

Original

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF THE CITY OF CAPE TOWN  
SUB DISTRICT OF KUILSRIVIER  
HELD AT KUILSRIVIER

Case No. 7536/2023

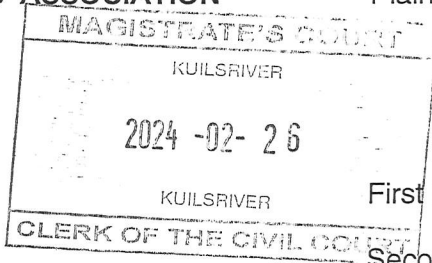
In the matter between:

**KLEINBRON ESTATE HOMEOWNERS' ASSOCIATION** Plaintiff

and

**RUBEN THEODOR FITCHAT**  
ID NO. 841228 5132 089

**SONET FITCHAT**  
ID NO. 820625 0125 080



First Defendant

Second Defendant

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**NOTICE OF APPLICATION TO COMPEL INTERMS OF RULE 23(8)**

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BE PLEASED TO TAKE NOTICE application will be made on behalf of the abovenamed Plaintiff to the above Honourable Court on Wednesday the 24<sup>th</sup> day of April 2024 at 09h00 or soon thereafter as the matter may be heard for an Order in the following terms:

1. Directing the abovementioned Defendants to comply with Plaintiff's Notice in terms of Rule 23(3) dated 6 December 2023, within 10 (ten) days of the order;
2. In the event of the Defendants failing to comply with paragraph 1 above, granting the Plaintiff leave to apply to this Honourable Court in terms of Rule 23(8) for an Order dismissing the Defendants' claim, with costs;
3. Ordering the Defendants to pay the costs of this application;
4. Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of DAVID JOSEPHUS NEL, annexed hereto, will be used in support of this application.

DATED at BELLVILLE this 21 day of FEBRUARY 2024.

**DIAAN NEL & GAGIANO INC**

Per: **DJ NEL**

Attorney for the Plaintiff  
Canal Edge Three, Block B  
1<sup>st</sup> Floor, Carl Cronje Drive  
Carl Cronje Drive

**TYGER WATERFRONT**

Docex: 22, Tyger Valley

Tel: 021 001 7607

Email: [diaan@dngattorneys.co.za](mailto:diaan@dngattorneys.co.za)

Ref: DJN/DN0670

c/o **HICKMAN VAN EEDEN PHILLIPS INC**

96 Van Riebeeck Road

**KUILSRIVIER**

Tel: 021 903 3106

TO: **THE CLERK OF THE COURT**  
Magistrates Court  
**KUILS RIVER**

By hand

AND

TO: **RUBEN THEORDOR FITCHAT**  
91 Frangipani Street  
Kleinbron Estate  
**BRACKENFELL**  
7560  
Tel: 083 925 1545  
Email: [theo@cluedapp.co.za](mailto:theo@cluedapp.co.za)

By email

AND

TO: **SONET FITCHAT**  
91 Frangipani Street  
Kleinbron Estate  
**BRACKENFELL**  
7560  
Tel: 060 340 1315  
Email: [sonet@cluedapp.co.za](mailto:sonet@cluedapp.co.za)

By email

IN THE MAGISTRATES COURT FOR THE DISTRICT OF THE CITY OF CAPE TOWN, SUB DISTRICT OF KUILSRIVIER HELD AT KUILSRIVIER

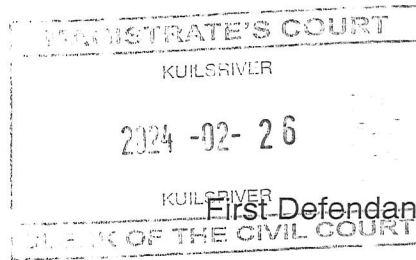
CASE NUMBER: 7536/2023

IN THE MATTER BETWEEN:

**KLEINBRON ESTATE HOMEOWNERS' ASSOSICATION**

Plaintiff/Applicant

and



**RUBEN THEODOR FITCHAT**  
(ID No. 841228 512 089)

First Defendant/Respondent

**SONET FICHAT**  
(ID No. 820625 0125 080)

Second Defendant/Respondent

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**AFFIDAVIT**

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I,

**DAVID JOSEPHUS NEL**

declares under oath as follows:

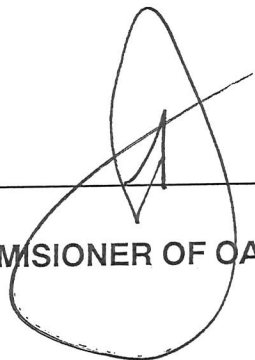
1. I am an adult male practicing attorney, the attorney of record for the Plaintiff, at DNG ATTORNEYS, Canal Edge 3, Block B, First Floor, Carl Cronje Drive, Tyger Waterfront.
2. The facts contained herein fall within my personal knowledge and belief and are true and correct unless the context indicates otherwise.

3. A Notice in terms of Rule 23(1), (6), (9) and (11) (Notice to Discover) was served via email on the First and Second Defendants on 6 December 2023. The Notice, and email send confirmation is attached as "A".
4. Service by email was agreed, as is evident from the Defendants' Notice of Intention to Defend, attached as "B". The email service addresses for the Discovery Notice (A) correspond with the Defendants' email addresses provided in the Notice of Intention to Defend (B).
5. Subsequent pleadings have also been exchanged and accepted in this manner.
6. The time to Reply to the said Notice expired on 2 February 2024, providing for 20 week/court days, and having considered *dies non* over this period.
7. The Defendants have failed to make discovery and there has been no response or engagement from the Defendants.
8. Plaintiff will be prejudiced in its further conduct of the matter, trial preparation etc. if proper Discovery by the Defendants is not made.
9. Same necessities this Motion to Compel Discovery.
10. I accordingly humbly pray for an order in terms of the Notice of Motion.

DAVID JOSEPHUS NEL

I hereby certify that I have no interest in this matter and that on the 14 day of February 2024 in my presence at Durbanville the deponent signed this Affidavit and swore and acknowledged to me that he knows and understands the contents thereof, had no objection to taking this oath and considered this oath to be binding on his conscience and uttered the words "I swear that the contents of this affidavit is true, so help me GOD", in accordance with the requirements of Regulation R1258 dated 21 July 1972, as amended by Regulation No 1648 dated 19th August 1977, as further amended by Regulations No 1428 dated 11th July 1980, and No R774 dated 23 April 1982, as well as Government Notice 903 dated 10th July 1998.

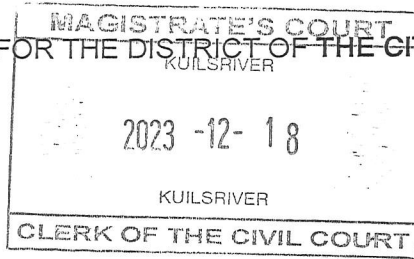
LEANDA VAN DEVENTER  
PRACTICING ATTORNEY  
CARL CRONJE DRIVE  
CANAL EDGE 3,  
UNIT 6,  
TYGERVALLEY  
WATERFRONT  
7530

  
\_\_\_\_\_  
COMMISSIONER OF OATHS



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IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF THE CITY OF CAPE TOWN  
SUB DISTRICT OF KUILSRIVIER  
HELD AT KUILSRIVIER



Case No. 7536/2023

In the matter between:

**KLEINBRON ESTATE HOMEOWNERS' ASSOCIATION**

Plaintiff

and

**RUBEN THEODOR FITCHAT**  
ID NO. 841228 5132 089

First Defendant

**SONET FITCHAT**  
ID NO. 820625 0125 080

Second Defendant

**NOTICE IN TERMS OF RULE 23(1), (6), (9) & (11)**

**KINDLY TAKE NOTICE** that in terms of Rule 23(1) the Defendants are hereby required within twenty (20) days after receiving this Notice, to deliver a schedule specifying all documents and tape, electronic, digital or other forms of recordings in his possession or under its control, or which have at any time been in the Defendants' possession or control, relating to any matter in question in the action which the Defendants intends to use in the trial.

**KINDLY TAKE FURTHER NOTICE** that in terms of Rule 23(6) the Defendants are hereby required to produce for inspection within five (5) days of receipt hereof during normal business hours at a time and place to be mutually agreed upon, any document or tape, electronic, digital or other form of recording specified in the Defendants' schedule of documents and recordings.

**KINDLY TAKE FURTHER NOTICE** that in terms of Rule 23(9) the Defendants are called upon to specify in writing not less than 15 (fifteen) days before the date of trial of said action, particulars of dates and parties of or to any documents or tape, electronic, digital or other form of recordings intended to be used at the trial of the said action on the Defendants' behalf.

  
2/....



**KINDLY TAKE FURTHER NOTICE** that in terms of Rule 23(11) the Defendants are hereby required to produce at the hearing of this action the original of such document or tape, electronic, digital or other form of recording, not being a privileged document or tape, electronic, digital or other form of recording in the Defendants' possession.

DATED at **BELLVILLE** this *14* day of **DECEMBER 2023**.

**DIAAN NEL & GAGIANO INC**

Per: **DJ NEL**  
Attorney for the Plaintiff  
Canal Edge Three, Block B  
1<sup>ST</sup> Floor, Carl Cronje Drive  
Carl Cronje Drive, Tyger Waterfront  
Docex: 22 Tyger Valley  
Tel: 021 001 7607  
Email: [diaan@dngattorneys.co.za](mailto:diaan@dngattorneys.co.za)  
Ref: **DJN/DN0670**

TO: **THE CLERK OF THE COURT**  
Magistrates Court  
**KUILS RIVER**

By hand

AND  
TO: **RUBEN THEODOR FITCHAT**  
91 Frangipani Street  
Kleinbron Estate  
BRACKENFELL  
7560  
Tel: 083 925 1545  
Email: [theo@cluedapp.co.za](mailto:theo@cluedapp.co.za)

By email

AND  
TO: **SONET FITCHAT**  
91 Frangipani Street  
Kleinbron Estate  
BRACKENFELL  
7560  
Tel: 060 340 1315  
Email: [sonet@cluedapp.co.za](mailto:sonet@cluedapp.co.za)

By email

**Diaan**

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**From:** Diaan  
**Sent:** Wednesday, 06 December 2023 08:46  
**To:** Theo  
**Cc:** sonet@cluedapp.co.za  
**Subject:** KLEINBRON ESTATE HOME OWNERS' ASSOCIATION / RT & S FITCHAT (CASE 7536/2023)  
**Attachments:** Untitled\_06122023\_082026.pdf



Good day,

Attached Plaintiff's Notices in terms of Rule 23(1), (6), (9) & (11).

Yours truly,

***Kindly note that our office shall be closed from 22 December 2023 and re-open on 3 January 2024. Wishing you Happy Holidays and a prosperous New Year!***

<p><b>DIAAN NEL</b> Director</p> <p> 021 001 7607</p> <p> diaan@dngattorneys.co.za</p> <p> www.dngattorneys.co.za</p>	<p></p> <p>DIAAN NEL &amp; GAGIANO INC ATTORNEYS   NOTARIES   CONVEYANCERS</p> <p>Canal Edge Three, Block B, First Floor, Carl Cronje Drive, Tyger Waterfront, 7530</p>
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**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF KUILSRIVIER  
HELD AT KUILSRIVIER**

Case number: **7536/2023**

In the matter between:

**KLEINBRON ESTATE HOMEOWNERS' ASSOCIATION** Plaintiff

and

**RUBEN THEODOR FITCHAT** First Defendant

**SONET FITCHAT** Second Defendant

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**NOTICE OF INTENTION TO DEFEND**

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**PLEASE TAKE NOTICE** that the above-named First Defendant and Second Defendant hereby deliver notice of their intention to defend the action instituted against them by the Plaintiff.

**PLEASE TAKE FURTHER NOTICE** that the First Defendant and Second Defendant agree to accept service of all pleadings and notices in this action by way of electronic mail sent to [theo@cluedapp.co.za](mailto:theo@cluedapp.co.za) and [sonet@cluedapp.co.za](mailto:sonet@cluedapp.co.za)

Dated at **BRACKENFELL** on this **31<sup>st</sup>** day of **JULY 2023**.



**RUBEN THEODOR FITCHAT**

91 Frangipani Street

Kleinbron Estate



Brackenfell

7560

Tel no.: 083 925 1545

Email: theo@cluedapp.co.za



**SONET FITCHAT**

91 Frangipani Street

Kleinbron Estate

Brackenfell

7560

Tel no.: 060 340 1315

Email: sonet@cluedapp.co.za

To **THE CLERK OF THE COURT**  
Magistrate's Court  
KUILS RIVER

And to: **DIAAN NEL & GAGIANO INC.**  
t/a DNG ATTORNEYS  
Per:  
D J NEL  
Canal Edge, Three, Block B  
First Floor, Carl Cronje Drive  
TYGER WATERFRONT  
P O Box 4682



TYGER VALLEY, 7536

Tel: 021 001 7607

Email: [diaan@dngattorneys.co.za](mailto:diaan@dngattorneys.co.za)

REF: DJN/DN0670

c/o HICKMAN VAN EEDEN PHILLIPS

96 Van Riebeeck Road

KUILSRIVER

Handwritten initials or signature, possibly 'D' and 'N', located in the bottom right corner of the page.