

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF THE CITY OF CAPE TOWN
SUB DISTRICT OF KUILSRIVIER
HELD AT KUILSRIVIER

Case No. 7536/2023

In the matter between:

KLEINBRON ESTATE HOMEOWNERS' ASSOCIATION

Plaintiff

and

RUBEN THEODOR FITCHAT
ID NO. 841228 5132 089

First Defendant

SONET FITCHAT
ID NO. 820625 0125 080

Second Defendant

NOTICE OF APPLICATION INTERMS OF RULE 23(8)

BE PLEASED TO TAKE NOTICE application will be made on behalf of the abovenamed Plaintiff to the above Honourable Court on **WEDNESDAY** the 7th day of **AUGUST 2024** at **09h00** or soon thereafter as the matter may be heard for an Order in the following terms:

1. The First and Second Defendants' Plea be struck.
2. Judgment be awarded against the First and Second Defendant jointly and severally for:
 - i) Payment of R3 130.53.
 - ii) Interest @ 15.00% p.a. from 2 June 2023 to date of payment.
 - iii) Costs on attorney and client scale to be taxed.
3. Ordering the First and Second Defendants to pay the costs of this application.
4. Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of DAVID JOSEPHUS NEL, annexed hereto, will be used in support of this application.

DATED at **BELLVILLE** this **13** day of **MAY 2024**.

DIAAN NEL & GAGIANO/INC

Per: **DJ NEL**

Attorney for the Plaintiff
Canal Edge Three, Block B
1ST Floor, Carl Cronje Drive
Carl Cronje Drive

TYGER WATERFRONT

Docex: 22, Tyger Valley

Tel: 021 001 7607

Email: diaan@dngattorneys.co.za

Ref: DJN/DN0670

c/o **SMIT & HUGO ATTORNEYS**

58 Lang Street

KUILSRIVIER

Tel: 021 903 1134

Email: arno@smithugo.co.za

TO: **THE CLERK OF THE COURT**
Magistrates Court
KUILS RIVER

By hand

AND
TO: **RUBEN THEORDOR FITCHAT**
91 Frangipani Street
Kleinbron Estate
BRACKENFELL
7560
Tel: 083 925 1545
Email: theo@cluedapp.co.za

By email

AND
TO: **SONET FITCHAT**
91 Frangipani Street
Kleinbron Estate
BRACKENFELL
7560
Tel: 060 340 1315
Email: sonet@cluedapp.co.za

By email

**IN THE MAGISTRATES COURT FOR THE DISTRICT OF THE CITY OF CAPE
TOWN, SUB DISTRICT OF KUILSRIVIER
HELD AT KUILSRIVIER**

CASE NUMBER: 7536/2023

IN THE MATTER BETWEEN:

KLEINBRON ESTATE HOMEOWNERS' ASSOCIATION

Plaintiff/Applicant

and

RUBEN THEODOR FITCHAT
(ID No. 841228 512 089)

First Defendant/Respondent

SONET FICHAT
(ID No. 820625 0125 080)

Second Defendant/Respondent

AFFIDAVIT

I,

DAVID JOSEPHUS NEL

declares under oath as follows:

1. I am an adult male practicing attorney, the attorney of record for the Plaintiff, at DNG ATTORNEYS, Canal Edge 3, Block B, First Floor, Carl Cronje Drive, Tyger Waterfront.
2. The facts contained herein fall within my personal knowledge and belief and are true and correct unless the context indicates otherwise.
3. Applicant brought an Application against the Respondents on 24 April 2024 to compel discovery within 10 days. The application was granted.



4. The Court Order was emailed (as agreed manner for service and exchange of pleadings) to the First and Second Respondents on 24 April 2024. The manner of service was agreed in the Respondents' Notice of Intention to Defend.
5. I emailed the Order to both the First and Second Respondents to the email addresses provided by them, on 24 April 2024. The email confirmation is attached as "DJ1" and Court Order as "DJ2". The First Respondent is only shown as "Theo" but I confirm that the order was emailed to theo@cluedapp.co.za. It is only when I want to forward this email or reply to this email that the full email address is indeed shown, and confirmed as indicated on "DJ3".
6. The Respondents have failed to comply with the Court Order. I respectfully request that an order now be granted in terms of the attached Motion.



DAVID JOSEPHUS NEL

I hereby certify that I have no interest in this matter and that on the 14 day of May **2024** in my presence at Bellville the deponent signed this Affidavit and swore and acknowledged to me that he knows and understands the contents thereof, had no objection to taking this oath and considered this oath to be binding on his conscience and uttered the words "I swear that the contents of this affidavit is true, so help me GOD", in accordance with the requirements of Regulation R1258 dated 21 July 1972, as amended by Regulation No 1648 dated 19th August 1977, as further amended by Regulations No 1428 dated 11th July 1980, and No R774 dated 23 April 1982, as well as Government Notice 903 dated 10th July 1998.



COMMISSIONER OF OATHS

CHIMONÉ CLAASSENS
KOMMISSARIS VAN EDE R.S.A.
COMMISSIONER OF OATHS R.S.A
PRAKTISERENDE PROKUREUR
PRACTISING ATTORNEY
1ST FLOOR, IMPERIAL BANK TERRACES
TYGER WATERFRONT

"DJ 1"

Diaan

From: Diaan
Sent: Wednesday, 24 April 2024 16:22
To: Theo
Cc: sonet@cluedapp.co.za
Subject: KLEINBRON ESTATE HOA // RT & S FITCHAT (CASE 7536/23)
Attachments: Untitled_24042024_153556.pdf

Good day,

Attached court order, for your attention.

Yours truly,

| | |
|--|--|
| <p>DIAAN NEL Director</p> <p> 021 001 7607</p> <p> diaan@dngattorneys.co.za</p> <p> www.dngattorneys.co.za</p> | <p></p> <p>DIAAN NEL & GAGIANO INC ATTORNEYS NOTARIES CONVEYANCERS</p> <p>Canal Edge Three, Block B, First Floor, Carl Cronje Drive, Tyger Waterfront, 7530</p> |
|--|--|



"DJ2"

IN THE MAGISTRATES COURT FOR THE DISTRICT OF THE CITY OF CAPE TOWN,
SUB-DISTRICT KUILS RIVER
HELD AT KUILSRIVER

CASE NO: 7536/23

In the matter between:

KLEINBRON ESTATE HOMEOWNERS' ASSOCIATION

Applicant

And

RUBEN THEODOR FITCHAT
(ID. No: 841228 5132 089)

First Respondent

SONET FITCHAT
(ID. No: 820625 0125 080)

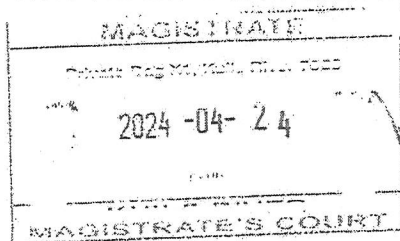
Second Respondent

ORDER

Having heard the representative for the Applicant, and having considered the application:

IT IS ORDERED:

- a) The **First** and **Second Defendants** are directed to comply with the Plaintiffs Notice in terms of Rule 23(3) dated 6 December 2023, within 10 (ten) days of the order;
- b) In the event the **First** and **Second Defendants** failing to comply with paragraph a above, granting the Plaintiffs leave to apply to this Honourable Court in terms of Rule 23(8) for an Order dismissing the **First** and **Second Defendants'** claim, with costs;
- c) Ordering the **First** and **Second Defendants** to pay the costs of this application.



MAGISTRATE

A handwritten signature in black ink, appearing to be a stylized name or set of initials.

"DT3"

Diaan

To: Theo
Cc: sonet@cluedapp.co.za
Subject: RE: KLEINBRON ESTATE HOA // RT & S FITCHAT (CASE 7536/23)

| | |
|--|---|
| <p>DIAAN NEL Director</p> <p> 021 001 7607</p> <p> diaan@dngattorneys.co.za</p> <p> www.dngattorneys.co.za</p> | <p style="text-align: center;">DNG</p> <p style="text-align: center;">DIAAN NEL & GAGIANO INC ATTORNEYS NOTARIES CONVEYANCERS</p> <p style="text-align: center;">Canal Edge Three, Block B, First Floor, Carl Cronje Drive, Tyger Waterfront, 7530</p> |
|--|---|

From: Diaan
Sent: Wednesday, April 24, 2024 4:22 PM
To: Theo <theo@cluedapp.co.za>
Cc: sonet@cluedapp.co.za
Subject: KLEINBRON ESTATE HOA // RT & S FITCHAT (CASE 7536/23)

Good day,

Attached court order, for your attention.

Yours truly,

ed

DIAAN NEL

Director



021 001 7607



diaan@dngattorneys.co.za



www.dngattorneys.co.za

DNG

DIAAN NEL & GAGIANO INC
ATTORNEYS | NOTARIES | CONVEYANCERS

Canal Edge Three, Block B, First Floor,
Carl Cronje Drive,
Tyger Waterfront, 7530

ed