

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

**CASE NO.: EC09/2013
EC10/2013
EC11/2013**

In the matter between:

**MARIA MAGDALENA PIETERSEN
SOON BOESAK
LUKAS MAARMAN**

Complainants

and

FIRST RAND FINANCE COMPANY LIMITED

Respondent

APPLICATION TO COMPEL

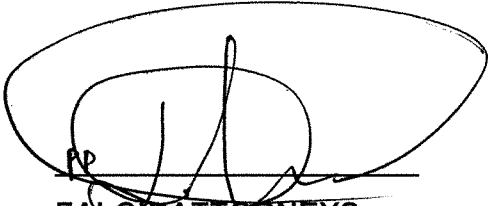
BE PLEASED TO TAKE NOTICE THAT an Application to Compel will be made on behalf of the above named Complainants to the above Honourable Court on **FRIDAY** the 5th day of **FEBRUARY 2016** at **10h00** or as soon thereafter as the matter may be heard for an Order in the following terms:

1. Compelling the Respondent to furnish the Complainants' attorneys with a response to the Complainants' notice in terms of Rule 35, which was served on the Respondent's attorneys on 17 September 2015 by no later than the close of business on a date to be determined by the court.
2. Granting leave to the Complainants to apply to this Honourable Court on these papers, duly amplified as may be necessary, on **FRIDAY** the 26th day of **FEBRUARY 2016** at **10h00**, for an order dismissing Respondent's defence, should they fail to comply with the Order granted in terms of the preceding paragraph of this application; and
3. Directing that the costs of this application should be borne by the Respondent.

BE PLEASED TO TAKE NOTICE FURTHER that the affidavit of **GRAEME FALCK**, which is annexed hereto, will be used in support of this application.

KINDLY SET THE MATTER DOWN FOR THE HEARING ACCORDINGLY.

DATED AND SIGNED AT CAPE TOWN THIS 28th DAY OF JANUARY 2016.



FALCK ATTORNEYS

Complainants' Attorneys

Drostdy Centre

c/o Bird- and Alexander

Street

Stellenbosch

(Ref: GF/eb/ 4071799)

c/o **HEYNS & PARTNERS INC.**

Unit 3, Third Floor

6 on Pepper

Pepper Street

CAPE TOWN

(Ref:DJC/S64161)

**TO: REGISTRAR OF THE EQUALITY COURT
CAPE TOWN**

AND TO: NORTON ROSE FULBRIGHT SOUTH AFRICA

10th Floor, Norton Rose House

8 Riebeeck Street

CAPE TOWN

(Ref: Mr. R Driman)

PER E-MAIL: andrew.strachan@nortonrosefulbright.co.za

PER HAND

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

CASE NO.: EC09/2013
EC10/2013
EC11/2013

In the matter between:

MARIA MAGDALENA PIETERSEN
SOON BOESAK
LUKAS MAARMAN

Complainants

and

FIRST RAND FINANCE COMPANY LIMITED

Respondent


AFFIDAVIT

I, the undersigned,

GRAEME FALCK

do hereby make oath and state as follows:

1. I am an adult male practicing attorney and director of Falck Attorneys, the Complainants' attorneys in this matter, with offices in Stellenbosch situated in the Drosty Centre, c/o Bird- and Alexander Street, Stellenbosch.
2. The facts herein stated are within my personal knowledge and are true and correct, and I am duly authorised to depose to this affidavit.
3. The purpose of this affidavit is to support an Application to Compel the furnishing by the Respondent, of their response to the Complainants' Notice in terms of Rule 35(3), which was served on Respondent's attorneys on 17 September 2015 and which is also filed on record (although it was dated in July, it was only served in September). A copy of this notice is annexed hereto marked "GF1".



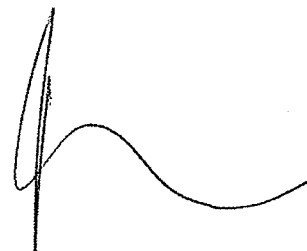
4. After the 10 days for compliance expired and an additional 10 days was granted in the hope of a positive reaction, I sent an e-mail to Respondent's attorneys on 14 October 2015 requesting compliance by 16 October 2015 and stating that an application will have to be brought if Respondent fails to comply. A copy of the e-mail is attached hereto as Annexure "GF2".
5. I had a telephone conversation with Mr. Strachan of Respondent's attorneys on the same date, which conversation was used to clarify the documentation needed.
6. Later on the same date, I received an e-mail from Respondent's attorneys stating that they are considering their client's position and will revert. A copy of the e-mail is attached hereto as Annexure "GF3".
7. The next day on 15 October 2015, Respondent's attorneys sent an e-mail in which they undertook to respond by 23 October 2015. The e-mail is attached as Annexure "GF4". I agreed to this.
8. On 11 November 2015, I eventually received an e-mail with an attached unsigned schedule. The covering e-mail is attached as Annexure "GF5".
9. Apart from the statements that were requested in Item 1 of the Rule 35(3) Notice, none of the other items requested were discovered.
10. On 26 October 2015, I addressed a letter to Respondent's attorneys requesting items 268 to 465 of the unsigned schedule. A copy of the letter and proof of posting is attached hereto as Annexure "GF6" and "GF7".
11. I did not receive any affidavit in compliance with Rule 35(3).



12. In the letter, I accordingly referred to each and every requested item of information or documentation. The details of the requirements relating to each item is clear from the the contents of Annexure "GF6".
13. In the letter I granted a further 14 days for compliance to ensure that Respondent has sufficient time to attend to this matter.
14. The 14 days have expired and to date hereof, I have not received a Discovery Affidavit, the requested documents in the unsigned Schedule, an Affidavit in response to the Rule 35(3) Notice, or any response to my letter of 26 November 2016 at all.
15. Complainants need the required information to prepare for trial. Respondent's failure to deliver the required documentation will prejudice Complainants in their preparation for trial.
16. Section 10(2) of the Usury Act 23 of 1968 (to which the loans in this matter was subject to) read together with Section 10(4) makes it an offence in terms of that Act if the credit grantor fails to comply within 7 days to such a demand for information. That Act has been repealed by the National Credit Act 34 of 2005.
17. Section 65 of the National Credit Act 34 of 2005 provides for the right of consumers to information requested.
18. More importantly however the Rule 35(3) of the Uniform Rules of this Court requires compliance to ensure that parties are not prejudiced by obstructing behaviour of the other party.
19. The only remaining remedy for Complainants is to apply for an order to compel Respondents to deliver the required response on the terms as stated in the attached Application to Compel.

A handwritten signature in black ink, consisting of a vertical line with a hook at the top and a stylized, illegible mark at the bottom.

In view of the above, I respectfully pray for an Order in terms of the accompanying Notice of Motion.

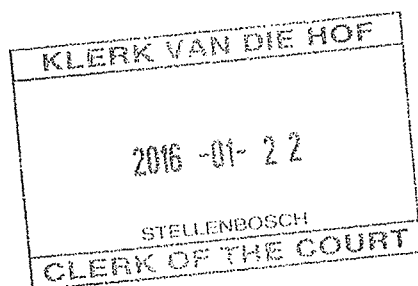


GRAEME FALCK

THUS sworn and signed at **STELLENBOSCH** on this **22ND** day of **JANUARY 2016**.

the Deponent having acknowledged that he/she:

- (a) knows and understands the contents of this Affidavit;
- (b) has no objection to taking the oath;
- (c) considers this oath to be binding on his/her conscience and utters the words "I swear that the contents of this Declaration are true, so help me God".




COMMISSIONER OF OATHS

Hendrina Barbara Prins
Clerk v.d. Hof
Landdroskantoor
Stellenbosch



IN THE EQUALITY COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT)

(4)

"GFI" 11

34 1

CASE NO: EC09/2013
EC10/2013
EC11/2013

In the matter between:-

PIETERSEN, MARIA MAGDALENA
BOESAK, SOON
MAARMAN, LUCAS

Complainants

And

FIRSTRAND FINANCE COMPANY LTD

Respondent

NOTICE IN TERMS OF RULE 35(3)

BE PLEASED TO TAKE NOTICE THAT the Defendant believes that there are the following documents in the possession of the Plaintiff which may be relevant to a matter in question in the proceedings:

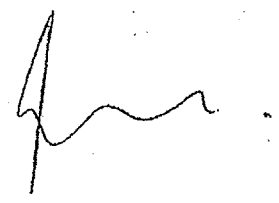
1. The statements of the account of Defendants from date of inception for the duration of the mortgage bond.
2. The letters sent to Defendants informing them of each interest increase and decrease as determined by section 10(6) of the Usury Act, Act 73 of 1968, as amended.
3. The list of interest rates levied on the mortgage bond for the duration of the mortgage bond.
4. The minutes of the meeting of the Board of Directors on each and every interest rate change.
5. Documentation to show when complainants were in arrears in that there were a difference between the total amount that was payable and the amount paid, at all relevant points in time during the existence of the loan.

C
RSP

- 6. The recalculation of the accounts of Complainants in 2006 to determine any overcharges by Respondent due the calculation of interest in advance.
- 7. The minutes of the meeting of the Board of Directors relating to the 2006 recalculations and repayments to accountholders.
- 8. All relevant codes and codification system that Saambou used for its categorization of mortgage loans.

THE PLAINTIFF IS REQUIRED TO PRODUCE these documents for inspection in accordance with rule 35(6) or to state on oath within 10 days that the document is not in he possession, in which event he shall state its whereabouts, if known to him.

DATED AT STELLENBOSCH THIS 23RD DAY OF JULY 2015



G FALCK
FALCK INC.
 DROSTDY CENTRE
 C/O BIRD & ALEXANDER STREET
 STELLENBOSCH, 7600
 (REF. GF/Is/40)
 C/O VAN DER SPUY & PARTNERS
 4TH FLOOR
 14 LONG STREET
 CAPE TOWN

TO: THE REGISTRAR OF THE EQUALITY COURT
 WESTERN CAPE HIGH COURT
 CAPE TOWN

AND TO: FIRST RAND FINANCE CO. (PTY) LTD
 C/O ANDREW STRACHAN
 NORTON ROSE
 BY EMAIL. andrew.strachan@nortonrosefulbright.com



"GF2" +
"GF4"

Graeme

From: Graeme <graeme@falckmb.co.za>
Sent: 15 October 2015 12:39 PM
To: 'Strachan, Andrew'
Cc: 'Solomon, Kate'
Subject: RE: FNB 12990: Equality Court matters [NRFS-A-JHB.FID96218]

Agreed

GRAEME FALCK
FALCK ATTORNEYS
MOBILE 082 8948075
EMAIL. graeme@falckmb.co.za
P.O.BOX 7322/DOCEX 14
OFFICE 16, DROSTDY CENTRE
CNR BIRD & ALEXANDER STREETS
STELLENBOSCH, 7599

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

From: Strachan, Andrew [<mailto:Andrew.Strachan@nortonrosefulbright.com>]
Sent: 15 October 2015 10:59 AM
To: Graeme
Cc: Solomon, Kate
Subject: FNB 12990: Equality Court matters [NRFS-A-JHB.FID96218]

"GF4"

Dear Graeme

I refer to your email below and to our discussion of earlier.

As discussed, we will respond to your notice by Friday, 23 October 2015.

Regards

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

From: Graeme [<mailto:graeme@falckmb.co.za>]
Sent: 14 October 2015 01:58 PM
To: Strachan, Andrew
Cc: Solomon, Kate
Subject: RE: FNB 12990: Equality Court matters [NRFS-A-JHB.FID96218]

"GF2"

Mr Strachan

I refer to the Discovery Notices i.t.o. Rule 35(1)(6) and (8) and also Rule 35(3) served on you.

We have received no reply yet.

ABP
P

You are now required to comply with same before close of business on Friday 16 October 2015, failing which have instructions to lodge an application i.t.o. Rule 35 (7) to compel you to comply with the notices.

We however look forward to your positive response.

GRAEME FALCK
FALCK ATTORNEYS
MOBILE 082 8948075
EMAIL. graeme@falckmb.co.za
P.O.BOX 7322/DOCEX 14
OFFICE 16, DROSTDY CENTRE
CNR BIRD & ALEXANDER STREETS
STELLENBOSCH, 7599

Andrew Strachan | Director
Norton Rose Fulbright South Africa Inc
15 Alice Lane, Sandton 2196, South Africa Tel +27 11 685 8872 | Mob +27 83 450 6212 | Fax +27 11 301 3352
andrew.strachan@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

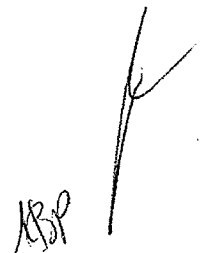
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nortonrosefulbright.com

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Handwritten signature and initials, possibly 'ABP', in the bottom right corner of the page.

Graeme

From: Solomon, Kate <Kate.Solomon@nortonrosefulbright.com>
Sent: 14 October 2015 03:51 PM
To: graeme
Cc: Strachan, Andrew; karl@falckmb.co.za; Msimanga, Brian
Subject: FW: Pieterse AO

"GF3"

Dear Graeme

We refer to the documents emailed to us on 17 September 2015.

We note that one of the documents was a Rule 35(3) notice. You already have a vast majority of the documents which your clients seek under discovery, however, we are considering our client's position and will revert.

Our client's rights are reserved.

Regards

Begin forwarded message:

From: "Karl" <karl@falckmb.co.za>
To: "Strachan, Andrew" <Andrew.Strachan@nortonrosefulbright.com>
Cc: "graeme@falckmb.co.za" <graeme@falckmb.co.za>
Subject: Pieterse AO

Mr.Strachan,

Attached hereto please find the Filing Notice with the documents listed therein, as well as the Amended Index III and Index IV.

The originals will be filed by our correspondents.

We look forward to your response.

Yours faithfully,

Andrew Strachan | Director
Norton Rose Fulbright South Africa Inc
15 Alice Lane, Sandton 2196, South Africa
Tel +27 11 685 8872 | Mob +27 83 450 6212 | Fax +27 11 301 3352
andrew.strachan@nortonrosefulbright.com

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Kate Solomon | Senior Associate

AS
K

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kate.solomon@nortonrosefulbright.com

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ABP


Graeme

From: Strachan, Andrew <Andrew.Strachan@nortonrosefulbright.com>
Sent: 11 November 2015 10:38 AM
To: Graeme
Subject: FNB12990: Equality Court proceedings [NRFSA-JHB.FID96218]
Attachments: FNB12990 Discovery schedule.pdf

"GFS"

Dear Graeme

I refer to our previous correspondence concerning the respondent's discovery affidavit.

I **attach** the schedule to the respondent's discovery affidavit. You should already have items 1 – 267 from the previous proceedings.

My recollection is that we also provided you with copies of the documents relating to the individual customers after the initial hearing. We have in any event included these documents in the schedule as well.

If you need any of these documents, please let me know.

Yours sincerely

Andrew Strachan | Director
Norton Rose Fulbright South Africa Inc
15 Alice Lane, Sandton 2196, South Africa
Tel +27 11 685 8872 | Mob +27 83 450 6212 | Fax +27 11 301 3352
andrew.strachan@nortonrosefulbright.com

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FALCK INGELYF / INCORPORATED
Reg. No. 2000/010986/21
h/a - t/a

"GF 6"

FALCK



Prokureurs / Attorneys

Aktebesorgers / Conveyancers

DROSTDY SENTRUM
h/v - c/o BIRD & ALEXANDER STRATE
STELLENBOSCH, 7600
DOCEX 14, STELLENBOSCH
Web tuiste / Website: www.falckmb.co.za

BTW / VAT Reg. No: 480 018 84 29

TELEFOON / TELEPHONE: (021) 882 8977
FAKS / FAX: (021) 882 8993
POSBUS / PO BOX 7322
STELLENBOSCH, 7599
E-Pos / E-Mail: stellenbosch@falckmb.co.za

Ons Verw.: / Our Ref.: GF/kp/H676

U Verw.: / Your Ref.:

DATUM / DATE: 26 November 2015

ANDREW STRACHAN

Norton Rose Fulbright

E-mail: andrew.strachan@nortonrosefulbright.com

PER E-MAIL

Dear Sir,

PIETERSEN A.O./ FIRST RAND FINANCE COMPANY (LTD.)

I refer to your e-mail of 11 November 2015 and the schedule attached to the Discovery Affidavit. Kindly provide us with copies of items 268 to 465.

We now refer to our Notice in terms of Rule 35(3) and refer to each requested item numerically:

Ad Item 1: Received

Ad Item 2: It appears that you do not have Interest Rate Adjustment-correspondence pertaining to Mrs. Pietersen before 12 June 2006, Mrs Pietersen 16 October 2006 and Mr. Maarman before 7 August 2006. Kindly confirm that we are correct in the assumption that no such correspondence is in possession of your client or yourselves. Alternatively, we request you to provide list of same, as well as copies thereof.

Direkteur / Director: Graeme Falck, BComm, LLB

Bygestaan deur / Assisted by: Daniël Willem Breytenbach, LLB

Kandidaat Prokureurs / Candidate Attorneys: Joseph Jozeph, LLB; Karl Petzsch B.Comm, LLB

Kantoor Bestuurder / Office Manager: Karin Coelzee

Handwritten initials/signature

Ad Item 3: According to our instructions, your client has a computer program that allows for the production of a list of interest rates levied on a specific mortgage bond since the inception and for the duration thereof. Attached is an example thereof in another matter. Kindly confirm whether your client can deliver same or not. If so, we request you to deliver same in relation to each of the Complainants.

Ad Item 4: Kindly confirm that the minutes of the meetings between the Board of Directors on each and every interest rate change will be found between items 1 to 267. If not, you are requested to confirm if any such other minutes exist and if so to provide us with copies of same.

Ad Item 5: We understand that your client's program allows for an application that shows when Complainants were in arrears, in that there was a difference between the total amount that was payable, but was unpaid at all relevant points in time during the existence of the loan. Kindly confirm whether your client can deliver same or not. If so, we request you to deliver same in relation to each of the Complainants.

Ad Item 6: We could only identify Items 452 and 454 (Maarman) in your schedule relating to the recalculation of the accounts in 2006 which determined overcharges, due to the calculation of interest in advance. Kindly confirm that there are none such documentation pertaining to Complainants Pietersen and Boesak, in that they did not qualify for such reimbursement as Maarman did. If they did indeed qualify and there indeed does exist such documentation, kindly provide us with a list and copies thereof.

Ad Item 7: We cannot find any minutes of the meeting of the Board of Directors relating to the 2006 recalculations and repayments to account holders, of which Lucas Maarman was one. We find it hard to believe that such an extensive exercise would have been instituted without various correspondence between the decisionmakers in the company and minutes of committees and board meetings in relation thereto, more so in that the total amount that was paid was R154 million. Surely, such documentation must exist and we request you to provide us with the list and copies thereof.

FALCK

Prokureurs / Attorneys - Aktebesorgers / Conveyancers



Ad Item 8: It should be common cause that Saambou used a codification system for the categorization of mortgage loans. From the documents that we have in our possession as provided by you previously, we for instance know of the following codes: Regulabond (PRO 50, PRO 55, PRO 59, PRO 63, PRO 64), Availabond (PRO 51, PRO 58, PRO 62, PRO 65) and Buildingbond (PRO 66, PRO 67). We require the document stating the essential qualifications that each account had to have in order to fall under a certain category of mortgage loan and codified as above. Kindly provide same.

In General: In the affidavit of Mr. John Louw dated 10 July 2002, he makes a statement that a portion of Saambou Mortgage Loans were already administrated or sold to First Rand Bank. On 2 February 1998, it also appears that a different program was used for the statements. You are requested to provide us with any documentation or contracts relating to those transactions between Saambou Bank and First National Bank or First Rand Bank at that point in time that relates to any such transaction(s).

We request your response hereto within 14 days from date of this letter.

Yours faithfully,

GRAEME FALCK

DM Mabunda 11831478001

Rate	Rate		Term	Rate
Date Start	Date End	Interest Type		
20040816	99999999	VARIABLE NEGOTIATED DR. INTEREST RATE	999	12.75
20031215	99999999	VARIABLE NEGOTIATED DR. INTEREST RATE	999	13.25
20031020	99999999	VARIABLE NEGOTIATED DR. INTEREST RATE	999	13.75
20030915	99999999	VARIABLE NEGOTIATED DR. INTEREST RATE	999	15.25
20030815	99999999	VARIABLE NEGOTIATED DR. INTEREST RATE	999	16.25
20030617	99999999	VARIABLE NEGOTIATED DR. INTEREST RATE	999	17.25
20020913	99999999	VARIABLE NEGOTIATED DR. INTEREST RATE	999	18.75
20020701	99999999	VARIABLE NEGOTIATED DR. INTEREST RATE	999	17.75
20020401	99999999	VARIABLE NEGOTIATED DR. INTEREST RATE	999	16.75
20020216	99999999	VARIABLE NEGOTIATED DR. INTEREST RATE	999	15.75
20011001	99999999	VARIABLE NEGOTIATED DR. INTEREST RATE	999	14.75
20010701	99999999	VARIABLE NEGOTIATED DR. INTEREST RATE	999	15.25
20000201	99999999	VARIABLE NEGOTIATED DR. INTEREST RATE	999	15.75
19991018	99999999	VARIABLE NEGOTIATED DR. INTEREST RATE	999	16.50
19990901	99999999	VARIABLE NEGOTIATED DR. INTEREST RATE	999	17.50
19990801	19990831	VARIABLE NEGOTIATED DR. INTEREST RATE	999	18.50
19990701	19990731	VARIABLE NEGOTIATED DR. INTEREST RATE	999	19.00
19990501	19990630	VARIABLE NEGOTIATED DR. INTEREST RATE	999	20.00
19990401	19990430	VARIABLE NEGOTIATED DR. INTEREST RATE	999	21.00
19981201	19980331	VARIABLE NEGOTIATED DR. INTEREST RATE	999	22.00
19980901	19981130	VARIABLE NEGOTIATED DR. INTEREST RATE	999	25.50
19980704	19980831	VARIABLE NEGOTIATED DR. INTEREST RATE	999	23.50
19980701	19980703	VARIABLE NEGOTIATED DR. INTEREST RATE	999	21.50
19980601	19980630	VARIABLE NEGOTIATED DR. INTEREST RATE	999	18.50
19971101	19980531	VARIABLE NEGOTIATED DR. INTEREST RATE	999	20.50
19961201	19971031	VARIABLE NEGOTIATED DR. INTEREST RATE	999	21.50
19961001	19961130	VARIABLE NEGOTIATED DR. INTEREST RATE	999	20.50
19960601	19960930	VARIABLE NEGOTIATED DR. INTEREST RATE	999	22.50
19960501	19960531	VARIABLE NEGOTIATED DR. INTEREST RATE	999	21.50
19950701	19960430	VARIABLE NEGOTIATED DR. INTEREST RATE	999	20.50
19950401	19950630	VARIABLE NEGOTIATED DR. INTEREST RATE	999	19.50
19941101	19950331	VARIABLE NEGOTIATED DR. INTEREST RATE	999	18.25
19940201	19941031	VARIABLE NEGOTIATED DR. INTEREST RATE	999	17.25
19930501	19940131	VARIABLE NEGOTIATED DR. INTEREST RATE	999	18.00
19921201	19930430	VARIABLE NEGOTIATED DR. INTEREST RATE	999	18.75
19920608	19921130	VARIABLE NEGOTIATED DR. INTEREST RATE	999	19.50

*** End of Data ***

Handwritten signature and initials in the bottom right corner of the page.

Graeme Falck

From: Graeme Falck <graeme@falckmb.co.za>
Sent: 26 November 2015 12:17 PM
To: 'Strachan, Andrew'
Subject: RE: FNB12990: Equality Court proceedings [NRFSA-JHB,FID96218]
Attachments: 26.11.15 Letter to Strachan.pdf; 151126121011_0001.pdf

GF 7

ANDREW

Please find letter and annexure attached for your response.



GRAEME FALCK
FALCK ATTORNEYS
MOBILE 082 8948075
EMAIL. graeme@falckmb.co.za
P.O.BOX 7322/DOCEX 14
OFFICE 16, DROSTDY CENTRE
CNR BIRD & ALEXANDER STREETS
STELLENBOSCH, 7599

Drostdy Sentrum, Stellenbosch
Posbus / P.O. Box 7322
Telefoon / Telephone: 021 882 8977
Faks / Fax: 021 882 8993
E-pos / E-mail: graeme@falckmb.co.za
www.falckmb.co.za

From: Strachan, Andrew [<mailto:Andrew.Strachan@nortonrosefulbright.com>]
Sent: 11 November 2015 10:38 AM
To: Graeme
Subject: FNB12990: Equality Court proceedings [NRFSA-JHB.FID96218]

Dear Graeme

I refer to our previous correspondence concerning the respondent's discovery affidavit.

I **attach** the schedule to the respondent's discovery affidavit. You should already have items 1 – 267 from the previous proceedings.

My recollection is that we also provided you with copies of the documents relating to the individual customers after the initial hearing. We have in any event included these documents in the schedule as well.

If you need any of these documents, please let me know.

Yours sincerely

ABP