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Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO 7681/17

In the matter between:

THE SOUTH AFRICAN BANK OF ATHENS LIMITED

Applicant

(Registration No 1947/025414/06)

VS

ZENNIES FRESH FRUIT CC

Respondent

AND

CASE NO. 24618/2016

In the matter between:

BUSINESS PARTNERS LIMITED

Applicant

(Registration No 1981/000918/06)

and

ZENNIES FRESH FRUIT CC

First Respondent

(Registration No 1999/024067/23)

ZENOPHANE DENVER SCHROEDER

Second Respondent

(Identity No [...])

JUDGMENT 1 FEBRUARY 2018

KUSEVITSKY AJ:

[1] This dispute concerns two applications, being case numbers 24618/2016 and 7681/2017, which were consolidated as they both relate to a common Respondent, Zennies Fresh Fruit CC, (“Zennies”). Both Applicants are seeking a declaratory order that the Business Rescue Proceedings in respect of Zennies have ended or lapsed in terms of section 132(2)(c)(1) of the Companies Act No 71 of 2008 (“the Act”). Zennies on the other hand refutes that the business rescue proceedings have been terminated and aver that the Applicants are not entitled to proceed against it in terms

of Section 133 of the Act which places a general moratorium on legal proceedings against a company.

THE PARTIES

Business Partners Limited

[2] Business Partners Limited (“Business Partners”) is the Applicant in case number 24618/2016. The First Respondent is Zennies and the Second Respondent is Zenophane Denver Schroeder (“Schroeder”) who signed a deed of suretyship in favour of Business Partners for the performance of Zennies obligations to it. Business Partners is seeking judgment against First and Second Respondents jointly and severally, the one paying the other to be absolved for monies loaned and advanced in terms of loan and royalty agreements entered into between them. As security for its indebtedness, Zennies caused a covering mortgage bond to be registered in favour of Business Partners on several properties in Gouda. Furthermore, as security for Zennies debts, the Second Respondent Schroeder, caused a surety mortgage bond to be registered in favour of Business Partners over a further property in Durbanville.

[3] On the 14 February 2017, Business Partners applied for judgment and execution of the properties.

The South African Bank of Athens Limited

[4] On the 16 May 2017, the South African Bank of Athens (“the Bank”) brought a liquidation application against Zennies by virtue of monies due and payable in

respect of various property loan and instalment sale agreements which debt, it said, Zennies were unable to pay as and when they fell due.

[5] The liquidation application became opposed and was eventually postponed to the semi – urgent roll.

THE BACKGROUND

[6] On 30 January 2017 the sole member of Zennies signed a resolution to place it under voluntary Business Rescue proceedings in terms of section 129(1) of the Companies Act. The business rescue proceedings of Zennies commenced on 1 February 2017. On 3 February 2017, Bernard Schneider (“Schneider”) was appointed as the business rescue practitioner for Zennies.

[7] On 14 February 2017 the application for judgment which was issued on 19 December 2016, was postponed to 16 May 2017 to allow Mr Schneider an opportunity of approximately three months to finalise the Business Rescue Proceedings.

[8] On 17 February 2017 the first creditors’ meeting for the general body of creditors of Zennies took place in terms of section 151 of the Act. There were two creditors present, namely Business Partners and the Bank. The minutes of the meeting indicate that:

“At the next meeting, scheduled for 25 business days after the appointment of the business rescue practitioner, a plan will be presented and voted on. This period for the voting of the plan can be extended with the permission of the major creditors”.

[9] The minute contains no recordal of any vote having taken place at the meeting. The proceedings at this first meeting are not in dispute. On 9 March 2017 a Business Rescue Plan (“the plan”) was published by Mr Schneider.

[10] On 23 March 2017 the second creditors’ meeting took place. It is what happened at this meeting which is the nub of the dispute.

[11] According to the supplementary affidavit of Business Partners, Schneider prepared and published the Plan which was distributed on 9 March 2017. This plan would be tabled for discussion and voting at the second creditors meeting which was scheduled for 23 March 2017. On the 20 March 2017, Business Partners attorneys directed an email to Mr Schneider which dealt with, *inter alia*, the contents of the plan and raised its concerns that the plan did not comply with the requirements of section 150(2) of the Act. The letter ended by stating that they would advise their client to either raise a motion in terms of section 152(d)(i) alternatively (ii) of the Act *“in terms of which you will be allowed to either amend the proposed plan in accordance with the request by the holders of the creditors voting interest or adjourn the meeting in order to revise the plan for further consideration.”* On the 22 March 2017, Mr Scheider replied by stating that it was his intention of settling all of the creditors in full

and that he had already addressed this by realizing certain assets. He believed that two to three months would be the maximum duration of this proposed plan.

[12] According to Business Partners, the second meeting which took place was adjourned in order to prepare and publish a revised plan. According to the Minutes of that meeting under the topic of '*Business Rescue Plan*', it was recorded, *inter alia* that the plan had been timeously circulated, that in order to comply with the prescribed time frames, there were certain information that Mr Schneider had been unable to confirm at the time of compiling the plan and that as such, it was suggested that the second meeting and the voting on the plan be adjourned until certain information and facts were more firmly established. The Minutes also recorded that the '*period for the voting of the plan can be extended with the permission of the major creditors.*'

[13] In its affidavit, Business Partners relies on this recordal to claim that in terms of section 153(3)(a)(ii) of the Act, Mr Schneider was required to prepare and publish a new or revised plan within ten business days from the date of the second creditors' meeting, that period so it was stated, having lapsed on 6 April 2017 and neither it nor the Bank had agreed to extend the time period for him to prepare and publish a new or revised plan. It therefore seeks a declaratory order that the Business Rescue of Zennies has ended and/or lapsed in terms of section 132(2)(c)(i) of the Act.

[14] Finally, with regard to the financial position of Zennies, the Minutes recorded that Mr Schneider had received an offer of R5.5 million for the company vehicles and that the proceeds would be sufficient to settle the outstanding creditors. It was noted that Business partners and the Bank as the major creditors were present at the meeting and that Mr Schneider *“advised those present that he will amend and redistribute the Business plan when he had more facts at his disposal, especially around the pending sale of assets and that Zennies Fresh Fruits CC would be able to settle its overdue debt.”*

[15] On 3 May 2017, the Bank brought a liquidation application against Zennies. The founding affidavit addressed only the requirements necessary to seek a winding up order, and did not deal with the business rescue of Zennies, nor did it ask for the termination of the business rescue on the basis of what had purportedly transpired at the second meeting. In its replying affidavit, the Bank averred that Zennies was no longer under Business Rescue, the contention being that there was no agreement to extend the time periods in reply to the allegation that all parties present agreed to extend the time periods in order to file an amended business rescue plan. The effect of this was that the plan was dismissed as contemplated by section 152 (3)(a) of the Act. It also denies that Mr Schneider took any steps in order to prepare and publish a new revised business plan within 10 days as permitted by section 153(3)(a)(ii) as contemplated.

[16] Zennies on the other hand contends that as a result of the lack of information available to Mr Schneider at the Second Meeting and the creditors' position at the

time, the plan was not accepted, and the meeting was adjourned on the basis that Mr Scheider would amend the plan and address the concerns raised by the creditors.

[17] It argues that on Mr Schneider's version, all of the parties present at the Second Meeting agreed to extend the time periods to file an amended business rescue plan and that the Plan was neither accepted nor rejected. The argument therefore is that, "*a further step*" had been taken in the business rescue proceedings by the affected parties.

[18] In summary, Zennies argument is that it remains under business rescue and that, without the consent of Mr Schneider or the leave of the Court, the moratorium against any proceedings being instituted against it remains in place.

[19] The Plan was therefore not rejected, rather the parties agreed that it be amended as contemplated in Section 152(1)(d)(ii) and therefore section 153 does not apply and even were it to be held that the Plan was rejected (and that Section 153 does apply), in light of the instruction that Mr Schneider had to amend the Plan, the business rescue proceedings did not terminate (as Section 153(1)(a)(i) would apply).

THE ISSUES TO BE CONSIDERED

[20] The issue that needs to be considered in both matters therefore is whether the business rescue proceedings have terminated or come to an end or whether it is

still under business rescue. In order to answer this question, I was requested to answer the following subsidiary questions:

- 20.1 Whether it was agreed to amend the plan as contemplated in section 152(1)(d)(ii) without rejection of the plan;
- 20.2 Whether if the plan was rejected, a further step was taken within the ambit of section 132(2)(a)(ii) thereby preventing the termination of the business rescue proceedings and
- 20.3 Whether, if a further step within the contemplation of section 132(2)(a)(ii) was taken, the business rescue still automatically terminates if the Business Rescue Practitioner fails in any of his other statutory obligations.

THE LEGISLATIVE FRAMEWORK

[21] The crisp question is whether the fact that no vote was taken to approve the plan at the second meeting justifies a conclusion that the plan was rejected as envisaged by section 152(3)(a) of the Act. This section provides that if a proposed business rescue plan is not approved on a preliminary basis, as contemplated in subsection (2), the plan is rejected, and may be considered further only in terms of section 153. It states as follows:

“152 Consideration of business rescue plan

...

- (3) If a proposed business rescue plan –
- (a) is not approved on a preliminary basis, as contemplated in subsection (2), the plan is rejected, and may be considered further only in terms of section 153...”

[22] Business rescue proceedings are initiated either through a resolution adopted by the board of the company in terms of section 129 (1)(a) or (b). The Act furthermore provides the termination of Business Rescue in certain instances. The first method of termination is through an application by an “*affected person*” to court in terms of section 130 (1)(a) for the setting aside of the resolution on three grounds¹. Subsection (b) also makes provision that an affected person may also apply to court to set aside the appointment of a practitioner on the grounds that the practitioner does not satisfy the requirements of section 138, is not independent of

¹ “Sec 130 - Objections to company resolution

(1) Subject to subsection (2), at any time after the adoption of a resolution in terms of section 129, until the adoption of a business rescue plan in terms of section 152, an affected person may apply to a court for an order-

1. (a) setting aside the resolution, on the grounds that-
 1. (i) there is no reasonable basis for believing that the company is financially distressed;
 2. (ii) there is no reasonable prospect for rescuing the company; or
 3. (iii) the company has failed to satisfy the procedural requirements set out

in section 129”

the company or its management or lacks the necessary skills, having regard to the company's circumstances. An affected person is defined in section 128(1)(a) of the Act in relation to a company, as a shareholder or creditor of the company, any registered trade union representing employees of the company and if any of the employees of the company are not represented by a trade union, each of those employees or their respective representatives.

[23] Business Rescue ends in terms of section 132 (2)(a)(i) of the Act when the court sets aside the resolution or order that began those proceedings or has converted the proceedings to liquidation proceedings in terms of section 132(2)(ii) of the Act.

[24] Another manner in which Business Proceedings comes to an end is in terms of section 132(2)(b) where the practitioner has filed with the Commissioner a notice of termination of business rescue proceedings. It is common cause that this has not been done. Finally, business rescue proceedings also ends in terms of section 132(2)(c)(i) or (ii) of the Act which provides for the termination of business rescue when a business rescue plan has been proposed and rejected in terms of Part D and no affected person has acted to extend the proceedings in any manner contemplated in section 153.

[25] In my view, this provision should be read in conjunction with section 152(3)(a) which reiterates that if a proposed business rescue plan is not approved on a preliminary basis, as contemplated in subsection (2), the plan is rejected and may only be considered further in terms of section 153 of the Act.

[26] Section 153 of the Act therefore only kicks in when a business rescue plan has not been approved and subsequently rejected. Section 153 provides for remedies in the event that a business rescue plan has not been adopted. These include seeking a vote of approval by the practitioner from the holders of voting interests to prepare and publish a revised plan or apply to court to set aside the result of the vote.

[27] Section 153(3)(a)(i) and (ii) furthermore provides that if, on the request of the practitioner in terms of subsection (1)(a)(i), or a call by an affected person in terms of subsection (1)(b)(i)(aa), the meeting directs the practitioner to prepare and publish a revised business rescue plan –

- “(a) the practitioner must ‘
 - (i) conclude the meeting after that vote; and
 - (ii) prepare and publish a new or revised business rescue plan within 10 business days;...”

[28] In terms of section 153(5), if no person takes any action contemplated in subsection (1), the practitioner “*must promptly file a notice of the termination of the business rescue proceedings.*”

[29] It is common cause that the business rescue practitioner in both applications has not filed a notice of termination of the business rescue proceedings. It is also interesting to note that despite the apparent unhappiness in the manner in which the proceedings were undertaken, no application to remove the practitioner or set aside his appointment was ever brought in terms of section 130(1)(b)(iii) of the Act.

Furthermore, none of the creditors sought to set aside the Resolution in terms of section 130(1)(a)(ii) on the grounds that there is no reasonable prospect for rescuing the company.

[30] At the meeting it is evident that the business plan was presented to the creditors in terms of section 151 of the Act. It is common cause that the meeting was adjourned. On Zennies version, the meeting was adjourned in order for Mr Schneider to obtain more information. This requires a closer analysis of section 152 of the Act which provides for the consideration of a business rescue plan. This section provides, *inter alia* as follows:

“152. Consideration of business rescue plan

(1) At a meeting convened in terms of section 151, the practitioner must-

(a) introduce the proposed business plan for consideration by the creditors and, if applicable, by the shareholders;

(b) inform the meeting whether the practitioner continues to believe that there is a reasonable prospect of the company being rescued;

(c) provide an opportunity for the employees’ representatives to address the meeting;

(d) invite discussion, and entertain and conduct a vote, on any motions to-

(i) amend the proposed plan, in any manner moved and seconded by holders of creditors’ voting interests, and satisfactory to the practitioner; or

(ii) direct the practitioner to adjourn the meeting in order to revise the plan for further consideration; and

(e) call for a vote for preliminary approval of the proposed plan, as amended if applicable, unless the meeting has first been adjourned in accordance with paragraph (d)(ii). ”

[31] It is apparent from the wording of subsection 152(1)(d)(ii) that it has to be read in conjunction with section 152(1)(e) by the inclusion of the word ‘*and*’ at the end of the sentence. This means that in the event that a practitioner is directed to adjourn the meeting in order to revise the plan for further consideration, one of two things can occur in terms of subsection (e). First, the practitioner would have to call for a vote for preliminary approval of the proposed plan, as amended if applicable unless (my emphasis) the meeting has first been adjourned in accordance with paragraphs (d)(ii).

[32] The Respondent argued that there was no evidence that a vote had been taken. This contention would be correct if the meeting was postponed in order for the practitioner to obtain further information that he required for the amended business plan.

[33] Both Applicants placed reliance on section 152 (3)(a) of the Act on the proposition that because the business rescue plan was not approved on a preliminary basis as envisaged in section 152(1)(e) and 152(1)(d)(ii) of the Act, that it was automatically rejected. This argument presupposes that there was a vote on a preliminary basis of the business rescue plan as contemplated in subsection 2. There is no evidence to suggest that this happened and accordingly I find that the both the Applicants reliance on section 152 (3)(a) and 132(2)(c)(1) is misplaced. Since I have found that there is no evidence to suggest that the business rescue

plan was not approved, there is no need for me to deal with section 153 as it does not find application here.

[34] To my mind, however, this is not the end of the inquiry. Can it be that a company enjoys the protection of business rescue indefinitely to the detriment of its creditors? Although the Act does not directly specify the length a company can be under business rescue, section 132(3) provides a guide under which the legislature envisaged companies to remain under business rescue. This section provides that if a company's business rescue proceedings have not ended within three months after the start of those proceedings, or such longer time as the court, on application by the practitioner may allow, the practitioner must prepare a progress report of the business rescue proceedings and update it at the end of each subsequent month and deliver it to each affected person until the end of the proceedings. No such application was brought by Mr Schneider to extend the business rescue.

Purpose of Business Rescue

[35] "Business rescue" is defined in Section 128(b) of the Act to mean "proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for-

- i) the temporary supervision of the company, and of the management of its affairs, business and property;
- ii) the temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and

iii) the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company."

[36] In **Advanced Technologies and Engineering Company (Pty) Ltd (in Business Rescue) v Aeronautique et Technologies Embarquees Sas and Others** (GNP) Case No 72522/2011², judgment delivered on 6 June 2012, Fabricius J was asked to consider an application for the extension of the time limits stated in ss 129(3) and (4) after these had expired. He was of the view that it was clear from the relevant sections contained in Chapter 6 that a substantial degree of urgency is envisaged once a company has decided to adopt the relevant resolution beginning business rescue proceedings.

[37] With regard to argument that the sole purpose of the business rescue is to avoid liquidation proceedings the following was said in the matter of **Absa Bank Limited v Caine NO and Another**; in re Absa Bank Limited v Caine N.O. and Another (38123/2013; 3915/2013) [2014] ZAFSHC 46 (2 APRIL 2014) where it was stated as follows at para 40:

"Business rescue proceedings are much more flexible and financially distressed company friendly than judicial management. The potential business rescue plan provided for in ss

² At para 27

128(1)(b)(iii) has two objects in mind, the primary object being to facilitate the continued existence of the company in a state of solvency and secondly and in the alternative, in the event that the primary objective cannot be achieved or appears not to be viable, to facilitate a better return for the creditors or shareholders of the company than would result from immediate liquidation. Consequently the Supreme Court of Appeal found in **Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others** **2013 (4) SA 539** (SCA) at para [26] as follows:

“It follows, as I see it, that the achievement of any one of the two goals referred to in section 128(1)(b) would qualify as "business rescue" in terms of section 131(4).”

As further stated by the Supreme Court of Appeal in para [27]:

“... business rescue proceedings are not limited to the return of the company to solvency...”

[38] While the sentiments expressed are noble, it cannot lead to a situation that where an extraordinary amount of time is taken to achieve this result, this should be at the expense of the rights of creditors. The balancing of these rights should always be paramount in the ambit of fairness.

[39] In **Commissioner, South African Revenue Service v Beginsel NO and Others** 2013 (1) SA 307 (WCC), where the Commissioner challenged the validity of a decision taken at a meeting of creditors to adopt a business plan and sought a conversion of the business rescue into winding-up proceedings, the court found that the implementation of the business plan was far advanced - there was already planning for the sale of some of the respondent's operations and the business rescue plan was supported by 87% of the value of creditors present at the meeting of creditors whilst only SARS took an opposite view. Consequently the court found that

nothing would be achieved if the business rescue proceedings would be converted into liquidation, bearing in mind the extra costs to be incurred. The court was also satisfied that the continuation of the business rescue proceedings would result in a better return for the company's creditors as a whole than would result from the reintroduction of the liquidation process.³

[40] This, however, is not the case in this instance. From the minutes of the second meeting, it is apparent that what Mr Schneider envisages for Zennies is an informal liquidation process, by selling the assets of Zennies in order to settle its indebtedness in full to the Bank and Business Partners. This matter is distinguishable from the **Beginsel** matter as the majority of the creditors in *casu* were not satisfied with the initial plan – hence the call for additional information and there seems no indication that Mr Schneider obtained the additional information that he required in order to finalise an amended plan.

[41] In **Oakdene Square Properties**, *supra*, the court, remarked as follows in para [33]:

“My problem with the proposal that the business rescue practitioner, rather than the liquidator, should sell the property as a whole, is that it offers no more than an

³ See para 40 of *Absa v Caine NO supra*

alternative, informal kind of winding-up of the company, outside the liquidation provisions of the 1973 Companies Act which had, incidentally, been preserved, for the time being, by item 9 of sch 5 of the 2008 Act. I do not believe, however, that this could have been the intention of creating business rescue as an institution..... *A fortiori*, I do not believe that business rescue was intended to achieve a winding-up of a company to avoid the consequences of liquidation proceedings, which is what the appellants apparently seek to achieve.”

[42] In the absence of specific information received to finalize an amended plan for consideration, a Business Rescue Practitioner is under a statutory duty to file a Notice of Termination. There has been an extraordinary long period of time since the Business Rescue Proceedings were initiated. The second meeting of creditors occurred on 23 March 2017 and according to the affidavit of Mr Schneider, the reason for the adjournment was for him to obtain information, *inter alia* regarding the sale of certain assets of Zennies and these included the sale of certain trucks, properties and the raising of working capital. There was also an averment that he had entered into an Agreement in principle and was awaiting signature of the signed sale agreement which would ostensibly have been finalized on 20 May 2017. Notably absent from the opposing affidavit, which was commissioned on 29 May 2017 was any evidence that the sale agreement had in fact been concluded. Neither was any evidence produced regarding the purported sale of the trucks which would have been sold in the region of R4million. In the absence of this vital information, this court was therefore unable to ascertain how far Mr Scheider was in securing these agreements. I mention these considerations in passing as it would in any event not have assisted Zennies since this was not part of the implementation of a plan as was consideration in

Beginisel.

[43] In my view, the mechanisms of Business Rescue proceedings were not designed to protect a company indefinitely to the detriment of the rights of its creditors. The delay in the finalization of the business rescue proceedings are unreasonable in the circumstances and I am satisfied that an order is justified terminating the proceedings.

[44] In case number 24618/2016, Business Partners in addition to seeking judgment against Zennies, is also pursuing judgment against the Second Respondent in his personal capacity by virtue of the suretyship agreement in respect of the immovable property described as Erf 1319 Durbanville. There is no indication that this property is the primary residence of the Second Respondent especially given the indication that this property would have been be sold in order to raise working capital for Zennies. As an aside, in **New Port Finance Company (Pty) Ltd and Another v Nedbank** Ltd [2014] ZASCA 201; [2015] 2 All SA 1 (SCA) paras 9, 10 and 12 the Supreme Court of Appeal considered the effect of business rescue on obligations of sureties and pronounced as follows:

'But we were referred to no authority and I have discovered none, in which it has been held that a compromise of the principal debtor's liability under the judgment, whether as a result of business rescue or otherwise, would accrue

to the advantage of the surety after judgment had been taken against them. There can be no question of the surety's rights or interests being prejudiced thereby, [*Bock and others v Duburoro Investments (Pty) Ltd* **2004 (2) SA 242** (SCA) paras 18 – 21] because the extent of the surety's liability for the debt in question has been fixed and determined. How the creditor thereafter sets about executing the

judgment against the principal debtor does not affect either the nature or the extent of the surety's liability Any default on the part of the principal debtor entitled the bank to sue the sureties. The benefit of excussion was waived the fact that in any of those situations the principal debtor would be released in whole or in part from its obligations would not disentitle the bank from recovering the outstanding amount from the sureties.'

[45] I am therefore satisfied, that even if I am wrong with regard to my assessment of the Business Rescue proceedings, that Business partners is entitled to judgment against Schroeder in the absence of any answering affidavit in the application for judgment. I will however not order the executability of Erf 1319 Durbanville as I do not have sufficient information before me to make such an order at this stage. I will also not order the executability of the listed properties given the order that I propose to make in case number 7681/2016. I conclude therefore that a proper case has been made out for the relief sought in both notice of motions adjusted as indicated in the orders below.

In the circumstances, the following orders are made:

Application 24618/2016:

1. It is declared that the Business Rescue proceedings of First Respondent has terminated.
2. Judgment is granted against first and second respondents jointly and severally, the one paying, the other to be absolved, for:

- 2.1 Payment in the amount of R 19 151.04 for arrear Royalties in respect of the Royalty Agreement with account number 702009;
 - 2.2 Payment in the amount of R 7 693.26 for future Royalties in respect of the Royalty Agreement with account number 702009;
 - 2.3 Payment in the amount of R 666 749.28 in respect of the Loan Agreement with account number 405756;
 - 2.4 Payment in the amount of R 2 046 179.68 in respect of the Loan Agreement with account number 405757;
 - 2.5 Interest on the amounts referred to in paragraphs 2.1 and 2.2 above at a rate of Prime plus 0% (Prime currently 10.50%) compounded monthly in arrears from 26 November 2016 until date of final payment, both days inclusive.
 - 2.6 Interest in the amount referred to in paragraphs 2.3 and 2.4 above at a rate of Prime plus 4.00% (Prime currently 10.50%) compounded monthly in arrears from 26 November 2016 until date of final payment, both days inclusive.
3. Costs to be paid on a party and party scale.

In matter 7681/17: Liquidation application

1. It is declared that the Business Rescue proceedings of Respondent has terminated.
2. The estate of Respondent is placed under provisional liquidation in the hands of the Master of the High Court.

3. A *rule nisi* is issued calling upon all interested parties to furnish reasons, if any, to this court on Tuesday 27 February 2018 why a final winding-up order should not be issued against Respondent.
4. This order is to be served by the Sheriff of his or her duly authorized deputy at its registered office and principal place of business being 11 Watercress Lane, Zeekoevlei, 7941.
5. A copy of the order must be served on:
 - (i) Any registered trade union that, as far as the sheriff can reasonably ascertain, represents any of the employees of Respondent;
 - (ii) The Respondent's employees if any, by affixing a copy of the order to any notice board to which the employees have access inside the Respondent's premises, alternatively by affixing a copy thereof to the front gate, where applicable, failing which the front door of the premises from which the Respondent conducts any business at 11 Watercress Lane, Zeekoevlei, 7941.
6. This order should be served upon the South African Revenue Services.
7. This order is to be published without any delay in The Burger and the Cape Times.
8. The costs of this application, including the costs of the 14 September 2017 but excluding the costs of opposition of this application, shall be costs in the liquidation.

KUSEVITSKY AJ