



TUGENDHAFT WAPNICK BANCHETTI
AND PARTNERS

MS SUSAN COMRIE

Our Ref: R Kantor/In/W4073

Your Ref:

Email: susanc@amabhungane.org

Date: 10 July 2018

Dear Madam

RE: MESSRS SHAW AND TICHAUER

1. We refer to your letter dated 6 July 2018.
2. Before turning to deal substantively with the further interrogatories that you address, we wish to make some comments of a preliminary nature.
3. Save to the extent otherwise indicated, the statements made by Mr Shaw and those advanced on his behalf do not talk across one another. Moreover you are incorrect in suggesting that the documents referred to are disjunctive. These matters will be expanded upon more fully hereunder.
4. We turn to address thematically the further interrogatories embodied in your letter under reply:

A. Interviews

5. You mischaracterise the position when suggesting that Mr Shaw initially sought to hide his involvement in BEX. You say in your letter under reply that during your first meeting, Mr Shaw claimed to be "*completely unaware of BEX*". It is not however what you recorded in your letter of 15 June 2018, addressed to Mr Shaw

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directly, where you said "*during our first meeting you indicated that you had no involvement with BEX*".

6. You will appreciate that there is a difference between being "*completely unaware of BEX*" (on the one hand) and having had "*no involvement with BEX*" (on the other hand). It was made clear in our letter to you of 4 July 2018 that Mr Shaw had no involvement in the day-to-day business or operations of BEX.
7. Mr Shaw stands by that position, which is not contradicted by what was conveyed to you during the second meeting, where Mr Shaw confirmed having signed the agreement as being the "*only thing he did for them*". The signature of the agreement was dealt with in paragraph 7 of our 4 July 2018 letter, which, we pointed out, was signed by him on the authority of a resolution duly passed by Mr Hasware as the *de facto* director of BEX and in circumstances where Mr Shaw did not participate in the negotiation, preparation, settling or implementation of the agreement.
8. Concerning ICM (including its directors Messrs Shane, Chipkin and Angel), you have read that ICM has had a long relationship with Legal Frontiers to whom it, from time to time, introduced clients for company secretarial work. As an objective fact, Mr Shaw has never met Mr Essa and has never spoken to him (indeed save for passing him in the hallways at the offices of ICM on one occasion, Mr Tichauer too has had no communications or dealings with Mr Essa of any nature).
9. You suggest in your letter under reply (at unnumbered paragraph 3, bullet point 4) that it is "*now said that Mr Essa and Mr Hasware were the clients*". Presumably "now" is a reference to our letter of 4 July 2018. If so, you have misread that missive, where no recordal was made that either Mr Essa or Mr Hasware "*were the clients*". What was conveyed in our 4 July 2018 letter was that Mr Hasware was the director and shareholder of BEX.
10. Mr Gundelfinger does not represent Legal Frontiers and cannot speak to its knowledge or affairs. His reference to Mr Shaw as "*simply an employee of Legal Frontiers*" is mistaken. The members interest of Legal Frontiers is held by Mr Rocharam as to 51% and the remaining 49% being held by Mr Tichauer (as at the date of the incorporation of BEX the members interest was held equally, but

that is neither here nor there). As an objective fact, Mr Shaw is not employed by Legal Frontiers and holds no members interest in that entity. The statements attributed to Legal Frontiers were not correct. Insofar as the signed declaration is concerned, it was submitted to you by Mr Gundelfinger prior to either of our clients having had sight of that document. Upon a more careful reading of the statement, Mr Shaw observed that it contained factual inaccuracies, as and by way of example, the averment that he is an employee of Legal Frontiers.

11. In the circumstances, there are no "*contradictory statements*" and no effort by Mr Shaw to "*shield his clients*" (whatever that may mean).

B. Bank accounts

12. When Vaxiware was drawn as a shelf-company and its name changed to BEX during 2015, a call account was established (a call account bearing interest, whereas a current account earns no interest). This is not an uncommon service undertaken by Legal Frontiers when shelf-companies are packaged for clients. Mr Shaw ought to have removed himself as signatory of these accounts, but, without the benefit of hindsight, there was no imperative for him to do so.
13. You must not however confuse, as you seemingly do, the signatory on the accounts (on the one hand), with persons transacting on the accounts (on the other hand). Accordingly, your assumption that Mr Shaw, as signatory on the accounts "*was therefore the only person able to execute these payments*", is demonstrably incorrect.

C. Payments

14. The four invoices in question were delivered to Legal Frontiers, but this was for the purpose of drawing up BEX's books of account and which was furnished to Legal Frontiers only after the relevant payments had been made. If you read in Mr Gundelfinger's statement that either Mr Shaw or Legal Frontiers made these payments, then that implication is palpably incorrect.
15. The issue is with respect simple: bank records will unequivocally demonstrate what our clients have said to be correct, *to wit* that neither Mr Shaw, Mr Tichauer, Legal Frontiers nor Tichauer & Bloch ever processed, executed or

approved any payments for or on behalf of BEX to any service provider or third party, in respect of the CNR project or any other project (save in discharge of Tichauer & Bloch's approved fees and those of BEX's bookkeeper).

D. Directorship

16. You are correct when recording that Mr Shaw never met, or spoke with Mr Hasware. If you say that Mr Hasware "*was working as a sales assistant selling Persian carpets*", that is certainly news to our clients. We are constrained to point out that there is nothing sinister or unusual in secretarial companies, such as Legal Frontiers, not having met a company's director and/or shareholder and that is no basis for you to rush to the mistaken conclusion that "*all instructions and documents were received from Mr Essa*". We reiterate that neither Mr Shaw nor Mr Tichauer have had any communications with Mr Essa whatsoever (whether or not he delivered documents personally to the offices of Legal Frontiers is possible, but cannot be confirmed by our clients).
17. The position with a *de facto* director is that, if elected by the company to be such, then notwithstanding any defect or irregularity in his appointment, he is treated as a director when representing his company. This is what occurred with Mr Hasware.
18. Turning to the recordal at page 2 of the agreement to which you refer, the description of the business of BEX and its long-standing relationships must be viewed against the backdrop of Mr Shaw's lack of involvement in its business and affairs. It is not at all uncommon in commercial life for companies to be established and who subsume joint venture partners who do have established relationships in the industry in question.
19. The agreement, properly interpreted and construed, concerned the potential by BEX to earn an agency commission. It does not emerge from the terms of the agreement that it "*contained potential liabilities running into hundreds of millions of rand*". On what basis exactly you come to this conclusion is unclear.
20. You say that "*BEX appears to have been tasked with persuading Transnet to pay for costs that had been artificially inflated*", and you refer to "*the fact that Transnet signed off on costs despite the objections of its own employees*", which

you insist "*further bolsters the suggestion that the contract was designed to channel funds from state owned entities to recipients that had not performed any bona fide service*". Once again none of this supposition is reflected in the agreement itself, which, we are at pains to reiterate, was the only document that served before Mr Shaw.

E. Books of account and CIPC records

21. The books of account were drawn up by Tichauer & Bloch, which accounts, as we have said, were not audited. You are reminded that BEX (formally known as Vaxiware) was a shelf-company incorporated under the 1973 Companies Act (with registration date 22 October 2009), which preceded the commencement of 2008 Companies Act (being 1 May 2011 by Proc 32, GG 34239 of 26 April 2011). Section 30(2) as read with Section 72(4) of the 2008 Companies Act does not require that BEX be audited, having regard to the Public Interest Score (PIS). Accordingly the reflection of Tichauer & Bloch as auditors in respect of the then shelf company incorporated under the 1973 Companies Act, is of historical interest only.
22. You refer to the "*CIPC documents handed to [you] by Mr Shaw*", which you reflect contains two different dates, which, so you say, "*reflects the change in shareholding in BEX*". That however is to misunderstand the documents handed to you, their import and meaning.
23. CIPC documents do not reflect shareholding interests in a company. That is maintained in the company's Securities Register, a copy of which was furnished to you.
24. Our clients are not at liberty to furnish you with documents lodged with CIPC. In terms of Section 26(2) of the 2008 Companies Act, you are entitled to address a request for a copy of the Securities Register and Register of Directors of BEX, being a profit company that is classified as a private company, as defined in Section 1 of the 2008 Companies Act.
25. Mr Kahn is correct in recording that R500,000 was not received by Legal Frontiers. Legal Frontiers was remunerated for its services, but certainly not in the order of R500,000. Tichauer & Bloch, as we said, did render accounting and

other services over a period of a number of years, for which it rendered invoices and was paid.

26. Our clients are unsure why Mr Kahn says that the signatory by Legal Frontiers on banking accounts falls outside of the scope of what it does. As was pointed out in our 4 July 2018 letter, Legal Frontiers, when establishing a bank account to facilitate the procuring of a VAT registration for the company concerned, is, as an objective fact, the signatory of the bank account so established (*via* its representative, given that Legal Frontiers is a juristic person).

F. Conclusion

27. You persist in pushing the narrative that "*Mr Shaw knew that BEX was not a functional company*". That however is to ignore the objective facts. Mr Shaw was not involved in the business or affairs of BEX. The high water mark of his participation was signature of the agreement on behalf of BEX, which was undertaken by him as alternate director in Mr Hasware's absence and on the basis of a resolution by its shareholder and director authorising him to do so.
28. You were disabused of the notion that any of our clients made payments on behalf of BEX and it was explained that Tichauer & Bloch conducted no audit. You misunderstood the process of the formation of the shelf company Vaxiware and the bank account established by Legal Frontiers to facilitate the procuring of a VAT registration, which you were certain evinced mischief, which was nothing of the sort. We trust that you will now have regard to the objective facts, as opposed to conjecture, innuendo and speculation.
29. Mr Shaw has thus far participated in your investigation and met with you on two separate occasions. He was of course not required to do so. We have now, on behalf of our clients, responded to you on these two times concerning the matters and issues within our clients' purview. What our clients however are not prepared to do is to divulge confidential information of and concerning their clients, to whom a duty of confidentiality is owed. That position may change if the holders of the confidentiality waive the privilege. At this juncture however, what was contained in our letter of 4 July 2018 and what is set out foregoing in this letter is as far as our clients are prepared to go.

30. Please provide this office with notice of any publication you wish to make of or concerning our clients, Legal Frontiers or Tichauer & Bloch.

Yours faithfully

 **TWB - TUGENDHAFT WAPNICK BANCHETTI AND PARTNERS**