**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

26/2/15

**CASE NO: A513/2013**

In the matter between:

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| **LA SPORT 4X4 OUTDOOR CC** | First Appellant |
| **TJM PRODUCTS SA (PTY) LIMITED** | Second Appellant |

and

(1) REPORTABLE: YES / ~~NO~~

(2) OF INTEREST TO OTHER JUDGES: YES / ~~NO~~

26/02/15
DATE

SIGNATURE

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|---|---|
| **BROADSWORD TRADING 20 (PTY) LIMITED** | First Respondent |
| **JOHAN CHRISTIAAN BEER NO** | Second Respondent |
| **COMPANIES AND INTELLECTUAL PROPERTY COMMISSION** | Third Respondent |

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**JUDGMENT**

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Tuchten J:

1 On 11 April 2013, the board of the first respondent passed a resolution pursuant to s 129(1) of the Companies Act, 71 of 2008 (the new Companies Act), voluntarily beginning business rescue proceedings and placing the first respondent (the Company) under

supervision. Supervision means, according to s 128(1)(i),[1] the oversight imposed on a company during its business rescue proceedings. Certain procedures for filing and publishing the resolution are required under s 129 to bring the business rescue process into operation. These were carried out. The second respondent (the Practitioner) was appointed as the Company's business rescue practitioner.

2 Under s 130(1)(a)(ii), any "affected person" may apply to court for an order setting aside such a resolution on the ground that there appears to be no reasonable prospect for rescuing the company. Under s 128(1)(a) an affected person includes a creditor.

3 The appellants applied to set aside the resolution and for certain consequential relief. That application was dismissed with costs in the court below (Makgoba J). The present appeal, with the leave of the learned judge, is against that order. The third respondent abided in the court below and did not participate in the appeal. I shall describe the first and second respondents collectively as the respondents.

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[1] All references to statutory provisions are to the new Companies Act, unless otherwise stated.

4 The appellants were the owners of a business called LA Sport. They concluded three agreements with the Company during the period 19 to 26 February 2010. These were a sale of business agreement, a trademark license agreement and a dealership agreement. Taken together, the agreements enabled the Company to operate as an LA Sport outlet in Pretoria.

5 The appellants are controlled by Mr and Mrs Lewis, who are husband and wife. The business of LA Sport is to design, manufacture, import and market a comprehensive range of off-road, aftermarket accessories and equipment, camping gear and the like directed at those who seek to participate in off-road experiences within Africa. To this end, the applicants offer prospective dealers a franchise to conduct business under the LA Sport brand. Between 2003 and 2013, seventeen new LA Sport dealerships opened in South Africa. The papers demonstrate the LA Sport is a valuable brand and that Mr and Mrs Lewis spent much time, energy and money in building up their brand.

6 Mr and Mrs Lewis represented the appellants in the negotiations toward the conclusion of the three agreements. The Company was represented in these negotiations by Mr and Mrs Duvenhage. Mr and Mrs Lewis took considerable pains before deciding that Mr and Mrs

Duvenhage were the right persons to take over the Pretoria outlet which they regarded as the flagship dealership of their operation.

7 The purpose of the sale agreement was to sell to the Company the business of LA Sport Pretoria which had previously been operated by Mr and Mrs Lewis themselves. The trade mark agreement embodied the terms on which the first respondent was licensed to use certain trade marks owned by the appellants. The dealership embodied the terms on which the respondents would buy the applicants' products for resale to the public.

8 On 11 April 2013, as I have said, the directors of the first respondent resolved that the Company begin business rescue proceedings. Business rescue proceedings in relation to the first respondent are deemed to have commenced on 15 April 2013, the date upon which the resolution was filed with the third respondent.

9 The appellants claim that at the time business rescue proceedings commenced the Company was indebted to them in the sums firstly of R300 000, being the balance of the purchase price under the sale agreement and secondly of R160 863,11 for product sold and delivered by the appellants to the Company pursuant to the dealership agreement. Clause 6.1 of the dealership agreement obliged the

Company to pay for product so sold and delivered to it within seven days of delivery. Payment of the amount in question was alleged to be overdue.

10 The answering affidavit of the respondents was deposed to by the Practitioner. Neither Mr nor Mrs Duvenhage made affidavits on behalf of the Company, although they and not the Practitioner manifestly had personal knowledge of the management of the Company's business before the inception of business rescue.

11 It is in this context that the Practitioner, on behalf of the Company, placed in issue the question whether the appellants were creditors of the Company. The respondents did not dispute that the debts in question were incurred by the Company. There are two grounds upon which the respondents say the debts have been discharged. The first is that they were extinguished by set off as allegedly demonstrated by the figures in a document described by the Practitioner as a statement emanating from the appellants.

12 The appellants' answer to this first defence is that the Practitioner has misunderstood the nature of the document which was, according to the appellants, not a statement of account at all but an email sent back and forth between the parties in an attempt to reconcile their

respective records. The appellants, through Mrs Annalie Lewis in particular, have explained why they say that the document in question, which reflects the Company's calculations, is inaccurate. The inferences drawn by the Practitioner from this document do not, in the face of the detailed evidence of Mrs Lewis, raise a genuine dispute.

13 The second defence is that as discovered by the Practitioner, certain of the purchases made under the dealership agreement were paid for by the Company using a credit card issued by Absa; therefore, the respondents say, Absa is liable to the appellants and not the Company. In answer to this, Mrs Lewis explained that this credit card was only honoured by Absa in relation to the Company as long as there were funds in the account of the Company linked to this credit card and that when the debt in question fell due, there were no funds in the linked account to pay for product bought by and delivered to the Company. Once again, the inferences drawn by the Practitioner in relation to this second defence cannot stand in the face of the evidence of Mrs Lewis.

14 The appellants have thus, in my view, proven on the papers that the Company is indebted to them as alleged and the evidence of the Practitioner to the contrary is rejected. The appellants have therefore established that they are creditors of the Company and thus affected

persons for purposes of s 130(1). The appellants accordingly had standing to bring their application before the court below.

15 On 17 April 2013, the first appellant sent a letter to the first respondent in which it demanded payment by the first respondent of the sum of R300 000 outstanding under the sale agreement. The first respondent did not pay the amount demanded and the first appellant elected to cancel the sale agreement. This election was communicated to the first respondent on 25 April 2013.

16 Clause 16 of the dealership agreement entitled the appellants summarily to terminate the dealership agreement for breach by the Company. They elected to do so and communicated their election so to do to the first respondent on 25 April 2013.

17 Clause 2 of the dealership agreement and clause 3 of the license agreement entitled the appellants to terminate the respective agreements upon termination of any one of them. So a termination of the dealership agreement in principle entitled the appellants to terminate the license agreement. As a result of the termination of the dealership agreement, the appellants contend, the license agreement also terminated on 25 April 2013.

18 One of the issues before us is whether the appellants were entitled to approach the court below to set aside the resolution and for the other relief they sought without obtaining the written consent of the Practitioner or the leave of the court granted under s 133(1).

19 This question was not raised in the answering affidavit but was raised in the court below in counsel's heads of argument. It was not alluded to by the court below in its judgment. The point was raised in the appeal in supplementary heads of argument filed by counsel for the respondents. I consider that this question, one of law, is adequately before us. Counsel for the appellants were ready to deal with the question.

20 Further questions of substance in this appeal as raised by the respondents and the judgment of the court below are whether s 133(3) suspends the right of a creditor of a company in business rescue to give notice to the company in business rescue to remedy a breach, preparatory to proceeding against the company for enforcement of such creditor's claim; whether the notices sent by the appellants constitute legal process as contemplated in s 133(1); and whether the rights which flowed from the three agreements constitute *property in the lawful possession of* the first respondent, in which case s 134(1)(c) would suspend any right of the appellants in respect of such property.

21 In addition, the Practitioner has stated that he intends to invoke the provisions of s 136(2)(b) to cancel the obligation of the company in relation to what was called in argument a rouwkoop clause in the sale agreement.

22 I proceed to deal with these questions.

23 Sections 133(1) and (3) respectively read as follows:

> (1) During business rescue proceedings, no legal proceeding, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum, except-
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> (a) with the written consent of the practitioner;
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> (b) with the leave of the court and in accordance with any terms the court considers suitable;
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> (c) as a set-off against any claim made by the company in any legal proceedings, irrespective of whether those proceedings commenced before or after the business rescue proceedings began;
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> (d) criminal proceedings against the company or any of its directors or officers;
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> (e) proceedings concerning any property or right over which the company exercises the powers of a trustee; or
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> (f) proceedings by a regulatory authority in the execution of its duties after written notification to the business rescue practitioner.
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> ...

(3) If any right to commence proceedings or otherwise assert a claim against a company is subject to a time limit, the measurement of that time must be suspended during the company's business rescue proceedings.

24 Section 130(1)(a)(ii) reads:

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-

(a) setting aside the resolution, on the grounds that-

(i) ...

(ii) there is no reasonable prospect for rescuing the company;

(iii) ...

25 Subsections (3), (4) and (5) of s 130 provide:

(3) An applicant in terms of subsection (1) must-

(a) serve a copy of the application on the company and the Commission; and

(b) notify each affected person of the application in the prescribed manner.

(4) Each affected person has a right to participate in the hearing of an application in terms of this section.

(5) When considering an application in terms of subsection (1) (a) to set aside the company's resolution, the court may-

(a) set aside the resolution-

(i) on any grounds set out in subsection (1); or

(ii) if, having regard to all of the evidence, the court considers that it is otherwise just and equitable to do so;

(b) afford the practitioner sufficient time to form an opinion whether or not-

(i) the company appears to be financially distressed; or

(ii) there is a reasonable prospect of rescuing the company, and after receiving a report from the practitioner, may set aside the company's resolution if the court concludes that the company is not financially distressed, or there is no reasonable prospect of rescuing the company; and

(c) if it makes an order under paragraph (a) or (b) setting aside the company's resolution, may make any further necessary and appropriate order, including-

(i) an order placing the company under liquidation; or

(ii) if the court has found that there were no reasonable grounds for believing that the company would be unlikely to pay all of its debts as they became due and payable, an order of costs against any director who voted in favour of the resolution to commence business rescue proceedings, unless the court is satisfied that the director acted in good faith and on the basis of information that the director was entitled to rely upon in terms of section 76 (4) and (5).

26 Counsel for the respondents submitted that the failure to obtain the leave of the court below was fatally defective. Counsel submitted that the leave of the court under s 133(1) requires a formal application to court. That was held to be the case in *Merchant West Working Capital*

*Solutions (Pty) Ltd v Advanced Technologies and Engineering Company (Pty) Ltd and Another* (13/12406) [2013] ZAGPJHC 109 para 67 where it was held:

> "Leave of the court" as laid down in section 133(1)(b) cannot be a simple one that can be advanced from the bar. Such leave in my view and finding must be motivated in the same way, just like, for instance, as criteria for departure from the Rules of Court to justify a prayer for urgency. A court being asked for leave to proceed against a company under business rescue, thus during a moratorium, must receive a well motivated application for that so that it could apply its mind to the facts and the law if necessary and then be in a position to make a ruling in accordance with any terms it may consider suitable in the peculiar circumstances. [footnotes omitted]

27 I cannot agree that in every case where a court is asked for leave to proceed against a company under business rescue, a formal application is required. There is no such requirement in s 133(1). Under s 173 of the Constitution, the High Courts have the inherent power to protect and regulate their own process. It must always be remembered that the primary role of the courts, which like all other organs of state must promote and protect the rights and values enshrined in the Constitution, is to decide disputes brought before them on their merits. Procedural mechanisms are not ends in themselves but tools to achieve justice. A court should be slow, in my view, to interpret a statutory measure so as unnecessarily to abridge its own power to do justice.

28 A whole spectrum of proceedings is possible against companies under business rescue. In some instances, perhaps even many such instances, a court would not be able to judge whether or not to grant leave to an applicant to proceed against the company without having factual material and sound legal contentions placed before it by way of a formal application. In such a case, the "well motivated application" referred to in *Merchant West* para 67 would be necessary so that the court could do justice to the issue before it. At the far end of the spectrum, however, are those cases which, on the information before the court when the request for relaxation is made, so self-evidently require that the moratorium be relaxed that no additional material is required.

29 Whenever relaxation is sought, the rights of the company, affected persons and the practitioner must be protected. It is for the protection of the interests of those persons that the moratorium regime was enacted. This may require an adjournment of the proceedings to enable these persons to consider their positions or to place additional material before the court. In other cases, the opposition to the request for relaxation will be self-evidently frivolous and lacking in substance, an exercise in empty formalism, designed cynically to perpetuate the advantages of immunity from the normal processes of the law which a company can secure for itself under the business rescue regime in the new Companies Act by a stroke of its own pen, and no more.

30 In such cases, in my view, the discretion of the court to do justice should be preserved. This is not an invitation to litigants to approach the question of relaxation in a casual manner. The approach I favour seeks to strike a balance between the rights of the competing litigants and to ensure that the power of the court to do justice in a deserving case is not impeded by a formalism which serves no purpose.

31 This approach is consistent, I think, with what I wrote in *Balemi Civils (Pty) Limited v Molefe Attorneys* (A308/14) [2014] ZAGPPHC 704 (16 September 2014), a judgment of a court over which my brother Msimeki J presided, at para 19:

> At the other end of that spectrum are those infractions of the rules which do not appear to have caused any prejudice and are raised for the most part for entirely tactical reasons. In my view, a court ought to be slow to lend its muscle to this kind of tactical manoeuvring. The rules exist for the court, not the court for the rules. Each instance of non-compliance should be evaluated on its own facts and a determination made whether the case requires a formal application for condonation or other procedural indulgence or whether the non-compliance should summarily be disposed of. [footnote omitted]

32 The present is to my mind a case where the leave of the court to proceed with the merits of the case should, assuming such leave is required, self-evidently be granted. The issues in relation to the relaxation of the moratorium are the same as those in the application

itself which served before the court below. When counsel for the respondents was pressed to advance grounds for the formulation of "such terms" contemplated in s 133(1)(b), all counsel could come up with was that creditors should have been given notice of the application. But this overlooks that in the present case all affected persons, a class which includes creditors, were notified of the application pursuant to the provisions of s 131(2)(b). Creditors were thus notified. None of them elected to join in the application.

33 Moreover, neither the Company nor the Practitioner, for whose benefit the moratorium regime in s 133(1) was enacted, sought in their answering affidavit the alleged benefits of the moratorium for which counsel now contends. The point is an afterthought, the product of counsel's ingenuity, and nothing more.

34 Finally, on this point: the judgment of the learned judge below granting leave to appeal to this court is before us. There is no suggestion in the judgment granting leave to appeal that the respondents contended that leave to appeal should be refused because the application to the court below had been doomed to failure for want of compliance with s 133(1).

35 There are two other grounds upon which this point must be disposed of against the respondents. Firstly, on the express wording of s 130(1), the right to apply to court is conferred on affected persons. There is no textual indication that this right is subject to the moratorium regime in s 133(1). There is good reason why the s 130(1) right should not be so subject.

36 The power to trigger the operation of the moratorium rests entirely with the board of the company under s 129. It need consult no one before it does so. The board will, in the vast majority of cases, consider only the company's own interests when it does so. The potential for abuse is manifest. The right to approach the court is an essential counterweight to the curtailment of affected persons' rights licensed by s 129. The purpose of the measures does not require s 130(1) to be read subject to s 133(1). Indeed, the contrary is correct.

37 Counsel for the respondents submitted that not only was the consent of the practitioner or the leave of the court required before an application to set aside a s 129(1) resolution could be brought but that an affected person aggrieved by a s 129(1) resolution was not entitled to approach the court for leave to proceed under s 133(1) until the prospective applicant had obtained leave to bring its application for

leave. Counsel was even able to refer us to a case where that procedure was adopted.[2]

38 But the logic of the literalism underlying counsel's submission is that the application for leave to bring an application for leave is itself, too, a legal proceeding, for the bringing of which consent of the practitioner or leave of the court would be required; and so on, *ad infinitum*.

39 These manifest absurdities are overcome if one applies the principle that a court interpreting a statute must have regard to the purpose of the measure.[3] The purpose of the s 133(1) moratorium is, broadly, to advance the business rescue process. The interests which the measure seeks to protect are those of affected persons as defined in s 128(1)(a), the company itself and the practitioner. The purpose of the exception to the moratorium created by the power vested in the court to allow legal proceedings to be instituted or to continue is to enable a balance to be struck between the rights of the individual affected person on the one hand and the general body of those persons I have mentioned on the other. This purpose is achieved if the members of this general body are afforded an opportunity of being

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2 *Niemand v Smith's Dairy CC and Another* NWHC case no. 593/2012

3 *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and Others* 2013 6 SA 520 SCA para 16, referring to the cases of *KPMG Chartered Accountants (SA) v Securefin Ltd and Another* 2009 4 SA 399 SCA and *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 4 SA 593 SCA which preceded it

heard on the proposed relaxation of the moratorium. They need only be heard once. There is therefore no purpose served by an application for leave to bring an application for relaxation. An application for leave to bring an application for relaxation is therefore not required by s 131(1). Indeed, such an application serves no purpose whatsoever.

40 Secondly, I have mentioned that the point was argued before the court below. Although the point must have been present to the mind of the learned judge below, he did not deal with it but proceeded to determine the application on its merits. The court below must therefore be taken to have granted any s 133(1) permission which might, against my reasoning, have been required.

41 I therefore hold that no consent or leave is required under s 133(1) to bring an application to set aside, under s 130(1), a resolution taken under s 129(1) and that if such leave or consent were against my reasoning in fact required, it was impliedly granted.

42 I turn to the question whether the rights of the appellants to give notice under and cancel the three contracts were suspended by the provisions of s 133(3). In its judgment, the court below found in favour of the respondents on this issue, reasoning that the notices of termination given by the appellants after the commencement of

business rescue proceedings were ineffectual by virtue of the provisions of s 133(3) and that the purported cancellations by the appellants were similarly ineffectual because they constituted legal process which falls under the moratorium imposed on legal action against the company.

43 I think the reasoning of the court below incorrectly equates a juristic act with legal process. Section 133(1), which imposes the general moratorium which flows from the commencement of business rescue proceedings, limits the right to commence or proceed with legal process, not the performance of juristic acts. My view is fortified by the reasoning in *Van Zyl v Evodia Trust (Edms) Bpk* 1983 3 SA 394 T 399B, where the court was called upon to interpret the meaning of legal proceedings in s 13 of the old Companies Act, 61 of 1973, the predecessor to the new Companies Act and came to a similar conclusion.[4] Moreover, s 133(1) limits the right of a creditor to commence or proceed with legal proceedings *in any forum*. This is a further indication in support of the construction I favour. The dispatch

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4 The reasoning in *Van Zyl's* case was adopted in *Lister Garment Corporation (Pty) Ltd v Wallace NO* 1992 2 SA 722 D 723G-H and *Merchant West, supra,* paras 63-64. *Henochsberg* on the new Companies Act (looseleaf ed, commentary on s 133) questions whether the phrase *legal proceedings* includes quasi-judicial proceedings such as arbitrations and proceedings before statutory tribunals but does not argue that the phrase should include letters of demand or juristic acts such as elections to cancel and the communication of such elections.

of letters of demand, the making of elections to cancel a contract and the communication of such elections do not take place within a forum.

44 Viewed in that light, it is in my view clear that notices and juristic acts such as those at issue in this case do not fall within the purview of s 133(3).

45 As I see it, moreover, s 133(3) does not deal with the running of a time period provided by contract to remedy a breach before a right to cancel accrues. It refers to the principle, which may broadly be described as prescription, that in certain circumstances the claim of a creditor which does not institute proceedings against its debtor within a certain time will lapse or become unenforceable.[5]

46 The next question to be considered is whether the rights of the appellants to compel performance under and to cancel the three contracts constitute property in the possession of the Company as contemplated by s 134(1)(c). Section 134 provides, sv Protection of property interests:

> (1) Subject to subsections (2) and (3), during a company's business rescue proceedings-

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5 This view is shared by Henochsberg, *op cit*, in the note to s 133(3).

(a) the company may dispose, or agree to dispose, of property only-

(i) in the ordinary course of its business;

(ii) in a bona fide transaction at arm's length for fair value approved in advance and in writing by the practitioner; or

(iii) in a transaction contemplated within, and undertaken as part of the implementation of, a business rescue plan that has been approved in terms of section 152;

(b) any person who, as a result of an agreement made in the ordinary course of the company's business before the business rescue proceedings began, is in lawful possession of any property owned by the company may continue to exercise any right in respect of that property as contemplated in that agreement, subject to section 136; and

(c) despite any provision of an agreement to the contrary, no person may exercise any right in respect of any property in the lawful possession of the company, irrespective of whether the property is owned by the company, except to the extent that the practitioner consents in writing.

(2) The practitioner may not unreasonably withhold consent in terms of subsection (1) (c), having regard to-

(a) the purposes of this Chapter;

(b) the circumstances of the company; and

(c) the nature of the property, and the rights claimed in respect of it.

(3) If, during a company's business rescue proceedings, the company wishes to dispose of any property over which another person has any security or title interest, the company must-

(a) obtain the prior consent of that other person, unless the proceeds of the disposal would be sufficient to fully discharge the indebtedness protected by that person's security or title interest; and

(b) promptly-

(i) pay to that other person the sale proceeds attributable to that property up to the amount of the company's indebtedness to that other person; or

(ii) provide security for the amount of those proceeds, to the reasonable satisfaction of that other person.

47 The issue at this level is whether rights under a contract constitute *property in the possession of the Company* for the purposes of s 134(1)(c). The short answer is that they do not. Even if the rights of the appellants under the three contracts constitute property for the purposes of the subsection, which I doubt, they are not property in the possession of the Company. This point, too, must be answered against the respondents.

48 The court below found that the appellants' application was geared at taking over the Company and was thus not *bona fide*. The applicants were however not contemplating taking over the Company. The appellants contemplated taking back the *business* of the Company which it sold to the Company under the sale agreement. The commercial reason the appellants were contemplating taking proceedings for the return of the business was that the Company was not able to pay its debts and Mr and Mrs Lewis feared that the parlous

financial state of the Company impacted adversely on their brand. The appellants have a right in contract to take back the business. Clause 19.2 of the sale agreement confers upon the appellants the right, at its election,

> ... to cancel the agreement ... and to claim retransfer of the Business, and to retain all monies paid thusfar in respect of the purchase price as agreed damages.

49 I cannot agree that a desire to get their business back and an application to put an end to business rescue proceedings to achieve that end demonstrates a lack of good faith on the part of the appellants. Whether the appellants should succeed in enforcing those rights is another matter, one which does not arise for consideration in this appeal.

50 Allied to this question is whether the right to retain all monies paid toward the purchase price imposes a corresponding obligation of the Company which, under s 136(2), the Practitioner might suspend for the duration of the business rescue proceedings or which a court might be persuaded to cancel. Perhaps it is. I express no opinion on the point. But whether it is or not is similarly irrelevant to the issues before us on appeal.

51 The respondents were permitted to put up to us evidence to show that a business plan has been adopted with the support of most of the creditors, that the Company is meeting its commitments under the plan and that within a short period, the Company might well be rescued, which would lead to the termination of the business rescue process. It was argued by counsel for the respondents that in these circumstances the business rescue process should be allowed to proceed to a successful conclusion. But as I have found, the Company is not presently carrying on business legitimately. Because the three agreements have been lawfully cancelled, the Company may not trade under the appellants' brand. There is no suggestion in the evidence before us that if the Company stops using the appellants' brand, it can trade profitably.

52 Section 130(1)(a)(ii) requires that an applicant who applies to set aside a s 129(1) resolution must establish that there is no reasonable prospect of rescuing the company. Where, as in the present case, the only way the Company can be rescued is by trading unlawfully, it cannot be said that such a reasonable prospect exists.

53 Section 130(5)(c) empowers a court which decides to set aside the resolution taken under s 129(1) to make any further and appropriate orders. In my view the orders sought by the appellants in their notice

of motion before the court below are all, in substance, both necessary and appropriate.

54 The appeal should therefore in my view succeed and costs should follow the result. I would propose the following order:

1 The appeal succeeds. The order of the court below is set aside and replaced with the following:

A The resolution passed under s 129 of the Companies Act, 71 of 2008 (the new Companies Act) by the board of the first respondent on 11 April 2013 voluntarily to begin business rescue proceedings is hereby set aside under s 130(1)(a)(ii) of the new Companies Act;

B The appointment of the second respondent as the business rescue practitioner of the first respondent is, hereby set aside;

C It is declared that the following contracts have been lawfully cancelled by the appellants: the sale agreement, annexure LA6 to the founding affidavit; the trademark licensing agreement, annexure LA8 to the founding affidavit; and the dealership agreement, annexure LA9 to the founding affidavit.

2 The first respondent must pay the costs of the appellants both in relation to the proceedings in the court below and to the appeal, on the basis that the employment of both senior and junior counsel was justified.

NB Tuchten
Judge of the High Court
26 February 2015

I agree. It is so ordered.

C Pretorius
Judge of the High Court
26 February 2015

I agree.

MW Msimeki
Judge of the High Court
26 February 2015

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