

POWELL, OLIVER, N.O. & 1 OTHER VERSUS INSOLVENT ESTATE D. LIDCHT

STRYDOM, J.P.

INSOLVENCY:

Vesting of movable property in trust;uch property outside jurisdiction of Court where person
declared insolvent - necessity to show that Court granting order of insolvency was Court of
insolvent's domicile -Domicile - what factors Court should consider to determine domicile.

CASE NO. A.368/97

1998/02/18

CASE NO. A 368/97

IN THE HIGH COURT OF NAMIBIA

In the matter between

POWELL, OLIVER, N.O.

FIRST APPLICANT

SIMON, NORMAN, N.O.

/

SECOND APPLICANT

versus

INSOLVENT ESTATE D. LIDCHI

RESPONDENT

CORAM: STRYDOM, J.P.

Heard on: 1997.12.09

Delivered on: 1998.02.18

JUDGMENT:

STRYDOM. J.P.: The two Applicants were appointed as joint provisional trustees in the insolvent estate of Mrs Lidchi. For sake of convenience I shall further herein refer to Mrs Lidchi as the Respondent. The estate of the Respondent was provisionally sequestrated in Johannesburg, Republic of South Africa, on 5 May, 1997. This provisional order was confirmed and the estate of the Respondent placed under final sequestration by Claasen, J, on 10 June, 1997. The granting of both these orders were opposed by the Respondent.

On the 8th September, 1997 the Applicants obtained, on a basis of urgency and *ex parte*, the following order from Teek, J, in the High Court of Namibia, namely -

" 1. That this matter is declared one of urgency and that the usual forms and time periods laid down by the Rules of this Honourable Court are dispensed with. < ,

1. That the appointment of the Applicants as provisional trustees in the insolvent estate of Diane Lidchi ('the insolvent') is hereby recognised, and they are hereby granted the powers bestowed upon them by virtue of section 18(3) of the Insolvency Act, 24 of 1936 (S.A.) ('the Insolvency Act') made applicable in Namibia by virtue of Act 16 of 1943 (Namibia) and in particular authorising the bringing of this application and any further proceedings which flow from it.

2. That such recognition and authority is hereby extended to the final trustees of the said estate, upon their appointment as such.

3. That a *Rule Nisi* do hereby issue calling upon the Insolvent and Clara Kahan in their personal capacities and the Insolvent, Clara Kahan and Farrel Wainer in their capacities as trustees of the Clamodaniel Trust and all other interested parties to show cause on Friday 31st October, 1997 why a final order should not be issued in the following terms:

4.1' Declaring that all movable property, including the shares registered in the name of Diane Lidchi in the share registers of Offshore Diamonds (SWA) Limited ("Offshore Diamonds"), Diamond Dredging and Mining CO. (SWA) Limited ("Diamond Dredging"), Moly Copper Mining and Exploration Company (SWA) Limited ("Moly Copper") and Lorelei Copper Mines Limited ("Lorelei") vest in the Applicants in their capacity aforesaid;

4.2 Declaring that the immovable property situate at Erf 266

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and Erf 267, Luderitz vests in the Applicants and in their capacity aforesaid;

4. Declaring that the purported resolutions of the boards of directors of Offshore Diamonds, Diamond

Dredging, Moly Copper and Lorelei annexed to the founding affidavit as Annexures "OMP.14A" to "OMP.14D" are invalid and null and void and of no force or effect;

5. Declaring that the costs of this application be costs in the administration in the insolvent estate of the Insolvent, save in the event of any party opposing this application in which event that this Honourable Court make such order in regard to the costs as it deems meet.

5. That an interim interdict is hereby granted pending the final determination of this application that the Insolvent, Clara Kahan, and the Clamodaniel Trust are interdicted and restrained from in any way whatever[^]

6. directly or indirectly dealing in any manner with, alienating, or disposing of, encumbering or exercising any right whatever attaching to the shares in Offshore Diamonds, Diamond Dredging, Moly Copper and Lorelei, registered in the name of the Insolvent;

7. alienating, disposing or encumbering or otherwise dealing with the immovable property situated at Erf 266 and 267, Luderitz;

8. from in any way whatever implementing or giving affect to any of the resolutions more fully referred to in prayer 4.3 above.

6. That the costs of this application be reserved for determination on the return date of the said *Rule Nisi*.

7. That service of the *Rule Nisi*, and the Notice of Motion herein and the founding affidavit herein together with all annexures thereto be served on:

9. the Insolvent at 2 Upper Park Drive, Forest Town, Johannesburg; f

10. Clara Kahan at 2 Upper Park Drive, Forest Town, Johannesburg;
11. Mr Farrel Wainer at c/o Fisher Hoffman Sithole, FHS i
House, 5 Girton Road, Parktown, Johannesburg.
12. Offshore Diamonds at N.G. Church Centre, Windhoek Namibia;
13. Diamond Dredging at N.G. Church Centre, Windhoek, Namibia;
14. Moly Copper at N.G. Church Centre, Windhoek, Namibia;
15. Lorelei at N.G. Church Centre, Windhoek Namibia.

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10. That in addition to the service hereinbefore provided for, the *Rule Nisi* be published iiv a local newspaper circulating in Windhoek and Luderitz, Namibia and in a local newspaper circulating in Johannesburg in the Republic of South Africa."

The matter was not ready for hearing on the 31st October, 1997 and the Rule was further extended. Because of the effect of the Order and the urgency involved the matter came up for hearing on 9 December, 1997. Applicants were represented by Mr Rubens, assisted by Mr. Smuts. The Respondent was represented by Mr. Bregman.

1. BACKGROUND:

Because of the way in which the Respondent was allowed to frame her answering affidavit the application degenerated into another battle in the war between the Respondent, Mrs. Lidchi, and her brother, Mr. Kahan, (Kahan), which has now been waging for some years. From the documents it is clear that the Respondent and Kahan inherited shares from their father in a number of Companies. In a diagram, "OMP.10", a schematic exposition is given of the various Companies and the shareholding thereof. I will herein only deal with the shareholding in those Companies affected by the Court Order.

According to "OMP.10" Offshore Diamonds (SWA) Limited (Offshore Diamonds) is the parent holding company in the group with a total issued share capital of 5 393 000 shares. Kahan and his family (being himself, his wife and children) (the Kahan Group) are registered shareholders of 43,9% of the total issued share capital of Offshore Diamonds. The Respondent and her family (being herself and her daughter)(the Lidchi Group) are registered owners of 49,47% of the total issued share capital of Offshore Diamonds. I am mindful of the fact that Respondent alleged that she is holding her shares in Offshore Diamonds and other companies as a nominee for her mother, Clara Kahan, and will deal later more fully with this aspect.

The total issued share capital of Diamond Dredging & Mining Co. (SWA) Limited (Diamond Dredging) is 209608 shares. Offshore Diamonds is the registered owner of 93,41% of the shares whilst Clara Kahan and others own 1.15% of the said issued shares. According to "MPO.10" the Lidchi Group are the registered owners of 3,15% of the total issued share capital of Diamond Dredging of which the Respondent is the registered owner of 3202 shares. The Kahan Group are the registered owners of the balance of the said shares.

The total issued share capital according to "OMP.10" in Moly Copper Mining & Exploration Company (SWA) Ltd (Moly Copper) is 450 000 shares. The Lidchi group own 4.44% of the total share capital in Moly Copper of which 13 332 shares are the property of the Respondent. The balance of the shares are held by the Kahan Group and other outside shareholders.

Moly Copper is also the registered owner of a 100% of the total issued share capital in various other private companies, as well as 99,65% of the issued shares in Lorelei Copper Mines Limited (Lorelei) with Kahan. The Respondent and others account for the balance of the registered shareholding. It is further alleged that the Respondent personally owns ,1245% of the total issued share capital in Lorelei, amounting to 747 shares.

The companies Offshore Diamonds, Diamond Dredging, Moly Copper and Lorelei are all companies registered and incorporated in Namibia. These four companies have as their transfer secretaries, Welwitschia Nominees (Pty) Limited at the offices of G.J. van Schalkwyk & Company, at N.G. Church Centre, Windhoek.

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As previously set out the Applicants alleged that the shares in the various companies were inherited by the Respondent and Kahan on the death of their father in 1964. In this regard it is the contention of the Respondent that these shares were only held by them as nominees of their mother, Clara Kahan. From the documents filed it seems that dissension and head-on collisions soured the relationship between Respondent and Kahan. Each party blamed the other for the development of this situation.

During 1982 the parties entered into a written shareholders, or joint resolution agreement, in terms whereof it was agreed to exercise joint control in certain affected companies as defined by the agreement. See Annexure "OMP.9A". In regard to such companies unanimity was required for all resolutions of shareholders and directors and no valid or effective resolution could be passed unless it was unanimous. According to the Applicants, Offshore Diamonds, Diamond Dredging, Moly Copper and Lorelei were, and still are, affected companies. This is however denied by the Respondent and it is further denied by her that the so-called shareholders or joint resolution agreement is still in existence.

According to Kahan the relationship between himself and the Respondent came to a head during 1985 to such an extent that a deadlock ensued between them in the administration of the companies. As previously stated each one blamed the other for this situation. How it came about is not really relevant to these proceedings. However it led to Kahan initiating winding up proceedings in regard to certain companies, including Offshore Diamonds. In order to solve the impasse the parties agreed to refer their disputes to arbitration. According to the Applicants

the arbitration proceeded in three phases. There was first a hearing and award in Kahan's favour by a single arbitrator, Adv. H Slomowitz S.C. Thereafter an appeal was lodged which was heard by a panel of three arbitrators. The appeal was upheld and the matter was referred for the hearing of *viva voce* evidence again before a panel of three arbitrators consisting of a retired Judge, the Honourable Mr. Justice Leon, Advocate M.D. Kuper SC and Advocate P.A. Solomon S.C. A final award was handed down by them on 17 March 1995 upholding the contentions of Kahan. What is of some relevance to the present proceedings is that the arbitrators rejected Respondents contention that the shareholders or joint resolution agreement was cancelled and that she as majority shareholder had control of the companies. The Respondent withdrew from the final hearing and her attitude is that the proceedings and award have no relevance and, as previously stated, the shareholders or joint resolution agreement, for various reasons, no longer govern the relationship between the parties vis-a-vis their control and administration of the companies involved.

The Applicants stated that the dispute between the Respondent and Kahan was settled during May 1995 as follows:

- (i) By payment of R21 million by the Respondent to Kahan which had to be guaranteed within a specific time; and
- (ii) by the delivery of Kahan of his shares and interests in the group of companies to the Respondent.

It is common cause that the Respondent failed to make payment of the amount of R21 million or furnished a guarantee within the time stipulated. This led to Kahan obtaining judgment against the Respondent in the Witwatersrand Local Division of the Supreme Court of South Africa for payment of the amount of R21 million against delivery of his shares and interests in the companies. Steps taken to obtain leave to appeal against this judgment were unsuccessful.

Pursuant to the judgment a writ of execution was issued and certain movable property was attached. Steps taken by the Respondent to interdict the sale in execution and any further attachment were dismissed. As the proceeds of the sale were insufficient to pay the judgment debt, Kahan instituted sequestration proceedings which ended in the final sequestration of the estate of the Respondent on 10 June, 1997.

From the papers filed it seems that the Respondent vigorously opposed each and every one of the proceedings referred to herein before. At this stage there are still appeals or applications for leave to appeal pending in regard to some of the orders made. That includes the final order of sequestration in regard of which a notice for leave to appeal has been lodged by the Respondent.

On the 22nd June, 1997, i.e. after the final sequestration of the Respondent's estate, meetings of the boards of directors of Offshore Daimonds, Daimond Dredging, Moly Copper and Lorelei were held in Windhoek. These meetings were attended by the Lidchi group and directors nominated by them. No notice of these meetings were given to the Kahan group. These resolutions are set out in Annexures "OMP.14A" to

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OMP.14D.

The more important of these resolutions are -

1. That Clara Kahan is authorized to act as Chairman of the group and to
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 y op the case. those facts. I overwhelmingly *manendi* is
 cit, There is cannot see support the to be
 l p no that contention of the inferred
 a 332 dispute evidence Applicants. from the
 w foot between one way or facts. may put it so, by
 note the the other Further it
 f 2. parties could add or In my opinion it is the Respondent.
 as to subtract clear that must be
 r what from the generally accepted that she took up
 o There would facts the factual speaking domicile that it is
 m in my Court allegations and the place of a always free
 opinion have should made in the person's residence she was entitled to
 c been a consider affidavits, are closely do as she was
 e dispute of in and which is connected. There to choose
 r fact if one or coming in any event are of course his The immovable
 t other of the to its not in exceptions. See in domicilium. property that she
 a facts conclusi dispute. If I this regard Lawsa, owned in Namibia
 i mentioned on. am wrong in op cit, p 321, Looking at she inherited.
 n before, and What is this regard Forsythe op. cit, p the facts Those are in any
 from which vehementhen, from 111, Pollak, op cit placed event vacant plots
 f the Court is tly what p 42, 43. before the situated in
 a a Court it

Luderitz companies Govern considered can call home ormerely the(T) at 200H:

. Whatas a ment ofthe factwhere she resides.place where "(T) he

interest nominee for South remains thatThe fact that sheshe stayed *ipse dixit*

the her mother, Africa the in this regard hadwhen she of an

Respond Clara or not. Respondent invariably madewas in interested

ent mayKahan. As is nowuse of vanNamibia for party in

have inthese There isresident inSchalkwyk's business these

the companies further South office addresspurposes. circumsta

compani are the Africa, anddemonstrates andIn the nces

es Namibian repeated more underscores thepresent should

presentl based and claims particularly fact that she is not;instance it be

y may be a by theJohannesbur resident here andserves carefully

registere source of Respond g, for thehas no residenceRespondent' scrutinize

d inincome, tax ent thatpast 60in Namibia. It also s interest to d."

Namibia returns andshe years, wherebeliees theclaim that

, shethe paymentalways she also hadRespondent's she isIn the light of

also of tax mustregardedher claim that the;indeed what I have set

inheritedbe renderedNamibia residence, atFurstenhof hotel domiciled inout herein before

or, onand paid to as herleast up tois her home inNamibia. Asthe say so of the

her Namibia. Inpermane 1992. Namibia. There iswas statedRespondent that

version, this regardnt Coupled no indication on,by Jansen, Jshe always

she isthe Courtresidenc with this isthe papers that the,(as he thenregarded Namibia

only was not e. the fact thatRespondent was), in theas her permanent

holding informed Although there is nostayed in Namibia case ofhome seems to me

the whether she h aplace infor any protracted, Masey vto be no more

shares inalso pays tax factor toNamibia time and the Masev 1968than a selfserving

those to the be which theFurstenhof was in (2) SA 199statement which is

Respondent my opinion

raised at that the SHARE dispute within the of the 103(3) of the
 this Respondent S: between the meaning of the Respondent, Companies Act,
 stage to was indeed parties in definition of entitled the Act No. 61 of
 safeguard domiciled in In this regard to the movable property Applicants 1973.
 d her South Africa regard its effect of a contained into obtain Furthermore that
 Namibia at the time was sequestration section 2 of the registration no instrument of
 n of her alleged n order on Insolvency Act, thereof transfer is
 interests sequestration by the the movable Act 24 of 1936. *nomine* required to effect
 against n. From this Respondent property of See also Standardofficii in the such registration.
 vesting it follows ent that the insolvent Bank of South register of See sec. 133(2) of
 in the that any all the where such Africa Limited members of Act 61 of 1973.
 Applica movable shares sequestration and Another v the company
 nts. property registered n order was Ocean as a result of Mr Bregman
 which the d in her granted by Commodities Inc. which the submitted to the
 In my Respondent name the Court of and Others. 1983 Applicants, Court that if the
 opinion has in are domicile of (1) SA 276 (A) at in their issue of domicile
 the only Namibia almost the 288 and Two aforesaid is decided in
 reasonable vests in the entirely insolvent. Sixty Four capacity, favour of the
 le Applicants held as Similarly Investments (Try) will be Applicants it
 inferenc by virtue of nominee there is also Ltd v Trust Ban deemed to would follow that
 e that her for her no dispute 1993 (3) S.A. 384 be members all the shares
 the sequestration mother. between the (WLD). It was of the said registered in the
 Court n. As parties that further in my companies Respondent's
 can previous shares opinion also not according to name would vest
 draw 3.3 ly stated constitute disputed that such the by operation of
 from the OWNERSH there is movable shares, if they provisions law in the
 facts is IP OF THE no property were the property of sec. Applicants which,

as it then be for. However, the Court, Applicants have pointed out children
understood Clara Kahan to have asked conceded that they Counsel whilst her
od to take out subject that the Respondent did this claim, husband
Counsel, proceedings parties matter behold some shares namely that was
will in the form to determined, in some of these is only a prospecti
make it of an further it would, in companies as nominee, is ng in
unnecessinterpleader, possible my opinion, nominee for Clara based on Namibia.
ary at if she is so litigation not be in the Kahan. I will deal various On his
this advised, to when interests of with that aspect grounds. In death in
stage to enforce her both Justice to more fully at a summary 1964 she
decide claim to the sides leave this later stage. these was owed
whether shares. I am have put issue, grounds are some
the sure that Mr Ruben has pointed out that there is no as follows: R70,000
Respond technically material the air. I am the parties about by his
ent was speaking Mr relevant therefore of the 1 Tha Estate.
the Bregman is to the the opinion number of shares t She was
owner of correct and issue that I should that are registered Cla also owed
such it is before deal with in the name of the ra payment
shares or certainly a the the issue of Respondent and Kah for
whether tempting Court the that the real issue an certain
she only thought to and ownership is whether she is sup shares in
held leave the where of those the owner of those port terms of a
them as matter there both, at shares shares, excluding ed divorce
a and not to least on which are the concessions her settlemen
nominee deal further the still in made by the hus t between
for Clara with it in docume dispute. In Applicants in their ban her and
Kahan. this nts this regard reply, or only the d her
It would judgment. before the nominee. As and husband

i ctio r late (SWA) to sferred
 n n in e hus Ltd and her the said
 rega c ban 20 000 in shares to
 J rd o d shares he ter Offshore
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 n the d sold Industrial of s without,
 u shar e 410 Diamond the according
 a es d 000 s South div to
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 , to h he Limited settl Clara
 abo a hel for eme Kahan
 1 ve, t d in certain nt. what was
 9 aros a amounts It is owed to
 5 e as C co to Saddle the her or
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 s nt it s mp her late Hill shares in
 a was any husband tran Moly

C amo t the It was shares in the voluntary action
o nd s thre further various by the parties,
p Dre e of alleged companies Clara Kahan
p dgin a the that over to his two became the owner
e g n m, and above children, the of the shares, that,
r regi d nam her legal Respondent so I understood it,
stere ely right and Kahan. both the shares
a d in o Kah thereto At least as a belonging to
n the r an, Clara starting Respondent as
d nam a Clar Kahan point it well as Kahan. If
es l a also has a seems to me this is not so then
1 of b Kah moral that the there is no logical
8 Res e an right to Respondent explanation or
0 pon q and these was the reason why such a
0 dent u hers shares. owner of fate would only
and e elf, those shares have befallen the
s Kah s thes From the which she shares inherited
h an, t e documentation put inherited by Respondent
a Res s shar before the Court it from her and not also those
r pon es seems that the father. of Kahan. It then
e dent m belo source of the Thereafter further seems
s alle a ng ownership in the by some strange that
ged d to shares is the will operation of through all the
i that e Clar of the late law, rather years of struggle
n due a husband of Clara than by any and deadlock
to b Kah Kahan who agreement Clara Kahan
D pay y an. bequeathed these or any other never stepped in
i men

and Kahan dealt with the majority of the shares of Clara Hill to the Respondent as follows by claimed with and not inter of the shares property of Clara Hill to the Respondent what controlled via also were Clara Kahan. Offshore namely: was the various deals Kahan's Diamonds rightful companies. with shares, is the "Since y hers. In this such not clear. In regard to the Respondent Kahan Such a regard it is topics as which Clara alleged that and I conclusi significant sharehol I further Kahan had against without were the on asto note that ding and agree with her late husband's payment to registered was Clara Kahan the loss Mr Rubens estate the Courts Clara sharehold contendewas not thereof that it is attention was Kahan, or ers and d for by in the difficult if drawn to the fact her consent, vendors the to the affected not that a claim was these shares of Respond shareholders impossible submitted in that could not be Offshore ent gives es and to extract regard which was transferred. Diamonds or joint the any legal reflected in the There is no shares, as rise to resolution resultant principle liquidation and allegations nominees some agreement effect from the distribution that these for our strange which thereof allegations account filed in shares were father to anomali governed the on the made by the estate and the only the extent es. One basis on Lidchi Respondent which was signed assets of of half of need which and as a result of by Respondent Saddle Hill. the issued only resolutions Kahan which it can and Kahan as joint How Clara shares in look at etc. were to groups. be executors thereof Kahan then Offshore the way be taken in How concluded became the Diamonds both regard to the this that the said Dealing with the owner of the , we were Respond companies. could shares, at transfer of shares shares is set legally ent and This be, when some stage,

r defa obligation is documents, signed her of shares from
 e ult. not clear to by Respondent husband's Saddle Hill to
 s I sme. The and Kahan, deceased for Offshore
 p refe obligation to authorised the Diamonds. It is
 o r to pay Clara Offshore R70,000-00. also not clear to
 n the Kahan in Diamonds to allot And as me why such
 s two terms of the 1 250 000 fully previously action by Saddle
 i lette idivorce paid up shares to set out this Hill would
 b rs Settlement Mr. E Kahan, the was in fact discharge the
 l ann and the father of claimed latter from its
 e exe lcession Respondent and from the obligation to pay
 d rested on Kahan. estate. In Clara Kahan.
 t here Saddle Hill regard to the
 o to, "and they On this uncertain shares of Mr. Bregman
 sign remained so and unclear Offshore submitted that the
 h ed How the obligated in premis Diamonds Court, considering
 e by sale of the absence Respondent no legal what was in fact
 r mys the of any alleged that Clara basis was in the administration
 elf shares agreement Kahan then my opinion of assets amongst
 f and by to the permitted herself alleged why members of a
 o Kah Saddle contrary. and Kahan to act Clara Kahan family operating
 r an, Hill to Annexures as her nominees, would at that stage in
 mar Offshore "P1" and As was pointed become the reasonable
 t ked Diamon "P2" do also out by Mr owner harmony, should
 h "P1" ds could not take the Rubens, Clara thereof just not approach the
 a and create matter any Kahan had at best because of issue too
 t "P2" this further. a claim against the transfer technically. Mr.
 " legal These

Bregma therefore not Saddle ns could referred to some refute this Diamond
 n further have been Hill and have been of the anomalies claim Dredging and
 explain done even if stated more to which the by the 125000 shares in
 d that without her that fully the allegations of the Respondent. Offshore
 the consent. I were so possibility Respondent will see e.g. Diamonds are
 transfer fail to see I fail to of an lead to., It was an annexure held by the
 of the logic of see how arrangement further pointed "OMPR 28" Respondent as
 shares this that between out by Mr. and "OMPR nominee of Clara
 by argument. In would Respondent, Rubens that 29". In my Kahan and the
 Saddle terms of the have Clara Respondent had Applicants do not
 Hill cession entitled Kahan and made statements opinion *viva* claim that those
 divested Clara Kahan Clara Kahan is not under oath and in *voce* shares should vest
 Clara was entitled Kahan so correspondence evidence, in them.
 Kahan to payment to the far fetched which were far from
 of her by Saddle shares of that it entirely disturbing
 source Hill and Offshore cannot be inconsistent with the balance, 3.4 THE
 of nothing Diamond said that her allegation that can only COMPANY
 payment more. There ds. *viva voce* she only held the RESOLUTIONS
 as setis no Mr. evidence various shares as strengthens
 out in allegation Bregma could not nominee for Clara Applicant's These resolutions
 the that the n disturb the Kahan. This case. all affect the
 divorce shares submitte balance of concerns also the relevant to these
 settleme transferred d that convenience so called It was proceedings
 nt to Offshore although as it exists oral bequests of the namely Offshore
 agreeme Diamonds some of on the shares. All Applicants Diamonds,
 nt and were the the papers. I documentation that 1200 Diamond
 this only or all allegatio have already seems to me to shares in Dredging, Moly
 could the assets of

further nominated One the and suspicion onetherefor fied that stipulate by the looks inagreement would expect alsoconclude the trend d thatLidchi vain formay be so that such anthat the of these resolutio group. any but there is^y important step1982 resolution ns ofDiamond allegatio would beagreement s and the directors Dredging ns that documented. Nowas not way in of theand Lorelei the 1982 such documentterminated which affected are joint seems to be inand that they were compani subsidiaries sharehol documents existence. when the obtained, es, orof the two ders result resolutions as well as their affected agreeme Various otherwere taken various subsidiarcompanies nt was grounds were seton 22 June, other ies, as Offshore canceller out in1997 they factors would Diamonds d by one Respondent's were taken such as not beowns or other answering in breach of the effective 93,41% of of the affidavit as to whythis Responde unless the issued parties. If the Court shouldagreement nt's stance agreed shares in That such a regard the 1982and are that she is to byDiamond there joint shareholderstherefor domiciled directors Dredging were it would agreement as non-invalid. in nominat and Moly occasion have been existent. None of Namibia, ed byCopper s when the easiest these grounds I am that she is the owns one orthing to were argued or furt virtually Kahan 99,65% of other ofallege. relied upon by Mr. her without group the issued the Given the Bregman and in mor any assets and shares in parties background my opinion they e etc., were Director Lorelei. breachedof mistrust were without satis such that s substance. I

A to a guar ests and al to counsel on a scale
 p vie n d rights. In the as between client
 p w the my inte and own Attorney.
 l the i righ opinion rest Mr. Rubens
 i situa n ts of these s of submitted that the
 c tion t the resolution cred Respondent made
 a with e cred s were itors unfounded and
 n distr r itors clearly in serious allegations
 t ust i in calculated her against the
 s and m the to prepare in so Applicants, Kahan
 appr estat the l ven and others. It was
 h ehen i e of ground t furthermore
 a sion n the for esta argued that the
 d and t Res unilateral te. Respondent, not
 they e pon action on being insolvent as
 e wer r dent the part of far as Namibia is
 v e d pen the 4. concerned, should
 e ther i ding Responde COSTS be ordered to pay
 r efor c the nt to deal the costs and that
 y entit t dete with the Mr Rubens it would not be
 led t rmi assets of submitted i fair to saddle the
 r to o nati the that the estate and the
 e ask on companie Court creditors with
 a the s of s in a way should grant such costs.
 s Cou a thos which the cost of Mr Bregman
 o rt f e could be two submitted that
 n for e inter detriment instructed there was no

reason t allegations Respond d by either the blame for this estate, and instructed why the and going ent and party and its situation and the hence the Counsel. Court into issues Kahan was more fact that there may creditors. It In the result the should not really and particularly or may not be an would in my following order is order the related to which the application for the opinion be made:

Respond the relief ended in Respondent removal of the fair to order ent to claimed nothing Who made Applicants as the 20. P pay opened the less than reckless and provisional Respondent, ar costs on door for the a raking serious trustees is not in who has a a client Applicants up of allegations my opinion a assets in gr and to come past and of good reason why Namibia and a attorney back with a present dishonesty the Applicants who is not P scale full scale wrong do and thievery should have insolvent as h and that attack and a ings and against entered into the far as s the costs replying accusati Kahan and arena. I am Namibia is 4. should affidavit ons of others. In there for not going concerned, 1 be born which, injustice one instance to grant an order to pay the a by the together s I counted that the costs be costs of the n estate. with committ the use of no paid on an Application. d annexures ed by less than attorney and client Mr. 4. In my consisted of the one five or own client Bregman 3 opinion some 531 against adjectives scale. I however conceded of the pages, and the describing also do not see that this was th Respond the whole other. Kahan. The reason why under an instance e ent by application No Applicants these where the R making developed restraint and the circumstances the Court could ul irrelevant into a battle was Respondent costs should be grant costs e between exercise must take bom in toto by the for two

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 n 2 D lica , **J.P.**
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