REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

Signature [redacted]
Date 03/06/2021

CASE NO: 7535/2020

In the matter between:

MARYNE ESTELLE SYME N.O.	**FIRST APPLICANT**
MUSTAFA MOHAMED N.O.	**SECOND APPLICANT**
JOHANNES ZACHARIA HUMAN MULLER N.O.	**THIRD APPLICANT**
PULENG FELICITY BODIBE N.O.	**FOURTH APPLICANT**

and

SOUTHERN SKY HOTEL AND LEISURE (PTY) LTD t/a HANS MERENSKY HOTEL AND SPA	**RESPONDENT**

IN RE:

The intervention application of:

SOUTHERN SKY FOOD ENTERPRISE (PTY) LTD

In the matter between:

VISION TACTICAL (PTY) LTD	**APPLICANT**
and	
SOUTHERN SKY HOTEL AND LEISURE (PTY) LTD t/a HANS MERENSKY HOTEL AND SPA	**FIRST RESPONDENT**
MARYNE ESTELLE SYME N.O.	**SECOND RESPONDENT**
MUSTAFA MOHAMED N.O.	**THIRD RESPONDENT**
JOHANNES ZACHARIA HUMAN MULLER N.O.	**FOURTH RESPONDENT**
PULENG FELICITY BODIBE N.O.	**FIFTH RESPONDENT**
MASTER OF THE HIGH COURT, POLOKWANE	**SIXTH RESPONDENT**

JUDGMENT

MAKGOBA JP

[1] The First, Second, Third and Fourth Applicants are cited herein in their capacity as the joint provisional liquidators of Southern Sky Hotel & Leisure (Pty) Ltd t/a Hans Merensky Hotel & Spa (in liquidation). The applicants shall for purposes of this judgment be referred to as "the Liquidators".

The Respondent is this matter, Southern Sky Hotel and Leisure (Pty) Ltd shall be referred to as the "Liquidated Company" or "the Company".

Southern Sky Food Enterprises (Pty) Ltd shall be referred to as the "Intervening Party" whilst Vison Tactical (Pty) Ltd shall be referred to as the "Applicant in the Main Application".

[2] The essential facts in this matter are that the Applicant in the Main Application (Vision Tactical) applied for the liquidated company to be placed under business rescue and that a Mr. Wiese be appointed as provisional business rescue practitioner in the Main Application. The liquidators opposed the Main Application on the ground that the draft business rescue plan of Mr. Wiese has no prospect of success. It also brought an application to accelerate the hearing of the business rescue application so that an auction that had been scheduled for 22 and 23 February 2021 can proceed. The Intervening Party then brought an application to intervene in the pending business rescue application of Vision Tactical. It joined in the consensus between Vision Tactical and the Liquidators that the Company is in financial distress, agreed with the Liquidators that the plan put forth by Vision Tactical does not enjoy prospects of success and instead proposed a different business rescue plan with a Mr. Tayob as the Buisness Rescue Practitioner.

Vision Tactical supports the plan put forward by the Intervening Party and the appointment of Mr. Tayob as the business rescue practitioner.

[3] In essence there are three applications before this Court, namely,

3.1. An application launched by Vision Tactical (Pty) Ltd to seek to place the company, Southern Sky Hotel and Leisure (Pty) Ltd t/a Hans Merensky Hotel & Spa into business rescue;

3.2. An application to have the business rescue set down and heard urgently as brought by the First to Fourth Applicants (the Liquidators)

3.3. An intervention application seeking a business rescue and as launched by Southern Sky Food Enterprises (Pty) Ltd.

In effect the essence of the dispute before Court is whether the Respondent (Company in liquidation) ought to be removed from its liquidation proceedings and be placed into business rescue in terms of the provisions of section 131 of the Companies Act, 71 of 2008.

[4] The Applicant in the Main Application (Vision Tactical) in its further papers filed of record, stated that it does not abandon its application for business rescue but realized, after close consideration of the Intervening Party's papers, that the Intervening Party's business rescue plan is a more viable plan and would admit same.

Vision Tactical therefore filed a notice to abide and at the hearing of this matter their Counsel did not present any argument in support of the Main Application.

6.11. Southern Sky Development (Pty) Ltd	R 15 328 484-24
6.12. Newinvest 56 (Pty) Ltd	R 141 110 949-83
6.13. Metro Oriental Import & Export CC	R 543 800-18
6.14. Shamira Rinderknecht	R 5 794 944-51
6.15. John Frederick Hume	R 12 475 031-37
TOTAL	**R 229 743 429-97**

[7] John Frederick Hume is the only secured creditor. The claim of Hume is secured by way of a mortgage bond registered over the immovable property of the Company in liquidation[1].

Based on the totality of the debt of R 229 743 429-97, it is contended on behalf of the liquidators that there is no conceivable basis to facilitate the rehabilitation of the company, hence the true purpose of the business rescue application is only to derail the sale which is due to take place on 23 and 24 February 2021. Furthermore, it is contended that the appointment of a business rescue practitioner will be to the detriment of the creditors. It will be an unnecessary additional expense under circumstance where there is no conceivable basis to rescue the company. All that remains is to realise the assets of the company and to distribute the proceeds to the creditors.

[1] See Annexure "SS8" and "SS9" to Answering Affidavit of Mustafa Mohamed, pages 233- 248

[8] Amongst the creditors listed in paragraph [6] above it is appropriate to mention specifically Ms Shamira Rinderknecht to whom the company in liquidation is indebted in an amount of R 5 794 944-51 being in respect of the loan account. Shamira Rinderknecht ("Ms. Rinderknecht") is the sole director and shareholder of the company in liquidation.

She is also the director and shareholder of the companies listed in paragraphs 6.6, 6.7, 6.8, 6.9, 6.10, 6.11 and 6.12 above.

She is the deponent of the affidavit in the present application wherein the Intervening Party (Southern Sky Food Enterprises (Pty)Ltd) seeks an order to remove the company from the liquidation proceedings and place it into business rescue.

The liquidation of the company was initiated by the Irish Investors and during such liquidation proceedings in this Court under Case Number 2013/2016 Rinderknecht deposed to the answering affidavit, vehemently opposing the application.

This Court granted the liquidation order on 21 January 2020.

The Supreme Court of Appeal dismissed the petition for leave to appeal.

Factual Background

[9] The rental pool agreements entered into by and between the Irish Investors and the liquidated company ultimately led to the liquidation of the company, that is

the Respondent – Southern Sky Hotel and Leisure (Pty) Ltd t/a Hans Merensky Hotel & Spa. The agreements were concluded between the years 2003 to 2007. After the 2010 Soccer World Cup, the occupancy of the hotel dropped dramatically to such an extent that the Company was unable to honor the rental pool agreements as concluded, let alone any of its other several creditors.

[10] Due to the fact that the company was unable to meet its obligations in terms of the rental pool agreements and during the course of 2013, a liquidation application was launched by the Irish Investors in the North Gauteng High Court, Pretoria under case number 55769/2013 on 9 September 2013.

The application was initially opposed by the company.

However, prior to the hearing of the application, the company settled the entire indebtedness and per agreement, the liquidation application was withdrawn.

[11] Subsequent to 2013, on 14 April 2016 a second liquidation application was launched by virtue of the fact that the company was again indebted to the Irish Investors in a substantial amount in respect of the rental pool agreements. This application was launched in the High Court, Pretoria under case number 30012/2016. A jurisdictional point was raised that the registered address of the Company was situated in Polokwane, consequently the application was withdrawn and had to be reissued in the Polokwane High Court on 9 June 2016.

However, one day prior to launching the liquidation application in the Polokwane High Court and on 8 June 2016, a business rescue was launched in terms of the provisions of section 129 of the Companies Act, 71 of 2008. By virtue of the fact that the Company was placed into business rescue the day before the application was launched, the liquidation application was suspended in terms of the provisions of section 131(6) of the Companies Act, 71 of 2008.

[12] On 14 December 2016 Nedbank Ltd and a company known as Zelpy 2539 (Pty) Ltd launched an application before the North Gauteng High Court, Pretoria, under case number 33778/2016 in terms of which they sought to inter alia set aside the business rescue resolution as filed on 8 June 2016 and seek the winding-up of the company. On 8 June 2016 the business rescue proceedings were commenced with. However, more than a year later a business plan had not been adopted.

The business rescue plan was published for the first time on 15 March 2017. The creditors' meeting, in order to consider the abovementioned plan, was set down for 31 March 2017 and was attended by the legal representatives of the Irish Investors.

The Irish Investors objected to the proposed business plan. It was pointed out that the business rescue practitioner could not convincingly state that there was a reasonable prospect to rescue the company, specifically considering that the proposed business plan was nothing more than an alternative winding-up.

Pertinently the Irish Investors were of the view that there was no prospect of rescuing the company and that the business rescue practitioner should similarly have come to the same conclusion.

The meeting was postponed in order to verify creditors' interests and for purposes of determining the voting interests of various creditor.

[13] The meeting was reconvened on 6 September 2017 for purposes of voting. The business rescue plan that was presented before this meeting had no prospect of success for the following reasons:

13.1. There was no demonstration of an ability to pay of any party, be it Ms. Rinderknecht or other, who had funds to finance or pay the creditors;

13.2. There was no demonstration as to how, in the event of non-payment of the claims, the properties will be disposed of and how this would give better return to creditors other than a liquidation;

13.3. There was no indictation that Mr. Hume was prepared to cancel his mortage bond over the immovable property;

13.4. There was no indication that Nedbank was prepared to cancel the mortage bond.

Eventually a vote was held and consequently, the business rescue plan was rejected.

[14] The above gave rise to an application to the High Court, Pretoria under case number 64129/17 and by *inter alia* Ms. Rinderknecht, to seek the setting aside of the vote as inappropriate and as invisaged in terms of section 153 of the Companies Act, 71 of 2008. The application was eventually heard and the Court dismissed the application on 18 October 2018[2].

[15] The Respondent / Company was finally wound-up on 21 January 2020 and on application by the Irish Investors[3].

Subsquent to the winding up promises to pay the creditors were made or alternatively to compromise with creditors but nothing was fulfilled.

The current business rescue application is premised on a post commencement finance injection of R 8 000 000-00 which does not even cover the costs of the claim of the Irish Investors which is estimated at R 8 500 000-00.

Upon appointment of the liquidators it became apparent to them that Ms. Rinderknecht was utilizing a variety of corporate structures in order to feature in different parts or different component of the hotel business.

The liquidators enquired from Ms. Rinderknecht the nature of the inter-company loans but she never responded to those enquires and never furnished any comprehensive explanation of the making up of the various alleged inter-company loans.

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[2] See judgment of Tuchten J, attached as Annexure MM5, page 586

[3] See judgment of Ledwaba AJ attached as Annexure MM6, page 602

[16] The liquidators stated in their affidavit opposing the business rescue application that the company is not only in financial distress, but clearly unable to pay its debts.

This has been ongoing since at least 2012 when the company for the first time reneged upon the obligations to pay the Irish Investors.

What made the conduct of the management of the company then repulsive and reprehensible are namely that the premises or properties of the Irish Investors where utilized as subject matters of occupation by persons who were paying money in exchange for gaining the right to occupy, so that at least some rental incomes was generated by the property of the Irish Investors. However, instead of them at least making some payment to the Irish Investors, no payment whatsoever was made to the Irish Investors since 2012, and it appears that the conduct was also frowned upon by both the Courts dealing with respectively the liquidation and the application to challenge the vote[4].

Legal Framework

[17] The cornerstone of any business rescue application is that there must be a reasonable prospect of rescuing the company.

In this regard our courts require proper motivation of the "reasonable prospect" in the application. Proper objective facts supported by affidavits of persons with

[4] Judgments of Tuchten J and Ledwaba AJ, supra.

actual knowledge of the facts required and the bar has been set fairly high and it is not enough to simply go through the motions of an unsubstantiated motivation when it comes to the "reasonable prospect" test[5].

[18] Of particular interest and importance in the present case is also the provisions of section 131(6) of the Companies Act, 71 of 2008.

The section deals with an application for business rescue pending liquidation of the company and it provides as follows:

"131(6). If liquidation proceedings have already been commenced by or against the company at the time an application is made in terms of subsection (1), the application will suspend those liquidation proceedings until

(a). the court has adjudicated upon the application; or

(b). the business rescue proceedings end, if the court makes the order applied."

It is therefore incumbent upon this Court to adjudicate upon this business rescue application brought by Vision Tactical and the Intervening Party so as to determine the continuation or otherwise of the pending liquidation process.

[19] Section 131(4) of the Companies Act, 71 of 2008 provides that-

"(4) After considering an application in terms of subsection (1), the court may

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[5] See Delport et al Henochsberg on Companies Act, 71 of 2008 at 480(5)

(a).make an order placing the company under supervison and commencing business rescue proceedings if the Court is satisfied that-

(i). the company is financially distressed;

(ii). the company has failed to pay over any amount in terms of an obligation under or in terms of a public regulation or contract with respect to employment-related matters;

or

(iii). it is otherwise just and equitable to do so for financial reasons and there is a reasonable prospect for rescuing the company; or

(b).dismissing the application together with any further necessary and appropriate order, including an order placing the company under liquidation."

Brand JA observed in **Oakdene Square**[6] that a Court of first instance exercises a general and wide discretion when deciding whether to grant business rescue under section 131(4) of the Act.

Each case will be determined on its merits, at all times having regard to the definition of business rescue in section 128(1)(b) of the Act which sets out the goals for consideration under section 131(4)

[6]Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty)Ltd 2013(4) SA 539 (SCA)

[20] "**Business Rescue**" means proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for-

(i). the temporary supervision of the company, and the management of its affairs, business and property;

(ii). a 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 maximizes 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.

It goes without saying that "rescuing the company" means achieving the goals set out in the definition of "business rescue" in section 128 (b) of the Act. Accordingly, an applicant for business rescue must establish grounds for reasonable prospect of achieving one of the two goals set in section 128(1)(b).

[21] A business rescue plan must be aimed at either restoring the company to a solvent going concern or at least facilitating a better deal for creditors and shareholders than they would secure from a liquidation process.

In **Oakdene Square**, supra, Brand JA pointed out that in circumstances where a business rescue practitioner, as opposed to the liquidator, is likely to have to sell property belonging to the embattled company, the purpose of business rescue is not intended to serve as a less expensive form of winding up. The learned judge expressed himself as follows:

> *"...I do not believe that business rescue was intended to achieve a winding-up of the company to avoid the consequence of liquidation proceedings, which is what the appellants apparently seek to achieve."*

[22] Where the majority of creditors are against the proposed business rescue scheme, that is an important consideration for the Court to have regard to when considering the application before it.

In **Oakdene Square**, supra, Brand JA said the following at paragraph [38]

> *"[38]... As I see it, the applicant for business rescue is bound to establish reasonable ground for the prospect of rescuing the company. If the majority creditors declare that they will oppose any business rescue scheme based on those grounds, I see no reason why that proclaimed opposition should be ignored....Unless, of course, that*

attitude can be said to be unreasonable or mala fide. By virtue of s132(2)(c)(i) read with s152 of the Act, the rejection of the proposed plan by the majority of creditors will normally sound the death knell of the proceedings. It is true that such rejection can be revisited by the Court in terms of s153. That of course, will take time and attract further costs. Moreover, the court is unlikely to interfere with the creditors' decision unless their attitude was unreasonable. In the circumstances I do not believe that the Court can be criticized for having regard to the declared intent of the major creditors to oppose any business rescue plan along the lines suggested by the appellants."

[23] As will be shown later in this judgment, the Irish Investors voted against the previous business rescue plan in 2017 and will still vote against the present business rescue plan. They are the majority creditors to the tune of R 8 500 000-00. In any event the Irish Investors initiated the liquidation court proceedings that lead to the present status of the company.

[24] An applicant for business rescue is not required to set out a detailed business rescue plan. However, the applicant must establish grounds for the reasonable prospect of achieving one of the two goals mentioned in section 128(1)(b) of the Act (i.e. a return to solvency or a better deal for creditors and shareholders than through liquidation).

In **Prospec Investments (Pty) Ltd v Pacific Coast Investments 97 Ltd**[7] it was held that a reasonable prospect means a possibility that rests on objectively reasonable grounds.

Van der Merwe J observed in ***Prospec*** that –

> *"There can be no doubt that in order to succeed in an application for business rescue, the applicant must place before the Court a factual foundation for the existence of a reasonable prospect that the desired object can be achieved*[8]*."*

In **Wedgewood Village**[9] Binns-Ward J held that an applicant for business rescue must be able to place before the Court a cogent evidential foundation to support the existence of a reasonable prospect that the desired object could be achieved.

[25] In **Normandie Restaurants**[10] the Supreme Court of Appeal delivered its most recent pronouncement on business rescue. However, the principles remain the same and **Oakdene Square** is still the touchstone. Of importance, Tshiqi JA remarked thus:

> *"[19] Section 128(1)(b) envisages that measures to be taken in order to facilitate the rehabilitation of the company should provide for temporary supervision, and for a temporary moratorium on the*

[7] 2013 (1) SA 542 (FB) at [12]

[8] Supra, at [31]

[9] Koen and Another v Wedgewood Village Golf and Country Estate (Pty) Ltd and Others 2012 (2) SA 378 (WCC) at [17]

[10] Firstrand Bank Limited v Normandie Restaurants Investments and Another [2016] ZASCA 178 (25 November 2016)

right of claimants against the company. They are not meant to provide companies with a mechanism with which to delay payment to creditors with no feasible plan of ever paying its debts, or a means of reconstructing its debts over lengthy periods of time.

[20] The temporary measures envisaged by the Act are aimed at maximizing the likelihood of the company continuing in existence on a solvent basis and at creating a better return for the creditors and shareholders... The measures proposed in the business rescue plan will, in my view, not provide for a temporary solution as envisaged in s 128(1) (b). They do no more than plan a long-term debt management process.

To those remarks I imagine that the creditors would probably add, 'and so say all of us."

Application of Law to the Facts

[26] Considering the law as set out above, it is clear that in so far as Vision Tactical is concerned no proper business rescue plan has been set out and as such no reasonable prospect exists for the rescuing of the insolvent company. That has been conceded by Counsel at the hearing of this application.

[27] In so far as the Intervening Party (Southern Sky Food Enterprises (Pty) Ltd) is concerned it has been submitted on behalf of the liquidators that the business rescue plan by Mr. Tayob is fatally flawed and that in several circumstances Ms. Rinderknecht, being the deponent to the affidavit on behalf of the Intervening Party, makes statements which are misleading and do not reflect the true state of affairs. In particular Ms. Rinderknecht purposely ignored a substantial creditor in the form of the Irish Investors, and to the tune of over R 8 500 000-00.

The liquidators submit further that considering the above, there is no hope whatsoever that the company can be saved in business rescue or at all.

[28] It is a fact that the previous rescue plan has not succeeded and was not accepted by the creditors.

It is contended on behalf of the liquidators that the application to place the company into business rescue is contrived and is done purely for the purpose of frustrating the winding up process and further dragging out the demise of an insolvent company which already nine years ago was unable to pay its debts as and when they became due.

[29] The Intervening Party's business rescue application is based on the business rescue plan prepared by Mr. Mohamed Mahier Tayob. The deponent, Ms. Rinderknecht alleges that she managed to arrange for R8 million of post

commencement finance to be available and that when it was done, Mr. Tayob was instructed to formulate a business rescue plan.

The gist of Ms. Rinderknecht's statement regarding the business rescue plan and the post commencement finance is contained in paragraph 25 of her founding affidavit which reads as follows:

> *"The Tayob Report (as well as the Tayob Plan) refer to post commencement finance of R 8 million. R 4 million is available for immediate payment and R 4 million six months later. The initial R 4 million is, indeed, immediately available. It is in attorney's trust account as appears from the statement attached as 'SR6'. I undertake immediately to cause this amount to be paid to Mr. Tayob should the Company be placed under supervision and business rescue proceedings commence and Mr. Tayob be appointed as practitioner. I also undertake that the second R 4 million referred to in the Tayob Report will be paid within six months from the date of the commencement of business rescue to Mr. Tayob. The Company will thus obtain R 8 million whilst retaining its assets from which it can generate revenue."*

[30] Furthermore, in paragraph 26 of her affidavit Ms. Rinderknecht states that Mr. Tayob will not have to utilise the post commencement finance referred to above for the management of the company. According to her this is because the Intevening Party at present leases its enterprise from the Company. The

rental provides the company with income that can be used for the settlement of its non-subordinated debts. Moreover, the post commencement finance will be available purely for the payment of the debts of the company.

[31] I have perused the Tayob Plan and have come to a conclusion that the said plan does not have any sensible and reasonable prospects for the company to be rescued. It is entirely dependent upon speculative and uncertain eventualities. The plan is inconsistent in the sense that in paragraph 5.3.1 it is alleged that the company secured from a lender post commencement finance. This is actually false because Ms. Rinderknecht states that only R 4 million is available in an attorney's trust account and the other R 4 million will be available six months later.

[32] Furthermore, in paragraph 5.6.2 mention is made of the intervener covering the expenses of the company in liquidation. It is alleged that rental income is received but this has also been shown to be false because the Intervening Party refused or failed to pay the rental to the company and resorts to reliance upon set off and no actual payments for rental are being made.

Paragraph 6.19.1 of the plan suggests that post commencement finance will be utilized as general working capital for the company and the debt amounts will be repaid from the first profits generated by the company if it is in full operation. This is highly speculative, far-fetched and fanciful because the company was virtually never in a postion to make profit, save for the short period during the high level of tourists visiting the country during 2010 World Cup and never thereafter.

This aspect in the Tayob Plan is in stark contrast with what has been said by Ms. Rinderknecht in paragraph 26 of her affidavit that the post commencement finance "will be available purely for the payment of the debts of the company" The allegations are therefore mutually destructive, inconsistent and unreliable. I therefore reject the business rescue plan of Mr. Tayob as the basis for a reasonable prospect of rescuing the company.

[33] In my view the Tayob plan does not have any prospect of achieving a favourable vote by creditors. Ms. Rinderknecht in her affidavit made a statement that the creditors are owed only an aggregate of less than R 5 million. This is false, considering that the debt of the Irish Investors alone is over R 8 million. In paragraph [6] of this judgment I listed all creditors making a total of over R 200 million.

I consider Ms. Rinderknecht's statement in this regard to be misleading to this Court. Ms. Rinderknecht suggested in her affidavit that certain debts, especially those of the sister companies, will be subordinated apparently in order to give the company a breather to enable it to pay off some more demanding creditors. Regard being had to the fact that Ms. Rinderknecht is the sole director and shareholder of all these sister companies including the liquidated company, her suggestion or undertaking cannot be trusted.

[34] Ms. Rinderknecht alleged with refence to a leter from SARS that the latter is supportive of the business rescue. This is not true. Actually the letter says that only if the company brings up to date its financial affairs and tax returns and submit from 2014 onwards tax returns, then SARS might support the business rescue. The SARS debts is R 1 200 000-00 as appears in paragraph [6.5] above. For Ms. Rinderknecht to boldly state that SARS supports the business rescue is grossly misleading.

[35] On the basis of the evidence before me, I make a finding that it is not true that the alleged post-commencement finance is available, and if so, the amount is only R 4 million in the attorneys trust account and not R 8 million as falsely contended for by Ms. Rinderknecht.

There is still the problem that Ms. Rinderknecht vacillates between on the one hand suggesting that the alleged post-commencement finance would be utilized to settle claims and on the other hand it is suggested that the money would be utilized to enable the company in liquidation to generate income as a working capital.

The two suggestions are completely incompatible.

It is simply not true to allege that the money is sufficient to pay all creditors because even the claim of just the Irish Investors is already substantially more than the alleged available post-commencement finance of R 8 million.

[36] From the evidence on record it is clear that since 2013 no less than four different winding up applications have been launched seeking the winding-up of the company.

A business rescue failed in 2016 when the creditors voted against the adoption of the business rescue plan. Amongst the creditors are the Irish Investors who ultimately applied successfully for the liquidation of the company as per order of Ledwaba AJ in January 2020. No doubt, the Irish Investors will still vote against the business rescue plan in the present case.

Conclusion

[37] Taking into consideration the conspectus of the evidence before me, I come to the conclusion that nothing had changed since 2012 insofar as the ability of the company to pay its debts.

The company is not capable of being rescued. There was a previous attempt to embark upon business rescue in 2016 but with no success. It simply spawned extensive litigation at the instance of Ms. Rinderknecht and frustrated creditors. I see no prospects of the company being rescued.

[38] The present application to place the company into business rescue is contrived and done solely for the purpose of frustrating the liquidation process and further dragging out the demise of an insolvent company.

It must be noted that business rescue is not meant for the terminally ill company or to frustrate liquidation proceedings.

Order

[39] In the result, the following order is granted;

Both applications for business rescue are dismissed with costs, such costs to include costs consequent upon the employment of two Counsel.

[redacted]

E M MAKGOBA
JUDGE PRESIDENT OF THE HIGH COURT, LIMPOPO DIVISION, POLOKWANE

APPEARANCES

Heard on	:	**26 May 2021**
Judgment delivered on	:	**03 June 2021**
For the Main Applicant	:	**R.G Wells**
Instructed by	:	**A Mothilal Attorneys Inc c/o Tarr Attorneys**
For the Intervening Party	:	**PF Louw SC**
Instructed by	:	**Aphane Attorneys c/o MJ Mothiba Attorneys**
For the Liquidators	:	**MP van der Merwe SC J Hershensohn**
Instructed by	:	**Barnard & Patel Inc c/o Steytler Nel Attorneys**