing to operate its trust account lawfully. CSTM is in possession of Fidelity Fund Certificates for the 2011 year.
6. The EAAB will act in accordance with its statutory mandate as regulator of the industry. CSTM will cooperate with them.

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CMA 2

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AFFIDAVIT : GERRIT VAN SCHALKWYK

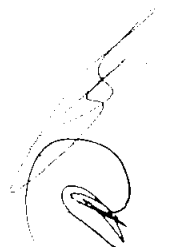
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I, the undersigned,

GERRIT VAN SCHALKWYK,

do hereby make oath and state as that:

I have been advised that an investigation is being conducted by the South African Police Services into various irregularities including allegations of theft and fraud in relation to trust monies deposited with, or controlled by, Constantia Sectional Title Management (Pty)



Limited. I have been advised that insofar as I may be guilty of any offence in relation thereto, or at all, that I have the right to remain silent and not to make a statement at all. I have been advised that I have the right to legal representation. No promises of any nature whatsoever have been made to me. I have elected to make a full and frank statement regardless of the consequences to myself. I do not require to be legally represented.

I am an adult male, former employee of Constantia Sectional Title Management ("CSTM"). Up until Friday, 13 May 2011, I held the position of Chief Financial Officer of the company.

The gravity and enormity of the offences that I am aware and, in certain circumstances I have been party to, have weighed heavily upon my conscience.

What is set out herein, are the key points on the issues that I can remember and have been asked about. The number and scale of the irregularities is such that it would take considerably more time than I have been given to set the full and complete detail of the all of the irregularities and offences that I am aware of and my involvement therein. If I am given unhindered and full access to the books, documents and records of CSTM, I will be able to identify and explain those specific, numerous transactions that I know to be unlawful.

I undertake to give my full and complete cooperation in this regard and to make a full and complete disclosure.

I am an adult male employee of Constantia Sectional Title Management (hereinafter "CSTM");

I was employed by CSTM in October 2008 as Financial Manager. I knew the Second Respondent and his previous company, Crestleigh Trading, prior to this. The Second Respondent Brown asked me to work for CSTM.

I was appointed as Chief Financial Officer in September 2010.

Until January 2010 I was the Financial Manager but was under-utilised. I told the Second Respondent that I wanted more responsibility and was given more responsibility to do tasks such as instructing accounting staff and monitoring loan accounts and loan transfers etc. I have since been the primary person transferring funds from the trust accounts and posting entries.

CSTM operates as an Estate Agency collecting and receiving funds paid to and on behalf of Sectional Title Schemes.

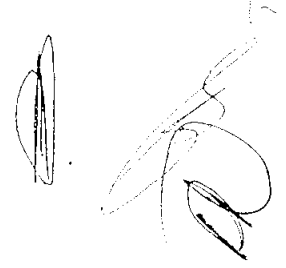
CSTM administers approximately 480 Sectional Title Schemes and receives deposits (levy payments) from around 20,000 units (members of the Sectional Title Schemes) each month. This sees payments of approximately R30,000,000 collected by CSTM each month.

These monies are paid into CSTM's Nedbank Trust Account No. 198 303 8040.

Against these deposits CSTM makes disbursements on behalf of the Sectional Title Schemes and becomes entitled to fees. Payment for clients are made almost exclusively from the Trust Account direct to the suppliers of the goods and services.

Trust Accounts

CSTM operates the aforesaid trust account which receives the funds from unit owners and holds that money (funds belonging to the Sectional Title Complexes) in a trust. Approximately half of the Sectional Title Schemes have large enough collections to build up surpluses sufficient to warrant placing some of their funds in an interest bearing call account. These are referred to as "call accounts". These call accounts





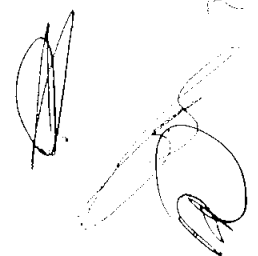
hold clients' money and are trust accounts. The total of trust money at any time is therefore the amount in the trust account and all the call accounts.

#### Accounting System

- 1.1. CSTM uses 2 separate accounting systems. Pastel for recording the business accounts of CSTM and Power Prop which is used to record transactions on the trust accounts.
- 1.2. Shortly after being given more responsibility in January 2010 and being given access to the various accounts I saw that the balance in the trust accounts (including call accounts) was less than what should have been there as shown in Power Prop. Power Prop is the accounting system in respect of which, *inter alia*, accounting in respect of trust monies is done. My recollection is that the shortfall was approximately R10,000,000.00.
- 1.3. I reported this to the Second Respondent who told me that this shortage was from the previous owners and that the Respondents were litigating to recover it. I subsequently was told that the litigation with the previous owners had nothing to do with this shortfall and related to restraint of trade.
- 1.4. I do not know how the shortfall then arose.

#### General Attitude to trust money

- 1.5. As the primary person effecting transfers and payments from the trust account and as the Chief Financial Officer, I am very familiar with the manner and details of CSTM's affairs.



- 1.6. CSTM treats trust money and the trust accounts as a convenient source of funds available for use as and when required.
- 1.7. The Second Respondent regularly instructed me and sometimes Jeannette Van Wyk to make transfers from the trust accounts to the business account or to pay CSTM's expenses or to pay him from the trust accounts.
- 1.8. The instructions to transfer and pay from trust as aforesaid and indeed all use of trust money was done without ever taking into consideration or checking whether CSTM was entitled to the money in the sense that it had earned it. This was never a consideration.
- 1.9. If CSTM and the Second Respondent needed money and there were insufficient funds available, then trust monies were simply used. The amounts that were taken over and above what CSTM was entitled to amounts to many, many million rand.
- 1.10. There is no question that there is a shortfall in the trust account and that there are insufficient monies in trust to pay all trust creditors. The shortfall is massive.
- 1.11. The Second Respondent is aware of the shortfall.

Year ending February 2011

- 1.12. The Pastel accounts attached as "GVS1" and "GVS2" are correct.
- 1.13. For this year the income was R20, 101, 025.71 (twenty million one hundred and one thousand and twenty five rand and seventy one cents) and the expenses were R23, 389 813.26 (twenty three million three hundred and

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eighty nine thousand eight hundred and thirteen rand and twenty six cents). This shows a loss in the amount of R 2, 787 969.60 (two million seven hundred and eighty seven thousand nine hundred and sixty nine rand sixty cents) and simply put, means CSTM spent more than it earned.

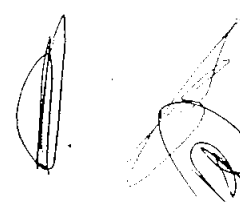
- 1.14. This loss/shortfall was funded from the trust account.
- 1.15. Although CSTM had an overdraft of R3,000.000.00 at Nedbank, it is not available as the Second Respondent draw it down by R2,500.000.00 during or about September 2009 to pay a deposit on his house. The shortfall was paid from the trust account. This overdraft was secured by a pledge of trust call accounts. I do not have access to the records of the Respondent but there is a record of pledge on the nedbank statements. At the time that each one of the call accounts mature (fixed deposit accounts) and become due, the proceeds are applied to reduce the Respondents' obligations to the bank.
- 1.16. The printout of the Second Respondent's loan account for this period shows payments to him or to his creditors. I captured or instructed these entries to be captured. They correctly reflect what the Second Respondent took. Where the 8901 reference appears, these payments were made to the Second Respondent on his behalf from the trust account.
- 1.17. The payments were made without ever checking whether CSTM had any right to use the funds (i.e. had earned them as fees that were due).
- 1.18. These payments to the Second Respondent or his creditors are funds taken from trust over and above the R23, 389 813.26 (twenty three million three

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hundred and eighty nine thousand eight hundred and thirteen rand and twenty six cents) used to fund the company and its trading loss for this period.

- 1.19. The income CSTM was entitled to for the period was R20, 101, 02.71 (twenty million one hundred and one thousand and two rand seventy one cents). The total taken from trust by CSTM and the Second Respondent was R29, 194 342.88 (twenty nine million one hundred and ninety four thousand three hundred and forty two rand eighty eight cents).
- 1.20. For this period R29, 194 342.88 (twenty nine million one hundred and ninety four thousand three hundred and forty two rand eighty eight cents) to which CSTM was most probably not entitled, was taken from the trust account taking into account what the First Respondent used to fund its business and what the Second Respondent used for himself. The amount that could lawfully be transferred was the amount of the First Respondent's income, R20, 101, 02.71 (twenty million one hundred and one thousand and two rand seventy one cents).
- 1.21. I point out that on some occasions I, on the Second Respondent's instructions, made the payments and transfers from the trust account. In other instances the Second Respondent processed electronic fund transfers (EFTs) or wrote out cheques on his own.
- 1.22. At all times payments from trust and the use of trust funds was on the Second Respondent's instructions and with his knowledge.

The Second Respondent's attitude

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- 1.23. I was very uncomfortable with the use of trust money and I spoke to the Second Respondent about it on many occasions.
- 1.24. The Second Respondent told me repeatedly that he intended to raise loans and put the money back.
- 1.25. I confronted him on many occasions and told him we need to stop using trust money that we are not entitled to and that the shortfall was getting bigger and bigger. I told him the misuse of trust money is "getting out of hand".
- 1.26. The Second Respondent never denied what I put to him and would continuously re-assure me that he was arranging loans to "put the money back".

#### Loans

- 1.27. I was told by the Second Respondent of two loans he applied for.
- 1.28. The first loan I was told of was a R5,000,000.00 loan the Second Respondent wanted from SASFIN. The purpose, according to the Second Respondent was to put back this sum into trust. It was only R5,000,000.00 as this was all SASFIN would consider. The shortfall in the trust account was substantially more than R5,000,000.00. SASFIN was told that the funds were needed to enable CSTM to lend to body corporates.
- 1.29. SASFIN were very interested and the Second Respondent told me to give information to SASFIN.
- 1.30. I prepared documentation and information on the Second Respondent's instructions. The information given to SASFIN was mostly (at least 80%)



false. False information given to SASFIN included financial statements and contracts.

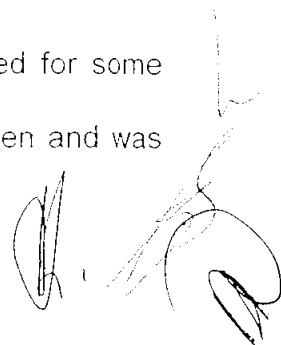
1.31. I was told by the Second Respondent that in respect of approximately 60 complexes which had debit balances (meaning that their levies were insufficient to cover their disbursements), that I should prepare contracts showing the complexes had agreed to repay these funds to CSTM. The total of these debit balances was approximately R4,500,000.00.

1.32. I prepared the contracts in the name of each complex and showed that the complexes had agreed to repay CSTM the amount due ad interest at prime plus 5%. I inserted the name of a trustee of the complex and signed as that trustee. The names were arbitrary and not real. No complex or trustee had agreed to this or authorised this or even knew of it. There was no authority to do this. I did all of this on the Second Respondent's express instructions.

1.33. The Second Respondent signed as various of the trustees as well as we had about a day to get the contracts for SASFIN as the Second Respondent had told them the contracts existed. It took the Second Respondent and I an entire day to create these documents and sign them.

1.34. None of these contracts were real and were given to SASFIN to support the loan application. If I recall SASFIN ultimately only needed to see 10 or so. The Second Respondent even remarked that we had spent a whole day producing all these contracts only for SASFIN to ask for only 10 which could have taken us an hour to create.

- 1.35. SASFIN's Arno Van Niekerk then requested to be allowed to conduct his own inspection of CSTM's financials. The Second Respondent could obviously not allow this and the loan with SASFIN was not pursued further.
- 1.36. It was SASFIN's insistence on their undertaking an audit that ended this loan application. The Second Respondent and I agreed that what we had given them would not withstand an audit. Some of the false entries in the financials given to SASFIN were increases in income and reductions in expenses. From what I recall, I was instructed by the Second Respondent to alter the figures to show a profit of about R2,600,000.00 whereas the correct position was a loss of approximately the same amount. The figures were inflated falsely by about R5,000,000.00.
- 1.37. In February 2011 the Second Respondent told me he had applied for R20,000,000.00 from METTLE specifically to put back into the trust account. METTLE were told by the Second Respondent that the monies were to fund a loan business, and exactly the same false story was told to SASFIN.
- 1.38. I was told by the Second Respondent to provide the audit financials for the year ending February 2010 and Pastel accounts as at February 2011. I was told by the Second Respondent to create new false accounts showing a profit instead of a loss. I did so and gave this to METTLE. The Second Respondent had seen the false accounts I prepared and instructed me to change them to increase the profit further. I did so and when I, the Second Respondent, was satisfied, they were given to METTLE
- 1.39. The EAAB inspections interrupted the process. METTLE asked for some information they also asked for a business plan (which was given and was



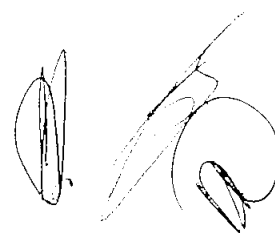
correct) and a list of bodies corporate debit balances (which was correct except that the bodies corporate had not agreed repayment agreements) and management accounts (which was given and was false).

Building 27

- 1.40. Building 27 is an account opened on the Power Prop accounting system.
- 1.41. It is shown as a body corporate just as the legitimate accounts are shown, although it is not a building or section title complex, which CSTM administers.
- 1.42. Power Prop records receipts and payments for complexes.
- 1.43. Receipts for legitimate complexes would be the levies paid by the owners. Payments for legitimate complexes would be things like rates and taxes, electricity, guarding, gardening services, etc.
- 1.44. Building 27 is not a legitimate complex. It is an account used to record CSTM's loan balance in the trust account, money taken by Brown for personal expenses and also some business expenses that CSTM claim from the trust account.
- 1.45. Instead of CSTM transferring funds they are entitled to as fees and other income to their business account, the amounts were recorded as income to building 27.
- 1.46. The expenses and the amounts the Second Respondent took from trust were posted as expenses of Building 27.



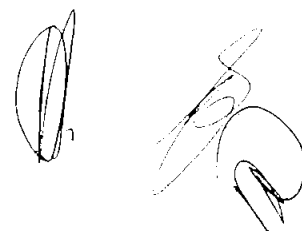
- 1.47. The Second Respondent, Gavin Feyerabend, Esther Schoeman, Melani Coetsee, Mary Ann Botha, Jeannette van Wyk and myself posted transactions to Building 27 account.
- 1.48. Sometime during the first half of 2010, the Second Respondent instructed me to change the descriptions of the expenses and the income as it was posted so that anyone looking at the account would not be able to see the true nature of the payments. This was to hide the true source and use of the money.
- 1.49. I made those entries and changed the transaction descriptions to conceal the true nature of those transactions, as instructed by Brown.
- 1.50. The true position is that Building 27 is fictitious, has no income nor expenses of its own and was intended to be used by the Second Respondent only as an internal mechanism for recording the First and Second Respondents use of trust monies.
- 1.51. During the course of the Estate Agency Affairs Board inspection, sometime during April 2011, I became aware that Building 27 as an account and all of the entries it contained had been deleted.
- 1.52. The account for Building 27 was no longer available on the system.
- 1.53. I printed a list of building balances, as it is part of my function, and I immediately became aware that the balances on this report differed markedly from that which I expected. This was because the account for Building 27 had been deleted.

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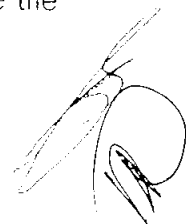
- 1.54. To the best of my knowledge, the only people who have the right to be able to delete an account on the system are the Second Respondent, Johan Bordenstein the external IT consultant and myself. I did not query the deletion with the Second Respondent as I had been effectively sidelined in the sense that my duties and responsibilities had been dramatically reduced by the Second Respondent during the first week of April 2011.
- 1.55. The importance of Building 27 is that it contains the most accurate record of money taken from the trust account by the First and Second Respondents.

#### Shortfall

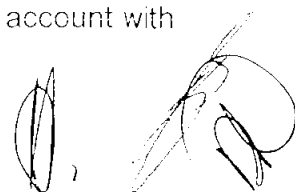
- 1.56. On or about 23 March 2011, I commenced a reconciliation of the total amount of money that the Second Respondent had taken from the trust account.
- 1.57. This was an exercise that I wanted to conduct as the Applicant had begun its inspection of the First Respondent's business affairs and I had confronted the Second Respondent about the reasons for the inspection.
- 1.58. The Second Respondent had continually asserted to the management of the First Respondent that there was no shortfall in the trust accounts other than R13,000,000.00 (thirteen million rand) which he insisted had been present in the trust account at the time the Second Respondent acquired the shares in the First Respondent from the previous owners.
- 1.59. I used the trust account bank statements to identify each individual and separate transaction where the Second Respondent had taken money from the trust account.

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- 1.60. I am intimately familiar with the First Respondent's business and expenditure and those which are legitimate payments made on behalf of clients. I also was well aware of the expenses which the Second Respondent routinely and regularly paid from the trust account together with monies paid to himself.
- 1.61. I specifically identified all transactions on the trust bank statements that I categorically knew to have been payments made to or for the Second Respondent and reconciled them to the entries that were recorded in the account for Building 27.
- 1.62. The types of entries that I identified were those with narrations such as; "Q. Brown" (payments to the Second Respondent's personal account at either Absa or RMB banks), "I. Brown" (payments to the Second Respondents then wife), debit orders which made payments for finance obligations of the Second Respondent (his Ferarri, Porsche, BWM, mortgage housing bonds and repayments to RMB bank for a R5,000,000.00 (five million rand) loan.
- 1.63. In addition, I identified specific expenses which I knew had been paid from the trust account for the Second Respondents benefit.
- 1.64. I had commenced the reconciliation from October 2008, the date the Second Respondent began to operate the business of the First Respondent, to December 2009. I intended to conclude the reconciliation as far as I could, however, the Second Respondent asked what I was doing and when I told him, he ordered me to stop, which I did.
- 1.65. As it was approximately 7pm when I was ordered to stop, I went home leaving my working papers in my office. When I returned to my office the

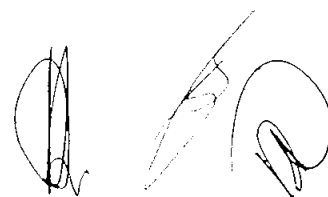


- following working day, I immediately noticed that my file containing the records for Building 27 was not there.
- 1.66. Many payments were made to the Second Respondent which were personal expenses paid from the trust account, I calculated the total to be not less than R10,000,000.00 (ten million rand).
- 1.67. My calculation excluded any payments made from the trust account for legitimate payments to the First Respondent. My calculations of money paid from the trust account to the Second Respondent excluded any payments made after December 2009, for the reasons stated above. I am aware of payments made to the Second Respondent in the same manner, after December 2009.
- 1.68. I wanted to demonstrate to the Second Respondent that both the First and Second Respondents had taken more money from the trust account than they were legally entitled to.
- 1.69. The annual income of the First Respondent did not exceed its expenses by a margin anywhere near the amount that would have been required to have entitled the Second Respondent to take the amounts that I calculated him to have taken from the trust account.
- 1.70. The Second Respondent's practice of taking money from the trust account continued after December 2009 until the commencement of the inspection by similar amounts to what I have previously shown.
- 1.71. I instructed the accounting staff to record these payments to the Second Respondent from the trust account as a debit entry in his loan account with

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the First Respondent, which is attached as GVS3. The 2010 financial year records a total debit loan account of the Second Respondent of R10, 613 919.55 (ten million six hundred and thirteen thousand nine hundred and nine rand and fifty five cents) of which R6, 454, 526.62 (six million four hundred and fifty four thousand five hundred and twenty six rand and sixty two cents) are payments made to the Second Respondent from the trust account. I identified the payments made to the Second Respondent from the trust account by including in the description 8901/000 (being the trust account general ledger record) and building 27 and accordingly I know that these entries are correct and do represent monies paid to the Second Respondent from the trust account.

- 1.72. The pastel bookkeeping system of the First Respondent shows a loss of for the 2011 financial year. I was in control of this system and I know these figures to be correct. The R2, 787, 969.60 (two million seven hundred and eighty seven thousand nine hundred and sixty nine rand and sixty cents) shortfall between the income and expenditure was funded with money from the trust account. I know this to be true as I verified the correctness of the accounting entries against the vouchers for transactions and additionally, the First Respondent did not have access to any other available source of funding and no person had injected any additional capital.
- 1.73. The amounts of money I calculated to have been taken from the trust account by the Second Respondent excluded amounts each month that the Second Respondent drew as salary and directors drawings.



Municipal accounts and Irregularities

1.74. Although I did not work in the department of CSTM working with the processing and payments of municipal accounts paid on behalf of body corporate, as Chief Financial Officer, I was fully aware of what was happening in that department.

1.75. Because of the aforementioned shortfalls in the trust account, there were insufficient funds available to honour and make all the payments due to the various municipalities.

1.76. One of the tactics employed by Brown to delay payment of the accounts due was to intentionally alter the numerical value written on cheques made out to municipalities such that after his alteration, the amount in words and figures would differ with the result that the cheque would be returned and not paid by the bank. The reason for the dishonoured cheque would accordingly be due to the alteration and not due to a lack of funds.

1.77. An example of this practice is attached as GVS4 being the e-mail from Ms Roux to the Second Respondent and I, in which she complained about the alteration of cheques and included examples.

1.78. The alterations were intentional and unnecessary as the cheques had been correctly made out prior to presentation to Brown for signature. It was Brown who made the alterations prior to signing the cheques.

1.79. Oftentimes, Brown would tell me that as there is not enough money in the trust account to pay these accounts, that altering cheques will get people off our back.

- 1.80. Brown was convinced that the cheques would be processed by the various municipalities and then dishonoured by the bank. Brown told me that he could then say that the accounts have been paid and there would be further delays, he mentioned three weeks, before the accounts would be corrected.
- 1.81. Brown's actions were to buy time to obtain sufficient money to pay the accounts. He told me on several occasions that the idea behind altering cheques was to achieve the above results. I am certain that Brown knew that his actions were wrong.
- 1.82. To hide and conceal the fact that CSTM was unable to pay the municipal accounts due, the people in that department were instructed by Brown to record the various accounts as being paid by CSTM and debit the various body corporate accounts with those amounts due.
- 1.83. Specific examples of these practices are contained in an email I received from Freeda Sheepers on 17<sup>th</sup> December 2010, and attached. Scheepers was the person who made out cheques on the trust account, attached to the email, and which were altered by Brown as previously described. In the email, Scheepers complained, drawing to my attention, that the cheques she had correctly made out had been altered and were not of her doing.
- 1.84. The bodies corporate received statements of account from CSTM showing that these payments had been made, despite the fact that these accounts were not paid.
- 1.85. The effect of these actions was that many bodies corporate had their municipal services suspended. When the bodies corporate contacted CSTM

to determine either why their services had been suspended or their respective accounts not paid, people were given various and differing excuses such as "the problem exists with city billing systems". These explanations were not true.

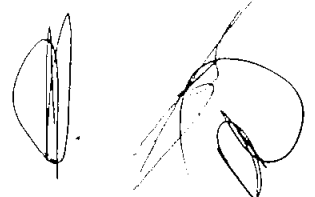
- 1.86. Examples of notices of suspension are attached as GVS 5, which were as a result of these actions.
- 1.87. I was told by Gavin Feyerabend that the total amount due and payable and not paid by CSTM to the various debtors, as at 11 May 2011, was approximately R9,000,000.00.
- 1.88. These practices had been continuing, at least from January 2010 to date, as far as I am aware, prior to which date I was not involved in the accounting functions of CSTM. Up until about February 2011, the average amount of money owed to the municipal debtors was at least R4,000,000.00 at any one point in time.
- 1.89. What monies were paid to municipalities was taken from recent deposits from bodies corporate and applied to the payment of outstanding debts. The amount owing to municipalities increased dramatically during 2011, as the deposits to the trust account decreased once details of the inspection became public.
- 1.90. As a result of my position within CSTM, I am certain that CSTM was, at the date of my last day with the company, not in any position to obtain funds make up the shortfall in amounts due to municipalities.

Payments to family members from trust account

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- 1.91. I know that Brown made many payments from the trust and business accounts to various members of his family. In the case of payments from the trust account, those payments were made either by electronic funds transfer (EFT's) or by cheque.
- 1.92. In the case of EFT's, Brown would instruct Mary Ann Botha to transfer money from the trust account to various external accounts of the family members.
- 1.93. In the case of cheques, Brown would ask Melanie Coetsee, his sister, to write out the cheques for his signature.
- 1.94. Occasionally, in addition, Brown would send his drivers Joyce and Solly (full names unknown) to the bank to cash cheques drawn on the trust account and they gave the cash to Brown. Brown would then give portions of the cash received to various family members.
- 1.95. I detected these payments from the respective trust and business bank statements, which I reconciled as part of my function.
- 1.96. In the case of payments from the trust account, Brown never verified that sufficient funds were available to make such payments in the sense that CSTM was entitled to the funds.
- 1.97. In any event, none of the family members were trust creditors and Brown was not entitled to make these payments.

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1.98. I am aware of payments made to at least the following people. I will show that these are the items contain upon the statements and records if I am given access to the records of the First Respondent.

1.98.1. Ione Brown (Brown's former wife);

1.98.2. Malie Batt (Brown's mother);

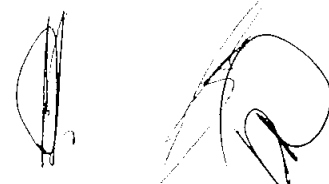
1.98.3. Jacques Brown (Brown's brother) R40,000.00 each month, commencing October 2010, paid into the bank account of Linspire cc. Linspire cc formerly operated a butchery.

1.99. Jacques Brown was employed by BCIB (an associated insurance company of Brown's). I recorded the money paid to Jacques Brown each month from the trust account in the Pastel books as consulting fees to BCIB paid by CSTM. BCIB provided no services to CSTM, invoices for the consulting fee were never received and Jacques Brown provided no services to CSTM. Additionally, Linspire cc provided no services to CSTM or any of the bodies corporate.

1.100. There was insufficient monies available to make these payments from the CSTM business account and thus these payments were made from the trust account to the various family members.

Retention of monies owned to bodies corporate who terminated services with CSTM


1.101. When bodies corporate terminated their respective mandates with CSTM, the bodies corporate would be entitled to receive payment of the credit balance held in trust on their behalf by CSTM.

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- 1.102. CSTM does not automatically pay these credit balances to bodies corporate unless demand is made therefore.
- 1.103. If the bodies corporate did not demand their credit balance be paid to them, periodically, Brown and I would identify such former clients, the amount of their credit balances and then I would delete the building account from the active file in Power Prop system and transfer it to a file called "DTTX".
- 1.104. Very few people other than Brown and myself know about the existence and use of "DTTX". Although "DTTX" existed on the Power Prop system, it never appeared as a trust creditor in reports by virtue of the way Power Prop was set up.
- 1.105. The effect of my actions was the building account and its credit balance, together with all its entries, would not appear in the Power Prop active systems. The bodies corporate would no longer be shown as a trust creditor, should anyone draw a statement of building balances.
- 1.106. I did this to so that the liabilities of the trust account would be reduced as there were insufficient funds held in trust to pay all creditors. To the best of my knowledge, the total value of credit balances held in terminated mandates and transferred to "DTTX" over time, I estimate could be as much as R2,000,000.00.


#### Loan to bodies corporate

- 1.107. Since early 2009, I became aware of bodies corporate which had approached CSTM to obtain loans to undertake maintenance work on their



complexes, which incurred extraordinary expenses that had not been provided for by the complex.

- 1.108. What would usually occur is that the bodies corporate would approach CSTM. I would consider the amount that they required and the period of the loan and would calculate monthly repayments at varying rates of interest decided upon by Brown.
- 1.109. Brown made the sole decision whether to loan any monies to the bodies corporate. Upon approval of the loan by Brown, a contract between CSTM and the bodies corporate would be concluded.
- 1.110. On all such occasions, monies from the CSTM trust account would be used to make the loan to the bodies corporate. I accounted for the advance as a loan from CSTM to the respective bodies corporate. The accounting records of these loans are attached as GVS 6.
- 1.111. Upon receipt of levy payments from the body corporate in future months, I would transfer the capital repayment amount to the trust account, and the interest portion thereof, to account building 27.
- 1.112. At present, I am aware of the following bodies corporate that have received loans from CSTM, of which the outstanding balances in the Power Prop records obtained by the inspectors as at 9 May 2011, are indicated in brackets:-
- 1.112.1. Club 7 body corporate (R7,908.30),
- 1.112.2. Pennington body corporate (R61,561.22),



1.112.3. Dylan Place body corporate (R 28,976.89).

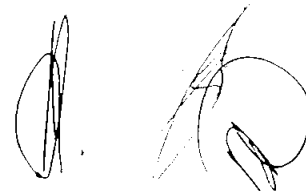
1.112.4. The above obviously excludes loans that had been made to bodies corporate that have already been repaid.

#### Call account rolling

1.113. The various bodies corporate may hold monies in trust with CSTM in both the trust account and in an interest bearing account in their name. The balance in these trust accounts should match the amount due to the body corporate and as shown on their monthly statement issued by CSTM.

1.114. The trust account holds various funds from various bodies corporate. It is this account from which payments are made. Payments cannot be made from the call accounts directly.

1.115. As there are insufficient funds in trust, it happens regularly that where payments need to be made from the trust account (legitimate or otherwise), that funds are first transferred from one of the call accounts into the trust account to boost the balance. When it is necessary to transfer funds from the call accounts to the trust account the usual practice is to transfer funds to trust from those call accounts opened in the name of complexes who least seldom request bank statements. There is generally no correlation between the complex whose call account funds are transferred to trust and the complex whose expenses are to be paid. Obviously, where CSTM expenses are paid, or where the funds are for Brown's use, this is even more applicable.

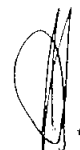


- 1.116. The balances in the call accounts that are used for these transactions will accordingly generally not match the balances shown on their statements as received from CSTM on a monthly basis. The use of trust monies as set out in this affidavit also means that, at any one time, the total monies held in trust is far less than the total amount owed to the various bodies corporate.
- 1.117. Occasionally, a body corporate would request a bank statement showing the funds held on their behalf on a trust call account. Where this body corporate's funds had been used as aforesaid, there would be less funds shown in the bank account that was due to the body corporate.
- 1.118. If I am given full access to the books of account and files, I will be able to provide more specific instances. I will also be able to show these transfers if I am given access to the bank statements and books of accounts. There are literally hundreds of these transactions. These transfers were made on Brown's instructions to me. I would instruct Jeannette van Wyk which call account i wanted the transfer to be made from and in what amount.
- 1.119. On some occasions I was told what amount to transfer by Brown. On other occasions, and with Brown's knowledge, I would determine the amount to be transferred. For example, certain bodies corporate employed staff who would need to be paid, generally on the 25<sup>th</sup> of each month. The total amount needed to pay these salaries was approximately R650,000.00 per month. If there were going to be insufficient funds in the trust account to make the payments then I would request a list of the salaries that needed to be paid for each body corporate from Jeannette van Wyk. I would look and

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see how much money was needed and how much was available in trust, and which trust call accounts had sufficient funds from which I could transfer funds to the trust account. The trust call accounts which were selected were those that had available funds, and on which we were not often requested to provide statements. These trust call accounts were often trust call accounts of bodies corporate who did not have salaries that needed to be paid. They were used simply because they met the criteria mentioned.

- 1.120. In the event that a request was received for a bank statement on a trust call account and an enquiry received regarding the shortfall in the trust call account, these requests would be sent to me. The first time I received such a query, I immediately went to Brown and I recall saying to him words to the effect that "hier is groot kak. Wat se ons vir die ouens?". We agreed to respond in the following manner: I would tell the person making the enquiry that the missing money had been transferred out of their call account into a "bulk call account" which earned a higher rate of interest, namely 7%. I would always ask whether they then required the money to be transferred out of the "bulk call account" and back into their call account and I would say to them that they were only earning 4.2% interest in their call account, whereas they could continue earning 7% if they left their money in the bulk call account. Where I was asked to transfer the money back into the call account I would manually calculate the amount of the shortfall, together with the interest amount of 7%, and would transfer this sum from the trust account into their call account. If there was insufficient money in trust then I would simply select another call account meeting the above criteria and transfer monies from that call account to the trust account first.

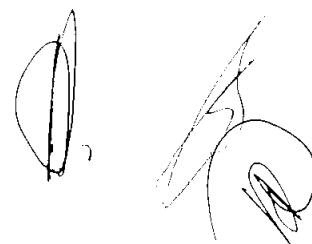


- 1.121. There was no "bulk trust call account". The monies that were missing had been used by CSTM and/or Brown and had not been invested as explained to the Bodies Corporate.
- 1.122. The process of transferring funds from trust call accounts to the trust account in this manner, and without regard to whether the funds used were being used for the benefit of the Body Corporate whose trust call account was accessed, happened often. This process was particularly required when salaries and payments to Municipalities had to take place.

#### Income Tax Irregularities

- 1.123. Jeannette van Wyk reported to me and was responsible for administering CSTM's payroll.
- 1.124. I was aware of the practice of the following employees receiving monthly salary payments without any deductions for PAYE and SITE being made. Further, I know that CSTM did not make payments of employees tax to SARS for any of these employees, as indicated:
- 1.124.1. Tiaan Nawn (R40,000.00 per month)
- 1.124.2. Rita Fererria (R38,000 per month until on or about October 2010 and thereafter she received R20,000.00 from which tax was deducted and R18,000.00 free of taxation)
- 1.124.3. Riaan Fererria (R8,000.00 tax free over and above his taxed commission payments)

Call account pledged to obtain CSTM overdraft

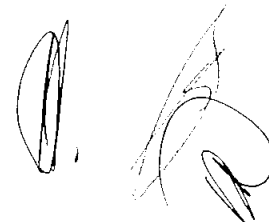
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- 1.125. Brown required a substantial deposit for his present home, which I recall to be approximately R2,500,000.00. Brown arranged an overdraft with Nedbank of R3,000,000.00 on or about May 2009.
- 1.126. Brown pledged various bodies corporate call accounts, totalling almost R3,000,000.00 to the bank as security for the overdraft facility.
- 1.127. Brown selected those call accounts that had been placed on fixed terms deposit with the bank as Brown knew that these monies would not be available to the bodies corporate at short notice.
- 1.128. I am aware of one of the call accounts (where the account was for a fixed term) falling due and the proceeds were applied by the Second Respondent to reduce the Respondent's overdraft. I recall that the amount was over R500,000.00 (five hundred thousand rand). If I am given access to the records of the First Respondent, I will be able to identify the respective accounting entries.

Instructions not to cooperate with inspection

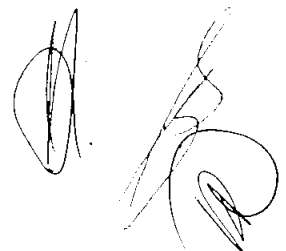
- 1.129. On 23 March 2011, the inspectors arrived at CSTM and began to question me during the course of the morning. They asked me who I was and what my position in CSTM was and if they could obtain various documents, records and a copy of my e-mail account. I did not object to their requests, which I considered reasonable after seeing a copy of their appointment letters.



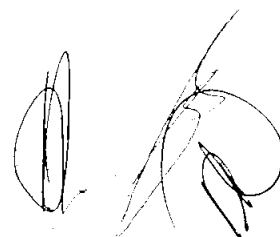
- 1.130. During the inspection, I was called out of the meeting by Rita Ferreria, who handed me her mobile telephone. Brown was calling on Ferreria's telephone and he told me not to provide any documents nor records to the inspectors.
- 1.131. Subsequently, Brown told not to speak to the inspectors alone, but ensure that either Ferreria or Brown's attorney (Ms Zacchas) was present for any meeting with the inspectors. I was never represented by Brown's attorney nor did I want representation.
- 1.132. Brown told me specifically not to be present at CSTM's offices on 5 and 6 May 2011, when the inspectors visited CSTM. I did not go to work on those days. The reason why Brown told me not to come to work was that the inspectors had previously requested a report on the building balances and I was supposed to give the report to the inspectors. Had I been present and had given a report of the building balances to the inspectors, it would have been immediately obvious, by comparing the building balances to the trust bank account, that the trust fund had less money in its account than it should have.

#### Falsification of books of account

- 1.133. As previously discussed, CSTM applied to several finance houses for loans to prop up the shortfall in the trust account. CSTM books of account did not show a company with sufficient income to justify nor repay any loan to third parties. On the sole basis of these accounts, CSTM would not qualify for any loan.



- 1.134. Brown instructed me to create a false set of accounts for CSTM and to provide those false accounts to CSTM's auditor, attached are both the correct and false accounts as GVS 7 and GVS 8 respectively. The Pastel accounts records on the system, which are the correct accounts, show a loss of R1, 747,178.31 (one million seven hundred and forty seven one hundred and seventy eight rand and thirty one cents) before taxation, whereas the audited financials prepared on the false set of figures show a profit before taxation of R3, 993, 111.00 (three million nine hundred and ninety three thousand one hundred and eleven rands). The false information was given by me to the First Respondent's auditor on the instructions of the Second Respondent. The material difference between the real and false set of accounts provided to the auditor is that in the false set of accounts, the amount of income earned by CSTM was inflated and its expenses were reduced to create a profit before taxation. The reality was that the company was running at a loss of approximately R2,500,000.00 per annum for the year ended 2010.
- 1.135. I created the false set of accounts and provided them to the auditor as instructed by the Second Respondent.
- 1.136. The auditor then produced audited financial statements and Brown signed them as director of CSTM, attached as GVS8. The attached statements show a profit for the year ending 2010 if R2,964,090.00. This is not true and correct financial position of CSTM.
- 1.137. The audited financial statements were provided to the finance houses so that they would rely upon them to process the loan application.

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1.138. I know that the false audited financial statements were also provided to the company from which CSTM leased its office equipment. CSTM entered into a lease with the office automation company and their monthly invoice of approximately R50,000.00 was paid from the trust account.

All of the activities that I have described above are going to make it incredibly difficult to work out true and accurate financial position of each of the respective bodies corporate funds held in trust with CSTM.

I repeat that with additional time and access to the books, records and documents of CSTM, I will fully cooperate and identify what is set out above and any additional transgressions that have taken place. Especially if the information deleted from the company's computer is recreated, I will completely be able to reconcile each and every unlawful payment from the trust account and movement of money from clients' trust call accounts.

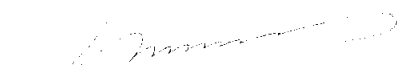
In addition, it would be very useful if all of the information and files in my office at the offices of CSTM could be obtained so that I could by means of the information therein contained assist the investigators in understanding the extent and level of the misappropriation and misuse of funds effected by Quentin Brown at CSTM. I have given the police a list of documents and information required to complete the recreation exercise.

  
DEPONENT



Signed and sworn to at Bryanston on this 16th day of May 2011 the Deponent having acknowledged that he know and understands the contents of this Affidavit, that it is true and correct to the best of his knowledge, that he has no objection to taking the prescribed oath and that the prescribed oath will be binding on his conscience.

BEFORE ME

  
 \_\_\_\_\_  
 COMMISSIONER OF OATHS

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

