

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NUMBER: 2025-071547

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 17/07/2025
SIGNATURE

In the matter between:

LAMBERTUS VON WIELLIGH BESTER N.O 1st Applicant

JOHNNY BASSON N.O 2nd Applicant

OCTOX (PTY) LTD (in liquidation) 3rd Applicant

CHRISTIAN FINDLAY BESTER N.O 4th Applicant

LAILA ESSOP N.O 5th Applicant

IMAGINA (PTY) LTD (in liquidation) 6th Applicant

and

GEORGE MICHAEL MAAS N.O 1st Respondent

(Identity Number: 6[...])

(in his capacity as Trustee of BHF Trust)

GEORGE MICHAEL MAAS N.O 2nd Respondent

(Identity Number: 8[...])

(in his capacity as Trustee of BHF Trust)

JUDGMENT

MNGQIBISA-THUSI J

- [1] The applicants seek on an urgent basis the provisional sequestration of the BHF Family Trust (“the Trust”). In the alternative, the applicants seek an order directing the Trust to make payment to the third respondent in the amount of R12, 140 640.25 and other ancillary relief.
- [2] The first and second applicants are the joint liquidators of the third applicant, Octox (Pty) Ltd. The fourth and fifth applicants are the joint liquidators of the sixth applicant, Imagina FX (Pty) Ltd. The third applicant was finally liquidated on 22 January 2021, and the sixth applicant was liquidated on 9 October 2020.
- [3] The respondents are trustees in the entity sought to be liquidated, the BHF Trust (“the Trust”).
- [4] The applicants seek the provisional liquidation of the Trust on the basis that the trust made an impeachable disposition as envisaged in section 26 of the Insolvency Act 24 of 1936. The alleged impeachable disposition relates to a payment the second applicant made to the Trust during the period 10 February 2016 to 29 June 2020. The salient grounds upon which the applicants seek the sequestration of the Trust are the following:
- 4.1 that the Trust was unable to pay its debts;
 - 4.2 that the Trust had committed acts of insolvency;
 - 4.3 that the sequestration of the Trust will be for the benefit of its creditors.

[5] From the papers filed of record and submissions made by the parties, it appears that on 25 January 2024, the applicants issued summons against the Trust in which they seek the setting aside of the alleged unlawful disposition made by the second respondent to the Trust. The applicants are seeking for an order directing the Trust to make payment in the amount of R12, 140, 640.25.

[6] The Trust is defending the applicants' claim and has also filed a counterclaim.

[7] The action proceedings are pending before this court.

[8] The respondents oppose the order sought on the following grounds:

8.1 that the matter is not urgent and should be struck off the roll;

8.2 that the applicants lack locus standi to bring the application;

8.3 that the applicants' claim has prescribed; and

8.4 that the application is *lis pendens*.

Urgency

[9] In terms of Uniform Rule 6(12), an applicant is required to set out the circumstances which justify the hearing of an application on an urgent basis and the basis on which it contends that it would not obtain substantial redress at a hearing in due course. The pertinent question is whether the applicant has set out objective grounds, why the matter is urgent and whether or not the applicant has explained in their founding affidavit why they cannot get substantial redress at a hearing in due course.

[10] The first issue to be determined is whether the applicant has set out objective grounds why the matter is urgent and whether or not the applicant has explained in its founding affidavit why it cannot get substantial redress at a hearing in due course.

[11] In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*¹ the court stated the following:

“[6] The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.

[7] It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his case in that regard.”

[12] In its founding affidavit, in support of its claim that the matter is urgent for the following reasons. It was submitted on behalf of the applicants that the matter is urgent and cannot be heard in the ordinary course and that they will be unable to obtain substantial redress in due course. It is the applicants' assertion that proceeding to recover the alleged unlawful disposition in the ordinary course will prejudice the applicants in that the Trust was dissipating its assets which will make it impossible for the unlawful disposition to be recovered. Further, it was submitted that the liquidators of the third applicant

¹ (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

only knew about the identity of the Trust during August 2023. Furthermore, it was submitted that in spite of the pending action proceedings, the respondents do not have a *bona fide* defense.

[13] On behalf of the respondents it was submitted that the urgency pleaded by the applicants is self-created in that although the knew about the identity of the Trust in 2023 and did not seek the sequestration of the Trust. It was further submitted that in view of the fact that the applicants have a pending action wherein the same relief as in the applicants' alternative relief sought in the action proceedings, which amounts to an abuse of process. Furthermore, it was submitted that although the applicants allege that the assets of the Trust are being dissipated, the applicants have not provided any evidence in support of their assertion.

[14] This matter was set down for hearing on 02 July 2025. The question that may be dispositive of this matter is whether the grounds objectively speaking warrant an urgent hearing and reasons if any, why the applicants claim they cannot be afforded substantial redress at a hearing in due course.

[15] The applicants allege as a basis for urgency that the assets of the Trust are being dissipated and that if the applicants were to await the hearing, possibly during 2026, of the action they instituted, by the time the matter is finalised there will be nothing remaining for the Trust's creditors. Nowhere in its founding affidavit do the applicants provide evidence of a continued dissipation of the Trust's assets.

[16] The urgent application was launched on 21 May 2025 when the respondents were served and set down for hearing on 01 June 2025. By the applicants own admission, the liquidators of the third applicant became aware of the identity of Trust in 2023. The reason proffered for the almost two years' delay from the time of gaining the relevant knowledge and the launching of these proceedings was that there is an ongoing dissipation of the assets of the Trust. There is no explanation why the application was only launched in 2025 and why, if there was a dissipation of the Trust's assets, why action proceedings were instituted

during 2024 instead of an urgent application, particularly as the alternative relief sought by the applicants in this application is the same relief sought in the action proceedings.

[17] Having read the documents filed and considered submissions made by counsel, I am of the view that the urgency is self-created and that the applicant has not shown cause why it will not be able to obtain satisfactory redress in due course. Having regard hereto, it is not necessary to deal with the merits of this application.

[18] In the result the following order is made:

18.1 The matter is struck from the roll.

18.2 The applicants are ordered to pay the costs of this application on a punitive scale, jointly and severally, including the costs of counsel.

18.3 The First, Second, Fourth and Fifth Applicants, in their capacities as liquidators, are held personally liable for the said costs.

NP MNGQIBISA-THUSI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing :02 July 2025

Date of Judgment :17 July 2025

Appearances

For Applicants: Adv R. Raubenheimer (instructed by Willemse Potgieter & Babinszky Inc)

For Respondents: Adv A A Basson (instructed by Jaco Coetzee Attorneys)