Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA

[WESTERN CAPE DIVISION, CAPE TOWN]

Case no: 23249/2024

In the matter between:

CAROL MARGARET WENTZEL	Applicant
And	
BANXSO (PTY) LTD	First Respondent
THE FINANCIAL INTELLIGENCE	Second Respondent
FINANCIAL SECTOR CONDUCT AUTHORITY	Third Respondent
NATIONAL DIRECRTOR OF PUBLIC PROSECUTIONS	Fourth Respondent
HASSEN KAJIE N.O	Fifth Respondent

And

In the matter between:

ECONOMIC FREEDOM FIGHTERS	Applicant for Intervention
And	
DAVID VAN DER MERWE	First Intervening Party
NICK RICHARD WEGGELAAR	Second Intervening Party
LEON ALBERTUS DE MAN	Third Intervening Party
SAUL GEOFFREY RUDOLPH	Fourth Intervening Party
BAREND UYS VAN NIEKERK	Fifth Intervening Party
CORNELIA MAGDALENA HUMAN	Sixth Intervening Party
THEO JOHAN SCHOEMAN	Seventh Intervening Party
MARIANA MARYNA DUVENHAGE	Eight Intervening Party
MARLEEN SMIT	Ninth Intervening Party
CHRISTIAAN THOEDORE BRUYNS	Tenth Intervening Party

Coram: LE GRANGE J
Delivered: Electronically on 22 August 2025

Summary: Provisional winding-up of Company - Application of the *condictio ob turpem vel iniustam.*

Judgment

LE GRANGE, J:

Introduction:

[1] In this matter the Applicant, Mrs Wentzel (Wentzel) seeks a provincial winding-up order against the First Respondent, Banxso (Pty) Ltd (Banxso), on the grounds that: Firstly, Banxso is unable to pay its debts as contemplated in s 345 of the Companies Act 61 of 1973 read with item 9 of Schedule 5 of the Companies Act, 71 of 2008; secondly, it would be just and equitable to do so as contemplated in section 344(h) of the of the 1973 Companies Act with item 9 of Schedule 5 of the Companies Act, 71 of 2008, alternatively in terms of s 81(c)(ii) and or section 81(1)(d)(iii) of the 2008 Companies Act; and, thirdly it would be just and equitable to wind-up Banxso as it is promoted for the purpose of perpetrating fraud or deception on investors.

[2] Wentzel, a pensioner lost approximately R500 000 as an investor in Contracts for Difference (CFD)[1] on a platform managed by Banxso. At the heart of Wentzel's application is the allegation that all her and other investors transactions with Banxso are null and void under the *condictio ob turpem vel iniustam causam, (condictio ob turpem)*[2]. According to Wentzel, Banxso operated as a criminal enterprise with an unlawful and illegal business model designed to defraud investors. Wentzel further alleges that although she has no knowledge of other creditors, concurrent or otherwise, more than 7000 investors including the intervening parties, were scammed and all of

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[1] A CFD is an essence a speculative trading position as to the fluctuation in price of a particular commodity (currency, shares or indices). If the client's position is that the price will go up, and does, they will win and make a profit. Conversely, if the client bets that the price will go down, and it goes up the client loses and suffers a trading loss.

[2] In *Afrisure CC v Watson NO* 2009 (2) SA 127 SCA at para 5, the CSA held that: the central requirement of the *condictio ob turpem vel iniustam causam,* is that the amount claimed must have been transferred pursuant to an agreement that is void and unenforceable because it is illegal, ie because it is prohibited by law; *Chevron SA (Pty) Limited v Wilson t/a Wilson's Transport and Others* (CCT 88/14) [2015] ZACC 15; (5 June 2015).

them have claims against Banxso. According to Wentzel it will therefore be reasonable to conclude that Banso liabilities exceeds its assets by far.

[3] Banxso is a financial service provider (FSP) with a licence to act as intermediary and opposed the relief sought. Banxso denies it is insolvent or operating a criminal enterprise and regards Wentzel's application, and that of the intervening parties, as an abuse of process as it has the necessary liquidity to pay all the alleged debt contained within the present application. Banxso has also offered to secure the claimed debt of Wentzel and all intervening parties. According to Banxso it had over R 26 million in its operational account and a stakeholder transferred R500 000 into its attorneys trust account as security for Wentzel's claim pending the successful prosecution thereof and the withdrawal of the current application. A stakeholder has also offered R57 125 588.80 in security on behalf of Banxso, being the total value of the intervening parties claim pending the successful prosecution of those claims.

[4] It is common cause that Third Respondent (FSCA) which oversees the conduct of FSP's provisionally withdrew Banxso's FSP licence on 15 October 2024 and finally on 4 July 2025. The latter occurred whilst judgment was pending.

[5] Before dealing with crux of the matter, the interlocutory applications launched by the relevant parties will be considered first.

The intervening parties:

[6] The intervening parties sought leave to intervene in these proceedings as co-applicants and creditors as contemplated in s 346(1)(b) of the 1973 Companies Act. David Van Der Merwe (Van der Merwe) the first intervening party, filed an affidavit. According to him Banxso, is not acting in the best interest of all its investors as it offered security for the applicant's claim on condition that she does not persist with the liquidation application. Van der Merwe further recorded that Banxso wants to enter into settlement agreements with individual complainants which could frustrate investors who

support the liquidation but are not party to these proceedings, if accepted. Van der Merwe further detailed how Banxso success managers traded in his name and caused him to suffer losses in the amount of R1 500 000. It was further alleged that Banxso allowed him to continue trading on its platform despite knowing the FSCA provisionally withdrew its FSP licence on 15 October 2024.

[7] Banxso, opposed the application on the basis that it is an abuse of process. According to Banxso it has given an undertaking to the intervening applicants attorneys that it would furnish security to the aggregate value of the intervening parties' net deposit in the sum of R57 125 578,80 which was rejected. Banxso rejected Van der Merwe's claim that he never conducted trade in his own name. A copy of his trading statement in support thereof was attached to the papers. According to Banxso, van der Merwe's trade was complex, erratic and needed high-level support due to his high-volume trading activity. Banxso has also denied that funds deposited by Van der Merwe after 16 October 2024 have been lost. According to Banxso, the full value of his deposits will be available for him to trade or to withdraw when Banxso transfers his account to a new FSP.

[8] Counsel for the intervening parties argued that they have established prima facie proof of their interest and thus entitled to join these proceedings in terms of Rule 12[3] of the rules of this Court.

[9] Counsel for Banxso disagreed and argued that: the failure by the intervening parties to furnished security for wanting to intervene, is fatal to their application; they also failed to show a direct and substantial interest in the matter which could be prejudiced by the judgment of this Court; moreover, Van der Merwe's failed to set out a

[3] Rule 12. Intervention of persons as plaintiffs or defendants: Any person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a plaintiff or a defendant. The court may upon such application make such order, including any order as to costs, and give such directions as to further procedure in the action as to it may seem meet. By virtue of the provisions of Rule 6(14) this rule is also applies to applications.

basis for his claim and his claim is reasonably disputed; Van der Merwe also failed to allege he was a creditor of Banxso.

[10] The argument by Banxso's counsel is unpersuasive. It is not in dispute that the intervening parties invested in Banxso. It appears on the allegations made by the first, second, fourth, fifth and seventh Intervening Parties, they all have existing liquidated claims against Banxso for repayment of the amounts they deposited after the provisional withdrawal of Banxso's FSP license on the basis that, all transactions post 15 October 2024, according to Banxso were simulated and all client funds in relation to those trades, irrespective of purported losses, are still available. It further appears that Mr. CT Bruyns, the eleventh intervening party, has an undisputed contractual claim for repayment, which is due and payable. Furthermore, if the allegations are correct that Banxso conducted its business illegally and the transactions between Banxso and its investors were void then all those investors, including the intervening parties, have claims against Banxso for repayment of the amounts that they invested.

[11] It follows that each individual intervening party do not have to furnish security as they do not seek to launch separate applications for the winding - up of Banxso. They want to be co-applicants in accordance with section 346(1)(b) of the 1973 Companies Act which contemplates that one or more of a company's creditors may be the applicants in an application for the winding up of the company. In the present instance there is only one application, as contemplated in s 346(3) and since Wentzel provided security, no further security is required from each co-applicant.

[12] In my view the Intervening Parties have established a legally recognisable interest in the outcome of this case and leave to intervene as co-applicants with the existing applicant should be granted.

<u>The Striking out:</u>

[13] The Applicant and intervening parties sought the striking out of parts of Banxso's affidavits due to their apparent scandalous and vexatious nature and being irrelevant. Banxso accuse the attorneys of the applicant and intervening parties (M&B) of being the main driving force behind the application for their own interest and not for legitimate creditors or their clients. M&B was further accused of unprofessional conduct (touting) by creating a website to lure clients on the premise that they will recover money who register on the website. It was also alleged the FSCA was unlawfully collaborating with M&B to seek its liquidation.

[14] On the other hand, Banxso sought the striking out of parts of the applicant's affidavit in reply relating to transcripts of telephonic conversations between Banxso's clients, that of the applicant and transcripts of interviews that the FSCA had with representatives of Banxso. According to Banxso the transcripts raised new matter which is impermissible and some of the allegations in reply are also scandalous, vexatious and irrelevant. More importantly, Banxso holds the firm view that the FSCA was not legally obliged to comply with the *subpoena duces tecum* as such is not permitted in motion proceedings.

[15] It is trite that in terms of Rule 6(15) of this Court's Rules, two requirements must be met before a striking out application can succeed: firstly, the matter sought to be struck out must be scandalous, vexatious or irrelevant; and secondly, the court must be satisfied that if such a matter is not struck out the party seeking such relief would be prejudiced[4]. The words 'scandalous', vexatious, irrelevant and prejudice are used frequently in courts. Their meaning is defined in the Shorter Oxford English as follows: "Scandalous" allegations are those which may or may not be relevant but which are so worded as to be abusive or defamatory; a "vexatious" matter refers to allegations which may or may not be relevant but are so worded as to convey an intention to harass or annoy; and "irrelevant" allegations do not apply to the matter in hand and do not

[4] See Rule 6(15) of the Uniform Rules of Court; *Helen Suzman foundation v President RSA* 2015 (2) SA 1 15 CC at para 28.

contribute one way or the other to a decision of that matter.'[5] The test for determining relevance is whether the evidence objected to is relevant to an issue in the litigation.[6]

[16] On the papers filed, M&B only became involved after the applicant had lodged a complaint with Banxso. The Applicant approached the attorneys and not the other way. At all relevant times, M&B have been acting on the instructions of the applicant and, later, the Intervening Parties. It is also common cause that M&B became involved on the instructions of the applicant before the investigation of the FSCA, the steps taken by them and other agencies against Banxso. For instance, The FSCA had been investigating Banxso since 2023 and had already received approximately 70 complaints against Banxso from members of the public and provisionally suspended its operating license; the Financial Intelligence Centre (FIC) had also done an analysis of Banxso's bank accounts and taken certain steps against it; The South African Reserve Bank had also taken steps against Banxso; the National Director of Public Prosecutions, had obtained a preservation order in terms of section 39 of the Prevention of Organised Crime Act, 121 of 1998, against Banxso although it was later set aside. Furthermore, the suggestion that M&B and some liquidators are behind the liquidation for their own gain and not for the interest of legitimate creditors or clients, is simply vexatious. The reliance by Banxso on a newspaper article and interim liquidation and distribution account from another matter, where B&M was involved, to support its claim, is simply vexatious and irrelevant. There is no evidence to suggest that M&B was the attorneys of record in the application for liquidation in that matter or involved in the appointment of the liquidators. M&B was only appointed in that case after the liquidators were appointed by the Master. Furthermore, the factual content of the article is being disputed by B&M. In any event, Banxso's allegations of collusion and self-serving litigation by M&B and liquidators do not contribute to the resolution of the real issues.

[17] On the issue of touting. Firstly, on the papers filed, M&B admitted that upon further investigation into the affairs of Banxso, a website where affected clients of

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[5] *Vaatz v Law Society of Namibia* 1991 (3) SA 563 (Nm) at 566 C-E.
[6] See Helen Suzman supra.

Banxso can inter alia register their details and provide the amount of money they invested and lost was created. As at 5 November 2024, it was alleged that a total of 130 investors had registered and a total amount of R133 286 078.49 was lost by them in dealings with Banxso. Touting is clearly unlawful and a contravention of rule 49.17 for the Rules of the Attorneys Profession[7] and code of conduct of the Legal Practice Council. On a proper reading of the relevant rules, I cannot find any contravention of the Attorneys Profession and or Legal Practice Council's Rules by B&M. It simply created a website not to improperly solicit clients but to enquire if there are clients of Banxso that had similar experiences like Wentzel. On the data extracted from the webpage, no promise was made by B&M that it will recover monies upon registration. On the papers filed B&M did not improperly sought or by unfair means, business from Banxso clients. The fact that the Banxso clients may or may not become clients of B&M was a matter of their own choice.

[18] In view of the abovementioned, the allegations to be struck are nothing more than reckless and offensive generalisations which should find no space in a proper court process. These assertions or conclusions by Banxso are not robust engagements but scandalous, vexatious and irrelevant as contemplated in Rule 6(15) and need to be struck out.

[19] Banxso's striking out application is mainly premised on the communication between B&M and the FSCA, including the subpoena B&M obtained to get hold of the interview transcripts between the FSCA and the Banxso's employees. Banxso, alleges the FSCA undertook that the interviews will remain confidential and unlawfully

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[7] The Rule provides the following: . . .no tout for professional work. A member will be regarded as being guilty of touting for professional work if he or she either personally or through the agency of another, procures or seeks to procure, or solicits for, professional work in an improper or unprofessional manner or by unfair means, all of which for purposes of this rule will include, but not be limited to: 49.17.1 the payment of money, or the offering of any financial reward or other inducement of any kind whatsoever, directly or indirectly, to any person, in return for the referral of professional work; or 49.17.2 directly or indirectly participating in an arrangement or scheme of operation resulting in, or calculated to result in, the member's securing professional work solicited by a third party. For purposes of this rule 49.17 "professional work", in addition to work which may by law or regulation promulgated under any law be performed only by a practitioner, means such other work as is properly or commonly performed by or associated with the practice of a practitioner.

disclosed it to M&B to seek its liquidation via the backdoor. Banxso further alleges the subpoena was invalid and the FSCA was under no obligation to disclose the information. Banxso also holds the view that the transcripts obtained is new matter and Wentzel cannot make out a new case in her replying affidavit.

[20] The FSCA, although a party to the proceedings adopted a neutral stance and neither opposed nor supported the application for liquidation, although it filed a replying affidavit and denied the assertion that it acted unlawfully or in collusion with B&M to liquidate Banxso. According to the FSCA it acted within the law when it provided the relevant material to B&M.

[21] The criticism levelled against the FSCA, is in my view unwarranted. It is well established in our law that in action or trial proceedings, the Registrar of the court may issue a subpoena duces tecum as provided for in Rule 38 of the rules of this court. Rule 38(1)(a)(iii) and (c) of the Uniform Rules make provision for various procedures to procure evidence for a trial. In addition, Rule 38 makes provision for the manner in which evidence would be adduced at a trial. It does not ordinarily deal with motion proceedings, as Rule 6(5)(g) does not permit a party on his own authority to cause the Registrar to subpoena a witness to appear at the hearing of the application. That authority only vests in the Court, which may grant leave for a person to be subpoenaed.[8]

[22] In this instance, Wentzel elected to issue a subpoena duces tecum, without leave of the Court. It is trite that '*the rules are not an end in themselves to be observed for their own sake. They are provided to secure the inexpensive and expeditious completion of litigation before the courts and where one or other of the parties has failed to comply with the requirements of the rules or an order made in terms thereof and prejudice thereby being caused to the opponent, it should be the court's endeavour to remedy such prejudice in a manner appropriate to the*

[8] *Campbell and another v Kwapa and another* 2002 (6) SA 379. See also *Steyn v Meyer* (59537/2021) [2022] ZAGPPHC (13 October 2022); *SP v SB* (2025/05447) [2025] ZAWCHC 253 (19 June 2025).

circumstances, always bearing in mind the objects for which the rules were designed.'[9]

[23] In these circumstances, the mere issuing of the subpoena by the Registrar, without leave of the court, does not automatically invalidate it. It remains a binding legal instrument to be complied with until properly set aside by a court.[10] The FSCA was therefore not acting in cahoots with M&B. It was under a legal obligation to comply with the subpoena. Moreover, the FSCA is not a witness but a party to the proceedings and also subject to rule 35(11) which provides that:

> 'The court may, during the course of any proceeding, order the production by any party thereto under oath of such documents or tape recordings in such party's power or control relating to any matter in question in such proceeding as the court may deem appropriate, and the court may deal with such documents or tape recordings, when produced, as it deems appropriate.'
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> As liquidation matters are ordinarily urgent, the furnishing of the documents by the FSCA to M&B made imminently sense as it was an expeditious and inexpensive way to bring the matter to finality then risking an unnecessary interlocutory application and wasting of scarce judicial resources.

[24] On the issue of prejudice, Banxso's main argument was the evidence was unlawfully obtained. In my view there is no merit in any of this. Firstly, the evidence was not unlawfully obtained, and secondly, Banxso made extensive use in its supplementary answering affidavit to deal with the evidence. In fact, it also relied on part of the documents in support of its own case.

[25] Turning to the issue of the new evidence in reply. The approach adopted by our Higher Courts to admit further evidence in reply has been settled by the Supreme Court of appeal in *Drift Supersand (Pty) Ltd v Mogale City Local Municipality and*

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[9] *Federated Trust Ltd v Botha* 1978 (3) AD at 654 C.
[10] *Oudekraal Estate (Pty) Ltd v Ciy of Cape Town* 2004 (6) SA 222 (SCA).

another[11] wherein it held that:

> 'As this Court recently stated in *Lagoon Beach*[12], not only must a court exercise practical, common sense in regard to striking out applications but there is today a tendency to permit greater flexibility than may previously have been the case to admit further evidence in reply. Consequently, as stated in *Nkengana*[13],'if the new matter in the replying affidavit is in answer to a defence raised by the respondent and is not such that it should have been included in the founding affidavit in order to set out a cause of action, the court will refuse an application to strike out'.

[26] Applying the abovementioned approach, the new evidence does not amount to creating or making out a fresh cause of action in reply. It mainly deals to disprove Banxso's defence and to support the allegations made out in Wentzel's founding affidavit. It follows that there is no reason either to strike out the explanation made in reply or to ignore it.

[27] For all the abovementioned reasons it follows Banxso's application to strike out cannot succeed.

Provisional winding-up

[28] It is trite that in an opposed application for provisional liquidation, an applicant must establish its entitlement to an order on a prima facie basis, meaning that the applicant must show that the balance of probabilities on the affidavits is in its favour.[14] This would include the existence of an applicant's claim where such is disputed. Even if the applicant establishes its claim on a prima facie basis, a court will ordinarily refuse the application if the claim is bona fide disputed on reasonable grounds. The

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[11] [2017] 4 All SA 624 (SCA) at para 10.
[12] Lagoon Beach Hotel (Pty) Ltd v Lehane NO and another 2016 (3) SA 143 (SCA) at para 16.
[13] Nkengana and another v Schnetler and another [2011] 1 All SA 272 (SCA) at para 10.
[14] (*Kalil v Decotex (Pty) Ltd* 1988 (1) SA 932 (A) at 975J-979(F).

rule that winding-up proceedings should not be resorted to as a means of enforcing payment of a debt the existence which is bona fide disputed on reasonable grounds, is part of the broader principle that the court's processes should not be abused. In the context of liquidation proceedings, the rule is generally known as the *Badenhorst* rule[15].

[29] A distinction is ordinarily drawn between factual disputes relating to the respondent's liability to the applicant and disputes relating to the other requirements for liquidation. At the provisional stage, the other requirements must be satisfied on a balance of probabilities with reference to the affidavits. In relation to the applicant's claim, however, the court must consider not only where the balance of probabilities lies on the papers but also whether the claim is bona fide disputed on reasonable grounds; a court may reach this conclusion even though on a balance of probabilities the applicant's claim has been made out.[16] However, where the applicant at the provisional stage shows that the debt prima facie exists, the onus is on the company to show that it is bona fide disputed on reasonable grounds.[17]

[30] At the heart of this winding-up application is the claim that Banxso is a criminal enterprise, designed to defraud members of the public. In support of its claim, Wentzel relies heavily on the affidavits filed by the following: the investigation by the FSCA to provisionally suspended Banxso's operating license; the analysis of Banxso's bank accounts by Financial Intelligence Centre (FIC) and the steps taken against it; The steps the South African Reserve Bank had taken against Banxso[18], including the affidavits filed in the National Director of Public Prosecutions, preservation order against Banxso although, as stated previously, it was later set aside.

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[15] *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T) at 347H-348C.
[16] *Payslip Investment Holdings CC v Y2K Tec Ltd* 2001 (4) SA 781 (C) at 783G-I.
[17] *Hülse-Reutter & Another v HEG Consulting Enterprises (Pty) Ltd* 1998 (2) SA 208 (C) at 218D-219C.
[18] The South African Reserve Bank instructed Capitec to block certain funds held in one of Banxso's Standard Bank accounts, due to the transaction being of a suspicious nature. The suspicious transaction was a transfer of R322 446.00 to a Cyprus registered entity XF Solutions Ltd which is earned by Mr. Sekler, being a director of Banxso.

[31] Apart from the allegation that the winding-up application is an abuse of process, Banxso believes that the security tendered for the applicant and intervening parties is a demonstration of its commercial solvency; the claims of Wentzel and intervening parties have been reasonably disputed, including the enrichment claim under the *condictio ob turpem*.

[32] The central question is whether the applicant on a balance of probabilities has established the transactions with Banxso were null and void and has a claim for those funds under the *condictio ob turpem*.

[33] The requirements premised on the enrichment claim under the *condictio ob turpem* are the following:[19] (i) a transfer of money between plaintiff and defendant, ie ownership must have passed with the transfer; (ii) an illegal and prohibited contract; and (iii), the defendant's unjustified enrichment.

[34] Wentzel's complaint can summarised as follows: she at the time of investing was a 60 year old pensioner who retired in 2015 after a career of 30 years in the retail environment. The funds that she entrusted to Banxso formed a substantial portion of her life savings and her provision for retirement. Before the investment with Banxso she became increasingly concerned that the provision made for her retirement was insufficient, considering the escalation of living costs in recent years. During or about early July 2024, she came across an online advertisement, which included a videoclip purportedly of a television interview between an SABC presenter and Elon Musk, discussing an amazing investment opportunity through an entity called '*Immediate Matrix*'. The interview inter alia advised that, by investing an amount of R4 700, one could, within a week, receive R34 300.00. She clicked on the registration option on the advertisement and completed an online registration form by providing her name and contact details. Almost instantly, she received a telephone call from a lady who identified herself as Akona, working for Banxso. Subsequently, another Banxso agent, called the applicant where the following exchange transpired:

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[19] See National Credit Regulator v Opperman 2013 (2) SA 1 CC, para 15.

‘(The applicant)“is this the *ad which Elon Musk* or – and all that ads? It is on Facebook. The Agent: Ja, ja, that was the ad that you saw, right. The applicant: Okay’. The Agent ‘*Ja, ja, that was the ad that you saw, right, so I am calling you so that we can help you to download the app*. The app is the one that you are going to use to keep check of how much profit you make on the investment. And then I will also show you how you can withdraw your profits once you have them …’

[35] The agent informed the applicant that she could make an initial deposit of R1 800 and that she could make a profit of about R800 or R900 per week depending on the market. On or about 13 July 2024, the applicant received a telephone call from another agent at Banxso. He provided her with the banking details of Banxso, a Standard Bank account, into which she paid a sum of R1800.00. He also advised her that a ‘success manager’ was allocated to her and would in future be her contact person at Banxso. She was further advised the success manager would explain to her how she should login to her Banxso online platform account and what trades she should execute. On 29 July 2024, the success manager contacted her for the first time and informed her that she had already made a profit of approximately R900.

[36] According to Wentzel, she had absolutely no idea how any of the available transactions worked and was completely reliant on advice. She states the success manager was aware of it. A transcript of the following telephonic exchange between them on 3 September 2024, reflects the following:

‘The applicant“you must remember I don't understand anything about the markets and about these things and you are taking me by the hand and I am very grateful about that, do you know what I am trying to say?”
Success Manager: “Yes I know.”’

[37] On 19 August 2024, she informed the success manager due to the success on

her initial investment, she wished to make a further deposit of R30 000.00. Numerous telephone and WhatsApp conversations occurred between them. According to Wentzel, the success manager started to place increasing pressure on her to urgently deposit R30 000 as the market was doing well and if she did not make the deposit within a few days, she would not receive as good a return as before. He furnished her with Banxso's Capitec Bank details and on 25 August 2024 she deposited R10 000. On 27 August 2024 she deposited a further sum of R20 000 into that account. She made a further profit in the amount of R5 000.

[38] Subsequently, Wentzel received numerous phone calls from the success manager who increasingly insisted that she make further investments with Banxso. She was also referred to the Banxso's referral scheme. According to the Banxso website a referral bonus is earned according to the number of persons referred as follows:

(a)One to five persons – 15% of the initial amount deposited.
(b) Six to ten persons – 20% of the initial amount deposited.
(c) Ten or more persons – 30% of the initial amount deposited.

[39] According to Wentzel, the success manager became increasingly insistent, and under the promise of enormous returns on her investment, she deposited a further amount of R470 000 into Banxso's Nedbank account on 6 September 2024. After the deposit of R470 000, the applicant saw the following day on the online Banxso platform that she had made a profit of R200 000. According to the Banxso platform she was continuously making profits on trades, and she felt assured that her investment was in good hands.

[40] On or about 24 September 2024, the applicant opened her Banxso online trading platform and noticed that the so-called margin levels were becoming quite low. She directed enquiries to the success manager with a requested to withdraw her funds from Banxso. She was informed by him not to withdraw her capital. Moments

later he contacted her telephonically and informed her that his manager had proposed giving her a recovery bonus of R45 000 to fix the margin levels. He further advised that, before the recovery bonus could be processed, she needed to complete a form which was e-mailed to her. On 24 September 2024 she returned the completed form via WhatsApp as she was unable to send it via e-mail due to network issues at the time. The success manager advised her to leave the form for now and the account as is, until the next day. Later that evening, she received alert notifications from the Banxso app on her cell phone. She immediately logged into her Banxso account and saw that her entire capital investment had been wiped out in apparent trading losses.

[41] The next day, 25 September 2024, she was informed the reason for the losses was that she did not send the aforesaid form to them via e-mail and that Banxso did not accept the form via WhatsApp. The R45 000 recovery bonus could therefore not timeously fix the margin levels, which resulted in the loss of all her money.

[42] On 26 September 2024, Wentzel received a call from the success manager, who informed her that he had spoken with his manager and that they would be able to make up for her losses with further trading, should she deposit a further R500 000. She attempted to access her online trading platform but was unable to do so. It appeared that access to her account was blocked. After further calls to Banxso, she was only met with a response to invest further funds to make up the loss of her monies. She ultimately decided on 23 October 2024 to consult with her attorneys of record.

[43] So, what is Banxso's Business model? According to Banxso it operates as a 'Straight Through Processor'. This means it operates between the client and the liquidity provider. As Banxso explains:

> '*A client uses the Banxso platform. Banxso, prior to 16 October 2024, was a licensed Category 1 Financial Services Provider (FSP). On that platform, the client enters into a Contract for Difference (CFD) with these off-shore LPs. A*

CFD is, in essence, a speculative trading position as to the fluctuation in price of a particular commodity (currency, shares or indices). If the client's position is that the price will go up, and it does, they win and make a profit. Conversely, if the client bets that the price will go down, and it goes up, the client loses and occasions a trading loss. These CFDs are intermediated by Banxso and placed with the offshore LPs, who acts as the counterparty, principal and market maker to the trading. As such, the LP is responsible for the profit and loss reconciliation. Accordingly, if the client wins, the LP pays Banxso, and Banxso credits the client's account accordingly. If the client loses, Banxso pays the client's money to the LP.'

[44] Banxso's General Terms and Conditions, attached to the founding papers, recorded the following:

'*You can enter a leveraged CFD transaction with us by placing an order on the Trading Platform (the "Order"). The Order shall state your "position" - "buy" (long) or "sell" (short), the size of the Transaction, the leverage rate, and the Rate (as defined below). . . .The Client deposits funds with the Company and places an order via a trading platform, which is managed by the Company and the Company is responsible for safeguarding of the clients' funds. Upon receipt of the order, it is immediately opened by the third party through the company's trading platform. In this respect, the Company executes the client order by acting as a broker (STP broker*)'.

[45] According to Banxso, it acts like an agent and the enrichment which derives from Wentzel's and the other claimant's loss, if any, is not with them but lies with LP. Banxso further explained that if there are any shortcomings in its business model, it will be working hard with the FSCA, to regulate its business.

[46] In practice Banxso alleges it employs the use of a Metaquotes MT4/5 trading platform. This platform is apparently an industry-standard software, ensuring that live

pricing feeds (drawn from market data) are reflected in respect of the commodities offered by the company. Neither Banxso nor the liquidity provider determines trading margins between buy and sell arbitrarily but instead these are predetermined being subject to live trading data as influenced by market conditions.

[47] A client will enter into a CFD with an offshore LP. The CFDs are thus intermediated by Banxso and placed with offshore LPs who act as the counterparty, principal and market maker to the trading. As such, the LP is responsible for the profit and loss reconciliation. Accordingly, if the client wins, the liquidity provider pays Banxso and Banxso credits the client's account accordingly. If the client loses, Banxso pays the client's money to the liquidity provider. In its further answering affidavit Banxso explained that it is *'an intermediary, and the liquidity provider is the market maker. As such, while the liquidity is provided by the liquidity provider, it is Banxso who has an agreement with the client*.'

[48] According to Banxso it employed the services of three different LPs from time to time depending on whichever provided the best pricing and most effective trading to clients. The LPs are the following:

(a) Flamingo Clearing House Limited (FCH), registered in the Comores;
(b) Flamingo Capital Services LLC (FCS), registered in Saint Vincent and the Grenadines;
(c) Eclat Technologies Limited (Eclat), registered in Mauritius.

In its answering affidavit, Banxso provided a schedule of alleged payments to Flamingo Clearing House via FiveWest OTC Desk Pty (Ltd) and Blockkoin. Banxso's attorneys explained it as follows:

'Following periodical reconciliation of client profits and losses, the company remits funds to its offshore LP (FCH) at its instruction and direction and moreover, to its nominated account. In doing so, funds are deposited with Fivewest - in ZAR and by EFT to Fivewest's nominated bank account (the local account confirmations being herewith enclosed, marked as annexure **"A6")** - where the LP holds an

account. As such, Fivewest accepts these funds on behalf of the LP and, in turn, remits them abroad through its global payment service and treasury management offering (please see: https://www.fivewest.co.za/international-payments).

For purposes of the aforesaid, both Banxso and the LP have separate accounts with Fivewest, in order to streamline the remittance of these funds. Notably, Banxso does not have any specific service level agreement with Fivewest (nor Blockkoin) for the aforesaid functionality and instead is subject to Fivewest's standard terms and conditions. Accordingly, it Fivewest's services much like any other corporate client. In respect of the remittance of funds, the LP then issues Banxso with receipts, which is kept for record and accounting purposes.'

[49] In clarification, Banxso recorded that it transfers money into an account named "FiveWest OTC Desk (Pty) Ltd and Blockkoin (Pty) Ltd who in turn transfer the fiat money (into cryptocurrency) to Banxso's liquidity provider, as it does not have an account in its own name with FiveWest.

[50] In Banxso's standard terms and conditions Banxso's clients are informed that: '"*Liquidity provider"* means "*a third-party company that underwrites or provides the financing for transactions and makes a market for a given asset". "The Liquidity Provider is the sole Execution Venue for the execution of Client Orders. The Company acts as an agent on the Client's behalf, and the sole Execution Venue for the execution of Client Orders is the Liquidity Provider".'*

The FSCA

[51] The FSCA investigation established that the sole shareholder of Banxso, is Mr. Sekler, an Israeli based attorney. He is also the shareholder and beneficial owner of the three LPs allegedly used by Banxso.

[52] The investigation by the FSCA also established that Eclat was not allowed to provide LP services to third parties and that Banxso did not place any of its clients'

business with them. In respect of FCS, it was established that it is a limited liability company and does not regulate LPs. Moreover, the FSCA uncovered the FCS's business description bears no relevance to the activities of LPs as it was a business advisory and solutions firm. With reference to FCH, it was established that only two payments of R 100 000 each were made during April 2024 to FCH, whilst during the period January 2022 to April 2024 more than R 880 million was received by Banxso from clients. According to the FSCA, the flow of monies is not consistent with FCH being a LP during the relevant period.

[53] The FSC ultimately expressed a view that that Banxso has materially contravened numerous financial sector laws and it will be in best interest of the clients that the funds be transferred to the control of an independent person pending the outcome of a final decision. Banxso was not oppose to utilizing a local LP, to appease the FSCA.

[54] The FSCA has in detail set out the reasons why it decided to provisional withdrew Banxo's FSP license. The allegations underpinning the complaints by Banxso's clients were the following:

> (a) The complainants saw various advertisements that were circulating on social media, including a news article which purported to be from the South African Broadcasting Corporation (SABC) relating to an investment platform known as Immediate Matrix. The news article stated that Tesla/Elon Musk launched a new platform, called Immediate Matrix, (IM) which was an automated trading platform aimed at helping families become wealthier;
> (b) The news article and advertisements (videos) referred to a minimum investment deposit of R4 700, with a promised return of R34 300 within a week. This equated to a return of approximately 730% in one week:
> (c) the IM webpage reflected that prospective investors would be contacted but it did not explain who would be contacting the prospective investors. However, after the prospective investors submitted their details, within minutes; they

were contacted by one of Banxso's agents through SMS, email or telephone call;

(d) in addition to the promotional videos and news articles with a link, Immediate Matrix also had a website. On IM's website, prospective investors were requested to submit their personal details. However, the process differed slightly on the website compared to the advertisements, in that on the website, once the details were captured and the 'submit' button clicked, the website redirected the prospective investors to a 'thank you' webpage. On the 'thank you' webpage, another button called 'continue to account' popped up. After clicking the 'continue to account' button, it redirected the prospective investors to Banxso's website, with another pop-up to make a deposit into the newly created account with Banxso;

(e) the Banxso agents assisted them with opening trading accounts and solicited the initial deposit from the prospective client as advertised by IM. After making the deposits, the agents directed the investors to enter specific trades derivatives, which ultimately led to massive trading losses;

(f) the consultants used aggressive and high-pressure sales techniques to convince investors to invest additional funds;

(g) the complainants were lured by the deepfake videos featuring celebrities / prominent persons and which promised high returns;

(h) they also alleged that once they invested with Banxso, Banxso failed to process their withdrawal requests timeously and did not disclose material information such as swap fees and the risks associated with trading.

[55] The FSCA, ultimately recorded that having regard to the complaints, and its own investigation, including an analyses of Banxso's bank accounts, it established that: The deepfake advertisements appeared to have been created by IM, a fictitious entity with no real corporate persona; the identities of the celebrities and prominent persons featured in the deepfake videos were fraudulently used; The videos and news articles contained electronic links that led to an IM webpage, through which prospective investors could provide their personal details, as well as their contact

details; when the prospective clients clicked on the link on the deepfake advertisements, they were redirected to Banxso's website. The clients' funds were then transferred into Banxso's bank account. The products offered by Banxso were similar to the ones on the deepfake advertisement. The client deposits into the various Banxso bank accounts were consistent with the investment opportunities advertised through the deepfake advertisements; the IM webpage reflected that prospective investors who submitted their personal information would receive a call from a person who would assist the prospective investors in setting up their trading accounts in derivatives. The prospective investors were contacted by Banxso agents who fulfilled the commitments made by IM in the deepfake advertisements; Banxso agents contacted clients and confirmed that they were calling because the prospective clients showed interest in the IM product or in connection with the advertisements which featured the prominent persons; the deposits into Banxso's bank accounts increased significantly when the deepfake advertisements gained prominence; and a high number of clients confirmed that they invested with Banxso because of the deepfake advertisements.

[56] Banxo denied any association with the IM scheme and disputes the FSCA's findings. According to Banxso it did not act fraudulently or unlawfully and intends to traverse the FSCA's findings in the appropriate forums. It admitted that its website called for an industry standard deposit of roughly 250 US dollars, translating to approximately R 4 700 (at the time) and is a figure which IM also used in their marketing material.

[57] Banxso explains that IM has no affiliation to them and have operated parasitically on its platform causing it great prejudice. According to Banxso, it found that many complaints were not genuine IM scheme related but rather disgruntled clients who might have experienced some loss or other issue on the Banxso platform. The original number was accordingly whittled down from over a hundred to seventy complaints. Banxso recorded it since has paid out R67 574 002.47 worth of refunds of which R14 million was identified as being IM scheme related.

[58] The FSCA, investigated five different bank accounts utilized by Banxso during the relevant period. There were three different accounts at Standard Bank. One at Nedbank and one at Capitec. The FSCA commented as follows:

Standard Bank account no. xxxxxx592

[59] It is a separate account designated for client funds; clients who took up products through Banxso, should have deposited their funds into this account. These funds were supposed to be remitted to a product provider, in this case the issuers of Contracts for Difference, which the clients believed were their investment products. During the period from January 2022 to April 2024, approximately R945 million was deposited into this account. This amount comprised clients' deposits of approximately R736 million. Transfers of approximately R99 million from Banxso Standard Bank account number xxxxxx000; and approximately R110 million transfers from Banxso Standard Bank account number xxxxxxx001. During the abovementioned period, payments including cash withdrawals of approximately R912 million were made from this account. The most notable payments and transfers were the following: approximately R94 million which appeared to be paid to clients; approximately R608 million transferred to Banxso Standard Bank account number xxxxxx000; approximately R162 million transferred to Banxso Standard Bank account number xxxxxx001; approximately R4 million paid to FiveWest (Pty)Ltd (FiveWest), an authorized crypto asset service provider. According to Banxso, they deposited funds to FiveWest' s bank account because it is where the liquidity provider holds an account. Banxso claimed that FiveWest accepts the funds on behalf of the liquidity provider and remits them abroad to the liquidity provider through their (FiveWest) payment system. The analysis of this bank account showed an amount of approximately R43 million worth of personal/business payments. The personal/Business payments were made at, inter alia, Vodacom, Woolworths, Pick 'n Pay, Bay Hotel and the Bar Keeper. From the analysis of these accounts, it appears that a significant number of clients' funds were used for personal and or business-

related expenses.

Standard Bank Account Number xxxxxx5083

[60] During the period from January 2022 to April 2024, approximately R941 million was deposited into this account. This amount comprised of approximately R608 million transfers from Standard Bank account number xxxxxx592; approximately R293.5 million credit card transactions; approximately R17 million from various entities; approximately R16 million transfers from Banxso Standard Bank account number xxxxxxx001; R 6 million was direct deposits from clients.

[61] The FSCA commented that the account was not a separate account designated to receive clients' funds although the bulk of the monies (R608 million) in the account were transferred from such an account of Banxso. The FSCA recorded that during the abovementioned period, payments, cash withdrawals and transfers of approximately R933 million were made from this account. The most notable payments and transfers were the following: approximately R581 million paid to FiveWest; approximately R99 million transferred to Banxso Standard Bank account number xxxxxx592; approximately R52.5 million was paid to what appeared to be clients; approximately R1.5 million was transferred to other Banxso bank accounts; approximately R162 million was paid to various entities such as Sars and service providers like Toshiba, Pointline and Red House; approximately R5.3 million worth of credit card transaction; approximately R5 million were personal and or business transactions; approximately R3.75 million was paid to the General Manager of Banxso, who filed the answering papers on its behalf; and approximately R100 000 was paid to Flamingo Clearing House.

[62] The FSCA holds the view that upon the analysis of this account, some client funds were used for personal and or business-related payments.

Standard Bank Account Number xxxxxxx001

[63] During the period from June 2023 to March 2024, approximately R156 million was deposited into this account. This amount comprised of approximately R149 million transfers from Banxso Standard Bank account number xxxxxx592 and approximately R5.5 million transfers from Banxso Standard Bank account number xxxxxx083. Most of the funds in this account were clients' funds. According to the FSCA records, this account was not a separate account designated for client funds.

[64] During the abovementioned period, transfers of approximately R126 million were made from this account. The transfers comprised of approximately R110 million to Banxso Standard Bank account number xxxxxx592 and approximately R16 million transferred to Banxso Standard Bank account number xxxxxx083.

Nedbank Account Number xxxxxxx486

[65] During the period from April 2022 to April 2024, approximately R137 million was deposited into this account. Approximately R136 million of the above total appeared to be direct deposits from clients. According to the FSCA's records, this account was not a separate account designated for client funds.
During the abovementioned period, payments of approximately R62 million were made from this account. The most notable payments were the following: approximately R23.6 million paid to Fivewest; approximately R18 million transferred to Banxso Standard Bank account number xxxxxx592; approximately R5.5 million paid to Blockkoin (Pty)Ltd, also a crypto asset service provider); approximately R6.6 million was paid to what appeared to be clients funds; and approximately R100 000 was paid to Flamingo Clearing House.

Capitec Account Number xxxxxxx004

[66] During the period from April 2024 to September 2024, approximately R12 million was deposited into Banxso Capitec account number xxxxxxx004.

Approximately R11 million of the above total appeared to be direct deposits from clients and the balance of approximately R1 million appeared to be transfers from other Banxso bank accounts. According to the FSCA records, this account was not a separate account designated for clients' funds. It needs to be mentioned that Banxso did not deny the South African Reserve Bank instructed Capitec to block certain funds held in one of Banxso's accounts, due to the transaction being of a suspicious nature. The suspicious transaction was a transfer of R 1, 322, 446.00 to a Cyprus registered entity XF Solutions Ltd which is owned by Mr. Sekler, a director of Banxso. According to the FSCA, payments of approximately R169 000 were made from this account during the above-mentioned period, and the payments appeared to be made to clients.

[67] From the above analysis of Banxso's bank accounts, the FSCA concluded that: not all clients' funds were invested; funds were co-mingled with business funds and client funds were not easily and or readily discernible. Moreover, Banxso transferred clients' funds to other Banxso bank accounts which were not designated accounts to hold such funds and clients' funds were misappropriated and used for personal and business expenses. Furthermore, no significant payments were made to product providers or liquidity providers who were supposedly the issuers of the CFDs.

[68] The FSCA further recorded that although approximately R615 million was paid to FiveWest and Blockkoin, direct payments made to liquidity providers were minimal. The FSCA, also stated that according to Fivewest and Blockkoin, they did not make payments to the liquidity providers. What Banxso did was to deposit and or transferred fiat currency to them with the intention to purchase crypto assets (USDT). The USDT was then transferred on the Blockchain to Banxso's crypto wallets.

[69] According to FSCA, several of the General Code of Conduct for Authorised Financial Services Providers and Representatives were contravened by Banxso, including sections of the Financial Institutions (Protection of Funds) Act 28 of 2001, in

that Banxso, a financial institution, failed to exercise proper care and diligence when handling trust property held in the separate account designated to hold clients' funds; section 8A(a) of the FAIS Act[20] and section 139(5) of the FSR Act[21].

[70] In the supplementary founding papers, it was further recorded that a total of 130 of Banxso's investors registered on the online portal w[...] as at 5 November 2024. According to the webpage a total amount of R 133, 386, 078,49 was invested and loss through dealings with Banxso; numerous clients of Banxso were provided with an ABSA account purportedly in the name of (AS BANXSO) with and account number; it was later established the actual account holder of the account is in fact a company called Ahead Start (Pty) Ltd (Ahead Start); Banxso also utilized an FNB account which clients were led to believe was in the name of AS Banxso (Pty) Ltd; it was however established the actual account holder is a company called Valor Vault (Pty) Ltd (Valor Vault).

[71] Banxso denied the clients funds were comingled and recorded in its papers the following bank accounts containing client funds:

(a) Standard bank account xxxx592 (containing R8 069 138.20);
(b) Standard bank account xxxx001 (containing R25 221 694.69);
(c) Nedbank account xxxx486 (containing R23 363 196.45); and
(d) Capitec account xxxx004 (containing R12 718 266.77).

[72] The following bank accounts were recorded holding operational funds:

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[20] Banxso no longer complies with the fit and proper requirements relating to honesty and integrity in that Banxso misled and provided false information to clients regarding inter alia; its association with Immediate Matrix, the contents of the deepfake videos, the unrealistic returns promised to investors, the use of the clients' funds which ended up misappropriated.

[21] by providing the investigators with false and/or misleading information which Banxso knew was false and/or misleading. Banxso informed investigators that the company was neither associated with Immediate Matrix not the deepfake videos. In fact, Banxso claimed it was a victim of a scam or cyber-attack by Immediate Matrix, when in fact, they (Banxso) were the main beneficiary of the Immediate Matrix marketing campaign. As already discussed, Banxso's denials were false.

(a) Standard bank accounts xxxx083 (containing R23 047 183.54);
(b) Capitec account xxxx008 (containing R88 732.00); and
(c) Capitec account xxxx545 (containing R9 992.66).

[73] Banxso does not dispute it made use of call agents. It apparently employed internal call agents for some time, however in April 2024 the entire department was retrenched. According to Banxso, it has since been making use of outsourced call agents and the majority of these outsourced call agents are complying with its policies, not providing financial advice, and not employing high-pressure sales techniques.

[74] Banxso also alluded to its marketing strategies that apparently are accurate, provide reliable information, and referred inter alia, to Google, Facebook, News24 and Moneyweb, including the sponsoring of a famous South African MMA fighter, and the national football team, in support of its claim.

Legality of the Business

[75] Banxso's business is dependent upon the participation of a legitimate LP. It is therefore important to look at Banxso's business operation as a whole, considering the statutory framework in which it must operate. Looking past the veneer, the legality of Banxso's business model and the claim it operates as a Straight Through Processor is highly questionable.

[76] Although Banxso denies there was an intention to benefit off the IM scheme, and only 70 complaints related thereto, the evidence shows differently. The evidence overwhelmingly demonstrates that deposits into Banxso's bank accounts increased significantly when the deepfake advertisements gained prominence. Numerous clients confirmed that they invested with Banxso because of the deepfake advertisements. Banxso's claim is also inconsistent with the statement of a key individual and internal compliance officer at Banxso at the time. According to his

testimony before the FSCA, clients that came from IM was difficult to track because they came through a normal onboarding process.[22] But more importantly, irrespective of who was behind the IM scheme there can be no bona fide dispute that Banxso have benefited enormously through the onboarding of clients who were lured to its platform via the IM scheme. Furthermore, the service agents of Banxso did not correct a new client when it was clear that the client was lured through the IM scheme but continued to onboard clients until October 2024 when the license was provisionally withdrawn, notwithstanding becoming aware of the IM scheme as long ago as December 2023. It follows, Banxso paid mere lip service to prevent its agents from onboarding clients lured through the IM scheme. The undertaking by Banxso to have better oversite over these agents is unlkely as most are working at outsourced call centers stationed in foreign countries. It is also difficult to understand how Banxso will be able to have proper oversight control and disciplinary over agents if most are working at outsourced call-centers stationed in different foreign countries.

[77] The contention by Wentzel that she was lured by the deepfake IM scheme can therefore not be discarded as highly improbable. There is also no objective evidence that she otherwise willingly connected through an internal Slava funnel to sign up, as suggested by Banxso. On the papers filed, there is no reference of an internal Slava funnel at Banxso. It follows, Wentzel's version is plausable.

[78] The claim by Banxso that it settled and refunded clients also came under the spotlight. The evidence of Banxo's clients does not fully support its claim. According to some of Banxso's clients once an internal complaint has been lodged, normally after the loss of their initial investment, the success manager will furnish the client with a bonus application, which in essence provides the client with a trading credit. The main complaint by the clients was that the credit only allows further trading and if a withdrawal is allowed it will be a relatively small amount. The clients' complaint is supported by Banxso' bank accounts. Small amounts were paid to them whereas vast

[22] The recording reads as follows: "When you come to land on our website and you sign up, we do not know where you come from. We know you just came to our website".

amounts were deposited into Banxso's bank accounts.

[79] The denial by Banxso that there were no co-mingling of funds or funds used for personal and or business-related expenses, is also not supported by objective facts. Banxso failed to deal properly with the allegations that certain of its accounts were separate and designated to receive clients' funds. Vast amounts of clients' funds were transferred to interrelated bank accounts of Banxso. A disturbing feature in all of this is the relative small amount of monies paid to investors in relation to their initial investment, whilst hundreds of millions of rands flowed through Banxso's bank accounts to be converted into cryptocurrency.

[80] The explanation provided by Banxso that it would transfer money into an account named 'FiveWest and Blockkoin'" who in turn transfer the fiat money (into cryptocurrency) to Banxso's liquidity provider, does not accord with the evidence established by the FSCA. According to the FSCA, FiveWest and Blockkoin denied making payments to LPs. According to FiveWest and Blockkoin, what Banxso did was to deposit and or transferred fiat currency to them with the intention to purchase crypto assets (USDT). The USDT was then transferred on the Blockchain to Banxso's crypto wallets. The latter is in stark contrast to what Banxso said that: '*all trades are conducted with an off-shore liquidity provider who acts as the counterparty and market maker in respect thereof*'.

[81] There is also no evidence to support the extent to which the LP performed as market maker or how and when the LP provided liquidity to Banxso's clients to trade. The alleged proof of payments to FCH as an LP via FiveWest and Blockkoin are equally unsatisfactory. There is no explanation who prepared the documents, the source of the information and the wallets into which the USDT cryptocurrency was deposited. There is also great uncertainty whether investors were properly underwritten by an LP.

[82] Another area of concern is the extent to which Banxso received payments for

its alleged intermediary services. There is no indication on the papers filed that an LP paid Banxso for such services rendered. In fact, the General Terms and Conditions of Banxso[23] shows the rate displayed on the website is determined by it and includes a certain margin between the buy and sell rate which ultimately constitutes the profit Banxso makes from each transaction. The latter is different to Banxso's version, that neither it nor the liquidity provider determines trading margins between buy and sell arbitrarily but are predetermined by live trading data as influenced by market conditions. The latter cannot be correct because in order for Banxso to make a profit the trading rates needed to be manipulated. Banxso's evidence that it only functions as an intermediary and does not derive a right to the monies in its bank accounts is therefore unlikely. It is obvious Banxso benefits directly when an investment took place whether the client suffer a loss or not.

[83] Banxso's other functions of inter alia, retaining investors funds to do reconciliation before paying the liquidity provider, paying trading and referral bonuses to clients, providing negative balance protection and replenishes clients' accounts to zero to avoid them having to pay the full value for their losses, do not support the contention of a 'Straight Through Processor' in the true sense of the word.

[84] On a conspectus of all the evidence, Wentzel and the Intervening Parties complaint that Banxso's business model is illegal and does not operate within the confines of the law, is not without merit. Prima facie it has been established that prospective investors were contacted by Banxso agents who fulfilled the commitments made by IM in the deepfake advertisements; Banxso agents contacted clients and confirmed that they were calling because the prospective clients showed interest in the IM product or in connection with the advertisements which featured the

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[23] The General Terms and Condition; reads as follow at 5.11- 5.14"5.11. By placing an order, you represent that you have fully understood: 5.12. the risks involved in the transaction (including but not limited to those detailed in our Risk Disclosure Policy);5.13. that by entering a Transaction you are not gaining any access or right to the Underlying Assets; and 5.14*. that all transactions are entered into and closed in accordance with the rate as displayed on the Website (the "Rate"), which we determine at our sole discretion. You acknowledge and agree that such right does not reflect any 'market price' or rates quoted by any third party. The Rate is determined by us in such a way as to include a certain margin between the "Buy" and "Sale" Rates which constitutes our profit from each Transaction."*

prominent persons; a high number of clients confirmed that they invested with Banxso because of the deepfake advertisements and undoubtedly, Banxso profited handsomely from their investments. The deepfake advertisements were clearly designed to lure client under false pretenses to invest their moneys in products with a promise of unrealistic returns on such investments. There is also no doubt that agents gave investment advice to clients contrary to Banxso's FSP license.

[85] The contention that the enrichment which derives from Wentzel and the other claimant's loss, lies with the liquidity provider, is also unpersuasive. Banxso, in my view did all the functions of a LP, despite the multiple off-shore entities it listed as LPs. In any event, Sekler is a shareholder of Banxso and FCH. The losses of Banxso's clients are the profit of a LP. Banxso has acquired and transferred cryptocurrency to FCH in the amount of R 319, 985, 959, 00 for the period 17 April 2023 to 29 December 2023. For the year 2024 a further total of R672 192 435 was transferred in this manner. This equates to a handsome profit of just over R 990 million that were pocketed from the misfortunes of Banxso's clients. In addition, further deposits by investors found its way in bank accounts of AheadStart and Volor Vault that remains unexplained by Banxso.

[86] Another disturbing feature of Banxso is despite that its license was suspended, it continued trading. Banxso advanced the following explanation: "no live trading can take place, because there is no flow of funds between the client and counter-party to any CFD. Simply put, no profit or loss reconciliation can and/or has been done and as such, no profit or loss allocation can be attributed to any client's account. Any indication to the contrary, is merely a visual illustration and amounts to what can be regarded as a "simulated" or "demo" trading environment. This is symptomatic of the fact that the MT4 trading platform has remained active and cannot be fully switched off, as it would adversely affect client's open positions which have already been impacted by the temporary freeze of the accounts." This explanation is seriously worrying as it goes to the heart of Banxso's business model. What it shows is that Banxso's clients were trading on a simulated or demo trading environment not

knowing about it. These clients were therefore brought under a false pretense that they were doing live trading. The latter is nothing but a deception in the true sense of the word. The fact that monies may be paid back does not undo the deceptive conduct. Furthermore, according to Banxso it determines the trading rates to make a profit. The question thus arises how Banxso did it in these circumstances if it was only a simulated training environment, as investors lost their initial investments. This is a further illustration that it is highly unlikely that Banxso operated as a “Straight Through Processor”.

[87] On a conspectus of all the evidence, I am satisfied that Wentzel has established on a prima facie basis, that Banxso does not operates within the confines of the law, and its business model is illegal. It follows the refusal by Wentzel and the Intervening Parties to accept the provision of security via a stakeholder of Banxso cannot be seen as an abuse of process.

[88] Wentzel, like all other investors, including the Intervening Parties has thus a prima facie claim under the condictio ob turpem.

[89] In view of the abovementioned, the way Banxso solicited investments from the public and the manner in which the losses occurred, militate against the exercise of a discretion in its favour. It follows that Wentzel made a case out for the relief sought in the notice motion.

[90] In the result the following order is made.

1. The order ‘X made order of this Court.

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Le Grange, J

APPEARANCES:

For the Applicant & Intervening parties:	R van Rooyen SC
	MM van Staden
Instructed by:	Mostert & Bosman
For the first respondent:	J Muller SC
	B Prinsloo
	J Aspeling
Instructed by:	Hanekom Attorneys
For the third respondent:	S Miller SC
	R Fitzgerald
Instructed by:	Robert Chanles Inc

X

Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA

[WESTERN CAPE DIVISION, CAPE TOWN]

Before the Honourable Judge Le Grange

At Cape Town on 22 August 2025

Case no: 23249/2024

In the matter between:

CAROL MARGARET WENTZEL	**Applicant**
And	
BANXSO (PTY) LTD	**First Respondent**
THE FINANCIAL INTELLIGENCE	**Second Respondent**
FINANCIAL SECTOR CONDUCT AUTHORITY	**Third Respondent**
NATIONAL DIRECRTOR OF PUBLIC PROSECUTIONS	**Fourth Respondent**
HASSEN KAJIE N.O	**Fifth Respondent**
And	

In the matter between:

ECONOMIC FREEDOM FIGHTERS	**Applicant for Intervention**
And	
DAVID VAN DER MERWE	**First Intervening Party**
NICK RICHARD WEGGELAAR	**Second Intervening Party**
LEON ALBERTUS DE MAN	**Third Intervening Party**
SAUL GEOFFREY RUDOLPH	**Fourth Intervening Party**
BAREND UYS VAN NIEKERK	**Fifth Intervening Party**
CORNELIA MAGDALENA HUMAN	**Sixth Intervening Party**
THEO JOHAN SCHOEMAN	**Seventh Intervening Party**
MARIANA MARYNA DUVENHAGE	**Eight Intervening Party**
MARLEEN SMIT	**Ninth Intervening Party**
CHRISTIAAN THOEDORE BRUYNS	**Tenth Intervening Party**

ORDER

IT IS ORDERED THAT:

1. The Intervening Parties are granted leave to intervene as applicants in this application and, in future documents in this application, shall be referred to as the Second, Third, Fourth, Fifth, Sixth, Seventh, Eight, Ninth, Tenth and Eleventh Applicant respectively. The Applicant shall be referred to as the First Applicant.

2. The striking out application of the Applicant and Intervening Parties is granted and the following parts of the First Respondent's affidavits shall be struck out:

    2.1 The First Respondent's answering affidavit: Paragraphs 113-120, 293.1 (the portion which reads 'I refer to what I have set out above concerning the touting activities of the applicant's attorney.') 312.4; and the annexures referred to in these paragraphs.

    2.2 The First Respondent's further answering affidavit: Paragraphs 5.2, 5.4 (the portion which reads, 'have touted their way to twelve disgruntled Banxso clients. '), 6-11, 12 (the portion which reads, 'Those offers are rejected out of hand by M&B.'), 17 (the portion which reads, 'and/or proceeded to give this bad advice to their clients thereafter.'), 18,21-22,31 (the portion which reads, 'It appears that the FSCA was asked for these items and proceeded to advise M&B to simply issue them with a subpoena as a "cover" for being able to justify their delivery.'), 195 (the portion that reads, 'M&B has proceeded in this liquidation for their own interests.'), 196 (the portion which reads, 'given that Ms Wentzel et al appear to be M&B proxies.'), and the annexures referred to in these paragraphs.

3. The First Respondent's striking out application is dismissed.

4. The First Respondent is placed under provisional liquidation.

5. A rule nisi do issue calling upon the First Respondent and all other interested parties to give reasons, if any, on 17 October 2025 why:

5.1 The First Respondent should not be finally liquidated.

5.2 The costs of this application should not be costs in the liquidation of the Respondent, which costs are to include the costs of two counsel, with scale C to apply in respect of senior counsel and scale B in respect of junior counsel.

6. Service of this order be effected by:

6.1. one publication in each of the Cape Times and Burger newspapers and the government gazette.

6.2. service on the South African Revenue Service at 1[...] L[...] L[...] Street, Cape Town.

6.3. service on the Respondent at the Respondent's registered address being 2nd Floor H[...] W[...], 1[...] S[...] Street, De Waterkant, Cape Town,

6.4. service on the Respondent's employees, if any, at the Respondent's business address being 2nd Floor H[...] W[...], 1[...] S[...] Street, De Waterkant, Cape Town, by affixing a copy of the application and order to any notice board to which the employees have access inside the Respondent's premises or, if there is no access to the premises by the employees, by affixing copies to the front gate, if applicable, failing which, to the front door of the premises.

6.5. service on all registered trade unions, if any, representing the Respondent's employees.

By Order of the court

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Court Registrar