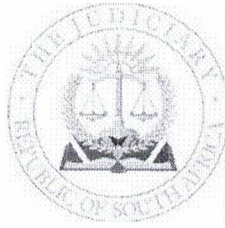


IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)



CASE NO: 17910/2019

(1) REPORTABLE: ~~YES~~ **NO**
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED: YES/ NO

12 MAY 2023

RM Keightley
JUDGE RM KEIGHTLEY

In the matter between:

CHAUCHARD, LUCIEN NORBERT GUY

First Applicant

CHAUCHARD, CALARIA GAY

Second Applicant

**HARBOUR TOWN HOMEOWNERS
ASSOCIATION NPC**

Third Applicant

**VAALMARINA BOATLOCKERS
BODY CORPORATE**

Fourth Applicant

And

FIRE RING TRADING 15 (PTY) LTD

Respondent

Neutral citation: *Chauchard, Lucien Norbert Guy & Others v Fire Ring Trading 15 (PTY) Ltd* (Case No. 17910/2019) [2023] ZAGPJHC 465 (12 May 2023)

EX TEMPORE REASONS FOR ORDER

KEIGHTLEY J:

- [1] On 08 March 2023 I granted a provisional winding-up order in respect of the first respondent. The order followed the dismissal of a postponement application launched from the Bar at the commencement of the hearing of the winding-up application. I dismissed the postponement application and immediately gave full *ex tempore* reasons for that order. I have been requested to provide reasons for the provisional winding-up order. I was unable to trace the *ex tempore* reasons captured on the MS Teams recording for the winding-up order. Accordingly, the following reasons are hereby provided.
- [2] The postponement application was premised on a last-ditch attempt by the respondent to rescind a default judgment order granted against it in 2012. As noted in my *ex tempore* judgment in the postponement application, two previous rescission attempts over the intervening years had got nowhere. A third attempt at rescission had been launched but was not yet finalised by the time the winding-up application was made. What the respondent wanted was for the court to agree to postpone the matter so that the rescission application could be finalised. As the default judgment gave rise to the debt upon which the applicant sought to wind-up the first respondent, the respondent reasoned that a postponement should be granted because, if the rescission was successful, it would be fatal to the applicants' case for winding-up.
- [3] It followed from the dismissal of the postponement application that the respondent's indebtedness to the applicant was uncontested. The judgment debt was for an amount of over R2 million. At the same time, the default judgment court had made an order declaring certain properties to be specially executable. That order had been implemented and the properties in question sold for some R746 000, meaning that the first respondent remained indebted to the applicant for the balance of the default judgment amount plus interest.

- [4] Further attempts at execution against the respondent's bank account yielded only a further R700. The Sheriff's return thus recorded that there were insufficient movables to satisfy the judgment debt. In terms of s 345(1)(b), the respondent was thus deemed unable to pay its debts.
- [5] The requirements for a winding-up order having been satisfied, the only question remaining was whether it should be in provisional or final form. Counsel for the applicant sought a final order. In the exercise of my discretion, I granted a provisional order. There remained a possibility (albeit in my view no more than an outside chance) of the rescission order being finalised in the first respondent's favour without undue delay. Out of an abundance of caution, I elected to keep the door open for such eventuality by granting the order in provisional form.


R M KEIGHTLEY
JUDGE OF THE HIGH COURT

Delivered: These written reasons were prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 12 MAY 2023

APPEARANCES

COUNSEL FOR APPLICANTS

APPLICANTS' ATTORNEYS

COUNSEL FOR RESPONDENTS

RESPONDENTS' ATTORNEYS

ADVOCATE P VAN DER BERG SC

MASHABANE LIEBENBERG SEBOLA INC

ADVOCATE S MILLER

COX YEATS

DATE OF HEARING:

06 MARCH 2023

DATE OF DELIVERY

OF WRITTEN REASONS:

12 MAY 2023