IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF JOHANNESBURG NORTH

HELD AT RANDBURG CASE NO: 20816/16

In the matter between:

BROLL AUCTIONS AND SALES (PTY) LTD Plaintiff

and

PRAXLEY CORPORATE SOLUTIONS (Pty) Ltd 1st Defendant
GREG ELS 2nd Defendant

JUDGMENT

The parties are as set out in the particulars of claim.

Plaintiff's particulars of claim sets out a claim A and claim B. Claim B is pleaded in the alternative. Claim A claims relief against the 1st defendant only. Claim B claims relief against the 2nd defendant only.

Claim A pleads a written engagement agreement annexed to the particulars of claim and marked "A". The crux of the claim is oral

representations made prior to the conclusion of the agreement which representations were false to the knowledge of the 2nd defendant with the object of inducing the plaintiff to enter into the agreement thus rendering the agreement voidable at the instance of the plaintiff.

The plaintiff subsequently rescinded the agreement.

Flowing from the cancellation of the agreement the plaintiff is entitled to be restored to the position it occupied at the time of having entered into the agreement with the result that it is entitled to repayment of the sum of R 171 000.00 paid to the 1st defendant in terms of the agreement.

The plaintiff is released from corresponding restitution because it was not the recipient of any performance by the 1st defendant.

Claim B is pleaded as damages suffered by plaintiff in the amount of R 171 000.00 inthat as the result of intended false misrepresentation by the 2nd defendant, the Plaintiff was induced to make payment to the 1st Defendant of a retainer fee comprising the sum of R 171 000.00.

The plaintiff paid out the sum of R 171 000.00 as a consequence of the representations, which sum it would not otherwise have expended but for the misrepresentations.

During opening address the legal representatives of the parties confirmed that the following is common cause between the parties:

1. The plaintiff and the 1st defendant entered into the engagement agreement annexed as annexure "A" to the summons on the 9th of June 2016;
2. Prior to the conclusion of the engagement agreement and on the 8th of June 2016 the 2nd defendant orally represented that the 1st defendant had a relationship with a Chinese construction company called Zhongji construction company limited which had confirmed that it would invest R 500 million in a company to be formed, PropCo structured by the 1st defendant;
3. The 2nd defendant represented that the 1st defendant would be able to facilitate the introduction of the plaintiff to key decision makers at the PIC;

4. The 2nd defendant represented that the 1st defendant had formally engaged with financiers who provided the first defendant with an in principle commitment to extend facilities to PropCo;
5. The 2nd defendant represented that the 1st defendant had already held in-depth discussions with financiers, was able to facilitate the introduction of the plaintiff to an appropriate BEE Investor interested in investing in a structure assembled through the defendant's input and the 1st defendant had strategic relationships with BEE investors, the PIC and international investors and would be able to leverage such relationship for the plaintiff's benefit.

The legal representatives confirmed that the following issues were in dispute:

1. The representations and the truth thereof, made by the 2nd Defendant to the plaintiff, namely –
    1.1 The PIC had committed itself to making a substantial capital investment in a structure assembled through the 1st defendant's input resulting in the formation of Propco;

1.2 Paragraphs 10.1 to 10.9 of plaintiff's particulars of claim dealing with the representations made by the 2nd Defendant which according to the plaintiff the 2nd defendant knew to be false;

1.3 The issue regarding the PIC and its commitment to make a substantial financial commitment.

The legal representatives agreed that the issues that the court needs to determine are:

1. If false representations were made by the 2nd defendant;
2. If so, did these representations induce the plaintiff to enter into the agreement;
3. If the agreement could as a result be cancelled and restitution claimed.

The plaintiff called two witnesses Mr. Tumela Kgatla and Mr. Norman Raad, and thereafter closed its case.

The 2nd defendant Mr, Gregory Johan Els, testified and thereafter the defendants closed their case.

Mr. Tumela Kgatla testified that he is employed as an asset manager in property claims at the Public Investment Corporation SOC Limited, and has been so employed for the last two years

and one month. He explained in detail the procedures that are followed at the PIC. His evidence culminates in the fact that the PIC had no knowledge of the transaction in question, that no procedures had been initiated with regard to the transaction and that he would have known had it been initiated.

He admitted during cross-examination that if discussions took place in the top structures he would not have known about it.

Mr. Norman Raadt testified that he is the Chief Executive Officer of the plaintiff and has been employed as such, for the last two years and eight months.

The plaintiff specializes in selling commercial properties. The relationship with the defendant came about when one of his broker's "cold called" the offices of the 1st defendant which culminated in a subsequent business meeting between *inter alia,* himself and the 2nd defendant. The purpose of the meeting was to explore business opportunities.

During discussions at this meeting he informed the 2nd defendant that the plaintiff would like to set up and manage big portfolios.

The 2nd Defendant then informed him that a Chinese company, Zhongji had R 500 million to invest but that they would only do so if a government department was involved.

The 2nd defendant informed him that he wanted to partner with the PIC, which was a government department.

The 2nd defendant informed him that the PIC wanted to bring Thebe on board. (Thebe being Thebe Investment Corporation, a BEE company).

The 2nd defendant informed him that he had a relationship with Thebe and that Thebe and the plaintiff would engage in a 50% partnership.

He testified that during the meeting the 2nd defendant created the following impressions:

1. The R 500 million from Zhongji was in the country, in the bank of China, ready to be deployed;
2. That the PIC was ready to invest;
3. That all the different parties were on board and that everything was in place and ready to proceed;
4. That the PIC had agreed to the MOU (the memorandum of understanding);
5. The 1st defendant needed the consultancy fee to put the documents together.

He testified that he interpreted clause 4.1 of the engagement agreement to mean payment for work already done and not for work still to be done.

He testified that when the 2nd Defendant mentioned the PIC he also mentioned Dr. Dan and that gave credibility to the deal because the plaintiff had dealing with the PIC and to have a personal relationship with a person that high up meant it must be real.

He stated that the mention of the PIC and Dr. Dan got their attention and that it all looked ready to go.

He explained that "Low hanging fruit" refers to a discussion he had with the 2nd defendant where he referred to easy deals as such.

On the 14th of July 2016 a meeting took place, which he describes as uncomfortable because a lot of work that he thought had been done, was still to be done. He thought that this was a formal meeting between all the parties involved, which would include the PIC and Thebe. He was only informed during the meeting that the PIC would not be present. This is when according to him "the

alarm bells rang". Jerry Mabena from Thebe was present at the meeting and Ben Nokaneng from Thebe arrived late.
He stated that when the 2nd defendant started talking to Jerry about the deal Jerry seemed perplexed and he could see that Jerry was not aware of the deal. He stated that Jerry seemed confused as to the discussion.

He testified that the amount paid to the 1st defendant amounted to R 171 000,00.

In conclusion he testified that the representations made to him were that Zonghi had the money in the country, and that Zonghi, Thebe and the PIC were all on board. After the meeting on the 14th of July 2016 and after the exchange of electronic mails he came to the conclusion that this state of affairs did not exist.

He would not have proceeded if he knew the real state of affairs.

Mr. Gregory John Els, the 2nd Defendant testified as follows.

He was an investment banker for 14 years and in 2003 he started Praxley Corporate Solutions (Pty) Ltd with other shareholders.

Praxley is in the business of advisory services first and foremost.

Shortly before the engagement letter was signed a meeting took place as testified by Mr. Raad. It was on the back of an introductory meeting to explore synergistic interest and business opportunities.

At the time Praxley was in the process of concluding another transaction with Thebe.

Thebe alluded that during those discussions that the PIC was interested in establishing a property fund with Thebe Investment Corporation. At the same time they were exploring through Praxley Asia the involvement of the Chinese into the property section. He believed that an opportunity existed for Thebe and the two Chinese companies to cooperate together.

When he met Mr. Raad, the plaintiff was looking to explore property acquisitions. Discussions took place regarding the opportunity to set up a black owned property fund in order to acquire certain properties as a black owned entity.

He alluded to Mr. Raad that he had discussions with Thebe and two Chinese investors with regard to a similar type of fund.

He suggested to the plaintiff that they should involve and enquire from Thebe where they should explore because there was no certainty how or where to explore.

The plaintiff was going to be the client. The defendants were going to assist the plaintiff during these engagements.

He testified that the plaintiff and defendants had one maybe two meetings which culminated in the drafting of the engagement letter after discussion with Thebe, wherein he obtained an in principle commitment from Thebe that he had board approval to set up a property fund within Thebe Investment Corporation.

Premised on these discussions he concluded an agreement with the plaintiff.

He testified that the 1st Defendant had six to seven transactions with the PIC over the last 14 years and has received capital from

the PIC. Navigating through a state owned company is difficult and that is why they will pitch at a very senior level.

He testified that he has had a long standing relationship with Thebe. They had facilitated the buy out of a property division with Thebe and were in the process of concluding two transactions with Thebe unrelated to this matter, at the time.

Propco was a company to be formed subject to the consummation of the transaction.

Without Thebe there would be no involvement of the PIC and without government involvement the Chinese companies would not invest.

The defendants mandate was to provide advice which if followed should result in a deal being successfully concluded.

The defendants worked tirelessly on this deal for two months and it was ultimately not concluded on the back of Mr. Raad failing to give information requested by Thebe which Thebe needed to convene a meeting with the PIC.

The information related to the "low hanging fruit". It was needed because of Mr. Nene and Dr. Dan. Mr. Nene requested it because he knew that the PIC would request an indication of the properties which were to be used in order to establish the fund.

They didn't not want it to be an idea, they wanted it to be a specific transaction.

Mr. Mabena is the Chief executive officer of Thebe Investment Corporation. He was aware of the transaction when the breakfast was held. He was briefed with regard to the MOU and it was in the advanced stages of being negotiated.

At all stages he had alluded to the fact that the PIC and Thebe were to become a meaningful player in the sector.

The MOU is a broad framework in terms of which the parties will move forward on a particular transaction. They needed to get Thebe 100% behind the transaction prior to them pitching it to the PIC.

He did not respond to the information requested in Mr. Raad's electronic mail dated 22 July 2016 because he wanted to focus him on what he needed to do, which was to give Thebe the information he requested.

He never stated that the money from the Chinese investors was in the bank in South Africa, that is why it is stated that the R 500 million was committed. If it was earmarked on deposit he would have stated so.

Thebe had undertaken to progress their property fund with the PIC using Mr. Nene.

He testified that he never lied to anyone and that he hasn't built a 14 year old business on the back of lies.

With regard to the payments received he testified that the contract details retainers and it is to cover their costs which included structuring, engaging third parties and taking transactions to its conclusion. The agreement makes provision for two separate payments because following the letter of engagement most of the work would be conducted after two months.

The retainer is not refundable because it is for payment of work already done. It covers their resources.

The plaintiff laid criminal charges against him but nothing has come of it.

During cross-examination he stated that the Chinese investors were confirmed by the person who runs Praxley Asia. She is the daughter of an ex Chinese commissioner in South Africa.

They would not "go pitch" the PIC unless they had a committed client.

In reply to a question that the PIC's involvement was a material term for Mr. Raad he stated that the PIC had already committed to Thebe and that he had a follow up conversation with Thebe and Thebe was 100% sure. He again stated that without Thebe the PIC would not be involved.

He absolutely relied on what Thebe told him because he had a longstanding, eight year relationship with Thebe.

He reiterated that the deal was negotiated at levels way above the levels of plaintiff's first witness.

He confirmed the procedure set out by plaintiff's first witness but stated that the discussion between Thebe and the PIC was at a very high level. He was not party to the discussion and he relied on what Thebe told him. Thebe confirmed that the PIC wanted to set up a property fund and commit R500 million to a billion rand to this fund which would be a black owned property fund.

He testified that the 1st plaintiff's witness had worked at the PIC for only two years and that he has had dealing with them over the last 14 years. The procedures set out by the witness may apply to the bulk of transaction but they do not apply to people who have preferential treatment. In the end the transaction would go through these procedures.

He stated that Mr.Raad did not understand the agreement and that he was unsuccessful in approaching the PIC because the PIC is not receptive if approached by entities that are not transformed.

Because the plaintiff did not know how to approach the PIC they sought the help of the defendants.

He replied to a question that the electronic mails represented that the interactions were successful that it indicated that they were on going. The defendants role was to ensure that the MOU was signed and they had to get Thebe over the line. Thebe was very specific about what had to be done and the PIC indicated that they were susceptible to the transaction, to Thebe.

That was the evidence of Mr. Els and the defendants case.

The electronic mails between the parties contained in the index to the trial bundle, reveal the following turn of events:

1. A meeting took place between the plaintiff and the defendant initiated by the plaintiff consequent to a "cold call" for business;

2. Mr. Raad and Mr. Els were present at the meeting;

3. Consequent to the meeting an engagement agreement was transmitted to the plaintiff and the parties entered into this agreement on the 9th of June 2016.

The agreement has fifteen clauses. Of importance are clause 1, clause 2 and clause 4.

Clause 1 is headed "*DEFINITIONS*". It defines inter alia the following:

Capital Raising *– Means the securing of the Facilities of R 1.5 billion for PropCo from the Financiers;*

Financiers *– Means any BEE Investors, International Investors, the PIC or any other Development Finance Institution (e.g. the IDC or DBSA) that has the ability to accord the Facilities and participate in the Capital Raising.*

International Investors *– Means any one of two international Chinese Investors that have already confirmed that they will accord Facilities of R 500 million to a PropCo structured by Praxley and in terms of which the PIC has committed capital.*

PIC *– Means the Public Investment Corporation SOC Limited, a state owned company registered in terms of the Laws of South Africa that performs asset management*

services on behalf of the South African Government Pension Fund with registration number 2005/009094/06.

PropCo *– Means a newly formed Property Investment Holding Company which, in terms of the Advisory Transaction, will be capitalised with Facilities of R 1.5 billion by the Financiers.*

Clause 2 reads as follows: " *PURPOSE 2.1 The purpose of this Engagement is to structure and raise the Facilities for PropCo and ensure that the Company or any of its Associates are awarded an asset management contract by Propco to manage the assets of PropCo following Closing of the Advisory Transaction."*

Clause 4 reads as follows: "*FEES 4.1 In consideration of Praxley providing the Advice herein referred, the Company agrees to compensate Praxley as set out below: a) Retainer Fees – a non-refundable retainer of R 75,000.00 (seventy five thousand Rand) will be payable upon signing of this Agreement. Thereafter, one additional non-refundable retainer of R 90 000.00 (ninety thousand Rand) will be paid on 25 June 2016.*

b) Success Fee – upon Closing, the Company agrees to pay to Praxley a Success Fee representing 1% (one percent) of the Transaction Value.

4. The agreement was followed by a letter dated 6 June 2016, the author being the 2nd Defendant and the recipient the plaintiff.

   The body of the letter reads as follows: " ***Our engagement Letter dated 6 June 2016 (the "Agreement") refers.***
   In terms of this letter, Praxley Corporate Solutions (Pty) Limited ("Praxley") hereby irrevocable agrees to pay Broll Auctions and Sales (Pty) Limited (the "Company") 25% (twenty five percent) of any Success Fee received by Praxley in terms of Article 4.1 b) of the Agreement (the "Broll Introductory Payment").
   The Broll Introductory Payment will be paid to the Company within two (2) working days of Praxley receiving any Success Fee in terms of the Agreement."

5. A letter dated 9 June 2016 was transmitted to the plaintiff requesting payment of the upfront retainer fee.

6. A letter dated 13 June 2016 was transmitted by the defendant to the plaintiff with regard to the non payment of VAT.

7. A letter dated 13 June was transmitted to the plaintiff to the defendant confirming that VAT is not payable in terms of the agreement.

   Numerous electronic mails are then transmitted between the parties regarding payment.

8. On the 22nd of June 2016 the 2nd defendant transmitted the following electronic mail to the plaintiff: " Dear Norman, Our recent telecom with Thebe Investment Corporation (Pty) Limited ("Thebe") on 21 June 2016 has reference. Based on our recent discussions and successful interactions with Thebe, the PIC and Zhongji Construction Co., Limited in China over the past two weeks, we are pleased to attach a draft Memorandum of Understanding ("MoU") for perusal and comment prior to onward submission to Thebe, the PIC and Zhongji for their comment and signature.

We confirm that the structures as proposed in the MoU are acceptable to the other Parties to the MoU and are in terms of what we have discussed...."

9. Numerous electronic mails are then transmitted between the parties regarding late payment of the second amount and the communication from the 2nd defendant becomes rather gruff.

10. An electronic mail between the 2nd defendant and Thebe Investment regarding the MOU is transmitted on the 4th of July 2016. It discusses amendments to the MOU.

11. On the 22nd of July 2016 the 2nd defendant transmits an electronic mail containing the following: **"...I have just had a brief telecom with Ben at Thebe who has requested and indication of some of the "low hanging fruit" in respect of properties already identified by Broll for the purpose of investing. Please could you assist in furnishing anything you have in this regard.."**

12. On the 22nd of July 2016 it is clear that the agreement is

unravelling, if regard is had to the electronic mail transmitted by the plaintiff at 11:17am and the reply thereto by the 2nd defendant at 12:02.

13. Numerous electronic mails are then exchanged between the parties culminating in a letter from the plaintiff's attorneys accusing the 2nd defendant of fraudulent misrepresentations and cancelling the agreement.

Annexed on page 78 of the trial bundle is an extract from the Cape Times E-edition on the 5th of April 2017. The headline reads: "***Thebe acquires Clear Asset to boost auction offerings"***.

Relevant extracts from the article reads as follows:

".....Twelve months ago, also in April, Thebe unveiled former minister of finance Nhlanhla Nene as an adviser in the company.....The acquisition of Clear Asset is seen as a move that will create a leading black owned online auction house....The acquisition by Thebe Investments was facilitated by Praxley Group, acting in the capacity of transaction advisers to Clear Asset on the transaction..."

The applicable case law

1. Avoidance of contract on the grounds of misrepresentation

"A misrepresentation has been described as a false statement of fact, not law or opinion, made by one party to another before or at the time of the contract concerning some matter or circumstance relating to it. A party seeking to avoid a contract on the ground of misrepresentation must prove that: (a) the representation relied upon was made; (b) it was a representation as to a fact; (c) the representation was false; (d) it was material, in the sense that it would have influenced a reasonable person to enter into the contract; (e) it was intended to induce the person to whom it was made to enter into the transaction sought to be avoided" - *Quartermark Investments (Pty) Ltd v Mkhwanazi & another [2013] ZASCA 15 at paragraph 14.*

See also: *Geary & Son (Pty) Ltd v Gove [1964] 2 All SA 50 (A).*

Standard Bank of SA Ltd v Coetsee 1981 (1) SA 1131 (A).

Dantex Investment Holdings (Pty) Ltd v Brenner NNO [1989] 1 All SA 411.

2. The reasonable person

"The concept of the bonus paterfamilias is not that of timorous faint-heart always in trepidation lest he or others suffer some injury, on the contrary, he ventures out into the world, engages in affairs and takes reasonable chances. He takes reasonable precautions to protect his person and property and expects others to do likewise – *Herschel v Mrupe 1954 (3) SA 464 (A) at 490E-F"*

"To these guidelines, of which I approve, a further observation is perhaps in order, *viz* that the test of 'reasonably requires' is a relative one. It is premised on the requirements of a reasonable man in the lessor's position and there will very seldom be an exact similarity of requirements between different lessors. It is, therefore, impossible to postulate an *a priori* or immutable test of what 'reasonably requires' means. The standard will differ from lessor to lessor, from locality to locality, and from time to time. It is, therefore, a purely factual test in the end

that takes cognisance of the lessor's station in life, his proven personal circumstances, the size and requirements of his household, and his reason for requiring better accommodation. Ultimately, one must make a balanced and justifiable value judgment" - *Batchelor v Gabie (125/2000) [2001] ZASCA 134*

3. Parole evidence rule and interpretation of contracts

The parole evidence rule provides that once a contract has been reduced to writing, the writing is in general viewed as the exclusive memorial of the transaction and no evidence is admissible to prove the terms of the contract. *See Affirmative Portfolios CC v Transnet Ltd t/a Metrorail 2009 (1) SA 196 SCA.*

The rule of interpretation provides that the ordinary meaning of the words in a written contract must be followed and that no evidence is admissible to prove the meaning of the terms contained in a written contract. *See Delmas Milling C Ltd v Du Plessis 1955 (3) SA 447 (A).*

These two principles has been developed and clarified in Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd 2013 (6) SA 520 (SCA).

At paragraph 16 – "In regard to the interpretation of the contract it was submitted that the arbitrator was bound by 'the well-established rule that a contract must be interpreted by construing its plain words' and that it is only in cases of ambiguity or uncertainty that an arbitrator can take account of surrounding circumstances 'or its so-called factual matrix'. It is surprising to find such a submission being made in the light of the developments in the interpretation of written documents reflected in *KPMG Chartered Accountants (SA) v Securefin Ltd & another* and *Natal Joint Municipal Pension Fund v Endumeni Municipality*. These cases make it clear that in interpreting any document the starting point is inevitably the language of the document but it falls to be construed in the light of its context, the apparent purpose to which it is directed and the material known to those responsible for its production. Context, the purpose of the provision under consideration and the background to the preparation and production of the document in question

are not secondary matters introduced to resolve linguistic uncertainty but are fundamental to the process of interpretation from the outset. The approach of the arbitrator cannot be faulted in this regard"

Conclusion

The engagement agreement is dated the 6th of June 2016 and the Applicant signed the agreement on the 9th of June 2016.

No evidence was adduced that the applicant had no opportunity to study, scrutinize or consider the terms of the written agreement in the privacy of their offices before annexing their signature to the document.

The agreement makes no representations as set out in clauses 9.1 to 9.7 of the particulars of claim nor can it be construed as such.

International investors are defined as any one of two. This, either or, phraseology can never be interpreted to mean that one company, namely Zonghi was already "on

board" as Mr. Raad testified. In any event the definition proceeds to read that they will accord facilities of R 500 million to a PropCo structured by Praxely. PropCo was still to be formed and not yet structured by Praxley at the time when the parties entered into the agreement. The definition then proceeds to read: "and in terms of which the PIC has committed capital". If one were to interpret it as Mr. Raad testified then one would have to accept that the PIC had already committed capital to a company yet to be formed and structured. It had no director and no shareholders. How, and with whom did the PIC then negotiate and commit the funds? Mr. Raad testified that he had dealings with the PIC before and the plaintiff's own witness testified with regard to the procedures. It is therefore impossible that Mr.Raad could have believed that the PIC was onboard and all that was left was for the documents to be drafted and signed.

Mr. Raad's evidence is in stark contradiction to clause 5.3 of the letter addressed by plaintiff's attorney. The clause reads as follows: ".....Mabena advised Raad and Posniak that he had absolutely no knowledge of the terms

and conditions of the Agreement." Mr. Raad testified during evidence in chief: "...Jerry Mabena from Thebe was present at the meeting...when Mr. Els started talking to Jerry about the deal Jerry seemed perplexed and I could see that Jerry was not aware of the deal...."

It stands undisputed that two representatives of Thebe Investment Corporation were present at the meeting on the 14th of July 2016, namely Mr. Jerry Mabena and Mr. Benjamin Nokaneng. What then were they doing at the meeting? Why did Mr. Raad not enquire? Why was Mr. Els not immediately confronted? Why was the agreement not immediately cancelled? These questions remains unanswered if Mr. Raad's version is to be believed.

Mr. Raad testified that he believed that the retainer fees as set out in clause 4.1 of the agreement was for work already done. In view the fact that PropCo still had to be formed, that the purpose of the agreement as set out in clause 2 of the agreement was to structure and raise the facilities for Propco and to ensure that the company is awarded an asset management contract, then the

question arises as to what work already done? There were no written agreements on the table between any of the parties. In business there can never be any guarantees that the parties will reach consensus culminating in a successful written agreement. More so in view of the scope of this transaction and the diverse parties involved in the negotiations.

Mr. Raad as an astute businessman involved in commercial property transactions must have been aware of this reality.

The version of Mr.Els as seen against the background of the facts of this matter is more plausible.

It is clear that he had dealings with Thebe. It stands uncontested that he was able to arrange a meeting between the highest official of Thebe and the plaintiff.

It also stands undisputed that that Thebe had dealings with the PIC and that the PIC was interested in setting up a property fund with Thebe.

Page 20 and 21 of the trial bundle contains two letters from Zhongji Construction Co. Ltd, indicating their intention to invest in South Africa.
It is not disputed that Thebe and Praxley, had dealings with the PIC before.

It does not require a stretch of the imagination to believe that businessman and bankers with years of experience and contacts would negotiate transactions behind closed doors far removed from the normal drudgery and procedures required of less connected counterparts.

It is clear that Mr. Els had connections, experience and expertise.
This is partly what he was paid for, his ability to negotiate at a higher level, outside the normal parameters and procedures. This is enforced by Mr.Raad's evidence that he himself was always unsuccessful in his negotiations with the PIC.

I can find no fraud or misrepresentation on the part of Mr. Els.

Judgment

Plaintiff's claims A and B are accordingly dismissed with costs including costs of counsel.

DATED AT RANDBURG ON THIS THE 28th DAY OF JULY 2017.

H. BANKS

Magistrate Randburg.