



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable/Not reportable

Case number: 4437/2024

In the matter between:

FIRST RAND BANK LTD

(Acting through its Rand Merchant Bank Division)

1st APPLICANT

INVESTEC BANK LTD

2nd APPLICANT

and

AZRAPART (PTY) LIMITED

1ST RESPONDENT

**THE COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION**

2ND RESPONDENT

Coram: Loubser, J

Heard: 28 November 2024

Delivered: 27 March 2025

Summary: Application to place company in business rescue – defence of imminent payment of substantial cash injection to the company by a foreign entity raised.

ORDER

1. The First Respondent must file a supplementary affidavit on or before 24 April 2025 informing the Court and the Applicants of the progress made in obtaining the Redcore funds and the payment thereof to the Applicants.
2. The Applicants are granted leave to respond to the First Respondent's affidavit, should they wish to do so, by the filing of a responding affidavit on or before 9 May 2025.
3. No further extensions of time will be allowed, and the Court will finally decide this application after the 9th of May 2025 on the papers as they then stand.
4. The application for a referral to hear oral evidence in respect of the dispute concerning the signature of Mr. Georgiou on the cross-guarantees, is dismissed.
5. Final judgment in the main application and in respect of the costs in the referral application is reserved for the period following upon 9 May 2025.

JUDGMENT

LOUBSER J

[1] This is an application for the First Respondent to be placed under supervision and that business rescue proceedings be commenced with in respect of the First Respondent in terms of Section 131 of the Companies Act.¹ It is further prayed in the Notice of Motion that Messrs. Piers Marsden and Lance Shapiro be appointed as the joint interim business rescue practitioners of the First Respondent. The application, which was initially set down on the urgent court roll of 21 August 2024, immediately became opposed by the First Respondent and had to be postponed on a number of occasions as a result. It was eventually heard by this Court on 28 November 2024.

[2] In terms of Section 131(1) of the said Companies Act, an affected person may apply to a court at any time for an order placing the company under supervision and commencing business rescue proceedings. In terms of Section 131(4)(a) the court may make such an order if the court is satisfied that the company is financially distressed or it

¹ Act 71 of 2008

is otherwise just and equitable to do so for financial reasons, and there is a reasonable prospect for rescuing the company.

[3] The First Respondent owns an undivided one half share in the immovable properties and buildings known as the Fourways Mall in Sandton. It is the largest shopping mall in South Africa. Mr. Michael Georgiou is the sole director of the First Respondent. The other undivided one half share is owned by another company of which Mr. Georgiou is a non-executive director. According to the papers filed in the application, the Applicants advanced loan facilities to the First Respondent in terms of various facilities agreements concluded between the respective parties. It is alleged by the Applicants that the First Respondent is in breach of these loan agreements in that it is in default with its payment obligations in terms thereof. As a result, the Applicants are exercising their rights in terms of the facility agreements to declare the total facility outstanding immediately due and payable.

[4] It is common cause between the parties that the total outstanding amount owing by the First Respondent to the Applicants is R2.3 billion, and that the First Respondent is unable to pay it. In my view, this is no doubt a strong indication that the First Respondent is in financial distress.

[5] In its answering affidavit, deposed to by Mr. Georgiou himself, the First Respondent contends that this Court has no jurisdiction to adjudicate this application. This is so because the First Respondent does not reside, does not conduct any business nor have its principal office in this Court's jurisdiction. It performs all its corporate functions and controls its administrative affairs from its principal place of business and principal office at Cedar Square Shopping Centre in Fourways, Johannesburg, it is contended.

[6] I do not agree. On the papers before me, it is common cause that the registered address of the First Respondent is situated at 96 Raymond Mhlaba Street, Navalsig, Bloemfontein, which address falls within this Court's jurisdiction. An overview of authorities dealing with the effect of the 2008 Companies Act, shows that the location of the registered office of a company confers jurisdiction on the relevant court.² The result is that this Court has the necessary jurisdiction to adjudicate this application launched against the First Respondent.

[7] It is the case for the Applicants that the First Respondent can be successfully rescued. The First Respondent does not dispute the allegation that there is a reasonable

² See for instance *Malvern Trading CC v Absa Bank Ltd* 2024 (1) SA 478 (GJ) at par. [57]

prospect that it can be rescued. This fact brings into play the provisions of Section 131(4)(a) of the Act. This subsection provides that a court may grant an application like the present if the court is satisfied, *inter alia*, that it is just and equitable to do so for financial reasons, and that there is a reasonable prospect for rescuing the company.

[8] At this juncture it needs mentioning that three days before the hearing of this application on 28 November 2024, the First Respondent filed a substantive application for an order directing that oral evidence be heard on the issue whether Mr. Georgiou signed the cross guarantees referred to by the Applicants in their founding affidavit. This application for a referral caused the filing of further affidavits and heads of argument by the parties. It was alleged by the Applicants that the First Respondent, represented by Mr. Georgiou, had concluded certain cross guarantee agreements with Sawindu 12 (RF) (Pty) Ltd. In terms of these agreements, the First Respondent is liable to the Applicants in the further amount of some R315 000.00, it is alleged.

[9] Mr. Georgiou, however, vehemently denied that he ever signed the cross guarantees. His signature on the agreements is a forgery, he said. In this respect he submitted a letter of confirmation by a handwriting expert that the signature on the agreement was not his signature. The Applicants, on the other hand, insisted that it was Mr. Georgiou who had signed, and they indicated that three witnesses who were present at the signing of the agreements, would testify to that effect.

[10] At the hearing of the application on 28 November 2024, it was submitted on behalf of the Applicants that this dispute relating to the alleged signature of Mr. Georgiou represented a material dispute of fact which cannot be resolved on the papers before the Court. The dispute should therefore be referred for the hearing of oral evidence, it was submitted.

[11] Mr. Antonie, appearing for the Applicants, pointed out that the quantum of the cross guarantees is only a negligible percentage of 12% of the total indebtedness of the First Respondent. He further informed the Court that the Applicants are no longer relying on this debt in their application to have the First Respondent placed in business rescue.

[12] Now if this is the present position, there is no *lis* between the parties any more on the issue of the signature of Mr. Georgiou. The issue has become moot, and for that reason the application for referral to oral evidence must fail. As for the costs of this application, I am of the view that the outcome of the main application for business rescue proceedings may have an effect on the costs order that will be made.

[13] This brings me to the main defence raised by the First Respondent in the application for it to be placed in business rescue. Right from the beginning of the application proceedings, and more specifically in its answering affidavit, the First Respondent already mentioned that it is well-advanced in the process of finalizing a transaction with a company registered in the United Kingdom. This company is Redcore Hospitality Holdings Limited. In terms of this transaction, the First Respondent would receive a capital injection of R2.6 billion from Redcore, but there is a substantial risk that Redcore would not conclude the transaction if the First Respondent is placed in business rescue. As could perhaps be expected, the Applicants expressed their suspicions in their replying papers as far as these allegations were concerned.

[14] In a further affidavit filed on behalf of the First Respondent, Mr. Georgiou undertook to make payment of the R2.6 billion to the Applicants on receipt of the amount from Redcore. The payment of R2.6 billion to the Applicants is more than sufficient to cover the liability of the First Respondent to the Applicant, he said.

[15] The defence raised by the First Respondent made it clear that if the transaction with Redcore becomes fulfilled, then the Applicants would not be able to rely on financial distress on the part of the First Respondent anymore, which in turn would mean the end of the application. Different courts of this Division which have dealt with this application over time, clearly gave recognition to this position. For instance, on 3 September 2024, Van Zyl, J remarked in her judgment that the transaction with Redcore “goes to the heart of the First Respondent’s opposition to both the urgency and the merits of the application”. She consequently postponed the application and granted the First Respondent leave to file a supplementary affidavit in respect of further developments pertaining to the Redcore transaction. On 24 October 2024 Chesiwe, J also postponed the hearing of the application to 28 November 2024 and ordered the First Respondent to report on the progress of the finalization of the Redcore transaction by 14 November 2024.

[16] When the application came before this Court for hearing on 28 November 2024, it was still not clear whether Redcore would definitely pay the R2.6 billion to the First Respondent. This Court therefore reserved judgment after hearing submissions by the respective counsel, and ordered the First Respondent to deliver an affidavit on 10 January 2025 confirming whether or not Redcore has made payment to the First Respondent in the sum of R2.6 billion, and if so, to provide proof of such payment. If that was so confirmed, this Court also required proof that the R2.6 billion has been paid to the Applicants by the First Respondent. The Applicants had to confirm same on the same day.

[17] Following this order, the First Respondent filed its affidavit on 13 January 2025. In this affidavit it explained that Redcore has been granted access to an equity funding facility of R14.93 billion, which is administered by Corpay UK. Out of this facility available to Redcore, Redcore instructed Corpay UK to allocate R2.6 billion for payment to the First Respondent, to be paid out to Peresec South Africa (Pty) Ltd. Peresec is a financial services provider in Sandton and Redcore's nominated representative to hold and administer the funds on behalf of Redcore, to be paid out ultimately to the First Respondent. An amount of approximately R400 million of the transaction has already been transferred to the account of Corpay, which will be transferred to Peresec. The balance of approximately R2.2 billion will be transferred to Peresec on or before 24 January 2025, it is stated in the affidavit.

[18] In closing, the First Respondent requested the Court in the affidavit to grant it a further extension of time within which to receive Redcore's funds and to arrange for the payment thereof to the Applicants by utilizing Peresec. The further extension would be in the interests of the Applicants as well since it would ensure payment of the indebtedness to them, the First Respondent said. Notably, the Applicants did not respond to this affidavit and the request for a further extension at all. If they had wanted to dispute the allegations in the affidavit, or if they had wanted to object to a further extension, they could have done so.

[19] On the other hand, the First Respondent has also not deemed fit to update this Court on the progress made in obtaining the Redcore funds after the date of 24 January 2025. The result is that the Court is still completely in the dark as to what the present state of affairs is. In view hereof, and in the interest of justice, the request of the First Respondent for an extension of time to receive the Redcore funds and to arrange for the transfer thereof to the Applicants stands to be granted. This extension will be a final extension, and after the date stipulated in the order to be made, the Court will decide the application as it stands to bring finality to these proceedings.

[20] The following order is made:

1. The First Respondent must file a supplementary affidavit on or before 24 April 2025 informing the Court and the Applicants of the progress made in obtaining the Redcore funds and the payment thereof to the Applicants.
2. The Applicants are granted leave to respond to the First Respondent's affidavit, should they wish to do so, by the filing of a responding affidavit on or before 9 May 2025.

3. No further extensions of time will be allowed, and the Court will finally decide this application after the 9th of May 2025 on the papers as they then stand.
4. The application for a referral to hear oral evidence in respect of the dispute concerning the signature of Mr. Georgiou on the cross-guarantees, is dismissed.
5. Final judgment in the main application and in respect of the costs in the referral application is reserved for the period following upon 9 May 2025.


P.J. LOUBSER, J

For the Applicants: Adv. M. Antonie SC
Assisted by: Adv. A Cooke
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