Reportable: Yes / No
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# IN THE HIGH COURT OF SOUTH AFRICA

(Northern Cape Division)

Case no: 84/02

Date Heard: 13/10/2003

Date Delivered: 20/10/2003

In the matter of:

**THE STATE**

*versus*

**MICHAEL BRUCE SASSIN ACCUSED 1**

**TIMOTHY GARTH SASSIN ACCUSED 2**

**ODETTE KOORTS ACCUSED 3**

Coram: **MAJIEDT J**

# JUDGEMENT

**MAJIEDT J:**

## A. INTRODUCTION

1. Section 105A of the Criminal Procedure Act, 51 of 1977 ("*the Act*") makes provision for the formalisation of a plea bargaining process which culminates in a plea and sentence agreement concluded between the State and an accused person. **Du Toit *et al***, Commentary on the Criminal Procedure Act at p.15-16 contains a detailed exposition of the history and background of this particular section.

2. In this matter accused number one has concluded such an agreement with the State. In return, the State has decided to withdraw those charges on which accused one has not proffered a plea of guilty. The State has also decided to withdraw the charges against the two co-accused, who I am led to believe are the son and daughter of accused one. I was somewhat surprised to

find that there has, at the time of preparing this judgement, not been any judgement reported in the law reports on this particular section.

## B. BACKGROUND

3. The State alleges in the indictment, amplified by the summary of substantial facts, that the accused had, for the period from January 1997 until December 1998, conducted what has in common parlance become known as a "*pyramid scheme*". Deposits had during this time been received from members of the general public, ostensibly for investment on the Johannesburg Stock Exchange as it was then known ("*the JSE*"). An amount of R29 167 761.80 in total is alleged to have been received from investors. This scheme originated at the accused's Kimberley offices and was later extended to

offices at Umtentweni in the district of Port Shepstone, Knysna and Roodepoort. The scheme was conducted under various trade or company names in these aforementioned centres. All the companies under which the scheme had been operating have been placed under final winding-up by order of this Court.

4. The State alleges that the accused had defrauded the investors by various misrepresentations, to the detriment of the said investors. There are in total 1655 fraud charges (i.e. in respect of 1655 deposits/investments made by members of the general public).

5. It is further alleged that only R8 009 766.12 of the total sum of money received from investors was eventually invested on the JSE. A loss of R1 990 068.00 was allegedly suffered on these investments.

6. The accused are alleged to have spent considerable

amounts of the money invested in the scheme on the personal acquisition of movable and immovable property.

7. In respect of the fraud charges the State alleges that the accused had made misrepresentations to these investors as to:

7.1 the expected profits on their investments (in some instances it is alleged that returns on investment as high as 700% had been forecasted);

7.2 the safety of their investment; and

7.3 by omitting to draw the investors' attention to the fact that a scheme such as this one has limited continuance, since earlier investors are repaid their investments and profits from the deposits made by later investors.

8. In addition to the aforementioned fraud charges, there are a number of charges under various statutes:

8.1 a charge of contravening sec. 11(1) read with sections 1, 11(2) and 91(4)(a) of the Banks Act, 94 of 1990.

8.2 One charge of contravening sec. 4(1)(a) read with sections 1, 2, 4(4), 48(1)(a) and 48(1)(a)(i) of the Stock Exchange Control Act, 1 of 1985, with an alternative charge of contravening sec. 36(1)(c) read with sections 1, 5(1), 17b (it should read 17B) and 36(1)(iii) of the Financial Markets Control Act, 55 of 1989.

8.3 A charge of contravening sec. 424(3) read with sections 1, 2(2), 2(3), 424(1) and 441(1)(d) of the Companies Act, 61 of 1973.

8.4 A charge of contravening sec. 10(1) read with sections 1 and 2(c) of the Financial Institutions Act (Protection of Funds), 28 of 2001 and read with sec. 1(a) of the Financial Services Board Act, 97 of 1990, with an alternative charge of a contravention of sec. 10(1) read with section 1 and 2(a) of the Financial Institutions Act (Protection of Funds), 28 of 2001 read with section 11(a) of the Financial Services Board Act, 97 of 1990.

8.5 A charge of the contravention of sec. 37(3), read with sections 1 and 37(1) of the Unit Trusts Control Act, 54 of 1981.

8.6 Contravention of sec. 40(1)(a) read with sections 1, 48(1)

(h) and 48(1)(i) of the Stock Exchange Control Act, 1 of 1985, with a first alternative charge of contravening sec. 36(1)(a) read with sections 1, 22(a), 22(b) and 36(1)(i) of the Financial Markets Control Act, 55 of 1989; and a second alternative charge of contravening sec. 36(1)(a), read with sections 1, 21(a) and 36(1)(i) of the Financial Markets Control Act, 55 of 1989.

8.7 A charge of contravening sec. 39(1), read with sections 1, 48(1)(d) and 48(1)(iii) of the Stock Exchange Control Act, 1 of 1985.

## C. THE PLEA AGREEMENT: LEGAL FORMALITIES

9. The written agreement between the accused and the State consists of the accused's plea on the various charges as well as the proposed just sentence to be imposed by this Court. This agreement has been signed by lead Counsel for the State, Mr. De Nysschen, the accused and his attorney, Mr. Janse van Vuuren. Attached to the agreement is a written explanation of the accused's plea of guilty which sets out in full the factual and legal basis of the said plea.

10. In order to comply with the requirements stipulated in sec. 105A(1)(a) of the Act, Mr. De Nysschen handed up to me at the commencement of the hearing, a certificate wherefrom it appears that he has been duly authorised to negotiate and enter into a plea agreement with the accused. In my view such proof of authority is an essential prerequisite for a plea agreement under sec. 105A – it was therefore correctly placed on record at the very outset of the proceedings.

11.1 In further compliance with the provisions of the section, Mr. De Nysschen handed up:

a) an affidavit by the investigating officer, Inspector Jacobus Smit, in which he conveys the fact that he has been consulted and expresses the view that he is satisfied with the plea agreement and the proposed sentence to be imposed; and

b) affidavits from the joint liquidators of the various companies under which the accused had conducted the pyramid scheme, attorneys De Jager and Tsangarakis as well as affidavits from thirty-one of the investors. The deponents to all these affidavits express their satisfaction with and acceptance of the plea agreement, including in particular, the proposed sentence to be imposed.

11.2 The affidavits mentioned above have as its purpose compliance with the requirements set forth in sec. 105A(1)(b)(i) and (iii) of the Act. It falls upon me to consider whether those requirements have been adequately met (sec. 105A(4)(a)(ii) of the Act). The affidavit by the investigating officer presents no problem at all and I am satisfied that there has been full compliance with sec. 105A(1)(b)(i) of the Act.

11.3 Section 105A(1)(b)(iii) reads as follows:

(b) The prosecutor may enter into an agreement contemplated in paragraph (a)-

(i) .....

(ii) .....

(iii) after affording the complainant or his or her

representative, where it is reasonable to do so and taking into account the nature of and circumstances relating to the offence and the interests of the complainant, the opportunity to make representations to the prosecutor regarding-

(aa) the contents of the agreement; and

(bb) the inclusion in the agreement of a condition relating to compensation or the rendering to the complainant of some specific benefit or service in lieu of compensation for damage or pecuniary loss.

11.4 This particular provision has as its objective victim participation in the plea bargaining process. To my mind this is an absolutely essential cog in the machinery of plea bargaining and plea agreements – it lends legitimacy and credibility to the process. As **Du Toit *et al*,** Commentary on the Criminal Procedure Act, correctly observe at 15-11, it not only accommodates the personal interests of the victim, but also serves the broader interests of the criminal justice system and society. The following view expressed by Bekker in 1996 CILSA 168 at 209 is apposite:

"The other interests advanced by giving the victim a right to participate in the plea bargain are society's interests. Society benefits from victim participation in plea bargains in two ways. The first is that according to the victim the right to participate will result in more information being provided to the decision-maker. The second benefit which accrues to society from victim participation in plea bargains is that it promotes the effective functioning of the criminal justice system. The theory is that if victims are not consulted regarding the plea bargain and so feel irrelevant and alienated, they will not cooperate in reporting and prosecuting a crime. As a result, the system, which is dependent on them, functions less effectively. Therefore, making victims feel their contribution is critical, regardless of its actual value, will motivate the victim to continue to report crime and cooperate in its investigation and prosecution."

Affording victims a say in the plea bargaining process furthermore enhances transparency and lends credence to the adage that justice must manifestly be seen to be done.

11.5 The subsection under discussion contains an important proviso, namely ..."*where it is reasonable to do so ...*". In the context of this case, the question arises as to whether

it is reasonably practicable to afford some 1600 victims an opportunity to have a say in the proceedings. I was informed by Mr. De Nysschen that the thirty-one investors whose affidavits are before me represent a broad cross-section of the total number of investors. There are small individual investors (R1000.00), very large individual investors (in excess of R1 million in one instance), churches and organizations. There are affidavits from investors who have lost their total investment, partial losers and also those who did not suffer any losses at all (and who, it must be inferred, may well have profited to a greater or lesser extent from their investment in the scheme). Without exception, these investors have no objection to the plea agreement and more importantly, to the proposed sentence. This factor is of considerable importance, even more so in the case of those investors who have suffered losses on their investments. I am of

the view that, for reasons of practicability, these thirty-one investors can reasonably be regarded as representative of the total investors in the scheme.

11.6 A liquidator stands in a fiduciary relationship not only to the company or companies for which he or she has been appointed [see: **Carolina Trekkers & Implemente (Edms) Bpk** *v* **Venter 1982 (2) PH E9(A)**], but also to the body of creditors as a whole (see: **Ex parte Klopper N.O.: In re Sogervim SA (Pty) Ltd 1971 (3) SA 791 (T)** at 795). The investors in the scheme undoubtedly constitute the bulk of the body of creditors of the companies in liquidation under which the scheme had functioned. Consequently the views of the liquidators, Messrs De Jager and Tsangarakis, supporting the plea agreement, carry considerable weight. Those views can be accepted as being the views of the general body of creditors including the investors. The liquidators quite clearly are the "representatives" of the investors, as envisaged in sec. 105A(1)(b)(iii). I am consequently satisfied that the affidavits of the two liquidators as well as the affidavits of the thirty-one investors, constitute compliance with the requirements stipulated in sec. 105A(1)(b)(iii) of the Act.

12. The plea agreement itself contains a recordal in its very first paragraph that accused one has been fully advised,

before entering into the plea agreement, of his rights as set forth in sec. 105A(2)(a)(i), (ii) and (iii) of the Act. An important consideration in this matter is that accused one has been trained in law, having practised as an attorney previously.

13. Having satisfied myself as to the fact that the accused acknowledged that a plea agreement has been entered into and that the requirements of subsec. (1)(b)(i) and (iii) have been met, the accused formally pleaded to the charges and the plea agreement was disclosed in court – it is exhibit F before the Court. The accused confirmed the terms of that agreement and the admissions contained therein. He also conveyed to me that he had entered into that agreement on his own volition, while he was in his sound and sober senses and without there being any undue influence exerted upon him.

14.1 In terms of the plea agreement, accused one pleads guilty to 1527 counts of fraud, out of a total of 1655 such charges (I was informed from the Bar that the balance of the charges are duplications). He also pleads guilty to the charges listed above in paragraphs 8.1 (contravention of the Banks Act), 8.2 (contravention of the Stock Exchange Control Act) and 8.3 (contravention of the Companies Act).

14.2 In setting out the factual basis of the plea in his plea explanation, the accused's version accords almost fully with that of the State as contained in the indictment and amplified by the summary of substantial facts. In respect of the fraud charges, the accused admits:

a) that he made the misrepresentations to the public as averred by the State;

b) that he knew what the correct state of affairs were in respect of these misrepresentations;

c) that there existed a duty in law and a duty of disclosure on him in respect of the matters as averred by the State; and

d) that his misrepresentations caused members of the public to invest sums of money with him to their detriment and loss / potential loss. In respect of the statutory offences, the accused also fully admits the allegations made by the State.

14.3 Having perused the explanation of plea, I am satisfied that the accused admits all the allegations in the indictment and the essential elements of the offences to which he has pleaded guilty. I am consequently satisfied that he is guilty of those offences.

## D. THE PROPOSED SENTENCE – IS IT JUST?

15.1 Before I can formally convict the accused, I have to consider whether the proposed sentence is just. In the plea agreement it is proposed by the State and the defence that the following sentence would be just:

a) In respect of the 1527 fraud charges, taken together for purposes of sentencing: 15 years imprisonment of which 6 years is suspended for a period of 5 years

on condition that the accused is not convicted on a charge of fraud or theft committed during the period of suspension and for which the accused is sentenced to direct imprisonment without the option of a fine.

b) The charge relating to contravention of certain provisions in the Banks Act (see par. 8.1 above) – a fine of R50 000.00 or 5 years imprisonment wholly suspended (the plea agreement is defective in not specifying a period of suspension – this is so in respect of all three statutory offences on which the accused pleads guilty) on condition that the accused is not found guilty of a contravention of sec. 4(1) of the Stock Exchange Control Act, 1 of 1985, during the period of suspension (*sic*)..

c) The charge of contravening the Stock Exchange Control Act, 1 of 1985 (par. 8.2 *supra*) – R15 000.00 or 3 years

imprisonment, wholly suspended on condition that the accused is not found guilty of contravention of section 4(1) of the Stock Exchange Control Act, 1 of 1985, during the period of suspension (*sic*).

d) On the charge of contravening certain sections of the Companies Act, 61 of 1973 (see par. 8.3 *supra*) – R10 000.00 or 2 years imprisonment, wholly suspended on condition that the accused is not found guilty of contravention of sec. 424 of the Companies Act during the period of suspension (*sic*).

15.2 I have been handed a detailed written exposition of the accused's background and personal circumstances. I shall refer to it shortly. Of paramount importance is the fact that the accused does not have any previous convictions.

15.3 A complicating factor in considering whether the sentence would be just is the fact that there is a minimum sentence of 15 years imprisonment prescribed in respect of the fraud charges which exceed R500 000.00 in value (sec. 51(2) of Act 105 of 1997, read with Part II of Schedule 2 thereof). Section 105A(7)(b)(ii) of the Act requires that I have due regard to the prescribed minimum sentence when I consider whether the proposed sentence is just.

15.4 The State and defence have placed before me an agreed list of factors which they believe constitute substantial and compelling circumstances as envisaged in sec. 51(3)(a) of Act 105 of 1997, thus justifying departure from the prescribed minimum sentence. I shall allude to these factors in due course. I had pointed out to Counsel during the hearing that the sentence proposed in the plea agreement in respect of the fraud charges presupposes a finding that there are indeed substantial and compelling circumstances which justify a deviation from the minimum sentence. That is so due to the fact that a minimum sentence prescribed in sec. 51 of Act 105 of 1997 cannot be suspended, either in part of in full (sec. 51(5) of Act 105 of 1997). Moreover, directive 13, issued by the National Director of Public Prosecutions in terms of sec. 105A(11)(a) of the Act specifically provides that:

> "13. For any other offence (i.e. one where a minimum sentence of life imprisonment is not prescribed) for which a minimum sentence is prescribed, only the Office of the Director of Public Prosecutions may authorize a sentencing agreement. The agreement (pro forma) should then include a pargraph dealing with the substantial and compelling circumstances which would justify a departure from the minimum sentence."

At my request, the agreed list of substantial and compelling circumstances was compiled and duly signed

by Counsel for the State and the attorney for the accused. That list has now been handed in as an addendum to the plea agreement. For the sake of brevity I shall refer to the agreed factors later when I deal with the question of substantial and compelling circumstances.

15.5 It is significant that the Legislature has deemed it fit to use the word "*just*" in respect of the sentence and not the word "*appropriate*". **Du Toit *et al*,** Commentary on the Criminal Procedure Act, express the view (at 15-19) that, in considering whether a proposed sentence is "*just*" a sentencing court retains its judicial discretion in sentencing, albeit in fettered form. The authors submit that a sentencing court has to exercise its discretion to determine whether the sentence is an appropriate sentence and not whether it is the most appropriate one (*ibid*). Put differently, a sentencing court is not called upon to agree with the proposed sentence; all it need to

consider is whether the sentence is an appropriate one considering the facts and circumstances of the case and taking into account the needs and interests of society in general and the victims in particular, counterbalanced by the personal circumstances of the accused.

15.6 I cannot find fault with this approach of the authors. After all, there is the important consideration that the State and the defence, with diametrically opposing interests, have found common ground on the sentence and seek judicial approval therefor. I hasten to add that a sentencing court can never be a mere rubber stamp in respect of a proposed sentence in a plea agreement under sec. 105A.

15.7 The Concise Oxford English dictionary, 3rd ed. revised, defines "*just*" as "*morally right and fair, appropriate or deserved*". The Afrikaans text of the section uses the word "*regverdig*". HAT (Verklarende handwoordeboek),

by Odendal and Gouws (4*th* ed.) defines "*regverdig*" as "*in ooreenstemming met wat reg is; regmatig, onpartydig, billik, eerlik*". Labuschagne and Eksteen, Verklarende Afrikaanse Woordeboek (8*th* ed., revised) defines that word as "*eerlik; onpartydig; billik*". See also the approach adopted by Chetty AJA in **Zwiegelaar** *v* **Zwiegelaar 2001(1)SA 1208(SCA)** at 1212 H – 1213 A.

15.7 It seems to me that in considering whether a proposed sentence is just, there is indeed some scope for weighing up the circumstances of the accused, and the offence and the needs of society / victim(s) against each other within the confines of the plea bargaining framework. A sentencing court must, in my view, in such a case consider whether the proposed sentence is just in respect of the offender and the victim, bearing in mind the gravity of the offence.

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15.8 Prior to the enactment of sec. 105A, the SA Law Commission had proposed the insertion of a section 106A into the Criminal Procedure Act to govern the plea bargaining process (South African Law Commission Interim Report, Project 73: Simplification of Criminal Procedure, 1995). The proposed sec. 106A differed in many material respects from the presently enacted sec. 105A. Pertinent to the matter presently under discussion is the fact that sec. 106A did not contain any provision which ensured judicial endorsement of an agreed sentence. Bekker, CILSA 2001 (34) 310 at 323 expresses concern about this lacuna, with good reason in my view. The judicial endorsement of the agreed sentence is now to be found in the requirement that a court must be satisfied that the agreed sentence is just (sec. 105A(8) of the Act).

15.9 The accused is 52 years of age. He is divorced and has four children, all of whom have attained the age of majority and are self-supporting. The accused also has six grandchildren. He holds a B. Iuris degree and had practised as an attorney for about 8 years until 1982 when he left practice to pursue a business career. He is a member of the Institute of Marketing Management and a

qualified life assurance consultant. He had in later life developed an avid interest in computers and is a qualified software programmer, having also lectured therein at the local RC Elliot College, prior to leaving Kimberley. The accused has been working as a group legal adviser for several businesses in the Mossel Bay area, where he earned a monthly retainer of R1 500.00 plus further commission ranging from R3 000.00 to R10 000 per month. He is actively involved in tennis in the Mossel Bay area and is also a member and office bearer of the Roman Catholic Church there. The abovementioned facts are gleaned from a detailed written exposition of the accused's personal circumstances, handed in as exhibit H.

15.10 It can hardly be gainsaid that the offences on which the accused has admitted his guilt are very serious, more so in the case of the 1527 fraud charges. They are offences committed against the general public in a calculatedly devious

fashion. Gullible members of the public have been hoodwinked into parting with, in some instances, large amounts of cash, ever hopeful of obtaining fantastic profits thereon. Pensioners, churches and wealthy and not so wealthy individuals count among these investors. One investor had placed in excess of R3 million on behalf of himself and others in the scheme. Schemes of this nature appear to be on the increase. There is consequently a duty upon courts to impose sentences which would serve as deterrence to others in such matters. To illustrate the gravity of the fraud offences and to demonstrate the approach of our Courts to them as far as sentence is concerned, I can do no better than to refer to the very recent judgement of the Supreme Court of Appeal in the case of **S v Assante 2003(2) SACR 117 (SCA)**. In that case a bank manager had committed fraud over a period of 3 years in the sum of R345 million. The trial judge quite rightly described the fraud as one of "breathtaking enormity". On appeal, an effective sentence of 24 years imprisonment imposed on the 50 year old, divorced appellant who was a first offender, was confirmed.

15.11 The State has accepted that the accused had spent about R3 million on himself, family and friends. Exhibit G is a list setting out where that amount has gone (R3 649 808.50 to be precise). It makes for interesting and revealing reading. Large amounts of cash were *inter alia* splurged on:

- a game farm, game and improvements;
- flats;
- luxury vehicles, including four wheel drive vehicles;
- overseas trips to the US and Mauritius;
- a large cash withdrawal in excess of R600 000.00

An ameliorating factor is the fact that, through the efforts of the liquidators and the Asset Forfeiture Unit, the full amount has been recovered or is in the process of being recovered. Counsel for the State accepts that the accused has nothing left of his ill-gotten gains (it is significant that the accused's bail had been paid by family and friends and that he was represented in these proceedings through instructions from the Legal Aid Board).

15.12 A matter of considerable concern which I raised with

Counsel for the State, is the fact that the numbers do not add up – some R18 million of deposits by the general public appeared to me to be unaccounted for. I was informed from the Bar that this amount represents profits on investments which had been paid out to some of the (lucky) earlier investors. I was also informed that the liquidators are in the process of recovering this money from the fortunate few so as to effect a more equitable redistribution amongst the general body of creditors, particularly those investors who have suffered losses.

16. Having carefully considered the agreed list of substantial and compelling circumstances as handed in by Counsel for the State and the accused's attorney and applying the principles laid down in **S v Malgas 2001(2) SA 1222(SCA)**, **S v Mahomotsa 2002(2) SACR 435 (SCA)** and **S v Thebus & another 2002(2) SACR 566 (SCA)**, I am satisfied that the following factors

cumulatively constitute substantial and compelling circumstances as envisaged in sec. 51(3)(a) of Act 105 of 1997:

a) The fact that the accused at age 52 is a first offender.

b) The accused's plea of guilty. The State has accepted and I am prepared to do so too, that the accused is genuine remorseful about his misdeeds. The consequences of the accused's guilty plea are significant – it has saved the State a huge amount of money, time and effort. This matter has been enrolled for the entire fourth term and the first term of next year. The State would have had to call a great number of witnesses, some of them experts from outside Kimberley. The costs implications are obvious. In addition, I would have sat with an assessor, a prominent retired chartered accountant, at further significant expense to the State coffers.

c) The fact, which I have already alluded to, that the entire amount of R3 649 808.50 which the accused had lavished on himself and family and friends has been or is being recovered.

d) It is common cause between the State and the defence that the pyramid scheme operated by the

accused had initially started out as a *bona fide* business venture. The accused had developed a software programme which taught would-be investors how to trade on the JSE. Many of these would-be investors were unable to afford the costs of the programme, whereupon the accused took receipt of their money, offering to invest it on their behalf. The original venture thereafter became transformed into an illegal investment scheme in which fraud was routinely and consistently perpetrated upon a gullible, unsuspecting public. The State accepts, correctly so in my view, that the accused acted with *dolus eventualis* from January 1997 until May 1998 and thereafter with *dolus directus* (it is common cause that during May 1998 the accused was warned in writing by the Financial Services Board of the illegality of his activities, but he nonetheless

continued therewith).

e) The accused has co-operated fully with the investigating officer as well as with the liquidators. He also testified and made full disclosure during the liquidation proceedings.

f) The accused had through his attorney initiated the plea bargaining process, having approached the State with the proposals which presently appear in the plea agreement.

g) An important consideration is that the investigating officer, the liquidators and thirty-one of the investors support the plea agreement, in particular the sentence agreement.

17. The State and defence had, as part of the agreed list of substantial and compelling circumstances, included the fact that the accused has had to leave Kimberley to settle in Mossel Bay "due to the attitude of investors (who) understandably were angry with him (and after) one of the investors had seriously assaulted the accused during 1998". I find this proposition startling to say the least.

Without sanctioning same, one can understand that unsuspecting investors who are led up the garden path and who then suffer substantial losses, will vent their anger against those who have hoodwinked them. It would in my view be absurd to place this particular factor in the scale in favour of the accused.

18.1 I have strong doubts as to whether I would under normal circumstances have regarded a sentence of 15 years imprisonment, 6 years whereof is conditionally suspended for 5 years, as the appropriate sentence on the fraud charges. That is, however, beside the point. The test here is different – the question is simply whether I consider the sentence on the fraud charges to be just. Moreover, I must be mindful of the fact that this is a plea bargain matter. Having found that there are substantial and compelling circumstances which justify departure from the prescribed minimum sentence and upon careful

consideration of all the facts and circumstances of this matter, I am satisfied that the sentence proposed in the plea agreement in respect of the fraud charges is just. A factor which has weighed heavily on my mind in coming to that finding is the acquiescence of the liquidators and the thirty-one investors, particularly those among them who have suffered losses.

18.2 Charge 1656 to which the accused has pleaded guilty is the contravention of sec. 11(1) and 11(2) of the Banks Act (see par 8.1 above). That transgression is punishable with a fine not exceeding R100 000.00 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment (sec. 91(4)(a) of the Banks Act). The sentence proposed in the plea agreement is one of a fine of R50 000.00 or 5 years imprisonment, conditionally suspended in full. For the reasons advanced before, I am satisfied that the proposed sentence is just.

18.3 Charge 1657 to which the accused has also pleaded guilty is the contravention of sec. 4(1)(a) of the Stock Exchange Control Act (par 8.2 *supra*). The penalty stipulation for this particular offence is a fine or imprisonment for a period not exceeding five years (sec. 48(1)(iii) of the Stock Exchange Control Act). The sentence proposed in the plea agreement is a fine of R15 000.00 or 3 years imprisonment, wholly suspended on certain conditions. Again I am satisfied that the proposed sentence is just.

18.4 The accused has also pleaded guilty on charge 1658, a contravention of sec. 424(3) of the Companies Act (par 8.3 above). The penalty stipulation in respect of such an offence is a fine or imprisonment for a period not exceeding two years or to both such fine and imprisonment (sec. 441(1)(d) of the Companies Act). The proposed sentence of a fine of R10 000.00 or 2 years

imprisonment, conditionally suspended in full, appears to me to be just.

18.5 I have made mention of the fact that the plea agreement is defective in that it fails to stipulate the period of suspension in respect of the three statutory offences above (counts 1656, 1657 and 1658). Counsel are *ad idem* with my view that the period of suspension should be 5 years, to ensure consistency with the sentence agreed upon and endorsed by me as being just, in respect of the fraud charges.

## E. CONCLUSION

19. I am satisfied that all the formalities prescribed in sec. 105A of the Act have been complied with. I am furthermore satisfied that the accused admits all the allegations in the indictment which are necessary to sustain a conviction on the charges to which he has pleaded guilty. I am also

satisfied that the sentence proposed in the plea agreement is just.

20. Consequently:

**20.1 The accused is convicted on 1527 counts of fraud as set forth in par. 2.1.1 of the plea agreement, Exhibit F, as amplified by the further addendum thereto, Exhibit K.**

**20.2 The accused is also convicted on counts 1656, 1657 and 1658 as set forth in paragraphs 2.1.2, 2.1.3 and 2.1.4 of the plea agreement.**

**21. The accused is sentenced as follows:**

**21.1 On the 1527 charges of fraud, which are all taken together for the purposes of sentence: fifteen (15) years imprisonment of which six (6) years is suspended for a period of five (5) years, on condition that the accused is not found guilty on a charge of fraud or theft committed during the period of suspension and for which the accused is sentenced**

**to direct imprisonment without the option of a fine.**

**21.2 On charge 1656 [contravention of section 11(1) read with sections 1, 11(2) and 91(4)(a) of the Banks Act, 94 of 1990: R50 000.00 (fifty thousand Rand) or five (5) years imprisonment, which is wholly suspended for a period of five (5) years on condition that the accused is not found guilty of contravention of section 11(1) of the Banks Act, Act 94 of 1990, during the period of suspension.**

**21.3 On charge 1657 [contravention of section 4(1)(a), read with sections 1, 2, 4(4), 48(1)(a) and 48(1)(a)(i) of the Stock Exchange Control Act, 1 of 1985]: R15 000.00 (fifteen thousand Rand) or three (3) years imprisonment, which is wholly suspended for a period of five (5) years on condition that the accused is not found guilty of contravention of section 4(1) of the Stock Exchange Control Act, Act 1 of 1985, during the period of suspension.**

**21.4 On charge 1658 [contravention of section 424(3) read with sections 1, 2(2), 2(3), 424(1) and 441(1)(d) of the**

**Companies Act, 61 of 1973]: R10 000.00 (ten thousand Rand) or two (2) years imprisonment, which is wholly suspended for a period of five (5) years on condition that the accused is not found guilty of contravention of section 424 of the Companies Act, Act 61 of 1973, during the period of suspension.**

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**SA MAJIEDT**

**JUDGE**

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| FOR THE STATE : ADV JH DE NYSSCHEN & ADV R CALITZ |

FOR THE ACCUSED : MR. D JANSE VAN VUUREN

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| DATE OF HEARING : 13/10/2003 |

DATE OF JUDGEMENT : 20/10/2003

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