

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

Case No: 13721/2022

In the application between:

**JACQUES ANDRÉ FISHER N.O.** First Applicant

**REUNERT NDIVHUHU KHARIVHE N.O.** Second Applicant

[In their capacity as joint trustees of the insolvent  
estate of Cornelius Johannes Steynberg]

and

**ADRIAAN WILLEM VAN ROOYEN N.O.** First Respondent

**HERMAN BESTER N.O.** Second Respondent

**CHRISTOPER JAMES ROOS N.O.** Third Respondent

**JACOLIEN FRIEDA BARNARD N.O.** Fourth Respondent

**DEIDRE BASSON N.O.** Fifth Respondent

**CHAVONNES BADENHORST ST CLAIR  
COOPER N.O.** Sixth Respondent

[In their capacity as joint liquidators of Mirror  
Trading International (Pty) Limited (in liquidation)]

**THE MASTER OF THE HIGH COURT,  
CAPE TOWN** Seventh Respondent

In re:

**ADRIAAN WILLEM VAN ROOYEN N.O.** First Applicant

**HERMAN BESTER N.O.** Second Applicant

**CHRISTOPER JAMES ROOS N.O.** Third Applicant

**JACOLIEN FRIEDA BARNARD N.O.** Fourth Applicant

**DEIDRE BASSON N.O.** Fifth Applicant

**CHAVONNES BADENHORST ST CLAIR  
COOPER N.O.**

Sixth Applicant

[In their capacity as joint liquidators of Mirror  
Trading International (Pty) Limited (in liquidation)]

and

**THE MASTER OF THE HIGH COURT,  
CAPE TOWN**

Respondent

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**ANSWERING AFFIDAVIT**

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I, the undersigned

JACQUES ANDRÉ FISHER N.O.

do hereby make oath and say:

1. I am a major male insolvency practitioner of Van Rooyen Fisher Trustees at Brooklyn Forum Building, Ground Floor, 337 Veale Street, Brooklyn, Pretoria.
2. The facts contained in this affidavit fall within my personal knowledge, save where otherwise stated or where the context indicates otherwise, and are true and correct.
3. I am a joint trustee of the insolvent estate of Cornelius Johannes Steynberg ("**Steynberg**"), a major male with identity number 830713 5016 088.
4. I am the first applicant in this application.



5. The second applicant is **REUNERT NDIVHUHU KHARIVHE N.O.**, a major insolvency practitioner of Stockhoff Trust at 250 Johny Claassens Street, Garsfontein, Pretoria.
6. The second applicant and I are the duly appointed joint trustees of the insolvent estate of Steynberg ("**Steynberg's Estate**").
7. The second applicant supports this application and has authorised me to instruct our attorneys and to depose to the affidavits in this application. In this regard I attach marked annexure "**JF1**", his confirmatory affidavit.
8. The second applicant and I were appointed as joint trustees of Steynberg's Estate after it was placed in provisional sequestration and thereafter final sequestration on 13 April 2021 and 20 July 2021, respectively. I attach copies of the court orders and of our letter of appointment, marked "**JF2**", "**JF3**" and "**JF4**".
9. The first to sixth respondents are the joint liquidators of Mirror Trading International (Pty) Limited (in liquidation) ("**MTI**"). Their names, particulars and other facts concerning the liquidation of MTI with effect from 23 December 2020, appear from the founding affidavit in the application instituted by them under this case number on 17 August 2022 ("**the Main Application**"). They are cited as respondents in this application, since the applicants make application for leave to intervene in the main application.
10. On 31 August 2022, a rule *nisi* was issued by this court in the Main Application, a copy of which is attached marked "**JF5**". In terms thereof, a



rule *nisi* was issued calling on any person with an interest in the application and/or the rule *nisi* to show cause on 31 October 2022 at 10h00, or so soon thereafter as counsel for the respondents (as applicants in the main application) may be heard, why the rule *nisi*, or any part thereof, should not be made final.

11. Steynberg's Estate, and therefore the second applicant and I, in our capacity as joint trustees, have an interest in the application and in the rule *nisi*. We therefore wish to intervene in the main application and require time to prepare and file a comprehensive affidavit in response thereto. As will be seen from the founding affidavit in the main application, the first to sixth respondents, as liquidators of MTI ("**the Liquidators**") were appointed after MTI was provisionally liquidated on 29 December 2020 and finally liquidated on 30 June 2021, their final appointment having been made on 11 November 2021. As I have indicated, the commencement of the winding-up in respect of MTI commenced on 23 December 2020. This much is also apparent from the founding affidavit in the main application.
12. On 3 May 2022, the Liquidators instituted an action in the Gauteng Division, Pretoria, under case number 24145/2022 ("**the Action**"). I attach, marked "**JF6**", a copy of the particulars of claim without its annexures, so as to avoid this affidavit becoming unnecessarily prolix. In the particulars of claim, the Liquidators contend in paragraph 21.1 that during the period April 2019 until December 2020, Steynberg was a director and the Chief Executive Officer of MTI and in paragraph 21.3 that Steynberg formed part of the management team of MTI and participated in the management and the



carrying on of the business of MTI. In paragraph 21.4, it is alleged that Steynberg is a shareholder of MTI. I confirm that this is so and that, by virtue of Steynberg's shareholding in MTI alone, we as the trustees of Steynberg's Estate, have an interest in the Main Application and in the relief sought, and consequently in the *rule nisi*.

13. Furthermore, in paragraph 30.1.1 of the particulars of claim, the Liquidators allege that during July 2020, the Financial Sector Conduct Authority ("FSCA") investigated the affairs of MTI and interviewed Steynberg and Cheri Marks ("**Cheri Marks**") and that they, Steynberg and Cheri Marks, represented to the FSCA and others that MTI "*had moved the entire bitcoin trading pool of MTI from the trader where it was allegedly held (FX Choice, at the time) to a new trading platform known as Trade 300, in anticipation, of a fear expressed by [Steynberg] that FX Choice may freeze all the bitcoin held by [MTI] pursuant to a cease and desist notice MTI had received from the Texas State Security Board*".
  
14. Furthermore, in paragraph 30.1.3 it is alleged that the bitcoin frozen at that stage in the FX Choice account amounting to approximately 1,282 bitcoin, were not part of MTI investors' bitcoin, but belonged to Steynberg and in paragraph 30.1.4 that MTI had moved the bitcoin held by it in the trading pool previously held at FX Choice to Trade 300, in four transfers over the period 21 July 2020 to 24 July 2020, the bitcoin transferred to Trade 300 being 16,444 bitcoin.



15. In paragraph 30.2, the Liquidators allege that the representations were false in that MTI had not moved the bitcoin from FX Choice because MTI's account with FX Choice had been frozen and the bitcoin could not be moved (paragraph 30.2.1), Trade 300 was not a broker but was no more than an alter ego for Steynberg (paragraph 30.2.2) and/or the bitcoin frozen by FX Choice was not the property of Steynberg but belonged to MTI and formed part of the so-called trading pool of bitcoin invested by the members of MTI (paragraph 30.2.3).
16. In paragraph 31.1.2, the Liquidators alleged that a limited number of bitcoin were traded with by MTI at FX Choice but losses were incurred in that 5,095 bitcoin were deposited to so-called MAM accounts of which 22 bitcoin were lost and during the period from approximately January 2020 to 3 June 2020, a limited number of bitcoin were deposited with FX Choice in a total number of 1,846.72 of which MTI made a loss in trading of 566.68 bitcoin, resulting in an approximate capital loss of 30%.
17. In paragraph 31.8, the Liquidators allege that a "*report*" that the bitcoin of MTI that were held at FX Choice were transferred to a new broker were false (paragraph 31.8) and that the new broker, Trade 300, never existed as a broker and was a platform created, owned and controlled by Steynberg himself, which was nothing other than sham (paragraph 31.8).
18. The Liquidators go on to allege that the business of MTI was unlawful in nature, that MTI was factually insolvent, that MTI conducted an unlawful Ponzi-scheme and that it was factually insolvent from inception.

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19. Significantly, in paragraph 37 it is alleged by the Liquidators that at the time of liquidation of MTI and to date, MTI is indebted to "*its creditors, being mostly members of the public who invested their bitcoin with MTI in the amount of at least R4,666,077,528.00*" (paragraph 37.1), which amount only reflects the balance of the capital amounts due to "*MTI's creditors as at the date of MTI's liquidation, excluding any interest thereon*" (paragraph 37.2).
20. The Liquidators contend that Steynberg *inter alia* carried on the business of MTI recklessly and/or with the intent to defraud creditors and/or for a fraudulent purpose.
21. We have defended the action and a copy of our plea is attached marked annexure "JF7".
22. In paragraph 38 of the particulars of claim, the Liquidators allege that there was a lack of corporate governance in respect of MTI and refers to the lack of corporate governance structures and that there was no transparent financial accounting or bookkeeping of any sort and, in paragraph 38.2.5 that a practice between Steynberg and Cheri Marks was to share 10% of the "*profit*" of MTI, without declaring any dividend and effectively simply misappropriating bitcoin from MTI and in paragraph 38.2.7 to the lack of control measures being implemented between financial control and executive control and in paragraph 38.2.11 to the inability of any person, including Steynberg, to explain the loss of at least 6,900 bitcoin.
23. The Liquidators if MTI therefore seek an order that *inter alia* Steynberg (and therefore Steynberg's Estate) be held personally liable, in terms of s424 of



the Companies Act 61 of 1973 ("**the 1973 Companies Act**") and, in the alternative, relief in terms of the Companies Act 71 of 2008 ("**the 2008 Companies Act**").

24. Significantly, in paragraph 54.1, it is alleged by the Liquidators that Steynberg from time to time deposited the total sum of 19.18639428 bitcoin in MTI with a value of R4,172,899.35 (paragraph 54.1) and that MTI transferred the total sum of 31.33569713 bitcoin to Steynberg, valued at R5,427,211.31 (paragraph 54.2). In paragraph 54.6.3 it is alleged that the sum of 12.14930285 bitcoin with a value of R1,254,311.96 were disposed of to Steynberg for no value in terms of s26 of the Insolvency Act 24 of 1936 ("**the Insolvency Act**") and 28.528922 bitcoin with a value of R5,015,752.88 constitutes a voidable preference in terms of s29 of the Insolvency Act (paragraphs 54.6.3 to 54.6.4). In the action, the Liquidators seek to hold Steynberg's Estate liable for various amounts in terms of the Insolvency Act and in terms of S424 of the 1973 Companies Act, *inter alia* in an amount of R4,666,077,528.00. I draw the attention of the court to the fact that the Liquidators submitted a claim against Steynberg's Estate in an amount of some R10,174,208,719.84 billion which claim was proved, but is the subject matter of an application for expungement. The discrepancy between these claimed amounts is telling.
25. I have repeated what is alleged by the Liquidators in their particulars of claim, without making any concession as to the correctness thereof and this affidavit is to be read with our plea. In the fulness of time, these aspects will





be the subject matter of a trial. The same applies in respect of the founding affidavit.

26. In the founding affidavit in the Main Application, it is contended that MTI in truth and in fact conducted a fraudulent unlawful Ponzi-type investment scheme (paragraph 31). In this regard, as appears from annexure "FA10" at page 350 and further, an application was brought by the Liquidators on 3 September 2021 in terms of which declaratory relief is sought from this court that the business model of MTI is an illegal and/or unlawful scheme and/or that MTI at all relevant times operated an illegal and/or unlawful business; declaring all agreements purportedly concluded between MTI and its investors in respect of the trading/management/investment of bitcoin for the purported benefit of the investors, to be unlawful and void *ab initio* and declaring that MTI is/was factually insolvent in that the value of its liabilities exceeded the value of its assets since 18 August 2019 until its winding-up and in paragraph 1.4, declaring any and all dispositions made by or on behalf of MTI to any of its investors or third party, as payment or part-payment of purported profits and the like, to be dispositions without value in terms of s26 of the Insolvency Act or declaring it to constitute undue preferences in terms of s29 of the Insolvency Act.
  
27. That application ("**the Ponzi application**") has been argued in part, and is set down for further argument on 9 November 2022. As is readily apparent from paragraphs 35 and 36 of the founding affidavit in the Main Application that the Liquidators have obtained various legal opinions with diverting views surrounding pertinent and central issues that arise in the MTI



liquidation proceedings, which pose a number of "*pivotal, contentious, and involved questions*" in respect of which the Liquidators "*require of this Honourable Court to issue them with such guidance as the circumstances may require, to ensure that the MTI liquidation proceedings are conducted with efficacy, expedience, and legal certainty, and also to render the steps taken in pursuance of the liquidation proceedings beyond subsequent reproach*" (paragraph 36.3) and approach this court for guidance in terms of s387(3) of the 1973 Companies Act in respect of questions listed in paragraph 37, which includes questions such as what is the nature of bitcoin and its clarification in an insolvent estate. I pause to add that these questions are also of importance in the administration of Steynberg's estate. This is so because we have received advice, based on information received by us, that at all material times, Steynberg was the owner of and controlled the bitcoin held at FX Choice, which were in a wallet in his name, and that creditors in respect of some or all of the bitcoin should be dealt with in the administration of Steynberg's estate. This includes the 1281 bitcoin to which reference is made in paragraph 78 of the founding affidavit.

28. In paragraph 86 of the founding affidavit, reference is made to the MTI database (also referred to as the so-called "*back office*"), said to be a database hosted by Maxtra Technologies in India. It is stated by the Liquidators that the MTI database stored information concerning the details of each investor's bitcoin deposited, the purported referral commissions, bonuses and profits credited to crypto-currency accounts as well as the actual number of bitcoin that each member withdrew from his or her



*“investment”* in MTI. Reference is then also made to an affidavit of Craig Pedersen (**“Pedersen”**) who deals with *“relevant information obtained from the MTI database”* in the founding affidavit in the Main Application, annexure **“FA8”** (paragraph 87).

29. However, the information and advice that we as trustees of Steynberg’s Estate received is that the MTI database is not reliable, it is capable of (and was in fact) manipulated and that the Liquidators’ reliance thereon, is misplaced. Plainly, it has no or little evidentiary value. Therefore, when the Liquidators contend in paragraph 89.3 of their founding affidavit in the Main Application that the bitcoin frozen by FX Choice *“was not the property of [Steynberg], but belong to MTI and form part of the so-called trading pool”*, this is denied and, on the contrary, we will demonstrate in due course in our answering affidavit that those bitcoin and/or its proceeds belonged to Steynberg and/or should be accounted for, and dealt with, in the administration of Steynberg’s Estate.
30. In paragraph 91, reference is made to a report by the FSCA in respect of their investigations into the alleged unlawful activities of MTI. The report is annexed to the founding affidavit as **“FA8”** and the applicants place reliance on the content thereof in support of the contention that the business conducted by MTI was unlawful in a number of respects and for various reasons.

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31. However, as appears from the FSCA report, the FSCA found that:

28.1 *"We have found no evidence of any significant store of Crypto assets and any trading platform and that most crypto balances appear in the name and under control of Steynberg"* (third unnumbered paragraph on page 5 of the FSCA Report); and

28.2 *"Clients' assets were pooled into one FXChoice account alleged to be in the name of MTI. However, the account at FX Choice was in fact in the name of Steynberg"* (first unnumbered paragraph on page 6 of the FSCA Report); and

28.3 *"Thereafter all the clients' assets were pooled into one account alleged to be in the name of MTI. However, this account was in fact in the name of Steynberg at FXChoice"* (paragraph 143 on page 35 of the FSCA Report).

32. It therefore appears from the FSCA report that they, as the authority with the statutory mandate to conduct investigations into possible contraventions of financial sector laws, have found as a matter of fact that the bitcoin frozen by FX Choice belonged to Steynberg.

33. As is apparent from paragraph 110 of the founding affidavit in the Main Application, the Liquidators (then provisional) recovered 1,281 bitcoin from FX Choice. Those are the bitcoin which were in the name of Steynberg and which the Liquidators have in paragraph 112 made mentioned of further bitcoin amounting to at least 6,853.29 bitcoin which is said to be *"unaccounted for within MTI"* while this is, by no means, the correct position.



34. As with the case of the Liquidators, we also seek clarity in respect of the issues raised in paragraph (i) to (iv), and likewise seek the guidance of the court in respect of those issues.
35. But, in addition thereto, we seek a declarator in respect of the frozen bitcoin and/or its proceeds and creditors in relation to those bitcoin, and whether they should be administered in Steynberg's Estate or in MTI's winding-up. These aspects will be elaborated upon in the answering affidavit, which we intend to file, and request the court to order to be filed, by 30 November 2022.
36. An aspect which is of importance is that this court must still hear further argument on 9 November 2022 and thereafter hand down judgment in the Ponzi application which appears, as things stand, to be necessary prior to the affidavits in this application being finalised and this application being argued.
37. Of concern to the Trustees of Steynberg's Estate is the reliance on the affidavit of Pedersen and, in turn, his reliance on the MTI database, for reaching his conclusions in his supporting affidavit. In paragraph 29 thereof (at page 456 of the paginated papers), Pedersen states that it was established that the total amount (presumably number of) 39,139.29 bitcoin were deposited with MTI of which 28,272.42 was subsequently withdrawn and, accordingly, that 10,866.87 bitcoin was known not to have been withdrawn. Repeating our reservations about the integrity of the MTI database, based on advice that we have received, it is evident that further

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investigation is required as to the whereabouts of the remainder of the bitcoin.

38. For the sake of completeness, I attach marked annexure "JF8" an opinion received from Adv PF Louw SC, confirming that, in his opinion, the frozen bitcoin and the creditors in relation to those bitcoin, should be dealt with and administered in Steynberg's Estate.
39. In the circumstances, the Trustees of Steynberg's Estate seek leave from the court to intervene in the Main Application and for an order affording us until 30 November 2022, to deliver our comprehensive answering affidavit.

DEPONENT



I certify that this affidavit was signed and sworn to before me at PRETORIA on this 28<sup>th</sup> day of OCTOBER 2022, by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

  
COMMISSIONER OF OATHS

Name:

Address:

Capacity:

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