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FEBRUARY 2011

Divorce Sandton style

Yanks swipe SA armoured car design

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The Boys are Back!

Mastermind of Supreme Holdings is up to his old tricks

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noseweek

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Winners' names will be published in the March edition of noseweek. The editor's decision in final.

Letters

Unhealthy procedure

It appears that Discovery Health (*nose*135) has various degrees of authorisation for medical procedures; perhaps they should code them – say a 3 being definite, a 2 being greater than 50% probability of approval; and a 1 for a less-than-50% probability that Discovery will agree to pay, come tomorrow morning.

What absolute bull! Are they remunerating staff for refusing claims, as is now common practice amongst health insurers in the USA?

Dr Watson
Johannesburg

■ Your articles on Discovery were very interesting, the second one also being somewhat alarming. I have heard that Discovery is going to be hard-arse this year, when it comes to approving claims.

One should ask them if they're going to put their internal rule book on their website, in the interests of contractual probity.

Richard Bennett,
Genesis Group Benefits,
Illovo, Jhb

Wrong about copyright

On the subject of copyright to church music (*nose*135), as a church musician let me give you some facts: if a composer copyrights his or her piece, they and their estates are entitled to royalties on every sale and performance of the piece until 50 years after their deaths. (Cliff Richard and others are trying to have the law in the UK amended to increase that to 100 years.)

For a composition to be performed or sung, it needs to be printed and made available. When a piece is rearranged, the person who does the arranging and/or publishing is also entitled to remuneration.

For ease of access to a bigger repertoire, churches today use data projectors rather than printed songbooks. But that results in fewer books being sold, depriving the composer/poet/publisher/arranger of income. The Christian Copyright Licensing International (CCLI) Licence and the Music Reproduction Licence (MRL) were introduced so that churches can legally photocopy music (hence the music reproduction licence) and/or words (hence the CCLI) printed on a sheet or displayed via a data projector instead of having to buy published hymn books.

Where I was church music director, we used music from a variety of hymn books, published over decades. That would have meant each parishioner would have needed a supermarket trolley to bring all their hymn books along each Sunday!

Of course not all music used in a church is covered by these licences – the person holding the copyright must contract with CCLI/MRL to represent them. Once a year every church is required to make a declaration of the music used and the number of regular parishioners. The annual fee from all churches is then divided amongst the contracted-in composers, obviating the purchase of hymn books. That sounds fair and reasonable.

Dr Chris Molyneux
Simon's Town

■ I was shocked about the issues discussed in "Good copyright, bad copyright" (*nose*135). In business, my only bad experiences have been with very religious groups. Religion does seem an easy way to make money. I had a good client in Joburg, an accountant of a large business. He resigned to join one of these churches as the financial director and sort of partner, and told me he could never hope to earn the same type of money anywhere else.

Bev,
Plettenberg Bay

It has to be one of "those" churches. – Ed.

Crookery pokery

The Tshwane University of Technology (TUT) has noted with concern the article in *nose*135 relating to crookery in hospitality training and the false claims made by a Dr Herbert Derendinger.

The university have never been associated with this person, either directly or through its affiliation with the former Technikon Pretoria.

The university has instructed its attorneys to act swiftly to stop this person from making any further false claims.

The courses offered by TUT are all registered on the National Qualifications Framework and accredited with Saqa and not with Theta as he claims. Secondly, the qualification he is referring to is in professional cookery; TUT has not at any stage (pre- and post-merger) offered a course in professional cookery.

The university's Department of Hospitality Management offers a course in Hospitality Management from a National Diploma up to B. Tech level and a joint Master's in Tourism and Hospitality. TUT has never offered the subject at doctorate level.

It needs to be emphasised that the National Diploma is a three-year qualification.

It is extremely sad when young people are lured into

> **"Are Discovery remunerating staff for refusing claims, as is now common in the USA?"**

Gus

"Waiter! There's no fly in my soup!"

costly scams such as the one that was highlighted in *noseweek*. Should these students still be interested in furthering their studies in professional cooking, an option for them would be to apply at the Cape Peninsula University of Technology (CPUT) who are in the same association with TUT in offering Hospitality Management, however, they also offer professional cookery.

I wish Mr Barnard and the other students who were victims of the scam better luck and success in their future endeavours.

Willa de Ruyter
Tshwane University of Technology

Conservation cruelty

Not only does the Western Cape government need to establish a rescue plan for wild animals affected by veld fires and other natural disasters; they need to see how it will correlate with the onerous permit restrictions imposed by Cape Nature Conservation.

We are currently dealing with a Barrydale sanctuary where CNC will not entertain the release of indigenous wildlife further than 100km from the sanctuary. This is a factor leading to the extermination by CNC of over 50 indigenous primates at the centre – some by shooting with no silencer.

More specifically, the sanctuary may technically not receive or rescue wildlife from further than 100km away. Other Western Cape sanctuaries are bound by similar conditions which, they maintain, are impossible as there are no nearer viable sanctuaries. Add to this the flat-out, obstructive denial of access to information by this provincial department.

Imagine if there were a veld fire similar to the horrific one in Australia – how would the imposed permit restrictions affect potential rescue operations, since most wildlife would not be given sanctuary and safety, simply because of distances?

It is about time the Western Cape cleaned up provincial departments, making them transparent operations, concerned for the heritage entrusted to it. The lack of accountability, transparency and vision leaves many connected to conservation deeply disillusioned.

Despite the well-argued lip service by the likes of Gareth Morgan, the DA's political will to address environmental concerns at grassroots level appears to be lacking. In Bedfordview, a DA ward, they openly pander to illegal developers at the expense of our green lungs – then treat residents who dare to object in a dictatorial, rude and unprofessional manner. As Beverley highlights (in Letters, *nose*135), what then is the difference between them and the ANC? Very little.

Samantha Jane Martin,
Bedfordview

■ It may be an expensive exercise but if a rhino is worth R500 per gram, then to spend a few bob saving its life should be economical.

It would be simple to dart all the rhino population, drill a large number of 2mm holes into the horn and insert a potent supply of arsenic or some other long-lasting organic poison akin to curare (poison used on arrows) to make the horn resource singularly undesirable.

To help save the animal, the horn could also be colour-coded, rather like the purple in methylated spirits, to warn would-be slaughterers that this supposed aphrodisiac or medicine is seriously undesirable.

We have a lot of very clever graduates at the CSIR and something along these lines should be a doddle for them to concoct.

John Bewsey
(Pr Eng),(Pr SciNat),CE,CSci,
By email

Another dissenter

Thank you for the job that you do. The articles that I've read in *noseweek* are different and in depth – and have been an inspiration to me.

I now plan to launch a weekly magazine of my own in Gauteng, called *Heresy*. It will be published online and in print, and the first issue will appear in February.

I will keep encouraging my friends to read *noseweek* for insightful articles.

Bakoena Manoto
Johannesburg

Thanks for the compliments and our best wishes for your new venture! – Ed.

Forearmed

In your November 2010 editorial (*nose*133) you drew a parallel between how, two centuries ago, it was customary for chieftains in British Caffraria to be paid off in brandy and trinkets by European traders for delivering up their own or neighbouring tribesmen into slavery or other forms of economic exploitation – and how, more recently, European arms traders have similarly exploited the moral and intellectual weakness of South Africa's leaders and its dominant political party.

There was no need to seek a historical parallel: European arms dealers, in fact, treat the South African government and ruling party in exactly the same way they treat all governments and ruling parties in Europe. They wish simply to drag South Africa down to Europe's level.

As for the "impending catastrophe": eternal vigilance is the price of freedom. Anyone who has lived in the USA will testify that after two centuries of democracy, their newspapers each month report the arrests or impeachments, prosecutions and jailings for corruption of parliamentarians, provincial legislators, mayors, police chiefs, judges, and prison heads.

Thanks to the vigilance of *noseweek* and other whistleblowers, and to our Bill of Rights, we will succeed at the same eternal struggle as other democracies do.

One of our prime arms deal corruption suspects, BAe, has already been fined under new anti-corruption laws that did not exist two decades ago. The US Foreign Corrupt Practices Act will also make life more difficult for rascals.

& I will be subscribing to *noseweek* for life!

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Fraud and the gentle art of image enhancement

THIS *noseweek* has developed into something of a theme edition: featuring the art of simulation – making things appear to be what truthfully, they are not – or, at least, not quite. From our lead story all the way through to the amusing tale of how the Melissa of Melissa's coffee shops and food stores once "doctored" her profile in a popular women's magazine to fit the pastoral innocence required by the corporate image.

Two recent news events that have featured in the media elsewhere, follow the same theme and are worth a mention here.

Noseweek regulars will recall our shocking disclosures some while back about how Ansbachers, a division of the FirstRand group, designed a scheme that simulated legitimate offshore transactions but was, in fact, in contravention of currency control regulations and in fraud of the revenue, exposing clients to prosecution.

Many found our story unbelievable. It now emerges from a judgment by a full bench of the Supreme Court of Appeal, delivered in December, that at about the same time the Ansbacher deals were going down, other divisions of the same bank were secretly marketing to selected wealthy clients another elaborate scheme specially designed to simulate a legitimate bank loan but which was, in fact, a criminal scheme to defraud the revenue.

In case you didn't believe us then, now you have the Appeal Court's word for it:

From the Appeal Court judgment in the matter of the Commissioner of the South African Revenue Service vs NWK Ltd (the old North West Co-op, and still a major marketer of maize) we learn that, over a period of five years, from 1999 to 2003, NWK claimed deductions from income tax in respect of interest paid on a R96m loan ostensibly obtained from Slab Trading Company (Pty) Ltd, a subsidiary of First National Bank (FNB).

In reality, NWK had borrowed only R50m, but the bank had contrived a scheme to fake or simulate a much larger loan amount – and therefore interest payments on it – in order to be able to claim bigger tax deductions.

NWK's finance director, Mr E Barnard, testified how, in January of 1998, two representatives of FNB, a Mr Louw and Mr McGrath, visited him and offered a "structured finance" loan facility to NWK. Shortly afterwards Louw and Mr J van Emmenes, also from FNB, wrote a memo to the general manager, group credit, FNB, on the proposal to offer a "structured finance facility" of R50m to NWK.

Presumably with the GM's consent, the proposal was made formally two weeks later in a letter to NWK. It was said to be confidential and "proprietary" to FNB, and NWK was required to sign a confidentiality undertaking to preserve FNB's "trade secrets and highly confidential and sensitive information". [Indeed!] A diagram set out the complex suite of transactions that would constitute the "finance facility".

(The whole structure is described, step by step, in the appeal judgment, and concludes with the judge's observation: "The reader might well say 'What a charade!'")

The court agreed with the commissioner's contention that the additional loan was a "mere paper exercise or simulation".

For the use of its secret, exclusive scheme in defrauding the Receiver of Revenue of R15.8 million in tax, FirstRand charged NWK a special up-front fee of R697,518, which, had the scheme succeeded, would, we suppose, have been a bargain.

But, in the end, NWK ended up paying FNB's fee plus double the tax: a nasty R32m – plus interest (which could amount to several more millions).

The taxman had originally wanted a 200% penalty, but NWK successfully argued in mitigation that FNB had approached NWK with the proposal, which was described as confidential and proprietary to FNB. and that NWK had relied on the expertise of the officials of FNB.

Noseweek readers might like to note that Henri Vorster, the lawyer who argued in favour of Ansbacher's fraudulent offshore "structures", was back in court arguing in defence of the scheme sold to NWK (and various other clients who have yet to be identified).

Our second judgment, which sounds deceptively mundane but deserves a great deal of attention, comes from the Southwark Crown Court in England. There, also in December, UK armaments company BAE Systems appeared for sentencing after pleading guilty

to a charge of failure to keep accurate accounting records as required by the Companies Act. The sentence handed down by Justice Bean – the company was fined £500,000 and ordered to contribute £225,000 towards the prosecution costs – gives no indication of the serious issues involved. It speaks, rather, of the power of the defence industry worldwide – and of political expediency.

In short, if you want to know what happened to the British investigation of bribes undoubtedly paid by BAE to secure its share of the South African arms deal, read on.

The sentence handed down by Justice Bean in fact brought an end to a long-running corruption investigation by the UK's Serious Fraud Office (SFO) into *all* BAE's corrupt activities overseas.

The basis of the negotiated plea was that BAE would make an *ex gratia* payment to Tanzania of £30m, less any financial penalty imposed by the judge. In return, the SFO would terminate *all* ongoing investigations into BAE; there would be no further investigation or prosecution of *any* member of the BAE Systems Group for conduct *before February 5, 2010*; there would be no civil proceedings against any member of the BAE Systems Group in relation to matters investigated by the SFO; and no member of the BAE Systems Group would be named in any prosecution that the SFO might bring against another party.

[Extraordinary! Many, including concerned South African citizens, would argue that BAE got by far the better half of the bargain. No more investigation of the billions paid by BAE to secure its share of the 1999 South African arms deal – and no doubt many others since – all for a small payoff to Tanzania?]

Some background: in February 2010 BAE reached a global settlement with the US and UK authorities in respect of long-running and high-profile corruption investigations. In neither instance did the company plead guilty to corruption. In March, BAE concluded its plea agreement with the US Department of Justice for $400 million. In the UK, it was announced that BAE would plead guilty to a Companies Act offence, and that it had agreed a settlement of around £30m with the SFO. Two organisations, Corner House and the Campaign Against Arms Trade, sought judicial review of the charging decision on the basis that it failed to reflect the gravity and extent of BAE's alleged bribery and corruption, and did not provide the court with adequate sentencing powers. However, the Administrative Court refused the application.

The long delay in bringing the case to court for sentence may have been prompted by two significant cases heard in the interim: Innospec and Dougall. The adverse comments made in those cases by sentencing judges at Southwark Crown Court may have prompted the SFO to consider its position carefully before committing the BAE matter to a court hearing.

In March 2010, Lord Justice Thomas sentenced chemicals company Innospec for corruption offences. He commented on the SFO's approach to criminal plea negotiations, and questioned the use of the SFO's civil powers for corruption cases and the legality of global settlements. The deal had restricted the judge to imposing a fine of $12m, which he felt was inadequate.

In April 2010 Robert Dougall came before the court expecting to be given a suspended sentence. He had cooperated extensively with the SFO and had entered into a plea agreement. However, Judge Bean did not feel that he was bound by the defendant's expectations and sentenced him to 12 months' immediate imprisonment. The sentence was subsequently overturned on appeal, but not without the Court of Appeal confirming that sentencing cannot be negotiated by the parties, but remains within the exclusive remit of the courts.

The BAE hearing in December began with the judge asking why there was no corruption charge when the obvious inference was that bribes had been paid by BAE's agent in Tanzania. After hearing submissions, the judge had to accept that the prosecution had no evidence that BAE took part in a conspiracy to corrupt decision makers in Tanzania or that the agent had paid bribes.

The payments in question, which amounted to £12.4m, were described in the accounts as being "provision of technical services", although it was submitted that a more accurate reference would have been "public relations and marketing services". The judge commented that it seemed "naïve in the extreme" to believe that the agent was nothing more than a well-paid lobbyist. In reality, BAE was paying an agent in Tanzania (through a Tanzanian company and an offshore shell company), and was asking no questions about his use of its money. [A well-established technique for paying deniable bribes – see *nose*120 for how Siemens did it.] It was accepted in the basis of plea that "there was a high probability that part of the £12.4m would be used in the negotiation process to favour" BAE. The result was that Tanzania paid an inflated price for radar equipment, with the agent's fees representing 30% of the contract price.

The judge sentenced BAE on the basis that the services had been wrongly described in the accounts in order to conceal the fact that the agent was receiving the payments to use as he wished in pursuit of the radar contract. He criticised the settlement agreement and said he was "surprised to find a prosecutor granting blanket indemnity for all offences committed in the past, whether disclosed or otherwise" – something the US Department of Justice had not done in its $400m settlement with BAE earlier in 2010. He said he was under "moral pressure" not to impose a greater fine, as this would reduce the amount to be paid to the people of Tanzania.

Anti-corruption campaigners have had a particular interest in the case and have regularly expressed unease about the SFO's ability to bring BAE to justice.

UK lawyers have noted that the BAE sentence throws the future of plea negotiations into greater uncertainty, raising questions such as: What determines whether companies are charged with corruption offences? When is a Companies Act accounting offence an appropriate charge? Can cooperative defendants expect to go to prison? Is it merely a matter of time before a judge refuses to accept the terms or settlement figure in a plea agreement?

This account of the case is an abbreviated version of a report by Jonathan Pickworth and Neil Gerrard at DLA Piper UK LLP, which first appeared – and may be found – at www.InternationalLawOffice.com

The Editor

Democracy dies in darkness

ONE OF noseweek's (many) contacts in the legal fraternity kindly sent us a transcript of an interview conducted by one James Lewis of the International Bar Association with legendary Watergate journalist Bob Woodward. Much of what he says applies equally here in South Africa.

Here's Woodward on open government: "There is a tendency towards secrecy, which is unnecessary. Things are hidden that don't need to be hidden. The public is eliminated from the debate too often. The book Obama's Wars takes you inside the White House. You get to see exactly what was said, verbatim… all new information… that the public should know about.

"So the big danger in all of this is secret government... In the end that's what will do us in, in the United States. Whoever said it, got it right: that democracies die in darkness... sometimes it's painful because in-fighting has exposed some personal animosities, (but) transparency works, makes the institutions better and it makes democracy function much better."

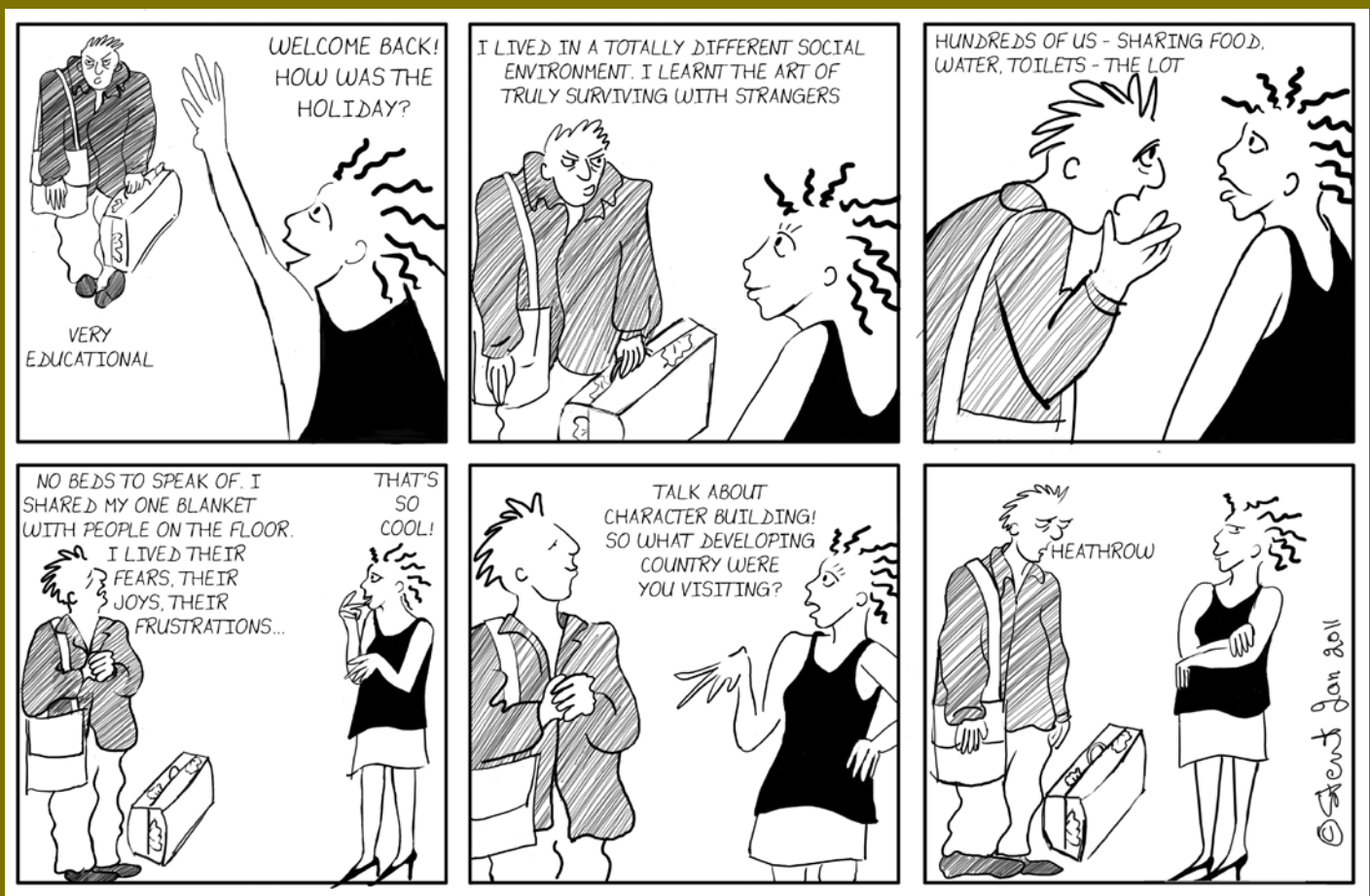
Woodward on the role of journalists – especially in the light of suggestions that they could've done more to stop the war in Iraq and even prevent the financial crisis: "And so the job of the journalist is to find a way to eliminate the darkness and explain... we have a responsibility to get those stories early and develop the evidence. And we didn't. And I'm at fault on the WMD (weapons of mass destruction) in Iraq... I had sources who told me the evidence about WMD in Iraq was skimpier than they're saying... I wrote a story before the war, saying there's no smoking gun evidence, no hard evidence of WMD in Iraq. I should have been smarter. When there's no hard evidence, what do you have? You can't be certain. I should have been much more inquisitive and aggressive."

On the media's lack of appetite for investigative journalism, especially in the light of its high cost: "I'm troubled by it... there's going to be a big price to pay because we're not into enough people's business and it's much easier for them to hide and do their business behind closed doors in secret... somebody's got to figure out the business model so that journalism can make money and then hire more staff."

On the role of the media: "I think it's the responsibility of the [US]Congress and the public and journalists to hold people accountable and not accept the spun version... It's the essence of accountability."

And, finally, on power: "The President has extraordinary power. There is an almost unsafe concentration in the presidency."

Stent



Roque trader

The popular Resilient property fund bears an uncanny resemblance to doomed Supreme Holdings

IN JANUARY the *Financial Mail* named its 16 "hot" picks on the JSE for 2011. In the property sector, the FM's hot choice is a property fund called Resilient, which "has had the highest distribution growth in the sector" and, in the *FM*'s estimation, "now probably has the best management team in the sector".

Maybe. And maybe not.

The *FM* forgot to mention the ghost that haunts Resilient's hallowed, small-town malls: an apparition from the past that should send shivers down the spines of many an investor.

PIC: Avusa

Des de Beer

Roque Hafner, a Swiss national, has for some time been playing a major, even critical, role in many of the Resilient property group's multi-billion-rand property- and share-related deals, yet nowhere is he officially associated with the JSE-listed company. In fact, rarely does his name appear in any of the transaction documents. The reason for this may have something to do with his role, 20 years ago, as financial director of Supreme Holdings, a scandalous corporate collapse that, in its public impact, was second only to that of Masterbond.

In an article published in *Auditing SA* (Summer 2007/8), a well-remembered journalist, the late Deon Basson, wrote of Supreme: "It was impossible to gauge the liquidity of the [Supreme debenture scheme] accurately because the company refused to make available financial statements... the directors were initially reluctant to make available their debenture registers for inspection...

"In 1994 the liquidators exposed the scheme for what it really was. Supreme's overheads and interest payments had long exceeded its revenue... the group survived for more than six years because it kept issuing debentures. Supreme did business as an insolvent company... the directors knew about it but kept investors in the dark. They showed very little respect for the law, their responsibilities in terms of the Companies Act, or the regulatory authorities... Substantial amounts were transferred to secret accounts for the benefit of directors."

A report in *Die Burger* on May 13, 1993, refers to the arrest of Roque Hafner the previous day on charges related to the issuing of debentures to the value of R280m and preference shares for another R40m to members of the public, while Supreme had, to his knowledge, long been insolvent. He was released on bail of R130,000.

Noseweek has been unable to trace how the criminal case was concluded – if it ever was. But by the time the Appeal Court gave its judgment in the civil matter of (Valerie) Durr vs Absa Bank four years later, the generally held view that Hafner was a sly crook and a rogue had not changed. In the case before the Appeal Court, Durr was suing Absa for the bad advice its broker had given her – to invest in Supreme debentures. The appeal judgment neatly sets out the facts:

"The affairs of Supreme Holdings and Supreme Investments were inextricably interwoven. Neither was a listed company. The moving spirits behind them were one Ronbeck, an attorney, and one Hafner [our Hafner], an accountant.

"They raised large sums of money from the public. At the time of liquidation they owed debenture holders some R280m (on what were described on the certificates as "secured debentures" but which were, in fact, not secured). So-called preference shareholders were owed another R40m. ...The means employed to raise money were... to offer a return of some one-and-a-half to two percent above the fixed-deposit rate... while holding

out to the world that Supreme had a sound financial base.

(Which lends a potentially chilling echo to that bit about Resilient having "the highest distribution growth in the sector", what?)

"During the course of the 1990 audit the auditors [finally] realised that Supreme was insolvent. In order to prevent this being reported, an increase in capital was fabricated retrospectively. After January 1989, not a single prospectus was issued, although money was being raised from the public wholesale. ...Again deceit was involved, but mainly of a kind that only a detailed investigation would reveal."

All this raises the question: Why would Desmond de Beer, MD and "moving spirit" of the Resilient group today choose to associate himself so closely with Hafner, given also that De Beer, a former Nedbank and Syfrets Properties employee, is known to have been involved with Hafner from early in his banking career and cannot therefore claim not to know about Hafner's role in the Supreme scandal?

A closer look at some of the Resilient group's accounts and activities in recent years suggests some answers. (This is quite apart from noting that several directors of companies in the Resilient group were formerly executives in the Nedbank group – suggesting that the whole Resilient scheme of business might be yet another "creative product" of the Nedbank school – rather like the sadness that was Acc-Ross, where, as it happens, one of the leading rogues was also a De Beer.)

On page 42 of the Resilient Property Income Fund's annual report for the year ended December 2008, it is recorded (in note 8) that the company has lent R86.3m to an entity called Amber Peek Investments (Pty) Ltd, that the loan is unsecured, is for 10 years, and bears interest at prime-minus 1% – all of which suggests a "most favoured son" relationship. So who might that favoured son be?

Amber Peek has one director: Roque Hafner.

And what was the purpose of the loan – or, rather, how was it supposed to advance the interests of Resilient's shareholders? Why, otherwise, is the MD's friend and associate favoured with a large, unsecured, long-term, low-interest loan from a public company? And, finally, were Resilient's non-executive directors fully aware of all the circumstances of the loan to Hafner's company, and did they approve its purpose?

Then again, some of the latter directors might have had personal reasons for not wanting to rock the boat with unnecessarily provocative questions. But more about that later.

Meanwhile, a bit of sleuthing by some smart investigators has turned up some facts which give a fair indication of what the most likely purpose of the loan was. But it's a purpose most directors would not want to be seen approving, assuming they wish to stay out of jail.

Amber Peek, it appears from an analysis of net monthly share trades published by I-Net Bridge, used the money it borrowed from Resilient to trade – furiously – in Resilient's own shares and those of three other JSE-listed companies in the Resilient group: Capital Property Fund, Pangbourne Properties and the since-delisted Monyetla.

Between June 2008, when it traded its first R112m-worth of Resilient units, and February 2010, when it sold the last R68m-worth of Resilient units, Amber Peek traded these shares back and forth, generating a turnover in Resilient shares of over R530m. In the same period and in similar fashion it traded Capital shares worth over R213m, Pangbourne shares worth R435m and Monyetla shares worth R13m.

Based only on month-end balances (there might have been many more trades within a month), Amber Peek succeeded in moving or "churning" a gross trade of at least R1.2bn-worth of Resilient group shares through the market, using just the R86.3m it had borrowed from Resilient for that purpose. (No evidence was found of it having traded in any shares other than those of companies in the Resilient group.) For Resilient's 2008 financial year, Amber Peek's trades accounted for a substantial 14.1% of total volume traded – all of it in the second half of the year. In the following financial year the trades accounted for nearly 12% of total volume of Resilient shares traded on the JSE.

The Resilient group's leading stockbroker is said to have been BoE Stockbrokers in Durban. If so, Nedbank would do well immediately to investigate the goings-on there, too.

Maybe the independent directors of the affected companies did not notice what was up – or maybe they didn't care to notice. Consider the circumstances of Dr Iraj Abedian, former Standard Bank chief economist and independent non-executive chairman of Pangbourne Properties Ltd, one of the shares involved in the Amber Peek trades. On page 34 of Pangbourne's 2008 annual report, it is noted that a loan to Pan African General Equity Properties (Pty)Ltd has been impaired by R11.5m (effectively this amount of the debt has been written off) as a result of "doubts regarding recovery".

Pan African General Equity is, of course, a company in which Abedian has a major personal interest. That's not all: a loan to a Pan African General subsidiary company, Aspire Financial Services, was also written off for an additional R9.2m. Given that impairment, how independent could the good doctor afford to be? (Resilient's own attorneys, Fluxmans, too, we are told, can find nothing untoward about the Amber Peek loan and share dealing – but how independent are *they* paid to be?)

In the real world the overwhelming suspicion must remain that the purpose of the loan by Resilient to Amber Peek was to facilitate manipulation of the market in Resilient's own

Some of the directors might have had personal reasons for not wanting to rock the boat

shares. These and other factors which we will discuss in due course must call into question the true value of Resilient's shares, which have, inexplicably, maintained a premium rating in the listed property sector and typically trade on a yield comparable to sector heavyweight Hyprop – this, despite the fact that its assets bear no comparison to Hyprop's.

Also of concern is the growth in distributions that Resilient has shown: two or three times higher than the sector average. Should we be recalling the words of Appeal Judge Schultz in his judgment in Durr vs Absa, where he recorded how Supreme had attracted investments from ignorant members of the public by offering "a return on debentures some one-and-a-half to two percent above the fixed deposit rate"?

ON THE SAME DAY in October 2009 that the Fortress Income Fund – a new member of the Resilient Group – was listed on the JSE, it purchased a "B grade" property in Pretoria North known as Shoprite Mayville for R196m, making it by far the most expensive property in the fund's portfolio of over 100 properties.

The seller, who was paid R100m in cash and the balance in Fortress units, was not named in the official transaction announcement – for good reason, it now transpires.

A Deeds Office search reveals that the seller was a company called New Heights 471 (Pty) Ltd – and that New Heights had bought the property for the Sasol Pension Fund in 2003 for R97m (with bond finance from Nedbank). Sole director of New Heights, as at the date of sale to Fortress, was Des de Beer's close friend and business associate Roque Hafner. In fact, until just seven months earlier, De Beer himself had been the sole director of New Heights.

Which raises the question: Had Hafner deliberately been interposed as a front for De Beer in order to evade proper "related party" disclosure, as well as all the necessary approvals required for such a deal?

More than a year after De Beer resigned as sole director of New Heights, and had been replaced by Hafner, the company had still not changed either its registered address or its auditors, lending credence to the suspicion that no real change of ownership had taken place – or that they are partners acting in concert.

On the other hand, once the cash was in the bag, New Heights might simply have been discarded as an empty shell by a director who cares little for legal formalities. Here it is worth noting that while Fortress bought the Shoprite property from New Heights, it somehow contrived to transfer the R9.8m Fortress A and R9.8m Fortress B units offered in part-payment for the property, not to New Heights, but to RCG Trade & Finance, another entity of which Hafner is a director.

There's lots more. *Noseweek's* next issue will expose the role secretly played by Hafner in all those private placements of Resilient shares, some great property deals done by Resilient directors for their personal profit and follow the remaining six tentacles of the octopus all the way to some of its offshore hiding places. In the meantime, watch out for those "hot" picks – you might just get your fingers burnt!

Navistar's MXT

HIJACK!

SA designers accuse giant US defence contractor of stealing their ideas

MAMMOTH US defence contractor Navistar Defense appeared in the Cape in September, pressing the flesh in preparation for pitches for new multi-billion-rand SANDF truck and armoured vehicle contracts. Bleached-toothed executives manned an impressive stall at the Africa Aerospace and Defence exhibition at Air Force Base Ysterplaat; simultaneously, the company was co-sponsoring a US-South Africa bilateral defence conference at the Spier wine estate outside Stellenbosch.

At Ysterplaat, Navistar proudly showed off their range of new-generation military trucks – the MXT and ATX6. Not on display, significantly, was Navistar Defense's latest version of its much-acclaimed, if controversy-mired, mine protection vehicle, the MaxxPro Dash, which the company is presently churning out by the thousand for the US military.

So who, you might ask, were those shadowy figures flitting among delegates distributing hundreds of flyers calling for Navistar Defense to be prosecuted, and urging the South African government to have no truck with the Warrenville, Illinois-based giant?

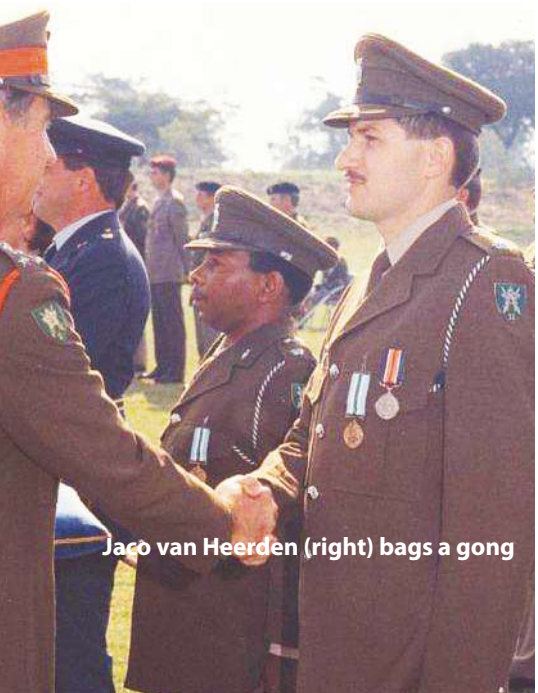
The insurgents' will-o'-the-wisp leader was former South African army major Jaco van Heerden (five years infantry; five years military intelligence), 43-year-old son of the late Colonel Koos van Heerden, intrepid leader of Task Force Zulu in that legendary 1975 Angolan incursion, Operation Savannah.

Jaco van Heerden maintains that the technology and know-how that has produced the winning MaxxPro Dash is not that of the Israeli company Plasan Sasa, as Navistar claims. It be-

longs, he insists, to his own little South African company, Armour Technology Services, and that Navistar Defense, in a cynically-premeditated plot, hijacked his development to avoid having to pay him agreed royalties that already exceed $100 million (R682m).

In 2007, Navistar was contracted to produce 8,014 MaxxPro vehicles for the US Military's MRAP (Mine Resistant Ambush Protected) programme. This was around 40% of the total MRAP tender, and worth some $5bn (R34bn) to Navistar. The open-ended contract is due to run for at least another year – in December Navistar announced a $123m order for a further 175 MaxxPro Dash vehicles for the US Marine Corps.

The MaxxPro, now in service in Afghanistan and Iraq, has proved a saviour not only for the troops but for Navistar International, its Fortune 500-listed parent struggling through a near-50-year industry low. Third-quarter income to July 31 showed net income of $137m (on revenues of $3.2bn), compared to a net loss of $12m the previous third quarter. The truck segment chalked up a profit of $227m in the period, compared to a 2009 third-quarter loss of $28m. Navistar International chairman Daniel Ustian partly attributed the rise to "substantial military sales" of the MaxxPro Dash.



Jaco van Heerden (right) bags a gong

Now Navistar Defense is casting a predatory eye on the next round of South Africa's defence splurge – to replace its ageing Samil army trucks and Caspar/Mamba armoured vehicles.

Van Heerden left the renamed-SANDF in 1995, and, in 2004, after the start of the second Gulf War, he identified the urgent need for a world-class mine-resistant troop carrier for US forces in Iraq and Afghanistan.

The following year he registered Armour Technology Services (ATS) and formed a team that included design and development engineer Johannes Jacobus ("JJ") van Eck and JJ's draughtswoman wife Marina. The couple had previously worked for Denel's Mechem division, where Van Eck personally designed and developed the Mamba 4x4 armoured vehicle and a rapid-attack vehicle, the BAT, for SA Special Forces.

Van Heerden was looking for a US drive train – chassis, engine, gearbox etc – for his embryo mine-resistant vehicle. He approached Navistar Defence – then called International Military and Government (IMG), a division of Navistar International. Navistar was enthusiastic and shipped a drive train over to South Africa for the prototype of Van Heerden's concept, which he called the Oryx. Everyone in the business knew that a massive US government tender for mine-resistant vehicles was about to be issued.

In May 2006, the US military announced the long-awaited MRAP programme. And just weeks later, says Van Heerden, Navistar Defense offered him $1m for the Oryx. He considered his brainchild was worth $20m, and rejected the offer.

Although that rang warning bells, all appeared well on the surface. In August, Navistar Defense came up with the licence agreement. This was signed by both parties. Under its terms, Navistar Defense pledged to manufacture, market and sell the Oryx mine protection vehicle to the US government, Canada and foreign military customers. It agreed to pay Van Heerden's Armour Technology Services royalties on sales. For the first 500 vehicles, these would be $20,000/vehicle; $15,000 for the next 250 and $12,000 for anything above that.

Van Heerden claims that, at the time he signed that licence agreement, members of his ATS team were secretly working on the development of a new mine-resistant vehicle for… Navistar Defense.

Having delivered the first Oryx prototype to Navistar, the Americans sent a second drive train to South Africa for a second vehicle. But, claims Van Heerden, the drive train arrived incomplete, with missing or second-hand parts, making it impossible for ATS to complete its contracted work.

On November 21, 2006, with just weeks to go before the MRAP tender was due for submission, the Americans asked Van Heerden to supply Oryx technical data to support its bid. It was then they told him that the bid was being made on "an improved version" of the Oryx.

Van Heerden insisted on clarification and a Navistar-drafted amendment to the licence agreement was produced and signed three days later.

Van Heerden signed for ATS and

The accusing flyer

Now Navistar Defense is casting a predatory eye on the next round of SA's defence splurge

John Barnett, who was local distributor development manager for Navistar subsidiary, International Truck and Engine Corp, signed for Navistar Defense as their South African liaison man.

The amendment agreement confirmed that under the original licence agreement, IMG (Navistar Defense) would proceed with the manufacture, marketing and sale of the Oryx.

However, IMG was preparing to bid on the MRAP tender and required "specific support from ATS in order to bid on the MRAP programme with an improved version of the Oryx".

ATS in turn requested clarification that the original licence agreement applied to the vehicles IMG was bidding on the MRAP proposal.

The parties agreed that "during the period of the MRAP bid and in the course of finalising an Oryx design for MRAP submission, IMG may make modifications to the Oryx design; however, regardless of how the design changes, it is agreed by both parties that the licence agreement applies to the vehicle that IMG bids on MRAP, currently due on December 8, 2006. Associated fees due to ATS will remain in effect."

Van Heerden believed that whatever changes Navistar Defense might make to Oryx's design, the original licence agreement remained in force and royalties to ATS were guaranteed. IMG (Navistar Defense) would accept technical responsibility for the Oryx modifications until the changes were accepted by ATS. The South African company ATS would forward to its new American partner in the venture all Oryx-related data and drawings in its possession by November 23. It would also conduct a blast test and provide verifications and certifications to IMG.

Van Heerden says he supplied the data and in December, Navistar Defense duly made its MRAP submission.

The knockout punch came the following month. On January 17, 2007, Navistar Defense told him it was cancelling the licence agreement.

Emails shot to and fro and in February, there was a conference call between the parties' lawyers. Participants were Navistar International's chief intellectual property attorney Jeffrey Calfa, their external attorney from Rouse Legal and, in Johannesburg for ATS, the respected corporate lawyer Michael Judin. Van Heerden says Judin was told in this call that the licence agreement had been cancelled because Navistar had decided not to go into the armoured vehicle business.

Van Heerden says he initially accepted this assurance, as well as the consequent cancellation of the licence agreement. However the following month, as he tells it, he was shocked to discover from US media reports that Navistar was still very much in the armoured vehicle business. Back on January 12, unknown to him, Navistar Defense had been awarded a first-stage win – a test order on the MRAP programme. This was just five days before the company had cancelled its licence agreement with ATS!

Seven companies were awarded test orders, in which each supplied vehicles for government testing. Tests were carried out that April after which four of the bidders, including Navistar Defense, were announced as MRAP tender winners. Navistar got the lion's share of the massive still-running award.

Van Heerden withdrew his company's acceptance of the licence agreement cancellation by Navistar, on the basis that the cancellation was based on lies. Navistar Defense responded by taking ATS to the International Court of Arbitration of the International Chamber of Commerce in London for failing to perform, claiming $425,000 (for a previous $250,000 payment to ATS, plus the two drive trains). ATS counter-claimed, saying the licence agreement had been falsely cancelled and was therefore still in force.

The arbitration hearing dragged on in five preliminary hearings for nearly two years. The International Court of Arbitration has no jurisdiction in the US – South African businesses doing business in the US please note – so Van Heerden was unable to subpoena vital documents from Navistar Defense. He waited 18 months for papers and says that when they arrived, less than a month before the final hearing was scheduled in March 2009, they were incomplete.

Van Heerden had already paid $45,000 in fees to the arbitration court. Now, before the final hearing could proceed, he would have to stump up another $5m – arbitration fees in this court are based on a percentage of claims. He says that, with funds run dry, he was forced (conditionally) to withdraw his counter-claim. In turn, Navistar Defense offered to drop its $425,000 claim and offered Van Heerden $600,000 in settlement of the whole thing. Van Heerden says he was forced to accept. "It was blackmail, under duress."

Earlier, in October 2008, Van Heerden had laid criminal charges with the US Attorney-General, the FBI and the US Attorney for the District of Columbia against Navistar Defense for tender fraud and ITAR (US International Traffic in Arms Regulations) breaches with the US Attorney-General, the FBI. None has proceeded.

In 2008 Van Heerden laid several criminal charges against Navistar. None has proceeded

Navistar Defense's side of the story is to be found in witness statements filed in the London arbitration. The company's president, Archie Massicotte, said he had met Jaco van Heerden in London on December 6, 2005. Van Heerden told him ATS had purchased a chassis from Navistar and modified it to develop a mine-protected vehicle called the Oryx. Navistar agreed to take the Oryx prototype to various military shows in the US to see if there was any interest from the US Army. "I thought the vehicle looked good," said Massicotte.

He confirmed that Navistar had decided to make the MRAP bid with the Oryx, but when the bid submission deadline was imminent, ATS had still not delivered key data, so Massicotte went to Pretoria to find out what was going on. "I found that ATS had only a handful of employees and that their 'office' comprised of a single card table with a computer on it," reads his witness statement. "The only 'production

facility' they had was a shed in which one vehicle was being assembled.

"I asked Mr Van Heerden to show me the drawings that ATS had for the Oryx. He danced around the issue and showed me drawings of different vehicles but none of the Oryx. Jaco claimed that ATS had built the vehicle without drawings. He said that the drawings would be done after the vehicle was in a more advanced state of design.

"I think that Mr Van Eck ["JJ", who was ATS's vehicle designer] probably concocted the vehicle in a garage with no drawings. I, personally, liked him and thought he was good. I did not, however, get such a good impression of Mr Van Heerden and felt that working with him would be a problem. On my return to Navistar I informed the team that ATS was nowhere near being able to provide the necessary data for the MRAP bid."

Massicotte disowned the John Barnett-signed amendment document committing Navistar to continue paying royalties to ATS. "I never authorised anyone to agree to the proposed amendment to the agreement," he said. "By then I was fed up with ATS. They had done nothing they were supposed to do and I was certainly not signing any more agreements with them."

In his witness statement, Massicotte said he first became aware of (Israeli company) Plasan's "MPV (mine protection vehicle) concept" in October 2006. On December 13, 2006, about a week before the MRAP bid was due, Plasan officials presented their final MPV concept.

"A prototype of the cab had been built and they had already done mine-blast tests in Israel. The design was very advanced and was radically different from anything else on the market."

When the bid deadline was less than 72 hours away, Massicotte called a team meeting to vote on whether Navistar would go for Plasan's MaxxPro or stay with the Oryx. "The team voted to switch to Plasan, despite the tight turnaround that would be needed, as the relationship with ATS had degenerated and the team did not think that we would be in a position to win the bid if we went ahead on the basis of what ATS had produced so far. Navistar worked around the clock for 48 hours to put together a new proposal with the Plasan vehicle."

Navistar Defense's purchasing manager Patsy Morello says that in the build-up to the MRAP bid, Navistar's engineers were "working on parallel paths": one with ATS's Oryx and one with Plasan's MaxxPro.

"We did not send anything from ATS to Plasan." From the presentation Plasan had given them that October, "Plasan were much further on in the game and already had more data than we ever got with ATS."

Van Heerden bases his entire case – that the original licence agreement is still valid because Navistar Defense lied about why they cancelled it – on that February 2007 conference call between Navistar's attorneys and ATS's Michael Judin. If the American lawyers really did tell Judin in that call that the agreement was cancelled because Navistar Defence was getting out of the armoured vehicle business, then Navistar is scuppered.

But is that what Judin was told? Again, Van Heerden admits that he has no proof. The crucial call was not taped; equally astonishingly, Van Heerden admits he never asked attorney Judin to put in writing for him exactly what was said. Judin tells *noseweek* that his firm handed the case to other attorneys in 2008, and without the file and the file notes he could not recall what was said in a telephone conversation which took place years ago.

Navistar ignores our request for clarification.

Among the unanswered questions: Why, if Navistar Defense is so sure of its innocence, did the US giant not see the arbitration through to the finish? Why pull out and pay $650,000 in settlement to Jaco van Heerden – that's a substantial R4.3m – just before the final hearing? Did it fear that even some of Oryx's technology may have found its way to the MaxxPro? As Van Heerden points out: "Who is responsible for the MaxxPro's hull design (a critical part of mine protection vehicles)? How come the angles of the MaxxPro's belly plate are exactly the same as those of the Oryx?"

The ATS team disbanded amidst bitterness and acrimony and today the company is a shell. All of Van Heerden's time and energy is devoted to goading the US authorities into prosecuting Navistar Defense – and thus lay the way for his planned new civil action in the US.

He confesses to having made some fairly wild statements about Navistar on his blog, in the hope they would enrage the US giant into suing him or any publication he can persuade to tell his tale – anything to get his day in court

Oryx prototype

"to open the whole can of worms" and get his hands on those multi-million-dollar royalties – made a great deal more difficult by his acceptance of that $650,000 in "full and final" settlement of his claim.

From Warrenville, Illinois, Navistar International's external communications manager Roy Wiley tells *noseweek*: "All I can say is that the matter has been settled through arbitration, with complete and unreserved agreement on both sides. I don't know why he [Jaco van Heerden] keeps trying to raise media interest in an issue that he agreed to settle."

Wiley attaches an apology Van Heerden made to Navistar in March 2009, saying he hopes it "puts an end to your interest and you can go back to chasing real news, not fiction".

The apology starts: "I write to you, Navistar Defense, in respect of the series of statements I have made against you over the past two years suggesting that Navistar had used Armour Technology Services (Pty) Limited's (ATS) trade secrets and intellectual property in producing and developing its MaxxPro vehicle. My reasons for doing so were unfounded, and were made in the hope that it would facilitate a settlement of ATS's dispute with yourselves.

"I now accept that these allegations were entirely unfounded and that I should not have made these statements to journalists, your competitors and the US military. I confirm that the legal dispute between us has been resolved and that as part of its resolution, as CEO of ATS, I have sworn an affidavit confirming that I had no basis for the allegations… I also undertake not to repeat such allegations in the future."

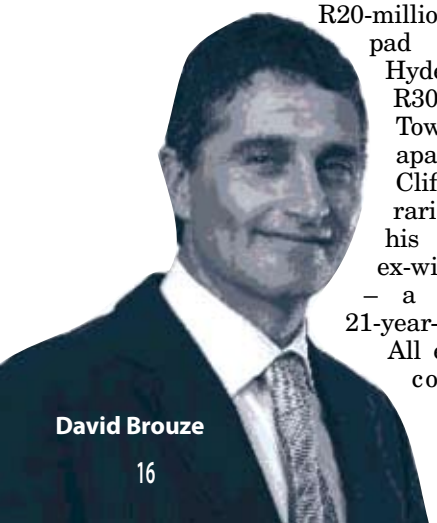
Van Heerden does not consider his apology and undertaking binding. "I was forced into that apology as part of the settlement agreement," he says. "They said if I didn't sign, they wouldn't pay the $600,000 and would get a summary judgment against me for R17m in legal costs."

PIC: Jack Lundin

THE gates of wrath

ORNATE GATES and a 24/7-manned guardhouse cauterise the wealthy residents of this exclusive stretch of Illovo's 5th Avenue from the rest of the world. But closed gates could not protect Karen Brouze from the enemy within – her allegedly abusive and philandering maybe-billionaire husband David Brouze.

Despite his much-denied great wealth, businessman David keeps himself out of the public eye. But in private, the former head boy of King David High School, who turned 47 on February 6, leads a colourful lifestyle now that he's departed from Karen and number 32 5th Avenue. He's got his new R20-million bachelor pad in Joburg's Hyde Park, a R30m Cape Town holiday apartment at Clifton, a Ferrari and – so his about-to-be ex-wife claims – a brand new 21-year-old squeeze. All essential accoutrements in the billionaire's desperate pursuit of his long-lost youth.



David Brouze

Lurid accusations – and fish – fly in billionaire's bid for access to youngest child

David is a chartered accountant and non-executive director (and former chairman) of the JSE-listed Austro Group, a leading supplier of woodworking equipment and cutting tools to the construction sector.

He married Karen, now 41, in December 1993, out of community of property but – and this is crucial to our tale – subject to accrual of estates. They separated in July 2010 and have three children: two teenagers and a two-year-old.

David's story

Our marriage has broken down irretrievably and there is no prospect of the restoration of a normal marriage relationship between us. Karen is psychologically unstable, she suffers from mood-swings, she's been under the care of a psychiatrist and psychiatric medication has been prescribed for her.

She suffers from an eating disorder, is emotionally cold and has never encouraged me in my work endeavours. Throughout the marriage she bought clothing which she never used which remained in packets in her cupboards. She bought large quantities of food, a great deal of which was thrown away.

There was hardly ever a meal at the dining-room table; the food served was always cut up, plain with no sauces or flavouring; Karen did not sit down, and normally ate at the stove. Very few friends visited over the years.

After… [the youngest child] was born I noticed Karen repeated herself continuously. She was continually crying and going up and down the stairs; she was out of control. For the first eight months of the baby's life Karen hardly touched her.

This period was extremely traumatic for all of us, especially for [the two

increased to R20m. Her estate has accrued by R200,000; his by R19m. The couple's total accrual: R19.2m. Divide by 2 = R9.6m. To balance things up, deduct the R200,000 of her accrual – and he has to give her R9.4m. If, as Karen Brouze believes, her husband's estate has soared to as much as a billion rand during their marriage, she stands to win a fortune on accrual.)

…In this regard he seems to think that he is above the law, despite him having signed an antenuptial contract in which the accrual system was included.

If I ever suffered from mood-swings or was emotionally cold, it was as a direct result of his conduct towards me. The only reason why David has not instituted [divorce] action or allowed me to do so is that he wants to finalise the financial aspect without having to calculate the accrual and settle the matter before the action is instituted.

Whilst I concede that our marital relationship has broken down irretrievably, I deny each and every one of the grounds as set out by David for the breakdown of our marriage. It is noteworthy that, despite the marriage relationship having broken down, David having taken a new 21-year-old girlfriend, and bought a R20m apartment for himself, he has not instituted divorce proceedings.

I have always encouraged him to succeed. He, however, is not prepared to share the details of such success with me, but I do know that he has made large amounts: in the region of R300m when he sold a share of Busby to Ethos; R50m when he listed Austro Engineering and approximately R200m when he sold his shares in Sentula.

A major contributing factor to the breakdown of our marriage was David's serial philandering tendency. He has conducted adulterous affairs. I do not suffer from any eating disorder and have never received any treatment for any eating disorder. David has attempted to vilify me and illustrate that I suffer from various obsessions and psychological, psychiatric and psychotic disorders. Most, if not all of these attributes, pertain to him. The only treatment that I ever received was for post partem depression after the birth of our youngest child. It was of short duration and does not impact in any manner upon my ability to be a good mother.

David is a manipulative liar. He sees no wrong in anything he does and believes that he can rule the world. In his own little world he thinks that he has already accomplished this. This has had a financial advantage in that he is extremely wealthy. Yet in private he acts in a very infantile manner, still sucking his thumb and insisting on spending breakfasts with his mother for extended periods of time.

He is furthermore absolutely obsessed with his physique, always trying to look younger so that he can impress younger women and physically pushing himself to the limit. David further suffers from a gambling disorder. I have numerous receipts for large amounts cashed at Monte Casino and other local casinos.

'He poured a goldfish bowl – with fish in it – over my head'

– Karen Brouze

teenage children]. Whenever Karen went near the teenage boy, he'd move away. and the teenage girl became more and more distressed, depressed and withdrawn.

As a result of the psychotic episodes Karen had – she contended that pizza boxes were flying around and that pictures were flying off pizza boxes – Weil [clinical psychologist Dorianne Weil] diagnosed her as psychotic. The following eight months were chaotic. Karen would be irrational. She would run down the driveway naked.

Karen's story

David and I separated from one another during July 2010. He vacated the matrimonial home and encouraged the two older children to go and live with him in the home he purchased for approximately R20m. Despite us being married out of community with an accrual, he has persistently failed to account for the accrual of his estate…

(The accrual system works like this: Say that on marriage the wife's estate consists of a house valued at R300,000 and the husband's estate totals R1m, when they divorce 10 years later, the wife's house has increased in value to R500,000 and her husband's estate has

He contends that [one of the older children] is in grave danger as a result of my reckless and irresponsible behaviour. I question what position he considers [the two teenagers] to be in [they live with David in his R20m Hyde Park bachelor pad] when he is in an intoxicated state and initiates drunken brawls or remains out until 3am with his young girlfriends.

David has attempted to alienate my older children from me by playing psychological games with them. He has ridiculed, belittled and assaulted me in front of the children. He then attempts to buy their love by over-indulging them with money and other gifts. In their presence, he has poured a goldfish bowl – with fish inside it – over my head, thrown plates at me and violently and viciously assaulted me.

The background

The foregoing comments and allegations about each other are extracted from affidavits filed by David and Karen Brouze in the South Gauteng (Johannesburg) High Court in December, when David brought an urgent application for access to his youngest child over the Christmas holidays.

The application signified an end to a "ceasefire" during which members of both families had sought to negotiate a David-inspired, mediated "overall settlement". Foremost in these negotiations was Karen's brother-in-law Monty Seligman and David's brother Keith Brouze (chief executive of leather goods group The House of Busby).

Last July David reported "significant strides" in resolving the matrimonial issues on a mediated basis in a two-day meeting with Karen's then-attorney, Alick Costa of Werksmans. Towards the end of September, a settlement proposal including financial terms agreed between David's brother and Karen's brother-in-law, was produced. David signed it, after making "certain changes".

"Foremost in my mind was the deleterious effect opposed litigation would have on the family," says the billionaire in court papers.

However, in Karen's view the proposed settlement was a cynical attempt by her husband to avoid the accrual factor becoming an (expensive) issue for him in their pending divorce. On November 16, she refused to sign and settlement discussions were terminated. Within 48 hours she had fired her attorney at Werksmans, Alick Costa (His bill came to more than R1.3m, excluding VAT).

Karen now had a new attorney, Sandton corporate lawyer Ian Levitt. And this new team set to work attempting to discover the extent of David 's assets (see box).

Despite their conclusion that the man is a billionaire, Karen observes in her affidavit that "David has on occasions tried to assure me and my advisors that he is insolvent".

After she refused to sign the settlement, relations between Karen and her two older children deteriorated.

"David alienated them from me because I did not sign the agreement," says Karen in her affidavit. She accuses her husband in court papers of being behind an SMS she received from her eldest on November 16, demanding her to reconsider the "peaceful" settlement way and telling her to stop communicating with him unless she did so.

Just days before Karen refused to sign, psychologist Dorianne Weil who had been acting as mediator in the settlement talks urged her in an email: "Do not allow yourself to get into a fight. I cannot tell you more strongly that I believe you are making a huge mistake if you decide to go that route. I fear greatly that even if you come out with added zeros, you will compromise your relationship with your children in the process."

After the settlement talks were terminated, the following exchange took place during a taped phone call:

Karen "David has manipulated my children. They are actually intimidated by him and he's done the same to you, the same to me, the same to my legal team. I actually will not be bullied by him any more, honestly, and he's used my children as soldiers in his war."

Weil "If you think he's used them as soldiers now, you ain't seen nothing yet."

First round in the resumption of hostilities was fired by David. On December 8 he brought an urgent application in the South Gauteng High Court, seeking extended access to their two-year-old over the imminent Christmas holiday.

On November 25, Karen's attorney Ian Levitt wrote to David's attorney Graeme Greenstein informing him that Karen intended spending 27 days at Plettenberg Bay — at the Beacon Island/Riverclub hotel — at a cost of R72,313. The plan was that the two teenagers would join them for a week (at an additional R17,000 for their room), and Karen would need an additional holiday allowance of R1,500 a day (total R40,500) for "entertainment etc". With flights (R9,804) her expenses would total R139,617. Levitt requested an undertaking that David would pay this.

Greenstein replied on December 2, saying David did not agree to the Plettenberg Bay holiday, but that he would arrange for suitable accommodation for Karen and their youngest child to spend the holiday in Cape Town, so that the child could visit him for two periods of four nights over the three-week stretch. If this was not acceptable, an urgent court application would be launched. The attorney added that Karen's actions in ceasing the mediation and negotiated-settlement route were perceived by her husband as "reckless".

On December 6, attorney Levitt responded: "We remain unaware of the extent to which your client's estate has accrued, which is required to enable us to determine whether or not any settlement negotiations conducted thus far have been *bona fide* or fair. The utilisation of the children as pawns in the process indicates that such negotiations were not *bona fide*. You are requested to refrain from utilising the children in the negotiations pertaining to the accrual of your client's estate, and the amount to which our client is entitled."

Karen, however, was now prepared to divide her Christmas holiday between Hermanus and Cape Town. In Hermanus, accommodation at the Sheraton Arabella would be acceptable; the

When she refused to sign the settlement, relations between Karen and her children deteriorated

Radisson, in Cape Town. David should pay all accommodation and flight costs in advance, plus R12,000 a week for Karen. She rejected David's requested two four-night access periods to their youngest child.

The following day Greenstein replied with David's final demand for access periods. Should Karen not agree, the urgent court application would proceed.

It was an *impasse* and David duly issued his urgent application the following day, December 8.

In his replying affidavit David declares that his wife's "volumes of pages on my financial affairs and a schedule of my alleged assets and liabilities" are "completely irrelevant". Karen was "more interested in financial aspects than the best interests of the children". David maintains: "The fact remains that we are married out of community of property. Whether our marriage is governed by the accrual system is not relevant to this application." Allegations regarding a 21-year-old girlfriend (which are not admitted) were also "not relevant".

David denies ever assaulting his wife. He admits he takes care of his appearance but that "this does not amount to an obsession" and "there is no crime in having breakfast with my mother occasionally". The billionaire concedes he goes to casinos from time to time, but denies he has "a gambling disorder".

When the matter came before Judge Majake Mabisela in the South Gauteng High Court on December 14, he dismissed the application, saying it was not urgent and that David Brouze had had ample time to negotiate his youngest child's holiday arrangements over the preceding months.

Although he lost the court battle, David did get an opportunity to see his youngest child over Christmas. Outside the court Karen's counsel Laurence Hodes SC, gracious in victory, approached David's counsel Ross Rosenberg SC and suggested that Karen would agree to reasonable visiting rights over the holidays. That evening the matter was resolved: the toddler could visit David in Clifton for three periods of two nights each.

By then, however, the couple had spilled the details of their torrid marriage and the accrual battle in open court for the public record — allowing all the plebs of the world a rare glimpse at just how care-free marriage can be when you're really rich.

■ Court testimony regarding the Brouzes' children has been excluded from this report.

Just how rich is David Brouze?

Here, from court papers filed by his wife Karen, is her best estimate of Brouze's assets at July 15, 2004:

Listed shares:
- House of Busby Ltd: R21.4m
- Local equities: R5m

Business stakes:
- Austro Group – Equity: R30m
- Austro Group – Loan a/c: R15m
- Vered Estates: R12.5m
- Digital Planet (13.3%): R1.5m
- Brixton & Eland Furn (25%): R10m
- Savannah Dancer, 50%: R0.5m

Property:
- 32, 5th Avenue, Illovo: R5m
- Brofam Properties: R3m.

Total: R103.9m. Liabilities nil.

(House of Busby and Brixton & Eland Furnishers are listed as trust assets but even if assets of the David Brouze Family Trust are excluded from the accrual of David Brouze's estate (in terms of clause 5 of their antenuptial contract), David Brouze's net worth back in 2004 was R72.5m.)

In her affidavit, Karen Brouze states:

"It's highly unlikely that his net estate will have decreased during the last six years, unless he has elected not to acquire assets in his own name but rather in the name of the David Brouze Trust or the other trusts."

On top of the old R103.9m list, Karen Brouze and her legal team have dug up more of David Brouze's past and present assets. These, she claims, include:

More assets:

■ Brouze's new bachelor pad at Unit 8, 89 Upfil Road, Hyde Park: R20m;

■ Stanlib Wealth Management Classic Investment Plan: R100m;

Direct and/or indirect shareholdings in and claims against:

■ Classic International Impex Holdings (Pty) Ltd (which holds or held an investment in Investec International Money Market Fund) – value approximately R60m;

■ Findon Investments Shareblock (Pty) Ltd (registered owner of the Clifton holiday home) – value approximately R30m;

■ 107,408,695 shares in Austro Group Ltd valued at approx R51.5m;

■ 1,038,351 Kaydav Group shares valued at approx R31m, through:
- Peregrine Equities – 81,984,696 shares,
- Classic International Impex – 2,237,000 shares,

■ Katzgold — 19,613,458 shares;

■ Claim on loan account against Amrod (Pty) Ltd: R30m;

■ Various bank accounts and trading accounts of which David Brouze is the beneficial owner/has access to and/or controls at Investec Private Bank Johannesburg, Peregrine Securities Ltd Johannesburg, Standard Bank of SA Johannesburg, Insinger London, Goldman Sachs London and Barclays Bank London.

■ 1/11th share in Hillside Lodge, Madikwe;

■ A fractional ownership in Pezula, Knysna;

■ A beneficial interest in a jet aircraft;

■ An (unknown) amount owing by Jonny Novick;

■ Transfer of R16m from Ideal Holdings (Pty) Ltd to David Brouze's Standard Bank account;

■ An investment David Brouze has or had in his name with the Israel General Bank Ltd, Tel Aviv;

■ In May 2004, R11.5m was paid into Brouze's Investec bank account – proceeds of his repurchase from Global Opportunity Income Fund Class B;

■ The same month a further R15.5m went into the same Investec account – proceeds of Brouze's repurchase from Global's Income Fund Class A;

■ US dollar transactions: $9.1m as at October, 2004;

■ An unknown interest in an entity known only as Elemental, situated in Australia;

■ 25% of certain funds held in Berwich International Investments;

■ Around November 1999, David Brouze led a consortium that acquired a large number of shares in Frame Group Holdings – Brouze alone held 7.5% of Frame's issued share capital, says his wife. This resulted in a change of control and a change of Frame's name to Furnex Capital Ltd. Brouze subsequently sold his Furnex shares, states Karen Brouze, for "a substantial sum";

■ Brouze was the beneficial owner of Busby Ltd quoted shares. When the company delisted from the JSE some 18 months ago, claims Karen Brouze, her husband benefited by more than R300m;

■ Sale of Sentula shares: R200m.

The full list clocks up to more than R1,000,000,000 – not counting the several unknown amounts – making David Brouze, at least on paper and by his wife's calculations, an extremely comfortable billionaire.

Concludes Karen Brouze in her affidavit: *My husband has, during the marriage, built an empire of assets, both in his own name and in the name of trusts. He has created a vast, intricate, complex web of companies in his name and trusts within South Africa and in foreign countries.*

THE HOUSE THAT PIERRE BUILT

How to turn a dream home into a crumbling jerry-built nightmare

IF YOU FOLLOW the local news you may well feel that the great and the good abuse the legal system shockingly. But even the lowest of the low sometimes get it right too.

The brothers Kotze, it transpires, are a bad lot, with a string of convictions for theft, fraud and assault.

This story involves only St Michael Pierre Kotze.

When Chris and Anthe Solomon moved from Mossel Bay to Gordon's Bay at the end of 2000, they bought a house that needed work but had great potential, being up against the mountain with a beautiful view over False Bay. New to town, the Solomons took the advice of a local and hired Pierre Kotze, trading as PK Building & Renovation, as a building contractor.

Kotze was very convincing: "I'm not only a builder but also a quantity surveyor, I do a lot of work for Group 5; I've done construction in the Middle East and Cyprus, I'm registered with the National Home Builders Registration Council (NHBRC), I have lots of contacts and I can offer the full package – architect, engineer, plumber and electrician".

So convincing was he that the Solomons were persuaded to go for concrete rather than wood, and to start work immediately rather than wait until June 2001 as they had planned

"You don't want to be building during the Cape winter", said Kotze, "and the price of materials is only going to go up, best to start right now".

Kotze started work in early 2001. The deal was that he'd be paid upfront for the materials — some R600,000 — but payment for labour would be in phases. Kotze was given the R600,000 (he wanted cash but the Solomons insisted on paying by cheque) and Chris Solomon, who was doing consulting work in Japan, returned to Tokyo, while Anthe stayed behind to supervise the project.

It was a nightmare from the outset. During the demolition phase, Kotze claimed he was entitled to all the materials that were being removed (which were apparently quite valuable). Then Kotze's labourers started getting aggro because they weren't being paid and Kotze started demanding more money to pay their wages – contrary to the agreement. Most worrying was that, even to the untrained eye, the workmanship was patently poor, with the concrete slabs that would support the multi-storey structure being inadequate. Whenever Anthe raised any concerns, Kotze simply turned on the charm and bought her roses.

Chris eventually arranged for a structural engineer to do an inspection. The report was damning: "We view the building as a safety hazard and strongly recommend that the building work cease".

When the Helderberg council became aware of the report, it ordered the Solomons to vacate the house. In June 2001 the Solomons fired Kotze.

All sorts of interesting things then emerged. The engineer Kotze had been using, Lourens van der Westhuizen, turned out to be unqualified and had been getting his (qualified) partner in Pretoria to sign off documents. Kotze's registration with NHBRC had been suspended many years back and it transpired that Kotze had never been employed by Group 5.

Kotze had actually spent very little

on buying materials.

The plans that had been approved by the Helderberg Municipality had exceeded height restrictions and building boundaries — Kotze had been bribing a municipal official to sign off on the work and Kotze had fraudulently signed council documents as though he were the owner of the property.

Shortly after firing Kotze, the Solomons laid a fraud charge against him. They also instituted high court proceedings against three parties: Kotze; the engineers; and the Helderberg Municipality. The building nightmare was about to become a legal nightmare.

First, Kotze was acquitted of the fraud charge, mainly, thinks Chris, because it was assigned to an inexperienced prosecutor. The high court proceedings were also a disaster. The first time the case came to court, some two years after its commencement, it was postponed because the Solomons' lawyers had failed to file a particular document – a lapse that required them to pay the Helderberg Municipality R35,000 for wasted costs.

On the second occasion, the quantity surveyor who was to testify for the Solomons, one Nick Monk, failed to pitch (he claimed not to have received the subpoena, and when he was contacted by the lawyers he made it clear he was going to be a hostile witness).

The Solomons' lawyers, attorney Ludolph Joubert and advocate Jerry Swanepoel, then persuaded the Solomons to drop the case against the municipality, accept a small settlement of R25,000 from the engineers (money the Solomons say they never actually saw — presumably having been swallowed up in that frightening swamp that is known as legal costs) and pursue their case against Kotze in the cheaper magistrate's court. (The lawyers initially suggested the Solomons accept a R15,000 settlement from Kotze).

The Solomons did agree to transfer to the magistrate's court, but they were angry when they found out that their advocate, Jerry Swanepoel, who had been paid an agreed fee of R50,000 to handle the trial, would no longer be involved as he felt that he had fulfilled his mandate by simply partially settling the matter on the steps of court.

So the case against Kotze moved to Bellville Magistrate's Court (the Solomons had wanted it to go to Strand but Kotze had refused as he was too well known there). The matter eventually came to trial, but because there was so much evidence, it ran for some 13 days, one day every couple of months. (Unlike high court trials, magistrate's court trials are set down for just one day, so if the matter doesn't finish, it resumes on the next available day, which could be several months away.)

The Solomons' attorney, Ludolph Joubert, claims Kotze's attorney Frank Raymond managed to delay the matter by often being late or unprepared (Raymond denies this, claiming he was always ready and that the delays were caused by the Solomons' legal team). Whatever the truth, the Solomons had to wait until April 2009 before getting a judgment in their favour, requiring Kotze to pay them R1.3 million – the sum they paid Kotze plus what it cost to put the work right, and interest. So after a full eight years, a result!

But that wasn't the end of it. Kotze's attorney, Frank Raymond, then applied for the reasons for the judgment, often a precursor to an appeal. Eventually Raymond did serve an appeal notice on the Solomons' attorney, but when this didn't go any further, Joubert made inquiries at the Western Cape High Court and established that no appeal was ever actually lodged. The Solomons were so angry at what they saw as a blatant attempt to further delay the matter, they tried to lodge a Law Society complaint against Raymond, but were told the complaint had to go through their own attorney.

Joubert told *noseweek* he thought he had written to the Law Society about Raymond – although, he said, he had been much more focussed on pursuing Kotze.

Raymond denied he had ever received notification of any complaint.

The Solomons' victory turned out to be a Pyrrhic one, because by the time a writ was issued, Kotze had done a runner, and the properties he had once owned in the Gordon's Bay area had been sold in execution by other creditors.

At one stage, tracing agents had tracked down Kotze to Estcourt in KwaZulu-Natal but before any action could be taken, he had moved on — possibly to Port Elizabeth or Port Alfred. Although the Solomons have a cellphone number for Kotze, they were told they would need a court order requiring the cellphone company to do a trace. Having already spent over R300,000 in pursuing Kotze, the thought of further legal proceedings has little appeal.

(Joubert said he knows of four attorneys who are looking for Kotze in order to serve writs, including one following a R300,000 judgment obtained in Hermanus.)

Noseweek managed to get hold of Kotze on his cellphone and asked him where he was. He was no more specific than to say "KZN". Asked whether he intended to honour the judgment, he claimed that the matter was on appeal. When it was pointed out that there is no appeal, he said: "With what must I pay him?"

Kotze said there was far more to the matter than *noseweek* knew, and complained he had been maligned in the earlier *noseweek* report about him and *noseweek* would no doubt do the same again.

Asked to tell his side of the story, he muttered something about the engineers being responsible for it being such a mess — the same unqualified engineer he had recommended to the Solomons.

That's pretty much where it ended.

It seems clear the man is a serial con artist, who will simply continue moving around South Africa taking innocent people for a ride. You have been warned!

Victory turned out to be pyrrhic, because by the time a writ was issued, Kotze had done a runner

Beware bankers bearing gifts

TAKE YOUR will seriously. Along with death and taxes, one other thing is certain: if you don't, nobody else will.

When Sarel Pretorius of Bellville died on September 7, 2010, wife Suzette Pretorius confidently assumed she would inherit his entire estate. After all, the couple had signed a joint will a few years back (on August 19, 2005) which provided that, on the death of either, the survivor would be the sole heir and that, if they died simultaneously, everything would go to the couple's four adult children: Morne Pretorius, Elandre Nell, Natasha Dye and Jacques Pretorius.

The will had been arranged for them by those nice people at Standard Bank, whose estates' business is called Standard Executors and Trustees. As we told you in *nose*108 in a story involving Absa titled "There's no free will", banks love drafting wills, and they charge very little for the service (Sarel and Suzette paid a mere R350 for their will). That's not because banks are wonderful organisations, of course, it's because they make sure that they're appointed executors of the will and administrators of the estate (in Sarel and Suzette's case, appointment was a condition of getting the R350 rate).

Being the executor and administrator is a lucrative little business, entitling the appointee to charge a fee equivalent to 3.5% of the gross value of the estate. As related in *nose*108, Absa was very reluctant to give up its appointment, when the son of the deceased wanted to do the administration himself so that he could preserve as much of the estate as possible for the heir, his elderly father.

There really is no free will

But there's a little problem in the case of Sarel and Suzette Pretorius: no one seems to know where the original will is. Suzette has a certified copy, as does Standard Bank, but the original is nowhere to be found. And that matters because apparently the Master of the High Court will not accept a certified copy unless instructed to do so by a court. And a court will only issue such an order if a formal court application is made.

But why the problem? Surely if there's no valid will the intestacy rules apply and the wife inherits? Well here's the rub: although Sarel and Suzette were married back in 1972, there was a little blip – in 1988 the couple were divorced. But they found that single life didn't suit them, so they got back together again almost immediately. They just never bothered to remarry. So technically Suzette was not Sarel's spouse at the time of his death, which means that if Sarel died intestate the estate goes to the four adult children.

Problem solved – surely, the children can simply donate the estate to the mother! Well, there's another snag: it's not all happy families and two of the children are prepared to hand everything over to the mother, but the other two aren't. What are the chances!

If Suzette is to inherit all that Sarel wanted her to inherit, it's critical that the original will is found, or that a

court confirms that the certified copy can be used. But just why is the original missing? Standard Bank is adamant that it never had it, with Jacinta Bassuday, legal manager of Standard Executors and Trustees, telling *nosewеek* confidently: "If SET did in fact hold the original, our records would reflect this". Standard Bank points to two strings to its bow. The first is that, when Sarel and Suzette had their will drawn up by the bank, they filled in an application form on which they ticked the "No" box in response to the following question (our translation): Do you want Standard Executors and Trustees to safely store your will?' (A bit of an ambiguous question – does the bank also offer a reckless storage option and, if so, is it cheaper than the R60p/m charged for the safe option?). The second string is that, shortly after the will was signed, the bank sent a letter to the couple reading (our translation): "We have received a copy of your will of August 19, 2005. It has been placed in our centralised storage facility for our records. Centralised storage has many benefits if the original will is kept there... If at any stage you want to place the original in centralised storage please contact us."

Not bad, but the opposing case isn't bad either! Suzette is adamant that the Standard Bank broker who drafted the will at the bank's Brackenfell branch (and who signed as a witness), one David Kotze, simply gave them a certified copy, and told them that the original would be held by the bank for safekeeping. In an email to Suzette's daughter, Elandre Nell, dated November 10, 2010, Kotze (who is no longer with Standard Bank) said this (our translation): "I confirm that I drafted your father's will for Standard Bank and confirm that the original must be with Standard Bank, given that I don't have any files for my clients, and given that I left them at the Brackenfell branch where I worked."

(We phoned Kotze and he was adamant that the original was left at the branch).

And Suzette is also quite sure that she and Sarel never received the letter from the bank about it having a certified copy in storage.

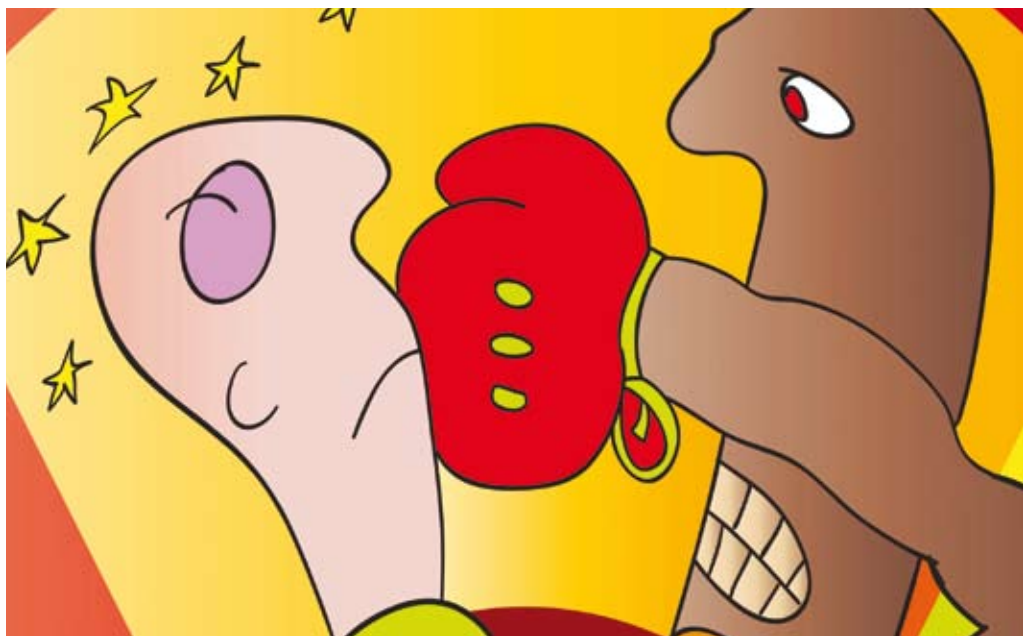
The application filled in by Sarel and Suzette contains a handwritten note saying that the couple were divorced but living together, which should have alerted the bank to the fact that preserving the original document would be critical if the will were to have any effect.

As with everything in life, it's all about money. Getting a court order validating a will isn't hard, but it costs money – R30,000 is the quote given to Suzette's daughter, Elandre Nell – money Suzette simply doesn't have. (The couple fell on hard times because of Sarel's ill-health and the estate, consisting of a little sectional-title unit in Bellville and an old car, both of which belonged to Sarel, is worth less than R500,000).

Suzette feels that Standard Bank, apparently having lost the will, should pay for the court application. But Standard Bank is showing absolutely no inclination to do that. In fact, the bank seems very keen to get shot of the matter. In an email to Suzette's daughter, Natasha Dye, estate officer Ann Zeelie, after stating that the bank hasn't got the original, said: "I confirm that your family attorney will be dealing with the administration of the Intestate Estate. We advise that we are now closing our file."

If the estate had been worth R500 million rather than R500,000, and the fees that could be charged some R17,500,000 rather than R17,500, would Standard Bank have been prepared to finance a court application? Just a thought… ◼

SLAP-HAPPY EVERSHEDS COP SLAP IN THE FACE



The sheriff is poised to pounce and seize the chairman's luxurious office furniture

A RECENTLY leaked document from the Eversheds chairman's office sheds some light on the abrupt resignation from the Sandton branch of that international law firm of leading attorney Imraan Haffegee.

Haffegee, a familiar figure in the legal world since he acted for former National Intelligence Agency boss Billy Masetlha (acquitted of fraud charges arising from the hoax email scandal of 2005), joined Eversheds in 2008 – only to bail out the following year.

Soon after his arrival, high-flier Haffegee, 47, was appointed to the firm's powerful five-strong Exco (executive committee) where he was charged with the task of driving transformation. One of the first things he did was to challenge the veracity of the BEE certificate issued to Eversheds for 2009/10.

In a memo addressed to then-chairman Terry Mahon and deputy chairman Lavery Modise, dated July 31, 2009 and headed *Parting Thoughts,* Haffegee pointed out that Eversheds's BEE rating of 8 was just one above being non-compliant (its scoring of 34% was only 4 points above the compliance level of 30%). This showing had been achieved in part, he said, on representations made regarding the proportion of black ownership of the firm (almost 20%).

However, maintained Haffegee:

■ In calculating the proportion of black ownership, the directorships of salaried directors had been included. "Salaried directors cannot be said to have any ownership," read his *Parting Thoughts.* "They receive a salary and bonuses and it can never be said that this amounts to ownership."

■ The correct calculation of the proportion of black ownership should be based not on the number of black directors, but be "a snapshot of the share of profits of black directors as a percentage of the total profit share." Based on the last profit share, he said, the equity share of black directors "is just under 8% (7.93% to be precise and a far cry from the 20% used for the BEE rating)."

Haffegee clearly considered that his employers had been cooking the books. He had intended sending his note to all of the firm's black directors and mentioned this to HR director Nikki Wood – who flew to inform chairman Mahon.

Finally Haffegee agreed to withhold his *Parting Thoughts* from the black directors; Mahon and Modise were its only recipients.

The note reveals the rift his BEE views had caused within the firm. But Haffegee clearly had no regrets. "While the legal and technical issues are important, the concerns of principle and integrity are even more important," he wrote. "I had raised these issues at Manco (management committee) and, to my dismay, these sentiments were not recorded in the minutes. It is in that light that I thought it important that I place on record that I had raised these issues and that Manco had adopted a different view.

"I believe the issues I raise ought to be debated and addressed at board level as part of the broader process of transformation."

And with that, after his "short stay" at Eversheds, Imraan Haffegee was gone.

Today, Eversheds continues to be plagued by controversy. Derek Rabin, current head honcho at the giant corporate law firm, faces a visit from the sheriff to attach moveable property worth nearly R70,000 from

his luxurious chairman's office at 22 Fredman Drive in Sandton City. For arrogant Eversheds has ignored a CCMA order to pay three months' salary to legal secretary Ursula Smith, who lost her job after being assaulted while at work by her boss, commercial lawyer and Eversheds director Peter Kemp.

*Nose*133 told how Ursula (that's a *nom de guerre*) was "aggressively slapped" by 49-year-old Kemp in a tussle over a lever-arch file in March last year. After complaining to human resources, she was told that her presence was disruptive and she was suspended for a month. On her return she was relegated to "float secretary" and walked out after a clash with another lawyer, Imraan Mahomed. HR director Nikki Webb told her the walk-out constituted resignation – and Ursula was out of a job.

The story related how a secret internal grievance hearing conducted by Eversheds deputy chairman Lavery Modise accepted Ursula's evidence. Modise ruled that Kemp had slapped her and been aggressive. However, Ursula was never given a copy of Modise's six-page Decision and only discovered her vindication later when she managed – probably improperly – to secure a copy. She has never been told what action, if any, was taken against Kemp.

Ursula's compensation claim to the CCMA was heard on November 8 last year and Eversheds was notified of the date by fax on October 19. But no one from the snooty law firm turned up for the initial conciliation meeting, which therefore proceeded as a default arbitration.

Commissioner Dan Pretorius found: "In the absence of the respondent's evidence, I am forced to conclude on the basis of the evidence before me that the respondent (Eversheds) made continued employment intolerable for the applicant (Ursula), amounting to an unfair dismissal." The commissioner ordered Eversheds to pay Ursula three months' salary in compensation, before December 15.

Not only did Eversheds not bother to turn up for the hearing but they failed to pay up by the ordered date – and as *noseweek* went to press, still hadn't settled the debt.

Normally, the next step would be for Ursula to have the award certified by the director of the CCMA as if it were an award of the Labour Court, and obtain a Writ of Execution under Section 143 (1) of the Labour Relations Act. The writ would be handed to the Sheriff who, in this case, would attach chairman Rabin's moveable office property and sell it to pay Ursula the money she is due.

But although arbitration awards are final and binding, Ursula is… well, Ursula. The 43-year-old firebrand considers that "three months' compensation after being assaulted is an insult"; she disagrees with "too many things in that award to just let it slide". So now she's off to the Labour Court, representing herself, to try to have her case re-heard – which wins Eversheds chairman Derek Rabin a breathing space before the sheriff descends on him.

The sad reality, however, is that Ursula Smith made a hash of the CCMA arbitration – and only has herself to blame for the unsatisfactory result. Her friends all urged her to take along Lavery Modise's clear and cogent "Chairman's Decision" which laid out the facts surrounding Kemp's assault in lucid detail, including his condemnation of the slap-happy attorney. But she didn't produce it, preferring to give rambling and tearful verbal evidence that was interrupted by Commissioner Pretorius, urging her to hurry up as another hearing was pending.

There is little doubt that had the secretary relied on Modise's Decision she would have received at least a year's salary in compensation. The three months' award was basically a slap on the wrist to Eversheds for not bothering to attend.

When asked her gross salary, a flustered Ursula replied R26,000/month – in fact Eversheds paid her R23,000. So the ordered compensation should have been R69,000 – not R78,000 – which was the figure in the printed award.

The volatile Ursula now sees herself as the champion of all downtrodden legal secretaries. "The sort of abuse, exploitation and intimidation that I endured at Eversheds is becoming far too common in the legal field – and it needs to be exposed," she says. "Furthermore, the CCMA and other organisations that are in place to protect employees' rights, need to view cases of this nature in the serious light which they deserve, and implement harsher compensation in order to protect us all in the future.

"Since the article in *noseweek* last November, I have had tremendous support and encouragement from other colleagues and employees, some who have shared their own experiences with me but are, as yet, too scared to come forward."

Chairman Rabin has not responded to *noseweek's* request for an explanation of why his firm did not attend Ursula's arbitration hearing. However, it is clear that Eversheds' behaviour in this whole affair is far from compliant with the Equality and Diversity policy of its London-based "parent", Eversheds LLP.

The Joburg office is one of 47 Eversheds network groups around the world, and all are expected to comply with this policy, which is endorsed by

PIC: Avusa

Imraan Haffegee (left) with Billy Masetlha

London chairman John Heaps, his chief executive Bryan Hughes and the board of Eversheds LLP.

It states that Eversheds is determined to create a working environment which is "free from any form of discrimination, harassment or bullying and within which all individuals are treated with respect, fairness and courtesy". Any breach "will be treated as a disciplinary offence".

On complaints and internal hearings (such as Ursula Smith's) the procedure is clearly laid down: "A full record of the progress and outcome of the investigation and any steps taken will be reported to the complainant at the earliest opportunity. We will protect individuals who make a complaint or assist in an investigation from harassment and victimisation. Any acts of retaliation or intimidation against the complainant will be treated as a disciplinary matter."

In Ursula's case, Eversheds:

- Never gave her a copy of Modise's Decision;
- Never notified her of what steps, if any, have been taken against Peter Kemp.

LOSING Momentum

Discovery's not the only medical aid that makes you sick

LAST month's *noseweek* might have left you thinking Discovery has cornered the market in crap medical aid service. Not quite. In fact, the market is fiercely contested.

South African businesses seem to get away with employing staff who are all at sea when confronted with someone who has the smarts sprout vague stuff about legality, morality and ethics.

Momentum Health certainly had no idea how to deal with Martin Horn, who was, until recently on a Momentum Hospital Plan. Horn paid his premiums by debit order, yet Momentum twice unilaterally suspended his cover under the pretext that he owed them money (something that can only happen if the medical aid messes up and refunds more than it should).

On both occasions, Momentum was in fact wrong – it actually owed Horn, due to late or insufficient reimbursements. And on each occasion Momentum decided not to phone or email him, but rather to notify him of the suspension by mail, which resulted in his being without cover for 24 days.

An angry Horn demanded three things from Momentum:

- A refund of the premiums for the period when there was no cover, roughly R1,500.
- To be paid for the six hours he wasted trying to sort the matter out, calculated at his hourly rate of R1,250.
- An acknowledgment that it is wrong for a medical aid to suspend cover for someone whose premiums are paid up.

His request stumped the Momentum employees and the matter was moved up to Deepak Maharaj, CA (SA), head of billing and membership. The correspondence between Horn and Momentum tells the story.

Maharaj thought hard-arse would be a good starting point: "The administrator has regrettably declined the request to refund the premium for the suspended period. Should you have had claims during this period the Scheme would have allowed payment… once the suspension was lifted. Once a membership has been suspended, the process followed is system-driven, letters are either posted or emailed as per the member's choice… This method has since been amended to e-mail."

Horn gave him short shrift: "I do not accept the arguments... as being at all valid from a moral, ethical or even a legal perspective. Momentum Health continues to totally miss the point concerning the very reasons that clients like myself pay substantial sums for private hospital cover... This cover, for which I have paid in full, was suspended by Momentum without any notice, twice... a total of 24 days. Momentum owed me money due to unpaid or otherwise maladministered claims; despite numerous phonecalls to try to get Momentum to do something about these many errors."

As for the claim that he would have been covered during the period of suspension, Horn was unimpressed: "I do not in any way accept the argument... which dishonestly implies that Momentum was somehow still 'at risk' for any medical expenses that might have been incurred during the suspended periods. This could only possibly be valid in the case of minor ordinary GP procedures where no pre-authorisations are required and invoices are only submitted to the scheme after the fact. Such instances can never occur in my case, since this is purely a hospital plan, and no private hospital ever provides any treatment without first obtaining an authorisation code.

"I have verified, by phoning Momentum's authorisations line, that such a code would not have been forthcoming during the suspension periods... the *de facto* position is that during these periods my family had no private emergency medical cover… our lives were placed at risk by Momentum's admin errors and careless procedures.

"I thus require an immediate refund... Far more important than these costs, I require an express apology from a senior source at Momentum, together with a written assurance that such a suspension due to Momentum's admin errors will never happen to me again in this manner, nor to any other member of the scheme...

"Should this not now be finally forthcoming, I will be submitting full details of this case to the Medical Aid Board at the Department of Health to check whether Momentum's practice of suspending the cover of people who have paid all their premiums is in fact legal. (I have verified that at least one other medical aid provider does not behave in this manner and considers this practice to be against the law.)

"However, should there exist a legal loophole allowing Momentum to do this, and should Momentum show no sign of a commitment to change its practice, I will not hesitate to release this entire email trail to carefully selected

members of the national press."

A difficult customer, best move this upwards! So Michael Temlett, head: client and employer services, stepped in with some smarmy stuff. "Going forward with regards to the issue of suspending clients without first making contact with them, our billing department is putting in place a process whereby clients will be contacted telephonically prior to the suspension of benefits... taking into account the inconvenience caused to yourselves and that you have been a loyal member of Momentum since July 2008, we have agreed to reimburse you the premium-related value requested in your email of R1,552.

"I apologise for the frustration and inconvenience you have suffered, both in attempting to have your claims reimbursed and in resolving the situation."

You can fool some of the people some of the time, Michael. Horn's response: "I am pleased to hear you... will in future phone clients before suspending them. I also accept your apology for the 'frustration and inconvenience'... However, I am disappointed to note that, like all of your colleagues, you have studiously avoided any response whatsoever to the material issues I have raised:

- The fact that you put my life and those of my family at risk by suspending our emergency hospital cover for 24 days. The morals, ethics and legality of suspending benefits of scheme members who have paid all their premiums and owe Momentum nothing (Or indeed those who might owe Momentum money due only to Momentum's own admin errors);
- The fact that you have wasted at least six hours of my professional time… in trying to get a basic resolution to this, let alone a final material response to the deeper issues it uncovered. Without my taking the time to do Momentum's job… in chasing after your ineffective staff to rectify their numerous admin errors, this issue would never have been resolved. If you do not believe Momentum is liable for my costs in doing your work for you, then please explain who you think should have the 'privilege' of covering them?"

Temlett to Horn: "I do not entirely agree with your statement that we placed you and your family's lives at risk for 24 days due to our incorrect suspension of your benefits... in practice, both our Pre-authorisation and Debtors departments maintain closely aligned working hours, meaning that, yes – had you or your family needed private hospitalisation and sought an authorisation – the authorisation would have been delayed. Depending on the nature of the treatment required and/or the severity of injuries, there would have been a process of checking between these departments as to the reason for the suspension, the value of the funds outstanding and your payment record with the scheme prior to releasing the authorisation.

"Despite the numerous authorisations processed daily within our business, I am not aware of a single case where a member of one of our schemes has been denied treatment in a life-threatening situation due to a benefit suspension where the suspension relates to claims debt and all premiums are in good standing, as was your case.

"Secondly, had you sought treatment after-hours, we have a standing arrangement with all the major hospital groups to admit and treat our members seeking after-hours admissions — without the need for pre-authorisation, provided the necessary authorisation is obtained on the next available working day... I therefore maintain that the above process would not have exposed you to the risk of loss of life and/or forced treatment in a state facility.

"As to the issue of the reimbursement for the cost of your time, although we have every appreciation for the valuable time you invested in resolving this issue, we believe that in this instance, our writing-off of your premiums for the period in question is reasonable compensation for your financial loss."

In his response, Horn delighted in pointing out "fatal flaws" in Temlett's argument: "I do not regard it as acceptable that there would be any delay at all in obtaining authorisation for emergency hospital treatment – why should there be any increased risk to me or my family due to Momentum's own admin errors? …I know very well that in practice the delay could have been lengthy indeed... I am also not satisfied that 'Depending on the nature of the treatment required and or the severity of injuries, there would have been a process of checking...' This means that in cases considered non-severe and non-urgent by your staff, I would be denied treatment. Once again, why should I be denied any private hospital treatment at all due to Momentum's admin errors?

"In addition, I am not at all comfortable that such decisions should be left to the discretion of your staff since... patient safety or welfare is usually the last thing on their minds... Momentum's default position during a suspension is to deny any authorisation. …Your employee stated categorically (and cheerfully) the blanket statement that he would not authorise any procedures. Therefore any hospital would have got that response too!

"…The only (cold) comfort I can derive from your explanations is that it would have been safest for me to have 'chosen' to suffer a life-threatening emergency after hours to be guaranteed immediate treatment, at least until the next business day!"

And then it's back to the principle thing: "I also question the morals and ethics of any suspensions being applied due to 'claims debt', since such situations can only ever come about via Momentum's own over-payment errors! Even if your new procedure will ensure people are telephoned before such a suspension, what if a person is too busy to make an urgent payment that day? ...Why do you ever need to suspend anyone due to your own errors? …Why not just wait until you have to pay out the next legitimate claim to the member and net off the overpaid amounts?... Take responsibility to sort out your own errors yourselves, at your own cost. After all, I have ample evidence that Momentum has no qualms whatsoever about making members wait when you owe them money in the form of legitimate claims...

Your procedures clearly hold Momentum's minor cash-flows to be far more important than the provision of legitimate medical benefits to paid-up members… your attitude to this suspension proves Momentum sees members as cash cows to be milked, inconvenienced and put at risk whenever expedient, rather than to be served...

"Please take this email as my one month's official notice of cancellation of my membership."

Temlett to Horn: "I am very sorry our differences on this matter have culminated in your decision to terminate your membership… I respect your decision and… wish you and your family all of the very best going forward."

Amazing how Momentum is willing to lose a client, face public humiliation even, rather than make a simple admission of wrongdoing. But no doubt the lawyers were calling the shots, and instructing Mr Temlett that you simply don't own up to unethical or immoral conduct, let alone anything illegal.

More fear and loathing at Rand Water

ARE THE investigative skills of Barry Badenhorst, the Clouseau-style head of group forensic services at Rand Water (*noses*94, 135), to be put to the test again?

Readers of our last issue will recall how Badenhorst headed a team of inside and external consultants who toiled for over 10 months at taxpayers' expense in a fruitless attempt to identify the author of an anonymous SMS to main board members, proposing that five of them should be axed.

Now the recidivist Pimpernel has struck again – and this time the target is the public utility's chief executive Percy Sechemane.

A six-page memo has been addressed to Rand Water's acting chairman Moabi Mosotho Petlane in which it is claimed that:

- When Sechemane applied for the top slot, he disclosed in his CV and at interview that he had left his previous employer, Landis+Gyr, because that company had "closed operations in South Africa and moved and/or relocated to Europe";
- Landis+Gyr in fact never closed operations in South Africa and the "true state of affairs is that the CEO was dismissed at Landis+Gyr for poor performance".

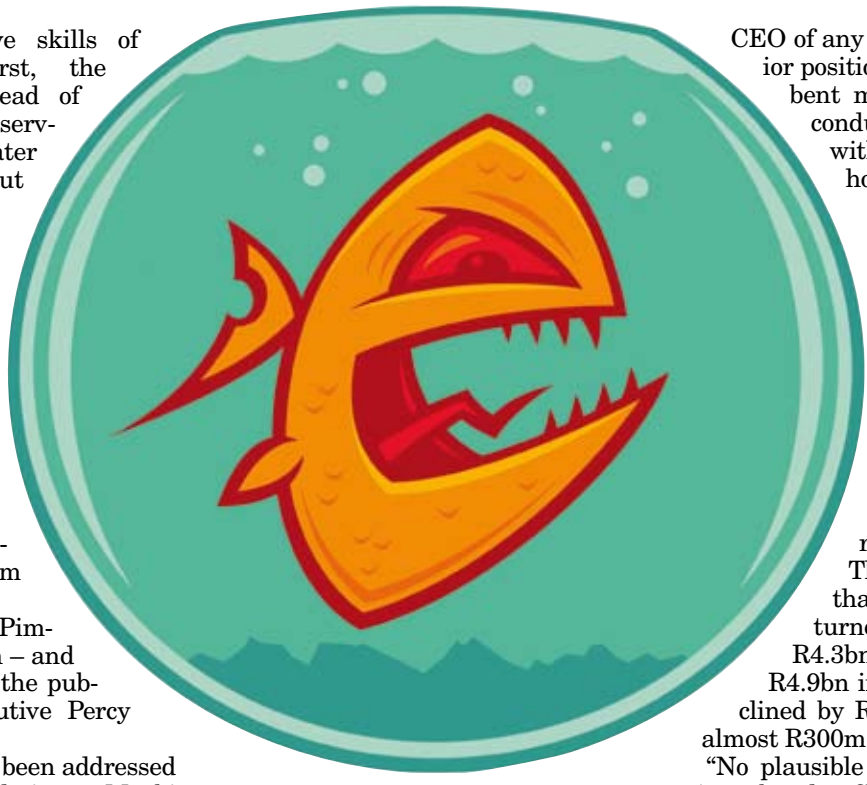
The memo, signed by "Concerned staff members of Rand Water Board" and copied to Auditor-General Terence Nombembe and Water Affairs Minister Buyelwa Sonjica, says: "The position of CEO of any entity is the most senior position and thus the incumbent must be a person who conducts himself/herself with integrity and utmost honesty.

"If these allegations are true, which we know for a fact they are, then the CEO should be summarily dismissed for dishonesty and misrepresentation."

There's more. Sechemane, was "once again performing poorly in his current employment". The memo points out that Rand Water's gross turnover in fiscal 2008 was R4.3bn, R4.7bn in 2009 and R4.9bn in 2010. Yet income declined by R212m in 2009 and by almost R300m in 2010.

"No plausible explanation has been given by the CEO, and the external auditor's failure to raise this issue is concerning. Taking into account the amount of money at stake, this issue certainly warrants an investigation and/or forensic audit." (Yet another forensic audit for Barry Badenhorst? May the saints preserve us!)

The next swipe suggests criminal behaviour. "It suffices to say there is massive and widespread tender fraud at Rand Water, where the CEO ensures that the major tenders are awarded to his cronies. We will be able to give details of this before an impartial forum… and we will further disclose the CEO's *modus operandi* where he puts his lackeys in critical decision-making committees so that his hands appear to be 'clean'. This item alone, if proven to



A pesky nipper lurking in the murky executive pond is snapping at the big fish

be true, is fatal to the CEO's position."

Sechemane, according to the memo writer or writers, rules at Rand Water through fear. "The CEO is paranoid, believing that everyone is there to get him or his position. This has resulted in his ruling through a tight fist. If you disagree with him, such employee either leaves Rand Water or is 'restructured' or 're-engineered'.

"In fact, the CEO has not taken leave for more than two days since he took over. The reason being that he trusts no one and is firmly in control of all facets of Rand Water. One view is that he is afraid that any acting person might discover the rot of his corruption and maladministration."

This had "disempowered middle and junior managers, as the CEO micro-manages every facet in the organisation. An atmosphere of fear and distrust is the order of the day at Rand Water and the board must do something".

The anonymous author calls on acting chairman Petlane to have these claims investigated by an independent person who is not a service provider to Rand Water. And the missive ends on a defiant note: "Rest assured, we will not let go of this one until justice is done. Viva Rand Water, Viva! Down with corruption, down!"

These allegations against Percy Sechemane certainly don't fit with *noseweek's* experience of the embattled CEO of the largest bulk water supplier in the Southern Hemisphere. We find Sechemane courteous if blunt-speaking – in interview he tends to ask more questions than give answers – and, unlike so many of his counterparts, he's always available and generous with his time. Since when has it been a crime to forego holidays in diligence for one's duties? And isn't it a chief executive's function to be "firmly in control of all facets" of his organisation?

Sechemane (last year's pay package R2.5m) took over the Rand Water helm after Themba Nkabinde's brief fiefdom, in 2008. Before that, he was chief executive at the South African operation of Landis+Gyr, the worldwide group that offers a range of meters and vending software marketed under the brand name of Cashpower.

In response to the allegations, he is quick to shoot down the memo writer's suggestion that he was fired from Landis+Gyr for poor performance.

"My performance-linked bonus for my last year at L&G was around R800,000, which makes the 'poor performance' angle interesting to say the least," he says. "If that is a sign of poor performance, then logic escapes me.

"I actually left the company in a better position than I found it. The relocation to its new headquarters [from Isando to the N1 Business Park] was my brainchild and I am very proud that it actually happened."

At Landis+Gyr South Africa, when *noseweek* inquired, there was no one to confirm either that Percy Sechemane was an exemplary CEO, or had been fired for poor performance. Present chief executive Connel Ngcukana was on his hols.

However, from Landis+Gyr's headquarters in Switzerland, group communications vice president Thomas Zehnder disposes of the "poor performance" charge.

"We can confirm that Percy Sechemane left Landis+Gyr South Africa. This was despite a positive business performance. Please understand that we do not comment on reasons or circumstance."

So who is behind these anonymous snipings at Rand Water? Percy Sechemane is convinced that the mysterious memo writer is one and the same as the author/s of that mischievous 2009 SMS which got forensic manager Barry Badenhorst's knickers in such a pedantic twist.

Has Sechemane now ordered the forensic sleuth into action again to identify the latest/same miscreant? "The chairman will pronounce on the matter once the board meets," is all he will say.

Much as we respect Sechemane – and admire him for that gutsy slideshow he never got to make last April (*nose*135) – all these spooky goings-on at the utility do seem to have unleashed a paranoid streak.

He declares that *noseweek* "has been identified as a tool for people to try to destabilise Rand Water by discrediting its board and executive management's credibility". And he adds: "My interest is really on whether you will see the light some day or not. You are *noseweek*, use your nose! Find the facts, not what you get fed by people! Hope you have a factual 2011."

Perhaps despairing that Barry Badenhorst, despite his vast forensic resources, will ever unmask his nameless persecutor/s, the chief executive ends with an appeal to *noseweek*: "What motive drives people this relentlessly? Saying it's an outrage won't be enough in my book. Find out why it's happening!"

Noseweek "has been identified as a tool for discrediting the board's" credibility

Thus tasked by the charismatic CEO, we repair to 221b Baker Street, dispatch Watson for a bankie of Malawi cob and charge up the old calabash. After much smoke-shrouded pondering we deduce: yes, we concur with Sechemane that the individual who wrote the anonymous SMS back in February 2009 is one and the same as the author of the anonymous memo.

Our advice to the CEO: Haul in Barry Badenhorst and quiz him on what he didn't include in his 10-page final confidential report on the SMS job. Which main board member – the SMS and memo author is clearly a director – did Badenhorst find most uncooperative in his SMS probe, especially over the production of their cellphone records? Who has a history of perpetual trouble-making?

What "drives people this relentlessly?" demands the CEO.

A woman scorned?

So, Mr CEO, draw up your short-list of evasive, chip-on-the-shoulder female main board members, serve Anton Piller orders on them and get dear old Barry Badenhorst to check out their hard drives at home (don't forget the laptops!) Elementary, my dear Percy.

Political chameleon shows his colours

Controversial Gordon's Bay mover up to his old tricks

POLITICAL chameleon Anton Fuchs of Gordon's Bay is back in the Democratic Alliance – evidently aiming to be the area's ward councillor come the next local government elections.

Fuchs is no stranger to *noseweek's* pages; as ANC councillor – by dint of floor-crossing from the DA – he played a central role in the grave-robbing that cleared the way for a prime seafront development to go ahead on cemetery land (See *nose*109) and more recently, a report on his efforts to worm his way back to the top of the DA (*nose*116).

Sometime in 2007, Gordon's Bay ratepayer and community activist Barbara Louw began receiving anonymous hand-written letters (some calling her names *noseweek* dare not repeat in these pages, others threatening that her pets would die). On top of the letters, came unsigned text messages until, desperate to put an end to the harassment, Louw reported the matter to the Gordon's Bay Police.

Although a detective was assigned to the case, nothing materialised to allay her fears and, in July 2008, she asked independent forensic scientist Dr David Klatzow to help establish who was behind the text messages and letters. Hearing that Klatzow was interested in the case, SAPS Detective Services in Pretoria re-assigned the case to a fresh team of investigators.

Unbeknown to the culprits, detectives were monitoring the cellphone numbers from which the terror texts were sent. Having pursued their vendetta for so long, the authors had become complacent, using the same phone numbers to call their friends around Gordon's Bay. Among them was Carol Miller, wife of the town's apartheid-era mayor, Danie Miller.

When the detectives approached Carol Miller, she confirmed having

received calls from Anton Fuchs on the days in question. Using the Regulation of Interception of Communication Act (Rica), the detectives subpoenaed various records from the relevant network providers. Armed with what they had found, which they are not disclosing to *noseweek,* the detectives called in the politician and cautioned him.

They sent the file to the State Attorney in the Strand, who called in Fuchs and his wife Helen to give them the chance to explain why they should not be charged. (Yes, as happened in the NPA/Zuma matter years before).

Also demanded from the Fuchses were several samples of their handwriting which, *noseweek* learnt, they initially declined to provide, but changed their minds in July. Seven months on, the police experts have yet to come up with the results of their handwriting analysis.

When *noseweek* contacted Fuchs for his explanation, he simply said "I've got no comments on that and I think you are on the wrong side of the street and I'm not interested in talking to you any further".

Two days later, Dawid Leon Viljoen, an attorney with Malan Lourens Lemmer Viljoen, Strand, wanted to know what *noseweek* had on his client.

Viljoen told us: "There were certain allegations made against my client by a certain Barbara Louw which were investigated and it was found that there were no relations with my client and that was the end of the story."

However, he confirmed that detectives had asked the Fuchses to submit handwriting samples. He had nothing to say about the cellphone calls that were traced to the Fuchses.

A few minutes after telling us that the matter had been dropped, attorney Viljoen contacted the office of the State Attorney offering to deliver Mrs Fuchs's 2007 diary to the detectives. This is one item that the Fuchses had initially declined to produce. Meanwhile, the state attorney's office is still waiting for results of the handwriting samples that were obtained last July.

Why did Viljoen say the matter had been dropped? Attempts to find the attorney at his offices to offer him the opportunity to withdraw his lies met with little success.

Noseweek has also learnt that the Fuchses – through the same law firm – issued a demand for R200,000 in damages from Louw for allegedly having told certain people and detectives that they were responsible for the hate letters and text messages. Ironically it was the police, not Louw, who traced the owners of the offending cellphone numbers.

Then in October last year, Danie Miller joined the letter-writing spree to Barbara Louw. He said he was neither writing the email as an attorney, nor as chairman of the Gordon's Bay Business Association, "but as a best friend" with "concerns":

"I am concerned about you and your health. I know that you are a very dynamic person with lots of drive, but I think that you sometimes take things too seriously. I am a fifth-generation Gordon's Bay person: my great-great-grandfather settled here in 1852."

He ultimately warned Louw: "I am concerned by the fact that you seem to be against every development that does not strictly comply with the rules and in the process you are making yourself very unpopular amongst many residents.

"I know that you have achieved a lot for GB. I also know about the war between you and Anton Fuchs but is it not, at your stage in life, time to relax and enjoy your guest house, the beach and the beauty around you?

"Won't you let go of the things of the past and relax? I am worried that you are destroying your health following the road that you are on at the moment.

"Mix only with those who appreciate you and avoid the others."

On whose instruction was Miller writing? Danie Miller, with his wife Carol chipping in in the background, responded to questions, saying: "I am not prepared to discuss the content of my email with anybody but Barbara. I simply extended a hand of friendship."

Asked what he knew about Louw's health to make him so concerned as to write to her about it, Miller rang off.

What is Louw doing that would make her the centre of such hatred in Gordon's Bay?

"I don't know!" she exclaims. "All I've always demanded from the council is for every development to conform to the council's by-laws.

"Some developers may blame me for advocating for a forensic audit on the building and development planning at the Bay – and I shall not apologise for that. All developers must respect the building regulations."

She confirmed that she is not interested in contesting any political position whatsoever.

Melissa's added

BRAND image is all: what the business says and does must reflect its image, failing which consumers will regard it as a fraud. All the more so where the business is closely associated with an individual. What would happen to the Virgin brand if it were to come out that, far from being an iconoclastic daredevil, Richard Branson's idea of a good time is a cup of cocoa and an Agatha Christie novel?

In the case of Melissa's, the highly successful Western Cape-based Melissa's Food Shop, (there's a branch at a posh address near you) the brand image is very much one of wholesome country goodness and old fashioned values. And the business is intimately linked with its founder, Melissa van Hoogstraten, a successful entrepreneur who lives outside Stellenbosch with husband Mark and their young children.

Clearly it would be bad for business if it were to emerge that Van Hoogstraten is a cold, anti-social, workaholic with very strange views on parenting. Which may explain why, when the now-defunct Femina magazine gave Van Hoogstraten the opportunity to review and modify the rather candid answers she had given in an interview in anticipation of a feature article. Van Hoogstraten grabbed the opportunity.

What follows are extracts of the interview, showing the answers as recorded by the journalist (and submitted for publication), and the answers as modified by Van Hoogstraten (and published by Femina). In some cases deleted bits were replaced with new bits. You may find it quite amusing.

The piece had a box with some quick facts about Van Hoogstraten, some of which gave a clear clue to her personality. It was standard women's magazine stuff: most treasured possession? "my Aga stove"; favourite holiday? "the family farm in the Karoo"; favourite leisure activity? "walking in nature reserves near our home, picking flowers in my garden and arranging them"; favourite perfume? "I don't do perfume".

So far, so brand consistent. The interview kicked off with a short introduction, and even here a bit of polishing was deemed necessary.

MELISSA VAN HOOGSTRATEN is passionate about the old-fashioned lifestyle and, with the help of her husband, Mark, has infused her philosophy into her four Melissa's stores. The success of their business has turned both Melissa and Mark into a ~~**frantically/**~~ very busy pair who run their head office from ~~**a building on their property/**~~ their home in the Stellenbosch countryside. They have two children, Alexander, nearly three, and Olivia, one-and-a-half... [The couple have since had a third child].

Then came the questions. For starters, Melissa was asked what quality of life means to her. She rabbited on rather predictably about picking vegetables, cutting flowers, baking bread, having candles in the house, and refusing to own a TV. But when husband Mark van Hoogstraten was asked to discuss lifestyle, he unwittingly gave a clue of what was to come.

Mark: "Lifestyle means deciding what is important to you and then planning your life accordingly. We simply do not waste time on things that don't matter."

Q: How do you balance such a busy working life with the high standards you set for your home?

Melissa: "It's ~~**flipping**~~ very difficult. ~~**Believe me, there is no such thing as**~~ I find it hard to believe that there is the woman that gets it all together as a businesswoman, a hands-on mother who runs a home like I like to do – and who somehow manages to produce stunning meals for all her best friends every Sunday. ~~**Now that Melissa's takes up about 90 percent of our lives**~~ Entertaining, children, family, friends and work keeps me very busy and I would, quite frankly, never manage without a great deal of help."

Mark: ~~**"We do not throw wonderful Sunday lunches. Our idea of a perfect Sunday is to be alone at home.**~~ We love entertaining & having our friends around but we also love a Sunday alone."

Q: Who helps in your home?

Melissa: "We have seven household staff. They are not always here all at once, but, at any given time, we have three women in the house – a cook, a cleaner and a nanny – and two men working in the garden. ~~**Then there is my mother, who does all the things that a normal mother does. She takes Alexander and Olivia to all the things that I don't do, like toddlers workshops, to plays etc and they love it. My mother lives in Camps Bay, and when I go into Cape Town twice a week, I drop the children off with her and pick them up on the way home. She gives them all the things we don't give them, like flings, jelly tots and smarties – and they are in their element when they are with her. Funnily enough, they don't ask for those sorts of things when they are at home. Having this kind of support frees me up. I don't do anything**~~

> *"We have not changed our lifestyle to fit in with our children. My mother takes them to all the things I don't do"*

ingredients

~~really enjoy that."~~

Whoopsy, major re-write required:

Then there is my mother who does all the things that I don't do and having this kind of support frees me up. When I am at my shops in town Alexander & Olivia spend the day with my mother going to the park, plays, friends or toddlers workshops and they always come home inspired.'

Q What is your parenting style?

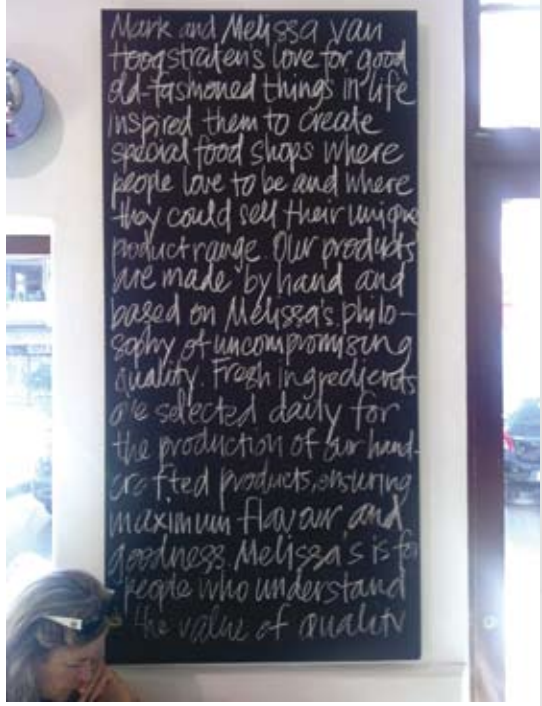
Melissa: "Mark and I are ~~so~~ not the norm. We are not normal parents. The children fit into our lives, we don't fit into theirs. *We never underestimate them and* nothing special is done for them or bought for them. We don't cook special meals for them, they eat what we are eating *and keep themselves busy all day*. ~~Most of their toys and clothes are hand-me-downs. If they need any basic items of clothing, my mother will go and buy them. We don't focus on the children at all. As a result, they are very independent and get on with their lives, without hanging around us~~ = *They are competent, independent little people and get on with their lives happily with confidence*. ~~I come across so many people in their 30s whose entire lives are their children. We are not like that. I have never read a book on raising children in my life. A woman I know was recently talking about a book she was reading on Montessori - and I didn't know what she was talking about.~~ I believe if children have love, structure and routine, they thrive. Alexan~~for my children – I don't change nappies, feed them or bathe them, dress them, or do any of the basics. When I come back from the office, they are always bathed and fed. I don't have to worry about anything to do with them. If I come in and feel like having a bath and they haven't bathed, then they will sometimes bath with me. That happens every now and then and I~~

der and Olivia have the most amazing people looking after them and are brought up in a very stable, secure and inspiring environment. Sometimes I think I should spend more time with them, ~~**but I don't think I could do it**~~ but I sometimes think that they are better off without me!"

Mark: "We pass on the fancy toys and clothes. ~~**I believe children should have a frugal, sparse upbringing, with as little money spent on them as possible**~~ I believe that the less children have in terms of possessions the better for them. ~~**We have not changed our lifestyle at all to fit in with our children.**~~ Children should be treated like little people. We do not buy toys for our children, but prefer to leave them to play outside and create their own entertainment. ~~**Toys kill a child's imagination. How can they be creative if you give them a television set, a video machine and a big pile of plastic toys? Give them some bricks and a box and some mud and they can make something of it. We are not into baby things - and could think of nothing worse than spending a Saturday morning at Baby City or Toys R Us. People buy so much rubbish for their children. Children have no dress and decor sense. You won't see any pastel colours in our children's rooms."**~~

Q: Tell us about Alexander and Olivia?

"They are the two most divine children. Alexander is hugely charming... He spends most of his time ~~**with no clothes on**~~ outside with his best friend Japie the gardener and a wheelbarrow and a spade. His feet are always so dirty it is impossible to get them clean.



He keeps himself busy all day, interacting with everybody on this property. Olivia is an Aries, and has lots of energy and knows what she wants. She is very bright and totally independent ~~**Because of our lifestyle, they have to fight for their rights!"**~~ (delete and substitute:) and loves her daddy!"

Q: What do you love doing with your children?

Melissa: ~~**"I can't bear sitting down for an hour having to entertain them. I would rather slit my wrists. We like including them in things we would normally do ourselves, like going for a walk. A few weekends ago, it was hysterical. We returned home after spending the day out - and for some strange reason Mark and I were alone with the children for an hour. I said Mark it's only an hour. But we were both in a complete mood because we just couldn't do it. To me it is the most tedious, boring thing looking after and playing with children. I adore my children more than anything, but I would never go home and spend hours reading to them. Absolutely no ways."**~~

Oops – scrap that! Rewrite:

Melissa: "I am useless at the entertaining children bit. We like including them in things we would normally do ourselves, like going for a walk, *baking, cooking and eating*".

Q: Tell me about your friends?

Melissa: ~~**"I don't really have many friends.**~~ Friends! My friends are mostly the people who live around Stellenbosch and the people I work with."

Is anyone surprised?

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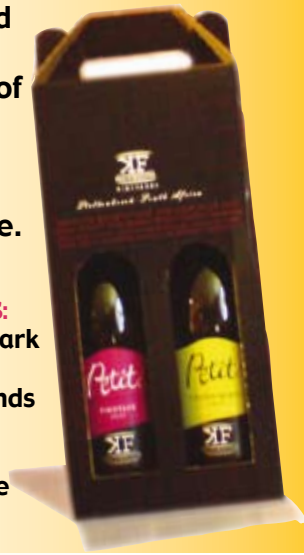

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Issue 136

Honesty in a world of secrecy

Len Ashton
reviews
Our Kind of Traitor
(Viking/Penguin)
by John le Carré

WILL JOHN LE CARRÉ sue Julian Assange for loss of income? After all, JleC has made a lucrative living out of secrets these forty-something years – and then, horrors, the entire cloak-and-dagger business goes phut. Assange's WikiLeak revelations of recent months have surely put paid to the whole espionage industry, never mind the spy novel.

Well, no. We Le Carré fans know better than that. And our smug knowledge of his arcane world is confirmed and expanded in the urbane master's latest – *Our Kind of Traitor*.

The wide-eyed innocents who imagined that public exposure of fragments from years of clandestine inter-governmental communications would launch a new millennium of sweet honesty in international affairs are in for a teeny surprise. If anything, spy versus spy action is likely to become much more, and much more dangerously, obscure.

Diplomacy does not reside in one-liners. Effective embassies keep up sustained conversations, which, all things being equal, tend to be preferable to actually ripping each others' throats out. The old "jaw-jaw is better than war-war" theory. So a rude or exasperated remark by a major player, possibly significant, is also quite likely to represent nothing more than an aside in the face of endless bloody-minded chats with intransigent "negotiators".

The envoys' loss of faith in current methods of communication simply means that new techniques will have to be developed. And fast. Humanity, at every level, needs reliable confidantes.

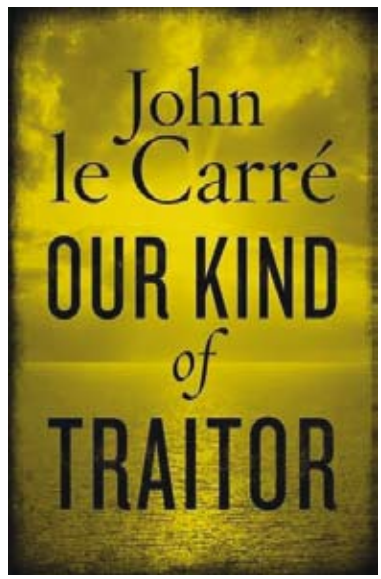
Which is not to say that the Assange bombshell does not have its merits. On the contrary – the people who play the power games need to know that We the People are on to them. And will continue to keep a beady eye on their machinations insofar as it is possible to do so.

Le Carré's genius lies in the combination of special knowledge of spookery (he was employed by HM Government in that department, and clearly knows his way around some very mazey corridors indeed) and his evident fascination with fallible humanity. The characters are memorable and sustained. Some are heroic without necessarily meaning to be so. Just like in real life.

He is particularly good at observing the terrible toll that realpolitik often takes on shiny idealists confronted by conflicting definitions of national interest. And he is a mesmerising storyteller.

Traitor is an exciting thriller. Highly intelligent, but always accessible, and essentially humane. The good guys tend to have a hard time – but then, t'was ever thus. There's not much point in giving away the plot, except to say that it is smack-on-the-nose contemporary and would make a nail-biting movie combining, as it does, derring-do, romance, romantic settings, and foul villains, all of them convincing. There's even a walk-on part for Roger Federer in a dramatic sequence set at the Roland Garros stadium in Paris.

Le Carré's magnetic skills have been honed from impressive beginnings (*The Spy Who Came in from the Cold* and all that), but the compelling, non-preachy morality of his writing remains a powerful and unusual constant. Those who imagined that the end of the Cold War would stop his stately advance up the best-seller lists were soon proved wrong.



The appeal of every one of his novels is enhanced by a powerfully autobiographical element that flatters the reader with his confidence. And this is accomplished without special pleading. How curious that a man moulded in secrecy, and clearly the soul of discretion, embodies personal honesty in his writings.

Our Kind of Traitor is published in paperback by Viking with a published price of R220. It is available from Loot.co.za for R184. We accept payment by Visa, Mastercard, or direct deposit to our ABSA bank account.

Harold Strachan

Misses v&k

Illustration: *Harold Strachan*

OF COURSE you don't have to be sexually active to be sexually in love, and I thought I held the all-time record by being sexually in love at the age of six. Until my son came along, that is, and got sexually in love at the age of three-and-a-half.

The object of such passion in my case was a certain Miss Vaughan, in Pretoria at a school called the Gymnasium, not because we had a whole lot of muscle-pumping gear in there, see, but because this was what the better-class schools in Holland were called at the time, and Oom Paul himself had opened this one in the hope of producing a generation of sparkling intellectuals for his Republiek. Trouble was I didn't want to sparkle intellectually, I wanted to sparkle sexually, with Miss Vaughan. Miss Vaughan would come and sit next to me and demonstrate writing with pen and ink and reading grown-up books and she would softly breathe on the back of my starboard ear and I would go all sort of dreamy and pie-eyed as during an orgasm in later life. I mean the pheremones coming off Miss Vaughan were like an aphrodisiac miasma settling on every male creature, man and beast. Finally she concluded I was a bit dippy, or deaf, and very kindly took the matter to Mr Plant, headmaster, who inhabited an all-glass office like a greenhouse at the tiptop of the school, above the roofs.

Nice old uncle. Relaxed. He didn't seem to think I was deaf, and surely not dippy. Indeed as he spoke about Miss Vaughan and my problem, I noticed he too was going a bit pie-eyed and dreamy: his speech got slower and slower as when mesmerised. We became comrades there and then. Miss Vaughan was the sort of woman you might expect to find dancing the Charleston 'mongst champagne glasses on a tabletop after midnight in a Chicago speakeasy. Mrs Plant was not. Miss Vaughan's mouth was wide, her lipstick a primary red, her teeth white-white and sli-i-ightly crooked and when she exposed these to get a grip on a long cigarette holder whilst flinging her limbs about, one might wish they would get a grip on one's own flesh, soon. Miss Vaughan had small round titties and nipples like diamonds, one might picture her writing her name on glass, she wore few underclothes, and now and then one might catch a glimpse of a fancy garter holding up a silk stocking. Mrs Plant had two fried eggs strapped to her ribs with something called a bust-bodice and held up her cotton stockings with something called a suspender belt. For the sake of my own sanity Mr Plant moved me over to Miss Lumly who was v. motherly and had grey hair and wore b/bodice and suspender belt for sure and I became tiptop of the class.

Young Joe, now, he also got sort of hypnotised in1971 when I signed him on at an infants' fun-school with every swing, slide, jumping castle and merry-go-round known to science and art. But it wasn't these delights that hypnotised him, it was the lady-in-charge. Indeed I felt sure I had seen her before, both of her. Where, where, where? She wore a gypsy-type sleeveless bodice with wide laces across the front and nothing underneath. Also she wore a slinky skirt and flat-heeled diamanté dancing shoes and managed to look entirely naked even when fully clothed. Whilst she smiled at Joe and entered his name in the books and all that, I took stock of our surroundings and there in a corner came upon a wooden crate with chicken-wire on top and inside, a bloody great snake, a rock python, no shit. I sat down shakily. What's with the snake, miss? said I. Aren't you afraid it'll get out and squash my son and eat him? Oh no! said she, that's Gus, my dancing partner, he's a dear, he loves everybody. Ja, said I, especially small children, hey? Then suddenly... er... You're not... er... you're not... um... Glenda Kemp, are you? The very same, said she, flashing her glistening teeth, tossing aside a mane of shimmering auburn hair.

Glenda Kemp rendered pole-dancing obsolete round here

Well what the hell, thought I, it's better than the other kiddies' places I'd looked at where they taught the poor little buggers to sing hymns about sin and not to be naughty. Nothing sinful about our Glenda here; come 40 winks after saamie-and-cocoa time and she would settle each infant on a personal little stretcher and sing a small quiet song. Gus would tag along like a necklace. Joe told me about it, how all three would share a cuddle, then he would get a kiss on the forehead. From Glenda, that is. To this day he has no fear of snakes, indeed keeps a spotted bush snake in the garden, named – you guessed it – Gus.

You savages out there don't know about Durban culture in the '70s, man. It was Glenda Kemp who rendered pole-dancing obsolete round here. And what brought all this to mind was Joe just last week bringing me from Ike's Classic Book Shop an old video tape of his Glenda doing her special, and it has a nice touch at the end where she has Gus strangling her to apparent death. I mean snake-dancing can't be sinful if you have a sense of humour.

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SMALLS

PERSONAL

Melissa and Brett You make me proud every day! Love Ma.
To all Africans We are knocked down, but not knocked out. Arise! PK.
Giving money and power to government is like giving whisky and car keys to teenagers. Joe Lazarus, CTN.
Happy Birthday Willy! 1 month early due to risk of missing an edition of nose! EV.
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