

Financial



How the Browns stole millions – lawyers

Top law firm explains to Moneyweb how Fidentia Chairman Arthur Brown and wife Susan stole R24,5m under its nose.

Jackie Cameron

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Big law firm Cliffe Dekker watched ousted Fidentia Chairman Arthur Brown and his wife Susan steal R24,5m, partly to buy a building, under its nose – but says it was taken in by Brown's demeanour, impressive offices and some documentation.

Lawyers are legally obliged to alert the Financial Intelligence Centre (Fic) about so-called suspicious transactions. These are the funds that may be the proceeds of crime or terrorism-related.

If they don't report to the Fic, and should have, the law firm can be fined up to R10m and the lawyer sentenced to up to 15 years in jail, according to the Fic.

Fic director Murray Michell told *Moneyweb* recently that it "fully intends to pursue alleged failures to comply with the Fic Act in relation to the Fidentia matter".

It will "provide the investigators and relevant supervisors with its full support to ensure that those responsible for compliance failures of this nature are held accountable", he said.

Absa bank's role in Fidentia-related money-laundering has already been highlighted in court papers and reported on *Moneyweb*.

No arrests have yet been made in connection with money-laundering and the Fidentia fiasco.

Moneyweb can this week reveal that Cliffe Dekker didn't call the centre when Brown got a Fidentia company to pay for a building purchased in the name of his family investment trust about 18 months ago.

Instead, the law firm processed the transaction and even paid about R1,5m cash into the Brown family trust bank account.

This cash "refund" was handed to the Brown trust because too much had been paid for the building – and because there was some interest owing on the sum which had been held by the law firm for a period during the transfer.

This week, Fidentia's curators obtained a forfeiture order allowing them to sell off the building in order to help recover some money for the hundreds of thousands of beneficiaries of the Living Hands trust.

At least R1bn can't be accounted for. The curators are piecing together a "web of deceit" as they try to trace millions of rands belonging to investors who had entrusted their funds to Fidentia entities.

Brown and accountant Graham Maddock are facing a string of criminal charges in connection with the debacle, with more arrests expected.

As the attorneys responsible for transferring ownership of the four-storey Facets, Century City, Cliffe Dekker could have signalled an alarm for the authorities in late 2005 when Brown put the wheels in motion to get Fidentia clients to pay for the building.

Mike Collins, the lawyer who processed the transaction, told *Moneyweb* this week that there were some unusual aspects to the deal, but that at the time he didn't smell a rat. Hence, he did not alert the authorities.

In addition, Collins said that Cliffe Dekker's know-your-client policies were such that he does not believe it was his duty to interrogate the origins of the money used to buy the building.

As he was acting for the seller of the building, and the Brown trust was the buyer, it was not his responsibility, is his argument. At best, it was his duty to apply the know-your-client policy to the seller, his client, he said.

"All we'd be looking to do is secure the purchase price for the seller," he said on Wednesday of what he believed his responsibilities were.

But a Fic official told *Moneyweb* that conveyancers have an obligation to report to it in terms of buyers and sellers - regardless of who the conveyancer represents.

"The conveyancer is involved in the entire transaction. It is better to report and continue with the transaction, than not report," said the official of so-called "suspicious" transactions.

A remarkably candid Collins explained how the transaction was effected.

First of all, he said the Brown family trust offered to pay R18m, plus VAT, for the building – which formerly housed the Dockside nightclub.

Susan Brown, Andrew Tucker and Arthur Brown signed the relevant documentation to allow the trust to acquire the property.

A guarantee was provided by Standard Bank to cover the amount, plus other costs associated with the purchase of the building.

The main part of the deal was handled by a commercial lawyer at Cliffe Dekker, Francis Newham, while Collins effected the nitty-gritty of the transfer, he said.

According to Cliffe Dekker's file on the matter, in September 2005, Newham wrote to the family trust, for the attention of Brown, questioning the suitability of the guarantee because it was issued on behalf of Fidentia's Capitalwise Securities.

"The guarantee was furnished by a party that wasn't a party to the transaction," was the observation made by Cliffe Dekker lawyers at the time of the deal.

There is correspondence between Derek Linde, an in-house "legal guy" at Capitalwise, and Newham in connection with the guarantee, said Collins.

Eager to finalise the deal, Newham - said Collins - forwarded a proposal draft letter to Capitalwise, saying that if it wanted to "give us a guarantee", a letter along the lines of the draft would "close the gap".

Linde obliged and Collins proceeded with the transfer.

Collins said the buyers and Linde were “adamant” there was an agreement between the family trust and this company.

In addition, there was an explanation from Capitalwise that it was the broker of assets on behalf of the Brown family trust and handled the assets and affairs of the trust, said Collins.

“Also, the bank issuing the guarantee and being an accountable institution would have had the duty to do the know-your-customer or do the Fica check on Capitalwise.

“The fact Standard Bank issued a guarantee on behalf of their client lent further plausibility to the whole thing. Standard Bank must have been happy that Capitalwise was above-board and Fica-compliant,” he said.

The conveyancer said that if Brown had arrived with a suitcase of cash he may have questioned the transaction, however Brown and the whole Fidentia operation were “very professional looking”.

When he visited Brown in his plush offices at Century City, Brown “appeared to be a man of substantial means”. With such a large and expensive-looking operation around Brown, it didn’t occur to Collins that Brown wouldn’t have the personal money to pay for a multi-million rand building, said the lawyer.

Brown told him that the building was being bought for his wife and that she would run a business from there, however Collins never met Mrs Brown.

Collins said he found Brown to be “a very difficult gentleman” in their dealings, and he came away thinking the Fidentia chief had a high opinion of himself – but it never occurred to him that Brown was spending money that was not his own.

With hindsight, and after hearing about what has been going on behind-the-scenes at Fidentia, Collins said he is not surprised to hear that he was duped by Brown.

“The anger comes in because he has obviously hurt a lot of people,” said Collins of how he feels now that he has been caught in the cross-hairs of the Fidentia saga.

Collins said he does not believe he neglected to alert the authorities of any suspicious activity “because I didn’t see any”. “I feel comfortable we acted correctly in this transaction,” said Collins of Cliffe Dekker’s role in the matter.

Brown’s lawyer John Hunter, meanwhile, told *Moneyweb* earlier this week that Brown has a very good business explanation about why the building was acquired in a personal trust rather than in a business entity. He said this explanation would be sent to *Moneyweb* by early Wednesday. By the close of business, no explanation was forthcoming.

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