

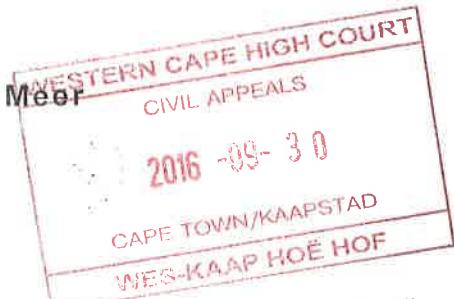
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IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 16919/16

Cape Town, 30 September 2016

Before the Honourable Ms Justice Meer



In the matter between:

THE ESTATE AGENCY AFFAIRS BOARD

Applicant

and

BEYERS REALTY GROUP (PTY) LTD

First Respondent

CHRISTIAAN FREDERICK BEYERS
SWANEPOEL-TROLLIP

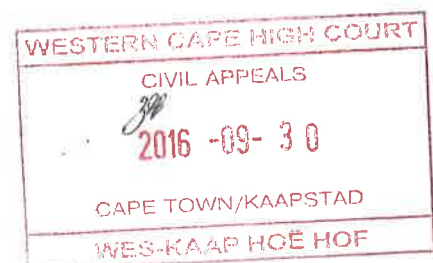
Second Respondent

ORDER

BY AGREEMENT BETWEEN THE APPLICANT AND THE SECOND RESPONDENT AS REGARDS ASPECTS AFFECTING THE SECOND RESPONDENT, AND IN DEFAULT OF APPEARANCE ON BEHALF OF THE FIRST RESPONDENT AS REGARDS ASPECTS AFFECTING THE FIRST RESPONDENT, AN ORDER IS MADE:

1. Dispensing with the forms and service provided for in the Uniform Rules of Court and directing that the application be heard on an urgent basis in terms of Uniform Rule of Court 6(12)(a);

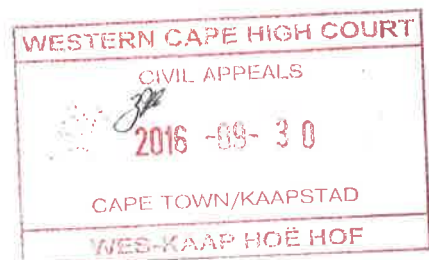
2. Directing that a rule nisi issue calling upon the Respondents to show cause, on **TUESDAY 15 NOVEMBER 2016** at **10:00** or as soon thereafter as Counsel may be heard, why an order in the following terms should not be made:
- 2.1. That the Fidelity Fund Certificates (as contemplated in Section 16 of the Estate Agency Affairs Act No. 112 of 1976 ("the Act")) of the Respondents are withdrawn and that the Respondents be ordered to return their Fidelity Fund Certificates to the Applicant within two days of this order;
- 2.2. Interdicting the Respondents from carrying on business as estate agents (as that term is defined in the Act), including the performance of any of the following:
- 2.2.1. In any manner holding themselves out as persons who, or directly or indirectly advertising that they, on the instructions of or on behalf of any other persons:
- 2.2.1.1. Sell or purchase or publicly exhibit for sale immovable property or any business undertaking or negotiate in connection therewith or canvass or undertake or offer to canvass a seller or purchaser therefor; or
- 2.2.1.2. Let or hire or publicly exhibit for hire immovable property or any business undertaking or negotiate in connection therewith or canvass or undertake or offer to canvass a lessee or lessor therefor; or



- 2.2.1.3. Collect or receive any monies payable on account of a lease of immovable property or any business undertaking; or
- 2.2.2 Causing or procuring any other person to do or perform any of the activities or functions set out in paragraph 2.2.1 above.
- 2.3. Interdicting the Respondents from causing or procuring an estate agent or person who carries on or intends to carry on the business of an estate agent from carrying on business as an estate agent under a trade name which is identical or confusingly similar to the trade name of the First Respondent.
- 2.4. Interdicting the Respondents from operating in any way on any trust, savings or other interest bearing account of or relating to the First Respondent referred to in Section 32 of the Act, which accounts include (but are not limited to):
- 2.4.1. Account no. 0000070123314 in the name of BRG Claremont at Standard Bank, Thibault Square branch;
- 2.4.2. Account no. 0000070123470 in the name BRG Darling /Yzerfon at Standard Bank, Thibault Square branch;
- 2.4.3. Account no. 0000070124272 in the name BRG Helderberg at Standard Bank, Thibault Square branch;
- 2.4.4. Account no. 0000070124388 in the name BRG Langebaan at Standard Bank, Thibault Square branch;
- 2.4.5. Account no. 0000070124485 in the name BRG Rondebosch at Standard Bank, Thibault Square branch;



- 2.4.6. Account no. 0000070124639 in the name BRG Woodstock at Standard Bank, Thibault Square branch;
- 2.4.7. Account no. 0000070143781 in the name BRG Sandton at Standard Bank, Thibault Square branch;
- 2.4.8. Account no. 0000070143846 in the name BRGB Blouberg at Standard Bank, Thibault Square branch;
- 2.4.9. Account no. 0000072515821 in the name BRG Cape Town at Standard Bank, Claremont branch;
- 2.4.10. Account no. 00000240420756 in the name Beyers Realty Trust at Standard Bank, Claremont branch; and
- 2.4.11. Account no. 4087525025 with account holder Property Payment Solutions (Pty) Ltd in the name Beyers Realty Group Sec32(1) Act 12/1979 at Absa Bank, Stellenbosch branch with branch code 632005.
- 2.5. Appointing Mr Thomas Makupo as curator bonis ("the curator bonis") to administer and control such trust, savings and other interest bearing accounts as are referred to in paragraph 2.4 above, with the following rights, duties and powers:
- 2.5.1. To take care of and administer the said accounts and to make whatever payments therefrom as the curator bonis is authorised to make in terms of the Act;
- 2.5.2. To take care of and administer any account conducted by the First Respondent at any bank, building society or financial institution into which the First Respondent may have, at any time, deposited monies received by it on account of any other person and which monies were



deposited pursuant to the provisions of Section 32 of the Act in any account;

- 2.5.3. To invest monies from such accounts in the manner contemplated by the Act;
- 2.5.4. To perform any act in respect of the said accounts or monies therein which may be necessary in the interests of the business or the interests of any person or persons entitled to performance of such act;
- 2.5.5. To take any proceedings which may be necessary for protecting the interests of those persons whose monies have been or will be deposited into such account;
- 2.5.6. To grant valid receipts and acquittances for any monies received into any of the said accounts;
- 2.5.7. To make such enquiries as he may deem necessary concerning the whereabouts of monies withdrawn from the said accounts and concerning monies received by the First or Second Respondent in the capacity as an estate agent on behalf of any persons and not paid into the said accounts;
- 2.5.8. To have unrestricted access to the books of account of the First Respondent for the purpose of exercising and giving effect to the powers aforesaid, such access to include the right to remove the books of account for such periods as are consistent with the proper conduct of the business of the First Respondent;
- 2.5.9. To require that the First Respondent and the Second Respondent give the curator bonis such assistance or



information regarding the affairs of the First Respondent, as may be necessary to enable the curator bonis to exercise the rights, duties and powers given to him in terms of this order;

- 2.5.10. To require the Second Respondent, within such time as the curator bonis may stipulate, to give unrestricted access to him to the accounting and other books and records and documents of the First Respondent as are necessary to enable the curator bonis to exercise the rights, duties and powers granted to him in terms of this order, such access to include the right to remove the books of accounts for such periods as are consistent with the proper conduct of the business of the First Respondent;
- 2.5.11. To delegate the performance of any of the aforesaid rights, duties and powers to any persons as he may deem necessary in his discretion for the due and proper performance of his duties.
- 2.6. Directing that the Second Respondent deliver to the curator bonis forthwith the accounting and other books, records and documents of the First Respondent and give the curator bonis such assistance and information regarding the affairs of the First Respondent as may be necessary to enable the curator bonis to exercise the rights, duties and powers granted to him in terms of this order.
- 2.7. Interdicting the Respondents, save with the written consent of the curator bonis, from:



- 2.7.1. Receiving any monies which they or either of them would upon receipt be required to deposit into a separate account in terms of Section 32 of the Act;
- 2.7.2. Committing any act providing for payment to or holding by either or both of the Respondents of monies referred to in 2.7.1 above.
- 2.8. That the Applicant be entitled to recover from the Respondents jointly and severally R300 per hour for the performance by the curator bonis of his duties in terms of this order as well as any disbursements incurred by the curator bonis in the performance of such duties.
- 2.9. Directing the Respondents to pay the costs of this Application jointly and severally, the one paying, the other to be absolved, on the scale as between attorney and own client.
3. Directing that the matter be placed on the semi-urgent roll for 15 November 2016.
4. Directing the Respondents to deliver any answering affidavits as regards final relief by 17 October 2016.
5. Directing the Applicant to deliver any replying affidavits as regards final by 31 October 2016.
6. Directing the Applicant to deliver heads of argument as regards final relief by 31 October 2016.
7. Directing the Respondents to deliver heads of argument as regards final relief by 7 November 2016.



8. Directing that, save for the following, the provisions of paragraph 2.1. to 2.7 above shall operate with interim effect pending the return date of the said rule nisi:
- 8.1. As regards the Second Respondent, paragraphs 2.1 and 2.2 shall not operate with interim effect, except for:
- 8.1.1 Paragraph 2.1.2.3; and
- 8.1.2 Paragraph 2.2.2 only insofar as it refers to paragraph 2.1.2.3;
- 8.2. The issue of interim operation of the remainder of paragraphs 2.1 and 2.2 is postponed to 6 October 2016 for hearing as a matter of urgency;
- 8.3. The Second Respondent is to deliver his answering affidavits as regards the issue mentioned in 8.2 above by 15:00 on 30 September 2016;
- 8.4. The Applicant is to deliver its replying affidavits as regards the question mentioned in 8.2 above by 15:00 on 4 October 2016;
- 8.5. Heads of argument as regards the issue mentioned in 8.2 above shall be exchanged between the Applicant and the Second Respondent by 17:00 on 5 October 2016;
- 8.6. The operation of 2.5.7, 2.5.9 and 2.6 shall be subject to the constitutional right of the Second Respondent not to incriminate himself by responding to enquiries by and giving information to the curator bonis;
- 8.7. The words "*make available to the curator bonis*" shall be regarded as substituted for the words "*deliver to the curator bonis*" in the first line of 2.6.

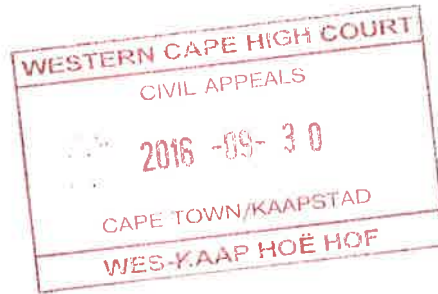


9. Service of this Order on the First Respondent shall be effected by the Sheriff at 6 Kloof Street, Sea Point.

BY ORDER OF THE COURT



COURT REGISTRAR



123 Edward Nathan Sonnenbergs, cape town

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