



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

CASE NO: 7595/2017

In the matter between:

CHRISTINE REDDELL

First Applicant

TRACEY DAVIES

Second Applicant

DAVINE CLOETE

Third Applicant

v

MINERAL SANDS RESOURCES (PTY) LTD

First Respondent

ZAMILE QUNYA

Second Respondent

Coram: Justice J I Cloete

Heard: 29 May and 30 May 2019

Delivered: 30 May 2019

JUDGMENT

CLOETE J:

- [1] This is an opposed interlocutory application for further and better discovery, brought by the applicants as defendants in an action against them for defamation.
- [2] In a nutshell, the applicants argue that they are entitled to the documents concerned as a result of their constitutional right to access to information enshrined in s 32(1)(b) of the Constitution, and that uniform rule 35, pertaining to discovery, should be interpreted in such a manner (as prescribed by s 39(2) of the Constitution) to give effect to that right.
- [3] The overarching defence raised by the respondents is that on the basis of their own plea, the applicants are not entitled to the documents remaining in dispute or, put differently, that the failure to plead facts in support of their pleaded defences precludes what otherwise amounts to a fishing expedition.
- [4] I have had the benefit of hearing extensive and lengthy argument over one and a half days, which was of considerable assistance in crystallising the issues, and for which I am indebted. I have also had the advantage of reflecting on the arguments overnight. I will thus deliberately keep this judgment as short and concise as possible.
- [5] For the reasons that follow, I am of the view that at the end of the day one must go back to basics. Whether or not the respondents have breached multiple laws relating to the first respondent's mining operation is not the issue

at this stage. That may be the case (or not), but that is for the trial court to decide. What I must decide is whether, on the pleaded defence of the applicants, they are entitled to the extensive range of documents still sought, which for convenience are set out in tabulated form (including the particular objections raised by the respondents) in Annexure A hereto.

- [6] In *National Media Ltd and Others v Bogoshi* 1998 (4) SA 1196 (SCA) at 1202G-H it was held that:

'In considering the validity of the third defence it is useful to bear in mind that liability for defamation postulates an objective element of unlawfulness and a subjective element of fault (animus injuriandi – the deliberate intention to injure). Although the presence of both elements is presumed once the publication of defamatory material is admitted or proved, the plaintiff is required to allege that the defendant acted unlawfully and animus injuriandi, and it is for the defendant either to admit or deny these allegations. A bare denial, however, is not enough: the defendant is required to plead facts which legally justify his denial of unlawfulness or animus injuriandi as the case may be.'

- [7] The aforementioned decision has been cited with approval in (amongst others) *Hardaker v Phillips* 2005 (4) SA 515 (SCA) at 524H-I and *Le Roux v Dey* 2011 (3) SA 274 (CC) at para [85].

- [8] In the instant matter, the applicants failed to plead any facts which legally justify their denial of unlawfulness or *animus injuriandi*. They contented themselves with what are possibly best described as "labels" for categories of defences. These were that: (a) the statements consisted of factual allegations which are true or substantially true and were made in the public interest; and

(b) to the extent that the statements consisted of statements of opinion, they were based on facts that were true or substantially true and fairly referred to, were a genuine expression of opinion, concerned a matter in the public interest, and were made in the exercise of the right to freedom of expression, including the right to academic freedom in s 16 of the Constitution.

[9] When this was raised with the applicants' counsel, the response was that the respondents should have excepted to the plea. I am not persuaded. Although the applicants failed to plead facts legally justifying the denial of unlawfulness or *animus injuriandi*, they nonetheless pleaded in a manner which disclosed a defence. Whether or not the plea is vague and embarrassing is not for me to decide. There may also have been tactical reasons why the respondents chose not to except, and I am not privy to those reasons. What I can, and do, take into account is that it is the applicants who bear the onus to prove their defence, and not the respondents to disprove it.

[10] As was also held in *Bogoshi* at 1218D-E:

'I have explained why, in my view, the onus should be on the defendant. This view is supported in a constitutional context by the Australian decisions mentioned earlier and the judgment of Owen-Flood J in the British Columbia Supreme Court in Pressler and Pressler v Lethbridge and Westcom TV Group Ltd 48 CRR (2d) 144. I should add that the falsity of a defamatory statement is not an element of the delict, but that its truth may be an important factor in deciding the legality of its publication. I find it difficult to see why (as was held in Holomisa) a plaintiff should, as part of his claim, allege and prove something that the defendant may rely upon in justification...'

- [11] The applicants not only chose to pin their colours to the mast (or label) of alternative categories of broad defences permitted by law, they deliberately, it must be assumed, chose not to disclose the particulars upon which they relied in advancing them. This is because they refused to provide an iota of particularity in the request for trial particulars served by the respondents, maintaining that their defences were '*sufficiently pleaded*'. I mention this only to the extent of its relevance to the pleaded issues in this case, which it is trite are all that may be considered in the context of an application such as the present.
- [12] How a trial judge in due course will be able, in these circumstances, to determine the admissibility or otherwise of the documents sought by the applicants, were I to grant this application, is not possible to discern, whether or not they are introduced for purposes of advancing the applicants' defence or for damaging the case of the respondents.
- [13] There is thus, to my mind, considerable merit in the respondents' contention that the task which the applicants seek to impose upon them to produce, it would seem, every conceivable document relating to the first respondent's mining operation since construction commenced in April 2013 (this date was provided during argument), is an impossibly burdensome one which, on the pleadings as they stand, may or may not have any relevance to the determination of the issues. Of course, one is not dealing here only with the fair trial rights of the applicants, but also those of the respondents. On the pleadings at present, not only are the respondents unable to determine what documents should be produced as part of the discovery process, the court is

not able to do so either. See also in this regard *Arnold v Bottomley* [1908] 2 KB 151 (CA) at 160 where it was stated, quoting earlier authority with approval, that:

'The House of Lords never meant to say that in every case of an action for libel the defendant is entitled to a discovery. It is a monstrous proposition that, if a person chooses to libel any mercantile firm, large or small, and then pleads a justification to an action, he has a right to inspect and take extracts from every book or document they possess.'

[14] I must also have regard to the clear warning set out in *Swissborough Diamond Mines (Pty) Ltd v Government of the Republic of South Africa* 1999 (2) SA 279 (T) at 321G-I, that a party can be severely prejudiced in circumstances where failure to comply with a discovery notice can result in an order compelling compliance, and failure to comply therewith can result in the claim being dismissed or defence being struck out in terms of rule 36(7). I mention this because, although those comments were made in the context of a lack of specificity of the documents themselves (which is also one of the respondents' complaints in the present application) they apply equally to what is at issue here.

[15] The applicants are not without a remedy. All they need to do is amend and plead their defences in accordance with the correct approach set out in *Bogoshi* (and the decisions that followed it). Discovery (and further and better discovery) may then follow, and were there to be a further rule 35(7) application, that court would have the advantage of being able to determine which of the additional documents sought have relevance to the pleaded

issues. At present this is pretty much an insurmountable task. That court will also be in a position to determine whether, as currently contended by the respondents, the applicants are simply embarking on a fishing expedition to seek justification for the statements made.

[16] That would also be the appropriate time for the court to consider the applicants' arguments relating to the interpretation of rule 35. To my mind it is premature to do so at this stage and may well have the unfortunate consequence of putting the proverbial cart before the horse.

[17] As to costs, this is a difficult call given the history between these parties, but it is one that I have to make. I am persuaded, for the reasons advanced by the respondents, that costs must follow the result, but that they should be limited to the costs of two (and not three) counsel.

[18] **The following order is made:**

- 1. The application is dismissed.**
- 2. The applicants shall pay the respondents' costs on the scale as between party and party, including the costs of two counsel (as determined by the taxing master) where employed as well as any reserved costs orders.**



J I CLOETE

Annexure to Defendants' heads of argument: List of disputed documents

(29 May 2019)

| Item: | Description of document, in NoM and "OGH2" | Basis for refusal, in "OGH3" and Answering Affidavit | Replying Affidavit | Legal basis for refusal to discover |
|-------|---|--|---|--|
| 4 | MSR's approved SLP for the Tormin Mine, any approved amendments thereto, and all compliance reports submitted to the DMR by, or on behalf of, MSR in relation to the SLP | <p>Refused: SLP for the Tormin Mine, amendments and documents related thereto are irrelevant to the pleaded issues in dispute between the parties. First Defendant said that the cliff collapse was caused by illegal action. Second Defendant said that the First Plaintiff operates and continues to operate in circumstances where it is in breach of multiple environmental laws, mining laws, municipal by-laws as well as planning laws ... neither the First nor the Second Defendant claimed that there was non-compliance with the approved SLP. "OGH3" par 9 ~ 10; AA par 33</p> | It is denied that the alleged defamatory statements related only to the transgressions relevant to the search and seizure application. RA par 6 | Defences 1 & 2: Compliance with the Social and Labour Plan ("SLP") never raised before. Compliance reports post 25 January 2017 cannot be relevant. |
| 8 | All correspondence, reports, and documents relating to the conditions of authorisation described in part E of the environmental authorisation for the Tormin Mine issued by DEADP, including: | On documents that show compliance with conditions in the Environmental Authorisation (EA) - AA par 35-70 | It is denied that documents that relate to any alleged transactions which took place after 25 January 2017 are irrelevant to the pleaded issues. RA par 5 | Defence 2 & 4: Not clear which conditions of authorisation the alleged transgressions relate to, overbroad, includes documents post 25 January 2017. |

" A "

| Item: | Description of document, in NoM and "OGH2" | Basis for refusal, in "OGH3" and Answering Affidavit | Replying Affidavit | Legal basis for refusal to discover |
|-------|---|--|--------------------|-------------------------------------|
| 8.1 | [No longer disputed] | <p>8.1 Refused: Defendants seek the disclosure of applications for amendments of the environmental authorisation when only documentation relating to approvals and conditions is relevant. "OGH3" par 13.</p> <p>The validity of the EA beyond the date of the presentation is irrelevant for the purposes of the pleaded issues in dispute between the parties. RA par 34</p> | | |
| 8.2 | [No longer disputed] | | | |
| 8.3 | [No longer disputed] | | | |
| 8.4 | written notice to the competent authorities before commencement of construction activities approved by the environmental authorization, | 8.4 Refused: not relevant to pleaded issue in dispute between the parties. "OGH3" par 16 | | Defence 1: Never in dispute. |
| 8.5 | [No longer disputed] | | | |
| 8.6 | [No longer disputed] | | | |
| 8.7 | [No longer disputed] | | | |

| Item: | Description of document, in NoM and "OGH2" | Basis for refusal, in "OGH3" and Answering Affidavit | Replying Affidavit | Legal basis for refusal to discover |
|-------|---|--|--------------------|---|
| 8.8 | letters of engagement of all environmental control officers appointed by the Tormin Mine, together with their curriculum vitae, | 8.8 Refused: documents sought are not relevant to pleaded issues in dispute between the parties. "OGH3" par 20 | | Defence 1: Appointment letters, on the face of it, entirely irrelevant. |
| 8.9 | all documents relating to the integrated waste management approach implemented by the Tormin Mine, based on waste minimisation and incorporating reduction, recycling, re-use and disposal where appropriate, | 8.9 Refused: documents sought are not relevant to pleaded issue in dispute between the parties. The defamatory statements do not concern non-compliance with the waste management approach. "OGH3" par 21 | | Defence 1: Waste management, recycling, etc. never in dispute. NEM: Waste Act 59 of 2008 contains 84 sections (excluding Regs). Fishing expedition on unrelated issues. |
| 8.10 | all documents relating to the disposal of solid waste at a landfill licensed in terms of the applicable legislation, | 8.10 Refused: not relevant to pleaded issue in dispute between the parties. The defamatory statements do not concern non-compliance with the disposal of solid waste at a landfill licensed in terms of the applicable legislation | | Defence 1: Disposal of solid waste at licenced landfill never in dispute. |

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|-------|--|---|--------------------|---|
| 8.11 | all documents relating to compliance by the Tormin Mine in respect of relevant legislation pertaining to water, | 8.11 Refused: not relevant to pleaded issue in dispute between the parties. "OGH3" par 23 | | Defence 1 & 4: Entirely unclear what this relates to. Is it non-compliance with the right to use water under the National Water Act 36 of 1998 or does it relate to the provisions of the Water Services Act 108 of 1997? Not even related to Environmental, Mining and Planning ("EMP") law. Water laws grouped with Agriculture, Fisheries & Forests. |
| 8.12 | reports to the Provincial Heritage Resources Authority of the Western Cape, in Heritage Western Cape, in accordance with applicable legislation, should any heritage remains have been uncovered and exposed during excavations or any actions on the site of the Tormin Mine, | 8.12 – 8.16 Refused: not relevant to pleaded issue in dispute between the parties. The defamatory statements do not concern compliance with the legislation or the matters raised in the subparagraphs under reply. "OGH3" par 24 | | Defence 1: National Heritage Resources Act 25 of 1999 not an EMP law, falls under National Monuments / Education. |

| Item: | Description of document, in NoM and "OGHZ" | Basis for refusal, in "OGH3" and Answering Affidavit | Replying Affidavit | Legal basis for refusal to discover |
|-------|--|--|--------------------|---|
| 8.13 | all documents relating to the appointment of a qualified archaeologist should human remains have been uncovered and exposed during excavations or any actions on the site of the Tormin Mine, | | | Defence 1: Not EMP law. |
| 8.14 | all documents relating to the implementation at the Tormin Mine of the Heritage Management Plan dated 2009 and compiled by Professional Grave Solutions (Pty) Ltd, submitted together with the EIA Report dated February 2012, | | | Defence 1: Also not EMP law. |
| 8.15 | all documents relating to the adherence to relevant legislation pertaining to occupational health and safety at the Tormin Mine; | | | Defence 1: Occupational Health and Safety Act 85 of 1993 not EMP law, but labour law. |

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|-------|---|--|--------------------|--|
| 8.16 | <p>all documents relating to the implementation of the mitigation measures as outlined in section 8.2 of the Botanical Impact Assessment Report (dated September 2007, revised in September 2009 and compiled by Bergwind Botanical Surveys and Tours, Appendix A), as well as the map indicating "no-go" areas, including the buffer areas, as determined by Bliff Lewis Geomatics (Appendix B),</p> | | | <p>Defence 1: Never raised before.</p> |
| 8.17 | <p>all documents relating to rehabilitation at the Tormin Mine as undertaken in accordance with the EMP,</p> | <p>Refused: The documents sought are not relevant to pleaded issue in dispute between the parties. The defamatory statements do not concern compliance with legislation or conditions pertaining to rehabilitation at the Tormin Mine in accordance with the EMP. "OGH3" par 25</p> | | <p>Defence 1 & 3: The rehabilitation will only take place once mining is finished.</p> |

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|-------|---|--|--------------------|--|
| 8.18 | all documents relating to the implementation of the recommendations in the Traffic Assessment (dated July 2007, revised in September 2011 and compiled by Tech IQ Consulting Engineers (Appendix C) at the Tormin Mine, | 8.18 – 8.19 Refused: The documents sought are not relevant to pleaded issue in dispute between the parties. The defamatory statements do not concern implementation of the traffic assessment or compliance with the SANS codes and standards of noise and sounds generated during all phases of the development at the Tormin Mine. "OGH3" par 26 | | Defence 1: Traffic never raised before. |
| 8.19 | all documents relating to compliance with the relevant SANS codes and standards of all noise and sounds generated during all phases of the development at the Tormin Mine, | | | Defence 1 & 4: Not clear which relevant South African National Standards ("SANS") relating to noise and sounds are referred to. There are many such standards. |
| 8.20 | [No longer disputed] | | | |

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|-------|--|---|--------------------|--|
| 8.21 | all documents relating to the monitoring undertaken at the Tormin Mine in accordance with the methodology outlined in the EMP of the physical diversity, community structure of the invertebrate macrofauna of the beach, the biota of the rocky intertidal and the subtidal sandy shore habitats, | 8.21 Refused: The documents sought are not relevant to pleaded issue in dispute between the parties. The defamatory statements do not concern monitoring in accordance with the methodology outlined in the EMP of the physical diversity, etc. "OGH3" par 28 | | Defence 1: Never raised before. |
| 8.22 | all documents relating to the construction of the sea walls, and in particular documents indicating the construction dates, | 8.22 Refused: The documents sought are not relevant to pleaded issue in dispute between the parties. The defamatory statements do not concern the construction of sea walls. "OGH3" par 2 | | Defence 1 & 4: Not clear what "sea walls" refer to. The documents pertaining to the "jetty" / groyne were dealt with and attached to the answering affidavit of DEA&DP in Case No. 18701/16. |

| Item: | Description of document, in NoM and "OGHZ" | Basis for refusal, in "OGH3" and Answering Affidavit | Replying Affidavit | Legal basis for refusal to discover |
|-------|---|---|---|--|
| 8.23 | all documents relating to the implementation of fuel mitigation measures at the Tormin Mine, including the confinement of all fuel temporarily stored on site to specific, secured and banded areas; the provision of drip trays for all vehicles, construction equipment and generators that may require re-fuelling on site; and the containment and removal of soil contaminated by a spill to a licensed landfill site. | 8.23 Refused: The documents sought are not relevant to pleaded issue in dispute between the parties. The defamatory statements do not concern the implementation of fuel mitigation measures at the Tormin Mine. "OGH3" par 3 | | Defence 1: Fuel mitigation measures never raised before. |
| 10 | All reports from Obsideo Consulting about the construction of the mine infrastructure, including the construction of the roads, at the Tormin Mine | Refused: The documents sought are not relevant to pleaded issue in dispute between the parties. The defamatory statements do not concern construction of all infrastructure at the Tormin Mine. Request is overbroad. "OGH3" par 33; AA par 71-74 | It is denied that documents that relate to any alleged transactions which took place after 25 January 2017 are irrelevant to the pleaded issues. RA par 5 | Defence 1: In any event the roads issues fully dealt with in DEA&DP's AA in Case No. 18701/16. |

| Item: | Description of document, in NoM and "OGH2" | Basis for refusal, in "OGH3" and Answering Affidavit | Replying Affidavit | Legal basis for refusal to discover |
|-------|--|---|---|--|
| 11 | All correspondence by and to the environmental control officers and the Tormin Mine | Refused: request overbroad. "OGH3" par 34; AA par 75-78 | It is denied that documents that relate to any alleged transactions which took place after 25 January 2017 are irrelevant to the pleaded issues or that that the alleged defamatory statements related only to the transgressions relevant to the search and seizure application. RA par 5-6 | Defence 1, 3 & 4: Unclear which environmental control offices, internal, provincial or national? Seeking post 25 January 2017 documents. |
| 12 | All notes, memoranda, reports and other internal documents prepared by the environmental control officers of the Tormin Mine | Refused: request overbroad. "OGH3" par 35; AA 80-82 | It is denied that documents that relate to any alleged transactions which took place after 25 January 2017 are irrelevant to the pleaded issues or that that the alleged defamatory statements related only to the transgressions relevant to the search and seizure application. RA par 5-6. It is denied that the applicants are at this stage obliged to identify the first plaintiff's non-compliance with mining, environmental and land use planning laws. RA par 15 | Defence 1, 2 & 4: Overbroad, not related to specific transgression pleaded. |

| Item: | Description of document, in NoM and "OGH2" | Basis for refusal, in "OGH3" and Answering Affidavit | Replying Affidavit | Legal basis for refusal to discover |
|-------|--|---|--|---|
| 15 | All performance assessments and/or environmental audit reports submitted to the DMR and/or DEADP by, or on behalf of, MSR in accordance with Regulation 55 of the MPRD Regulations, and/or in accordance with MSR's environmental authorisation approved under NEMA, and/or in accordance with Regulation 34 of the EIA Regulations, 2014. | Granted (incomplete): "ZQ9" Plaintiffs cannot reasonably be expected to discover each and every performance assessment and or environmental audit report, in order to facilitate the Plaintiffs' attempts to exculpate themselves from liability for publication of their defamatory statements. AA par 8 | First Plaintiff is by law required to submit performance assessments and environmental audit reports to the relevant state departments. The Defendants' request for such assessments and reports relates directly to a pleaded issue Def RA par 16. | Defence 1, 2 & 4: Overbroad And Includes Documents Post 25 January 2017. "ZQ9" (The S 102 MPRDA Amendment) was provided including performance assessments contained therein as the 102 amendment was of importance in Case No. 18701/16 and indeed form part thereof. |
| 16 | The approved mining works programme for the Tormin Mine and any approved amendments thereto. | Refused: Read in context, neither the First nor the Second Defendant claimed that there was non-compliance with the approved mining works program. "OGH3" par 39 | | Defence 1: The compliance with the MWP never an issue. |
| 17 | Prescribed annual reports in terms of section 25(2)(h) of the MPRDA detailing the extent of compliance by MSR and Tormin Mine with sections 2(d) and (f) of the MPRDA, the Mining Charter and the SLP | Refused: Read in context, neither the First nor the Second Defendant claimed that there was non-compliance with the sections 2(d) and (f) of the MPRDA, the Mining Charter and the SLP. "OGH3" par 40; AA par 86. | It is denied that documents that relate to any alleged transactions which took place after 25 January 2017 are irrelevant to the pleaded issues or that that the alleged defamatory statements related only to the transgressions relevant to the search and seizure application. RA par 5-6 | Defence 1: Compliance with the affirmative action requirements (s2(d)) and promotion of employment (s2(f)) never an issue. |

| Item: | Description of document, in NoIM and "OGH2" | Basis for refusal, in "OGH3" and Answering Affidavit | Replying Affidavit | Legal basis for refusal to discover |
|-------|---|---|--|--|
| 32 | <p>All the documents seized at the Tormin Mine on 29 September 2016 in terms of a search warrant issued by the Magistrate of Vredendal and returned to the Tormin Mine in terms of an order by Rogers J in the matter of Mineral Sands Resources (Pty) Ltd and the Magistrate for the District of Vredendal and others (WCHC 18701/16), and as described in "SPM16" in the pleadings filed under case number WCHC 18701/16:</p> <p>32.1 Personal files – contract of employment Z Qunya</p> <p>32.2 Contract of employment S. Mkhize</p> <p>32.3 [No longer disputed]</p> <p>32.4 Appointment letter for mine manager</p> <p>32.5 Land use agreement</p> <p>32.6 [No longer disputed]</p> <p>32.7 Land use agreement letter</p> <p>32.8 [No longer disputed]</p> <p>32.9 Operating agreement between TransHex and De Punt</p> <p>32.10 [No longer disputed]</p> <p>32.11 [No longer disputed]</p> <p>32.12 Water use license - file</p> | <p>Paragraphs 32.1, 32.2, 32.4, 32.5, 32.7, 32.9, 32.12:</p> <p>Refused: The documents sought are not relevant to pleaded issue in dispute between the parties. "OGH3" par 52. The warrant on which the search and seizure operation depended was declared invalid. AA par 88</p> <p>Defendants have not made out a case for the relevance to the issues in dispute between the parties in relation to the balance of the documents listed in the search and seizure receipt. AA par 94</p> <p>The request is overboard. AA par 97</p> | <p>The DEA officials obtained the search warrant ... It is reasonable to conclude that the seized documents may be relevant to the first plaintiff's compliance with mining, environmental and land use planning laws. RA par 17</p> <p>It is denied that the request is so broad that the plaintiffs cannot reasonably identify documents which may be relevant from those which are not. RA par 9 and 19</p> | <p>Defence 1 & discretion: Not in the public interest for third party to be granted access to documents seized by government agencies.</p> |

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|-------|--|--|---|---|
| 35 | All correspondence by and to MSR and the DMR in relation to the Tormin Mine from the granting of MSR's mining right to date | Refused: overbroad – The request does not only relate to matters referred to by the First and the Second Defendants in their presentations. "OGH3" par 59; AA par 96-98 | It is denied that documents that relate to any alleged transactions which took place after 25 January 2017 are irrelevant to the pleaded issues or that that the alleged defamatory statements related only to the transgressions relevant to the search and seizure application. RA par 5-6. | Defence 1, 2 & 4: Completely overbroad, relates to documents before mining operations started and post 25 January 2017, privacy of third parties. |
| 36 | All correspondence by and to MSR and DEADP in relation to the Tormin Mine from the granting of MSR's mining right to date | Refused: overbroad – The request does not only relate to matters referred to by the First and the Second Defendants in their presentations. "OGH3" par 59; AA par 96-98 | | Defence 1, 2 & 4: Completely overbroad, relates to documents before mining operations started and post 25 January 2017, privacy of third parties. |
| 37 | All correspondence by and to MSR and the Matzikama Municipality in relation to the Tormin Mine from the granting of MSR's mining right to date | Refused: overbroad – The request does not only relate to matters referred to by the First and the Second Defendants in their presentations. "OGH3" par 59; AA par 96-98 | | |
| 38 | All email correspondence by and to Mark Caruso and Gary Thompson in relation to the Tormin Mine between January 2014 and date of summons | Refused: overbroad – The request does not only relate to matters referred to by the First and the Second Defendants in their presentations. "OGH3" par 59; AA par 96-98 | | Defence 1, 2 & 4: Completely overbroad, include documents post 25 January 2017 and impact on privacy of third parties |

| Item: | Description of document, in NoM and "OGH2" | Basis for refusal, in "OGH3" and Answering Affidavit | Replying Affidavit | Legal basis for refusal to discover |
|-------|--|---|--------------------|--|
| 39 | All email correspondence by and to Mark Caruso and Zamille Qunya in relation to the Tormin Mine between January 2014 and date of summons | Refused: overbroad – The request does not only relate to matters referred to by the First and the Second Defendants in their presentations. "OGH3" par 59; AA par 96-98 | | Defence 1, 2 & 4: Completely overbroad, include documents post 25 January 2017 and impact on privacy of third parties |