REPUBLIC OF SOUTH AFRICA

IN THE TAX COURT OF SOUTH AFRICA

HELD AT KWAZULU-NATAL LOCAL DIVISION, DURBAN

Case NO: VAT 2060

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED.

....

SIGNATURE DATE

In the matter between:

ZZZ VENTURE Appellant

and

COMMISSIONER FOR THE Respondent

SOUTH AFRICAN REVENUE SERVICE

J U D G M E N T

Lopes J

[1] This is an appeal by ZZZ Venture ("the Venture") against an additional assessment, (in terms of section 92 of the Tax Administration Act, 2011 ("the TAA")), dated the 15th December 2017 by the Commissioner for the South African Revenue Service ("SARS"). The additional assessment related to the imposition by SARS of output tax in terms of section 92 of the TAA and section 22(3) of the Value-Added Tax Act, 1991 ("the Act") for the tax periods 2012/12 – 2016/08 and 2016/10 – 2017/01.

[2] A summary of events will demonstrate how the dispute arose:

(a) Prior to 2011 AB (Pty) Ltd ("AB") and CD (Pty) Ltd ("CD") carried on the business of civil contracting. They agreed to form a joint venture to tender for the construction of an overhead bridge interchange at the intersection of the N2 Highway, the M19 Highway and Umgeni Road ("the project"). To this end the Venture was established, it tendered for the project, and was awarded it. The employer on the project was the South African National Roads Agency Limited ("SANRAL").

(b) At the outset of the project there were three partners in the Venture, being AB, CD and an entity that was referred to as a BEE partner, XY Trading CC, trading as ED Civil and Building Contractors ('ED'). They concluded a written joint venture agreement ("the agreement") on the 12th April 2011, setting out, *inter alia*, their respective rights and obligations. Their shares in the Venture were 52%, 36% and 12% respectively.

(c) From the outset of the project matters went poorly. Labour unrest and difficulties plagued the project. Communities residing near the project demanded inclusion as part of the labour force. The local residents, apparently as a result of pressure by SANRAL, were then hired. It quickly became apparent that they did not have the necessary skills for the project. Violence was used to attempt to gain the upper hand, there were assaults on the project staff and security, and damage to project assets. The entire workforce was eventually dismissed and other, more competent workers, were hired to complete the project. The consequence of all of this was that the project got behind schedule, and the Venture incurred extensive penalties from SANRAL. This resulted in substantial losses for the Venture.

(d) Originally, the partners contributed the necessary capital, as the Venture possessed no assets. In addition, the partners (only AB and CD being relevant here) supplied goods and services to the Venture, for which they rendered monthly invoices to the Venture. Those invoices included output tax which was paid to SARS, and is not in dispute in this appeal. To shore-up the failing finances of the Venture, the partners were required to make further substantial capital contributions. ED realised that it was simply unable to do so, and on the 28th February 2013, and with the consent of the other partners and SANRAL, it was permitted to withdraw as a partner in the Venture. ED is of no further concern in this judgment.

(e) On the 24th August 2011, a meeting was held of the Venture which was attended by the partners. What was referred to in argument before us as "the first addendum" to the agreement was concluded as follows:

> "The Venture participants agree that in order to protect the integrity of the project the Venture Participants agree to payment of services rendered and goods supplied will only be made as and when and to the extent that the Venture cashflow permits it." [*sic*]

(f) In accordance with the agreement and the first addendum, goods and services continued to be supplied to the Venture by the two partners. Those invoices were not paid by the Venture. At the end of the various accounting periods (and probably mostly in the 2016 Annual Financial Statements) those amounts were converted from short-term debts to long-term liabilities in the books of the Venture. To achieve this, the simple expedient of crediting them to the loan accounts of the partners in the Venture was used. Although this appears to be the factual position, the appeal was argued by both parties on the basis that it was not.

(g) What gave rise to the dispute before us, is that the Venture claimed the value-added tax ("VAT") charged on the invoices from the partners, as input tax. Eventually, pursuant to a SARS audit it was established that the debts were not being paid by the Venture to the partners. SARS then, in terms of section 92 of the Tax Administration Act, read with subsection 22(3) of the Act, imposed an output tax assessment on the Venture in a sum equivalent to those input taxes claimed. This was contained in a 'Finalisation of Audit' notice, dated the 15th December 2017.

[3] A Notice of Objection to the assessment was delivered by the Venture on the 12th April 2018. The objections raised the following:

(a) That the Venture does not rely on the provisions of subsections 22(3)(ii) and (iii) of the Act.

(b) That the first addendum constitutes:

> "[A] contract in writing in terms of which such supply was made provides for the payment of consideration or any portion thereof to take place after the expiry of the tax period within which such deduction was made, in respect of such consideration or portion be calculated as from the end of the month within which such consideration or portion was payable in terms of that contract. . . ." [*sic*]

in terms of subsection 22(3)(*b*)(i) of the Act.

(c) This meant that the output VAT on those invoices sent to the Venture, would only be due to be paid to SARS by the Venture, when it paid the debts. That event has not yet materialised.

[4] On the 15th April 2019, SARS disallowed the objections of the Venture. The reasons cited were the same for each year-end, viz. that:

> "-Members of joint venture and the Venture not qualifying as 'same group of companies as defined'; and
>
> -Decision by joint venture to pay when cash flow permits is not a 'contract'."

[5] A Notice of Appeal was then issued by the Venture on the 27th May 2019. The grounds of appeal mostly re-state the Notice of Objection, and conclude with, *inter alia*, the submission that:

> ". . . proviso (i) to section 22(3) of the VAT Act applies to the input tax amounts claimed in respect of the debt owing to AB and CD Construction. We further submit that the minutes constitutes a 'contract in writing' as required by the proviso."

The reference to "minutes" is clearly a reference to the first addendum.

[6] Two witnesses testified for the Venture, Mr E, an engineer, and Mr G, an accountant. From that evidence, and concessions in argument, the following eventually became common cause between the parties:

(a) all the invoices in question were sent by the partners to the Venture after the first addendum was concluded;

(b) each partner co-signed the invoices of the other;

(c) those invoices had never been paid in money, but transferred to the loan accounts of the partners to the Venture. In the pleadings, however, the Venture admitted that the invoices were never paid. Notwithstanding that admission, it seems clear from the evidence and the annual financial statements that they were settled by the expedient of transferring them to long-term loans. As the withdrawal of the admission in the pleadings that the debts had not been paid by the Venture, was presumably too inconvenient or difficult to deal with, the Venture stood by its admission in the pleadings that those short-term debts had not been paid.

(d) the first addendum did constitute a valid agreement;

(e) the debts had never become payable in terms of the first addendum, and it was unlikely (but not impossible, or yet determined) that they ever would be paid;

(f) the Venture is deemed, in terms of section 51 of the Act to be a separate and distinct entity from its partners;

(g) the Venture did not, and does not seek relief pursuant to the provisions of subsection 22(3A) of the Act;

(h) the project eventually accrued a loss of R177 million.

[7] Section 22(3) of the Act provides:

"(3) Subject to subsection (3A), where a vendor who is required to account for tax payable on an invoice basis in terms of section 15—

(*a*) has made a deduction of input tax in terms of section 16(3) in respect of a taxable supply of goods or services made to him; and

(*b*) has, within a period of 12 months after the expiry of the tax period within which such deduction was made, not paid the full consideration in respect of such supply,

an amount equal to the tax fraction, as applicable at the time of such deduction, of that portion of the consideration which has not been paid shall be deemed to be tax charged in respect of a taxable supply made in the tax period following the expiry of the period of 12 months: Provided that—

(i) the period of 12 months shall, if any contract in writing in terms of which such supply was made provides for the payment of consideration or any portion thereof to take place after the expiry of the tax period within which such deduction was made, in respect of such consideration or portion be calculated as from the end of the month within which such consideration or portion was payable in terms of that contract;"

[8] Taxpayer's Counsel SC, who appeared for the Venture, submitted that the Venture's main argument was in relation to the first proviso to subsection 22(3). He emphasised that this was not a situation where SARS had reversed input taxes claimed by the Venture, but rather that SARS had deemed an output tax applicable because the debts owed by the Venture had not been paid. This is a new, deemed supply of tax. As the cash flow of the Venture has not yet permitted the payment of the outstanding debts, those debts have not yet become payable. Until the suspensive condition has been fulfilled, the end of the month during which the deemed output tax becomes payable, has not yet arrived. The simple question then arises – has the Venture complied with the proviso to subsection 22(3)(*b*) to enable it to avoid the liability for those deemed taxes?

[9] Taxpayer Counsel further submitted that the deeming provision itself, was not challenged. He referred to the curious situation that the Venture partners were in fact the Venture, and *vice versa*. Accordingly, the wording of the first addendum would appear differently from what one would otherwise have found. The first addendum, read with the invoices subsequently co-signed by the partners and their conduct, was consistent with the first addendum constituting an agreement.

[10] Taxpayer's Counsel referred to the necessity for the Court to adopt a purposive and commercial approach to the interpretation of subsection 22(3). In this regard he referred to:

(a) the dicta of *Van der Merwe* J in *Commissioner, South African Revenue Service v Capstone 556 (Pty) Ltd* 2016 (4) SA 341 (SCA), para 34:

> "I agree with what was said by McCreath J on behalf of the full court in *Commissioner for Inland Revenue v General Motors SA (Pty) Ltd* 1982 (1) SA 196 (T) at 204A, namely:
>
> > 'Finally, I consider that the correct approach in a matter of this nature is not that of a narrow legalistic nature. What has to be considered is the commercial operation as such and the character of the expenditure arising therefrom. This is perhaps but another way of expressing the concept that it is the substance and reality of the original loan transaction that is the decisive factor.'
>
> (See also *Commissioner for Inland Revenue v Conhage (Pty) Ltd (formerly Tycon (Pty) Ltd)* 1999 (4) SA 1149 (SCA) (1999 (12) JTLR 337; [1999] ZASCA 64) para 1.) In this regard I find the following remarks of Lord Hoffman in *MacNiven (Inspector of Taxes) v Westmoreland Investments Ltd* [2001] 1 All ER 865 at para 32, instructive:
>
> > 'The innovation in the *Ramsay* case was to give the statutory concepts of "disposal" and "loss" a commercial meaning. The new principle of construction was a recognition that the statutory language was

> intended to refer to commercial concepts, so that in a case of a concept such as a "disposal", the court was required to take a view of the facts which transcended the juristic individuality of the various parts of a preplanned series of transactions.'
>
> If the receipt or accrual arises from a detailed commercial transaction the transaction must be considered in its entirety from a commercial perspective and not be broken into component parts or subjected to narrow legalistic scrutiny."

(b) *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA), paragraphs 17-26.

(c) The majority judgment of *Hurt* AJA in *Commissioner, South African Revenue Service v Airworld CC and another* 2008 (3) SA 335, para 10.

[11] In the circumstances of this matter, submitted Taxpayer's Counsel, it would be anomalous if relief was not extended to the Venture. This is because the Act, in subsection 22(3), envisages that there would be exceptions to the deeming provision. The mischief which the legislature sought to avoid in subsection 22(3) was, for example, where AB or CD issued an invoice to the Venture which would claim input taxes equal to the amount of output tax paid by AB/CD: the Venture would not pay the debt, and then AB/CD would claim a bad debt, and seek to recover the extent of the output tax paid by it. In those circumstances, SARS would be prejudiced because it would allow an effective refund to the extent of the output tax paid by AB/CD, and, in addition, an input tax deduction by the Venture. Subsection 22(3) will not apply to companies in the same group (unless 100 per cent owned by another in the group), but the suppliers cannot claim the tax benefits bestowed by a bad debt. Taxpayer's Counsel emphasized that the purpose of subsection 22(3) may clearly be seen in subsection 22(6) which prohibits a vendor in a group of companies who makes a taxable supply to another company in the same group of companies – ie companies referred to in subsection 22(3A), from making a deduction in terms of subsection (1) read with section 16 of the Act, for any tax that has become irrecoverable for as long as both vendors are members of the same group of companies.

[12] Taxpayer's Counsel pointed out that SARS did not need to invoke the provisions of subsection 22(3) to disallow an input VAT claim. It does that by deeming a new supply after 12 months' have elapsed, and does not interfere with the input taxes claimed. The supplier (in this case, AB or CD) is precluded from recovering output tax on the supply, if for no other reason than that it cannot claim, on the one hand that the debt is not payable, and on the other hand that the debt is irrecoverable. What has happened in this case is that SARS invoked

subsection 22(3), and deemed an output tax by the Venture to have occurred, and that output tax became payable to SARS.

[13] Taxpayer's Counsel emphasized that the mischief which subsection 22(3) seeks to avoid did not, and could not, occur here. Notwithstanding that the Venture has not relied on the provisions of subsection 22(3A) of the Act (because it could not meet the requirements), the reality is that it is in an *a fortiori* position because of the unity of identity of the partners being the Venture and *vice versa*. The anomaly that arises is that SARS has levied the output taxes in terms of the deeming provisions in subsection 51(1) and subsection 22(3). It could not have been the intention of the legislature that such a situation should arise.

[14] Taxpayer's Counsel referred to section 92 of the Tax Administration Act which provides:

> "Additional assessments. – If at any time SARS is satisfied that an assessment does not reflect the correct application of a tax Act to the prejudice of SARS or the *fiscus*, SARS must make an additional assessment to correct the prejudice."

In its "Finalisation of Audit" letter of the 15th December 2017, SARS set out the provisions of subsection 22(3) of the Act, and then the provisions of section 92 of the Tax Administration Act. Taxpayer's Counsel submitted that as the output tax already paid by AB/CD would equate to the input tax refund claimed by the Venture, that SARS would not have been financially prejudiced. Its position was financially neutral.

[15] SARS Counsel, who appeared for SARS, submitted that:

(a) the Venture did not, in its objection, or in its grounds of appeal, raise the defence of reliance upon section 92 of the TAA. It was, however, raised in argument by Taxpayer's Counsel. The Venture could not do so now, because section 92 involved the concept of prejudice to the *fiscus*. Prejudice was a factual issue, and no evidence had been led in that regard. Section 92 was only to be found in the finalisation of assessment letter, and is accordingly part of the assessment. In its objection, the Venture had not referred to, nor dealt with, nor objected to, the matter of prejudice. It is part of the objection not objected to by the Venture. The prejudice to SARS is clear – a vendor has received millions of rand in refunds without having paid for the supplies.

(b) The Venture disclosed no invoices, and the two contained in the dossier were put up by SARS. The non-payment of consideration was because the business was not thriving. The invoiced amounts were not paid, and the suggestion that an entity could not sue itself is overcome by the Venture's own agreement. The Venture itself resolved not to pay its partners, and they agreed not to be paid.

The cash flow has never allowed a payment, and it will never do so. The prejudice to SARS will persist for so long as the Venture does not pay its partners.

(c) As per the pleadings, the Venture has limited itself to two issues;

(i) the proviso in subsection 22(3)(i), and the interpretation of subsection 22(3); and

(ii) the relief claimed under the concept of the operation of a "group of companies", as envisaged in subsection 22(3A) of the Act. The Venture has abandoned this argument.

[16] SARS Counsel emphasized that the Venture bears the burden of establishing that an agreement exists which satisfies the proviso in subsection 22(3)(i). To do so the Venture must prove a contract in writing which provides for the payment of consideration or any part thereof to be made after the expiry of the tax period in which such deduction was made, which consideration or portion would be calculated from the end of the month in which the consideration was payable. They must establish that the consideration will be payable, and in this matter it will never be payable. The Venture never pleaded a factual basis for any payment to take place. The Venture has operated at a loss, and no part of the consideration has, or will be, paid.

[17] SARS Counsel referred to the Venture's reference to the agreement in its rule 31 statement, which he described as an agreement for no payment at all, because there is no indication when, or if, payment will ever be made. Because of the nature of the relationship between the partners and the Venture, there is no consideration payable.

[18] He reasoned that the agreement does not stipulate a period when payment was to have been made. It, in fact, provides that no consideration will be made, unless and until the Venture has sufficient cash flow to do so. SARS Counsel stated that SARS does not adopt the stance that the agreement does not constitute a contract – rather that it is not one within the proviso to subsection 22(3)(*b*). The proviso requires the stipulation of a period, after the expiry of the current tax period, indicating when the amounts would become payable. The agreement does not do so. The payment agreement contained what SARS Counsel described as a resolutive condition.

[19] During SARS Counsel*'s* argument Taxpayer's Counsel conceded that the Venture does not persist with the arguments raised in terms of section 72 and section 74 of the TAA.

[20] I deal firstly with SARS Counsel*'s* submission that section 92 of the TAA cannot be debated by Taxpayer's Counsel. The fact that SARS submitted its 'Finalisation of Audit' relying on that section, and that it was not dealt with by the Venture in its objections or grounds of appeal, does not mean that it is precluded from raising it in argument. It is simply the basis upon which SARS issued the additional assessment. Had SARS not believed that it was financially prejudiced, it would surely not have raised the additional assessment. In its reference to section 92, SARS actually recites that prejudice as part of its complaint, and regards itself as bound in this regard. Even though section 92 is not referred to in the Venture's objections and grounds of appeal, the section is part of the structure of the Tax Administration Act relied upon by SARS. The Venture has made it clear why it believes the additional assessment should not have been levied. That inevitably involves a debate on whether SARS or the *fiscus* was left in a financially neutral position. Because of the reasons for my decision in this matter, the point is, in any event, of no moment.

[21] The next aspect is whether there was an agreement concluded between the Venture and AB and CD, which satisfies the proviso to subsection 22(3)(*b*). The Venture, represented by its partners AB and CD, concluded the first addendum with AB and CD, in terms of which the repayment of the debts owed by the Venture to AB and CD would be delayed until the Venture had the necessary cash flow to do so. On the basis that, for the purposes of the Act, the Venture is deemed to be an entity, separate and distinct from its partners in terms of section 51 of the Act, it is appropriate to find that the agreement is a legally binding contract between them.

[22] The question which then arises is whether the agreement fulfils the requirements of the proviso in subsection 22(3)(*b*)? If an input deduction has been made on the basis of a supply of goods or services by the Venture in this matter, and the supplier has not been paid within a period of 12 months', then SARS may deem a tax to be charged in respect of that supply. The tax will be payable in the tax period following the expiry of the 12 months. The proviso allows an exemption to that deeming provision. The exemption occurs in circumstances where:

(a) a contract in writing is concluded between the supplier and the vendor (AB and CD on the one hand, and the Venture on the other);

(b) providing for the payment of the consideration (or any portion thereof), to take place after the tax period during which the contract (the first addendum here) was concluded; and

(c) the tax will be payable in the month after the end of the tax period during which payment was to have been made.

[23] The parties are agreed that the agreement and the first addendum provide that the payment of the goods or services would only be made "as and when and to the extent that the VENTURE cashflow [*sic*] permits it"; that the cash flow has never permitted it; and that a period of 12 months' has elapsed after the end of the tax period during which the output tax on the original invoices were payable.

[24] There seems no doubt that the Venture, which, it is common cause, was a registered vendor in terms of the definition of that word in section 1 of the Act, qualifies as a "person" as defined in that section, being a "body of persons (corporate or unincorporated)".

[25] SARS Counsel steadfastly maintained that no payment would ever be made, because the Venture ran at a loss, and sufficient cash flow would never become available. That statement does not deal with the matter entirely, because the Venture has sued SANRAL, apparently for an amount of R100 million, arising out of the principal contract. That action is, apparently, pending. I have no information regarding the action, and am accordingly unable to comment in any way upon its prospects of success or failure. Nor, indeed, should I do so in any event. I have no knowledge of the basis upon which the partners may conclude that sufficient cash flow is or is not available to pay the debts of the Venture, in the event that the Venture is successful in the action. In those circumstances it cannot validly be asserted that the Venture will never pay the output taxes (or part thereof), nor that the suspensive condition is so vague as to be unenforceable.

[26] With regard to the possible vagueness of the addendum because of the uncertainty of the payment date, it is not an undertaking to pay when the Venture chooses to do so, but rather when it is able to do so. The happening of that event will be a matter of fact, not solely within the Venture's discretion. That the cash flow of the Venture enables it to pay its suppliers may be objectively established. It may be evidentially difficult for SARS to establish that, but that is a separate issue, and not an insurmountable problem, because SARS need do no more than follow the legal proceedings between SANRAL and the Venture in order to establish the financial well-being of the Venture. The fact that the Venture is deemed to be a separate and distinct entity for VAT purposes, is important in establishing the independence of the partners from the Venture. This is what may be viewed as a mixed potestative condition, depending as it does on future events outside the powers of the Venture – ie. the result of the litigation with SANRAL.

See: the cases cited in G B Bradfield *Christie's Law of Contract in South Africa* 7 ed (2016) at 114 fn 723.

[27] The “anomaly” of which Taxpayer’s Counsel complains, is, as I understand it, that if the Venture was a company, the shareholders of which were AB and CD, then they would have been able to claim protection under the proviso to subsection 22(3)(*b*). Taxpayer’s Counsel emphasized that the purpose of subsection 22(3) may clearly be seen in subsection 22(6) which prohibits a vendor in a group of companies who makes a taxable supply to another company in the same group of companies – ie. companies referred to in subsection 22(3A), may not make a deduction in terms of subsection (1) read with section 16 of the Act, for any tax that has become irrecoverable for as long as both vendors are members of the same group of companies.

[28] In *ABC (Pty) Ltd v Commissioner for the South African Revenue Service* 2016 JDR 1699 (Tax), Savage J dealt with a matter, the facts of which were very similar to the facts of this matter. The question there, was whether the conversion of short-term debts to long-term liabilities between two companies constituted payment of the short-term debts. Savage J held that it did. In dealing with the purpose of subsection 22(3), the learned judge stated, in paragraph 25:

> “From the explanatory memorandum to the Taxation Laws Amendment Bill, 1996 it is apparent that subsections (3), (4) and (5) were introduced into s 22 with a specific aim. What was intended by the inclusion of these subsections was to rectify the position in relation to irrecoverable debts insofar as a vendor who accounts for VAT on an invoice basis and writes off a bad debt is entitled to an input tax deduction equal to the tax fraction of the irrecoverable amount written off. It was the prejudice to the *fiscus* which motivated the amendments in that it allowed the opportunity for deliberate manipulation by creating bad debts with a view to creating a tax benefit. It follows that the introduction of s 22(3) was aimed at preventing such deliberate manipulation and was not aimed at circumstances such as arise in the current matter, in order to bar an invoice from being considered paid through the creation of a loan account liability where a funding arrangement exists between group companies.”

[29] There is no hint of a deliberate manipulation in this matter. A suggestion was made by SARS Counsel during the cross-examination of Mr E that an invoice provided by one of the partners to the Venture was “false”. This was not followed-up, pursued or established by SARS. The Venture and its partners concluded an agreement to postpone payment of the Venture’s debts. The first addendum was concluded to regulate the payment of the debts owed by the Venture to its partners. It provided for the payments of the debts to take place when the cash flow was sufficient to allow the Venture to do so. That cannot be said to be an event which would, or could, never happen. The pending action between the Venture and SANRAL is yet to be decided.

[30] I have interpreted subsection 22(3) in accordance with the approach set out in the cases referred to by Taxpayer's Counsel in paragraph 10 above. I have also sought to interpret the wording of the addendum in the same manner – ie. to give a commercial and purposive meaning to the agreement expressed by the parties, taking into account their understandable desire to protect the integrity of the project. It seems certain that had they not concluded the addendum, the project would have collapsed, jobs would have been lost and the finalisation of a much-needed public facility inevitably delayed. SARS has been left with a financially neutral position – a factor that a court would, in my view, almost always consider in weighing-up the merits of any tax case, particularly when the facts clearly established the true position.

[31] In all the circumstances, it was inappropriate for SARS to have delivered an additional assessment of tax based on section 22 of the Act. The Venture's defence that its conduct falls within the provisions of subsection 22(3)(*b*) of the Act succeeds. I do not agree with SARS Counsel*'s* submission that because SARS had rebutted two of the bases upon which the Venture sought to appeal, that SARS was substantially successful and should be awarded its costs. The fact is that the assessment by SARS was incorrect, should not have been made, and falls to be set aside. Taxpayer's Counsel submitted that as no costs were sought in the application papers, none could be awarded now. I agree.

I make the following order:

(a) The appeal succeeds.

(b) The additional assessment made by SARS, contained in its 'Finalisation of Audit' notice, dated the 15th December 2017 is set aside.

Lopes J – President of the Tax Court

GMA Gani – Accounting member.

Mrs JM Anthoo – Commercial member.

Date of hearing:	8th September 2021.
Accountant member:	Mr Goolam Gani.
Commercial member:	Mrs Jennifer Anthoo.
Date of judgment:	Handed down by publication by email to the parties' legal representatives, on the 8th October 2021.