

Case no EL: 926/2016
GHT: 2226/16
Date Heard: 04/08/2016
Date Delivered: 23/08/2016

In the matter between:

AL MAYYA INTERNATIONAL LIMITED (BVI) **APPLICANT**
(formerly AL MAYYA SOUTH AFRICA LIMITED (BVI))

And

VALLEY OF THE KINGS THABA MOTSWERE **1ST RESPONDENT**
PROPRIETARY LIMITED (Reg no: 2008/012143/07)
 Carrying on business at THABA MTOSWERE, Thabazimbi)

THABA MOTSWERE GAME FARM (PTY) LTD **2ND RESPONDENT**

THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION **3RD RESPONDENT**

PHILIPUS JACOBUS MOSTERT **4TH RESPONDENT**

THE FIRST RESPONDENT'S EMPLOYEES	5 TH RESPONDENT
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FIRSTSTRAND BANK LIMITED **6TH RESPONDENT**

GOVERNMENT OF FUJAIRAH **7TH RESPONDENT**

SOUTH AFRICAN REVENUE SERVICES 8TH RESPONDENT

MINISTER OF TRADE AND INDUSTRY 9TH RESPONDENT

JUDGMENT

SMITH J

Introduction

[1] The applicant seeks an order placing the first respondent under supervision; commencing business rescue proceedings in terms of sections 131 (1) and (4) of the Companies Act, 71 of 2008 (“the Act”); and appointing the business rescue practitioners mentioned in the notice of motion.

[2] The applicant is a company registered in accordance with the laws of the British Virgin Island. It owns 55% of the issued shares in the first respondent.

[3] The first respondent is Valley of the Kings Thaba Motswere (Pty) Ltd, a duly incorporated company (“the company”). The company carries on business as a game farm in the Thabazimbi region. Its main object is to breed and sell game for commercial gain. It also conducts a safari and hunting lodge on the farm.

[4] The second respondent is Thaba Motswere Game Farm (Pty) Ltd, a duly registered company with its registered head office in East London. The second respondent owns the remaining 45% of the issued shares in the company.

[5] The applicant also cited very various other parties against whom no substantive relief is sought. The seventh respondent, in particular, is the Government of Fujairah, a constituent state of the United Arab Emirates. The applicant’s controlling shareholder, namely Prince Sheik Mohamed bin Hamad Al Sharqi, is also the Crown Prince of the Government of Fujairah.

[6] There can be little doubt that the applicant has the necessary *locus standi* to bring these proceedings since it is an “affected person” within the meaning of section 130(1) of the Act. In addition to being a shareholder, it is also a creditor

of the company. The company's annual financial statements for the period ending 31 December 2014 show that it owes the applicant the sum of some R4.05 million, which bears interest on the outstanding monthly balance at the rate of 10.5% per annum and is repayable from future profits.

[7] The fourth respondent, Phillipus Jacobus Mostert ("Mostert"), is the company's only director. In terms of the shareholders' agreement the applicant and the second respondent were each entitled to appoint one director. The applicant initially appointed one Sanjay Gupta and the second respondent appointed Mostert. Gupta has, however, since resigned and the applicant's new nominee, one Mustafa Thanikkal, is yet to be formally appointed.

[8] Mostert has deposed to the answering affidavit on behalf of the company. He avers that he has been duly authorised to oppose the proceedings on its behalf. The applicant contests his authority to act on behalf of the company and contends in this regard that the defence of legal proceedings (other than those arising in the ordinary course of business) constitute reserved matters which require approval by way of special resolution of the ordinary shareholders. The applicant, as majority shareholder, would have been party to such a resolution if it had indeed been adopted. However, no meeting was called for that purpose, and there can accordingly be no special resolution to that effect. However, for reasons which will become clear later, I do not believe that it is necessary for me to pronounce on this issue.

[9] The second respondent did not file an answering affidavit, but instead filed a notice in terms of Uniform Court Rule Rule 6 (5)(d)(iii) wherein the following legal points are raised:

- “1. The applicant failed to make out a case in terms of section 131(4)(a) of the Companies Act 71 of 2008 (the Companies Act);
2. The application seeks to achieve objectives not recognised in section 128 (1)(b) of the Companies Act, constituting an abuse of process;
3. The applicant failed to establish that the company is financially distressed as is required by section 128 (1)(f), read with section 131 (4)(a) of the Companies Act;
4. The applicant failed to comply with section 131 (2) of the Companies Act;
5. The applicant failed to establish grounds of urgency; and
6. The applicant failed to address the requirements of Rule 6(12)(b) of the Uniform Rules of Court in that it failed to advance any reasons why it could not be afforded substantial redress at a hearing in due course.”

Factual background

[10] The applicant purchased shares through a subscription agreement and invested approximately R100 million in the company during 2012.

[11] Mostert is responsible for the management of the company in terms of a management agreement concluded during 2012. In terms of that agreement Mostert is required to carry out the management services:

- “3.3.1 In a transparent, faithful and diligent manner:
- 3.3.2 In accordance with the reasonable standards of a business, carrying on a similar business to that of the company;
- 3.3.3 In accordance with the business plan; and
- 3.3.4 In a way that will not through his intentional actions/omissions or through negligence, cause damage to the property of the company.”

In addition, Mostert is accountable to the board and responsible for, *inter alia*, the preparation of monthly management accounts; paying the company's day to day running expenses timeously; ensuring that proper books of account are kept, and notifying the company of any legal claims exceeding the sum of R5 000 within 7 days of him becoming aware of it.

[12] During 2015 the company ran into financial difficulties, and in an exchange of emails between it and the applicant during August and September 2015, one Morrison Smit, representing the company, declared that it was struggling to make ends meet and was not in a position to pay its employees.

[13] The company sought to address its cash flow problems by borrowing an amount of USD 500 000 (R7.5 million) from the seventh respondent (the Government of Jumairah). The loan was secured by way of a notarial security bond over all the buffaloes owned by the company. The loan amount was advanced to the company on 30 September 2015 and was due to be repaid by 30 April 2016.

[14] During January 2016, Thanikkal, acting on behalf of the applicant, informed Mostert of the applicant's intention to sell its shares in the company. Mostert replied to Thanikkal's e-mail effectively trying to dissuade the applicant from divesting. It appears that the parties did not pursue further discussions in this regard.

[15] The parties thereafter held a meeting in Pretoria during June 2016 where the applicant was represented by one Alexander George McDonald, who is also

the deponent to the main founding affidavit. Also present at that meeting was one Veldhuisen, the applicant's attorney, and Neil Michael Hobbs, one of the proposed business rescue practitioners. The company was represented by Morrison Smit and Advocate Murphy. At that meeting Morrison and Murphy explained that the company was experiencing cash flow problems and as part of its strategy to address those problems had entered into a joint venture agreement with Gamevest Gamebreeders (Pty) Ltd, in terms of which the company would accommodate and feed game owned by third parties in exchange for half of the progeny. The company would be responsible for all costs in respect of the accommodation, maintenance and feeding of the game.

[16] It is common cause that the company has failed to comply with its obligations in terms of the loan agreement and that the seventh respondent consequently demanded payment in terms of section 345 of the Act, by virtue of an email dated 20 July 2016. That loan has still not been paid.

Applicant's contentions

[17] Mr *Woodland* SC, who appeared for the applicant, argued that it has established that the company is financially distressed within the meaning of section 131 of the Act, and that there are reasonable prospects that it can be rescued. He submitted in particular that:

- (a) Mostert has failed to manage the company properly and to account to the applicant, despite repeated requests in this regard. The arrangement with Gamevest, apart from being unauthorised, is of

questionable benefit to the company and has instead placed additional financial burden on it, since it is now also liable for expenses in respect of game owned by third parties. The fact that Mostert is a director of Gamevest, further casts doubt on his *bona fides* and calls into question whether he had the company's best interests at heart when negotiating the deal. This is an issue which should be investigated by a business rescue practitioner;

- (b) in addition, the company is in "financial distress" within the meaning of section 128(g) of the Act. The company has been struggling to make ends meet. In support of this contention he pointed to the exchange of e-mails between the applicant and Mostert wherein it was stated that the company was '*struggling to make ends meet*' and concern was expressed that it would not be in a position to pay employees' wages. The cash flow problems have also been further exacerbated by the Gamevest venture and the prolonged drought;
- (c) the company has defaulted on its loan obligations to the seventh respondent, and despite the section 345 demand, the money has not been repaid. Mostert has admitted that the company has defaulted, but stated that he has already selected buffaloes to sell in order to repay the loan. Although he has valued the buffaloes at about R13.5 million, he is still waiting for the results of blood tests and does not yet have prospective buyers. On his own version it would take at least another two months to sell the buffaloes. In the event, Mostert had lost sight of the fact that the company cannot sell the buffaloes since they are subject to a notarial security bond.

The company is thus unable to pay its debts as they become due, and is consequently commercially insolvent;

- (d) at the meeting on 23 June, Mostert had shown the applicant's representative a demand by FirstRand Bank in terms of section 345 of the Act, and indicated that the three week period for payment of that debt had elapsed. In order to deal with that indebtedness he had obtained an unauthorised loan from one Henrieta Oosthuisen and pledged the company's game to her as security. He was, however, required to obtain a special resolution since the transaction constituted a "reserved matter" within the meaning of the Memorandum of Incorporation. He has in any event not improved the company's financial situation and has effectively only swapped one liability for another;
- (e) the cash flow projections put up by Mostert in the management accounts are unrealistic and unlikely to be achieved. By way of example, the accounts forecast sales in the amount of R10 million for August 2016. Apart from the fact that Mostert has admitted that no sales are likely for the next two months, the company has only achieved some R1.1 million in sales for the entire year. The difference between the year-to-date sales and the expenses mean that the company will suffer a loss (before tax) in the sum of some R8.2 million;
- (f) Mostert has also encumbered the farm with a R20 million mortgage bond without being properly authorised to do so; and
- (g) in addition, during 2015 he repaid a loan amount in the amount of R5.8 million to one of his related companies, namely Consortio

Management Company (Pty) Ltd. These unauthorised transactions must also be investigated by the business rescue practitioners.

The second respondent's contentions

[18] Mr *Liversage*, who appeared for the second respondent, correctly submitted that in order to adjudicate the points raised by second respondent, the court should ignore the answering and replying affidavits, treat the facts averred by the applicant in its founding papers as having been established, and determine whether those facts entitle the applicant to the relief it seeks in its notice of motion.

[19] He argued that when regard is had to those facts, certain solutions, other than business rescue proceedings present themselves. These are:

- (a) the management agreement clearly defines the type of conduct which will constitute a breach thereof. The company will thus be entitled to demand specific performance or cancel the agreement. The simple effective remedy is thus a contractual one and not business rescue proceedings;
- (b) the cash flow problem can be relatively easily alleviated by selling game in the normal course of business; the applicant raising further cash from its shareholders; or raising a further mortgage bond on the property (which it is common cause has substantial value);
- (c) the applicant's real motives appear to be to dispose of its shareholding, alternatively to increase its shareholding in the company. It thus requires the moratorium provided by business

rescue proceedings only to afford itself sufficient time to implement that strategy;

- (d) since the primary objective of the business rescue proceedings is to ensure the likelihood of the company continuing in existence on a solvent basis, or to ensure maximum return for creditors, the application is thus not *bona fide* and falls to be dismissed for that reasons alone;
- (e) the applicant failed to serve the papers properly on the affected persons mentioned in section 131(2) of the Act through the sheriff; and
- (f) the application was premature. The applicant should have waited until after the seventh respondent has launched winding up proceeding. It has failed to establish that those proceedings are imminent and the matter was thus not sufficiently urgent to justify the truncation of the time limits provided for by the Uniform Rules of Court.

Contentions advanced on behalf of the first, fourth and fifth respondents

[20] Mr Murphy, who appeared for the company, as well as for the fourth and fifth respondents, made the following submissions in support of their assertions that the company is being properly managed; that it is solvent; and will be able to trade out of its difficulties in the ordinary course of business:

- (a) while the respondents admit that the loan by the seventh respondent was due and payable by 30 April 2016 and that no payment had been made, they have shown that they have caught

and selected a number of buffalo which can be sold to meet that obligation. The only obstacle being that they are awaiting the results of blood test so that the buffalo can be given a certificate of good health, whereafter they can be sold. The company will thus be able to repay the loan within the six months period as required by the Act;

- (b) the purported section 345 notice, which was sent on 20 July 2016, does not comply with the Act. The applicant launched these proceedings the 22nd of July 2016, scarcely two days after the notice was sent. The notice is accordingly not a proper one in terms of section 345 of the Act, but merely a demand for payment;
- (c) in terms of the business plan, which was agreed to at the inception of the business, the shareholders were expected to contribute financially over a period of ten years. The applicant, in particular, was supposed to contribute some R11.1 million. It has, however, failed to comply with those obligations, stating that royalty do not concern themselves with budgets. The respondents thus have a counter-claim against the applicant for not honouring its obligations in terms of that agreement;
- (d) the respondents have shown that the company has paid its employees, and has in this regard produced a letter from the company's auditors stating that it is solvent. There is thus no basis for the applicant's contention that the company cannot meet its current financial obligations, or those that will become due and payable within the next six months;

- (e) when the buffalo are sold, there will be more than sufficient funds available to settle the seventh respondent's loan. For this reason the company does not require the intervention of business rescue practitioners since the sale of game is something that occurs within the normal course of business;
- (f) the company's financial statements evince that the company has grown from a R189 million business to one which is now worth R256.6 million. The financials also indicate that the company has substantial assets and is properly managed. Mostert has maintained comprehensive records of all the animals, *inter alia*, in respect of their ownership, weight, length and DNA, and is thus able to account for each and every animal on the farm;
- (g) Mostert has attempted to provide the applicant with regular reports concerning the management of the business, but was discouraged by the applicant's representative who made it clear that the Crown Prince did not want to be bothered with details and reports. It accordingly does not lie in the mouth of the applicant to complain that it did not receive regular reports; and
- (h) the joint venture with Gamevest was not a clandestine affair, as the applicant is trying to make it out to be, but a *bona fide* and profitable business venture which was undertaken with the applicant's knowledge and acquiescence, and which has resulted in significant growth for the company.

The Law

[21] In terms of sections 131 (1) and (4) of the Act the court may make an order placing a company under supervision and business rescue if it is satisfied that:

- (a) the company is financially distressed; or
- (b) the company has failed to pay over any amount in terms of an obligation under or in terms of a public regulation, with respect to employment related matters; or
- (c) it is otherwise just and equitable to do so for financial reasons; and
- (d) there is a reasonable prospect for rescuing the company.

[22] The term “financially distressed” means:

- “(i) it appears to be reasonably unlikely that the company will be able to pay all of its debts as they become due and payable within the immediately ensuing six months or
- (ii) it appears to be reasonably likely that the company will become insolvent within the immediately ensuing six months” ¹

[23] The meaning of the phrase “*a reasonable prospect for rescuing*”, was explained as follows by Brandt JA in *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kayalami) (Pty) Ltd and Others*²:

“As a starting point, it is generally accepted that it is a lesser requirement than the 'reasonable probability' which was the yardstick for placing a company under judicial management in terms of s 427(1) of the 1973 *Companies Act* (see eg *Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 Ltd* 2012 (2) SA 423 (WCC) para 21). On the other hand, I believe it requires more than a mere prima facie case or an arguable possibility. Of even greater significance, I think, is that it must be a reasonable prospect — with the emphasis on 'reasonable' — which means that it must be a prospect based on reasonable

¹ Section 128 (1) (f) of the Act.

² 2013 (4) 539 (SCA)

grounds. A mere speculative suggestion is not enough. Moreover, because it is the applicant who seeks to satisfy the court of the prospect, it must establish these reasonable grounds in accordance with the rules of motion proceedings which, generally speaking, require that it must do so in its founding papers.”³

[24] The prospect of rescue must accordingly be considered in the light of the objectives of business rescue proceedings contemplated by the definition in terms of section 128 (1) (b) of the Act, which are: to facilitate rehabilitation of the company in order to (a) return the company to solvency, or (b) provide a better return for creditors and shareholders than what they would achieve through liquidation. An applicant for business rescue proceedings must thus place before Court a factual foundation for its contention that there are reasonable prospects that the aforementioned objectives can be achieved. However, he or she is not required to establish that a business plan is already in existence, or to provide comprehensive details of the costs or resources available to the company to return it to solvency. In *Propspec Investments (Pty) Ltd v Pacific Coast Investments 97 Ltd and Another*⁴ Van der Merwe J held that to require proof of those factual details would be tantamount to requiring proof of a more exacting nature, namely a “reasonable probability”. The learned judge said the following in this regard:

“In my judgment it is not appropriate to attempt to set out general minimum particulars of what would constitute a reasonable prospect in this regard. It also seems to me that to require, as a minimum, concrete and objectively ascertainable details of the likely costs of rendering the company able to commence or resume its business, and the likely availability of the necessary cash resource in order to enable the company to meet its day-to-day expenditure, or concrete factual details of the source, nature and extent of the resources that are likely to be available to the company, as well as the basis and terms on which such resources will be available, is tantamount to requiring proof

³ At page 551, para 29.

⁴ 2013 (1) SA 542 (FB)

of a probability, and unjustifiably limits the availability of business rescue proceedings.”⁵

These comments were cited with approval by Brandt JA in *Oakdene Square Properties* (supra).

[25] There can also be little doubt that the legislative scheme of the Act envisages that where there are reasonable prospects of rescue, business rescue proceedings must be preferred to winding up so as to avoid the adverse socio-economic consequences of liquidation. Binns-Ward J explained the rationale for this preference as follows in *Koen and Another v Wedgewood Village Golf and Country Estate (Pty) Ltd and Others*⁶:

“The requirements for a supervision order for business rescue purposes are materially different from those which pertain to judicial management. It is clear that the legislature has recognised that the liquidation of companies more frequently than not occasion significant collateral damage, both economically and socially, with attendant destruction of wealth and livelihoods. It is obvious that is in the public interest that the incidence of such adverse social economic consequences should be avoided where reasonably possible. Business rescue is intended to serve that public interest by providing a remedy at avoiding the deleterious consequences of liquidations in cases in which there is a reasonable prospects of salvaging the business of a company in financial distress, or of securing a better return to creditors than would probably be achieved in an immediate liquidation.”⁷

Discussion

[26] The respondents' contentions regard urgency and the manner of service cannot be upheld. In my view the applicant was justified, in the face of imminent

⁵ At para 15.

⁶ 2012 (2) SA 378 (WCC)

⁷ At para 14.

liquidation proceedings, to take urgent steps to protect its substantial investment in the company. The extent to which the prescribed time limits had been truncated was accordingly justified under the circumstances. I am also satisfied that all affected persons have received due notice of the application.

[27] I now turn to consider whether the applicant has successfully established the abovementioned legal requisites.

[28] There are, in my view, two grounds which compel the conclusion that the company is in fact financially distressed. First, it is common cause that the company has defaulted on its payment obligations in respect of the loan advanced by the seventh respondent. As mentioned before, the company owes some R7.5 million which was due and payable on or before 30 April 2016.

[29] Mr *Woodland* has accordingly correctly submitted that the company is commercially insolvent. The test for commercial insolvency was explained as follows by Berman J in *Absa Bank Ltd v Rhebokskloof (Pty) Ltd and Others*⁸

“The concept of commercial insolvency as a ground for winding up a company is eminently practical and commercially sensible. The primary question which a Court is called upon to answer in deciding whether or not a company carrying on business should be wound up as commercially insolvent is whether or not it has liquid assets or readily realisable assets available to meet its liabilities as they fall due to be met in the ordinary course of business and thereafter to be in a position to carry on normal trading - in other words, can the company meet current demands on it and remain buoyant? It matters not that the company's assets, fairly valued, far exceed its liabilities: once the Court finds that it cannot do this, it follows that it is entitled to, and should, hold that the company is unable to pay its debts within the meaning of s 345(1)(c) as read with s 344(f) of the Companies Act 61 of 1973 and is accordingly liable to be wound up.”⁹

⁸ 1993 (4) SA 436 (CPD).

⁹ At page 440 F-H

[30] And in *Oakdene Square Properties*¹⁰ Brandt JA held that although the company was factually solvent, in that the value of its assets exceeded its debts, it was unable to satisfy the judgment debt and was accordingly commercially insolvent for liquidation purposes, and thus “financially distressed” within the meaning of the Act. Furthermore, although the court has a discretion to refuse a winding up order, such discretion is limited where a creditor has a debt which a company cannot pay. In such a case the creditor is entitled, *ex debito justitiae*, to a winding up order.¹¹

[31] Mr *Woodland* has also correctly argued that Mostert’s assertions that he has already selected buffaloes for sale and that the realisable assets would accordingly be sufficient to satisfy the debt, cannot avail the company. Mostert acknowledges that he does not have any prospective buyers, and it appears in any event that before the buffaloes could be sold he would have to wait for the results of blood tests, which is a prerequisite for the sale of the animals. But there is yet another insurmountable to this suggested quick fix solution: the company cannot legitimately sell the buffaloes since they are subject to a notarial security bond.

[32] It is thus manifest that:

- (a) the debt has become due and payable by 30 April 2016;
- (b) the company has defaulted on payment;

¹⁰ *Oakdene Square Properties* (supra) at page 543, para 7.

¹¹ *Absa Bank Limited v Rhebokskoof* (supra) at page 440H – 441B

- (c) the company presently does not have the necessary funds to repay the debt; and
- (d) it does not have liquid or readily realisable assets available out of which it can pay the debt and remain buoyant.

There can, in my view, accordingly be little doubt that the company is in fact commercially insolvent (and thus “financially distressed” within the meaning of section 131 of the Act) and liable to be wound up, should the seventh respondent decide to launch liquidation proceedings.

[33] Mostert’s reliance on a counter-claim, which he appears to suggest would be sufficient to stymie the seventh respondent’s claim, is also misplaced. Even if the company does have a claim against the applicant for defaulting on its financial obligations arising out of the business plan, it is obvious that that claim cannot be enforced against the seventh respondent, despite the fact that the sole controlling shareholder of the applicant is also the Crown Prince of the seventh respondent. These are different legal entities and the applicant has not made out a case for the piercing of the corporate veil.

[34] Second, it is also manifest that the company has been experiencing cash flow problems and has struggled to keep its head above water for some time. It has been unable to meet creditors’ demands out of funds generated in the ordinary course of business and was reliant on shareholders’ loans to service its debts. And, as mention before, the fact that the company has only been able to achieve some R1.1 million in sales for the entire year so far, renders Mostert’s sales projections for the month of August 2016 manifestly unrealistic.

[35] Mostert's contentions regarding the validity of the section 345 notice issued by the seventh respondent is also inconsequential. Mr *Woodland* has correctly submitted that the only effect of such a notice is to bring into operation a deeming provision to the effect that the company is unable to pay its debts. In this case it is manifest that the company is currently unable to pay its debts.

[36] Under these circumstances the applicant's concern about the increased risk jeopardizing its investment is understandable, and in my view its decision to institute these proceedings is fully justified. The respondents' contentions regarding the applicant's *bona fides* and the legal points set out in the second respondent's Rule 6(5)(d)(iii) notice can accordingly also not be upheld.

Reasonable prospects of rescue

[37] The only question that then remains to be answered is whether there is a reasonable prospect that the company could be rescued, in other words, if it can be returned to solvency; or a better return for creditors and shareholders can be achieved than what they would receive through liquidation.

[38] As mentioned above, while the applicant is not at this stage required to put up a comprehensive plan showing the prospects of rescue, it must establish a factual foundation for the existence of such a reasonable prospect.¹²

[39] In this regard one of the proposed business rescue practitioners, namely Neil Micheal Hobbs, has averred that it would be relatively easy to restore the

¹² See Propspec Investments (Pty) Ltd (*supra*) at para 11.

company to solvency by realising assets and using those proceeds to pay third party debts; alternatively, to canvass shareholders to recapitalise the company. Mostert has also asserted that the company would be able to trade out of its difficulties by selling game. It is also significant in this regard that the applicant's controlling shareholders indicated their willingness to provide finance once an approved business rescue plan has been implemented. It is thus reasonable to conclude, on the basis of the established facts, that there is indeed a reasonable prospect that the company can be rescued. This option should, for the reasons which I have already stated, be preferred to liquidation.

[40] Mr *Woodland* has correctly submitted that it appears almost certain that the seventh respondent will launch proceedings for the winding up of the company, if business rescue is not commenced. On the established facts before me there can be little doubt that the winding up of the company would virtually be a foregone conclusion if such proceedings are launched. The commencement of business rescue would, in my view, consequently allow the company the crucial breathing space which it requires to return to solvency. And I do not believe that these objectives are achievable under the current management. Mr *Woodland* has correctly submitted that there are various questionable transactions which should be investigated by the business rescue practitioners, not least of which is the repayment of a substantial loan to a company of which Mostert is a shareholder.

Order

[41] I am thus satisfied that the applicant has made out a case for the relief it seeks in the notice of motion, and the following order accordingly issues:

- (a) The first respondent (“the company”) is hereby placed under supervision and business rescue proceedings shall commence in terms of section 131(1) and (4) of the Companies Act 71 of 2008. (“the Companies Act”).
- (b) In terms of section 131 (5), Neil Michael Hobbs (senior business rescue practitioner) and Stephanus Johannes Martinus Steyn (senior business rescue practitioner) are hereby appointed to act as the joint interim business rescue practitioners of the company, subject to ratification by the holders of a majority of the independent creditors’ voting interest at the first meeting of creditors, as contemplated in section 174 of the Companies Act.
- (c) The company is ordered to notify each affected person of this order 5 business days of the date hereof, in terms of section 131 (8) (b) of the Companies Act.
- (d) The first, second, fourth and fifth respondents shall (jointly and severally, the one paying the other to be absolved) pay the applicant’s costs of suit, including the costs of two counsel where employed.

J.E SMITH
JUDGE OF THE HIGH COURT

Appearances

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Date Heard	:	04 August 2016
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