



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO

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

(3) REVISED

DATE: 25 August 2025

SIGNATURE: [REDACTED]

Case No. 121475/2024

In the matter between:

DAMONS, JUANITO MARTIN N.O.

FIRST APPLICANT

VAN DER MERWE, ELZERI JANE N.O.

SECOND APPLICANT

And

BEZUIDENHOUT, LEONARD FRANCOIS

RESPONDENT

Coram:

Millar J

Heard on: 18 August 2025

Delivered: 25 August 2025 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 14H00 on 25 August 2025.

ORDER

It is Ordered:

- [1] The application is dismissed.
 - [2] There is no order as to costs.
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JUDGMENT

MILLAR J

- [1] The applicants are the liquidators of a company called CGB Capital (Pty) Ltd (in liquidation) (CGB). These proceedings have been instituted against the respondent in terms of section 34(1)(2) of the Companies' Act¹. The applicants seek an order that the respondent (Mr. Bezuidenhout), who had rendered services to CGB repay to the insolvent company, R533 650.00.

¹ 61 of 1973.

- [2] The factual matrix upon which this application is brought is not contentious and largely common cause. On 5 January 2023, an application was brought for the liquidation of CGB. A final winding up order was subsequently granted on 27 February 2024. In terms of section 348(1) of the Companies' Act, the effective date for the liquidation is 5 January 2023.
- [3] During November 2022, payment of the proceeds of an insurance policy in the sum of R34 962 693.60 was paid into the trust account of the attorney's for CGB. Subsequent thereto, CGB's attorney, Mr. Pienaar, approached Mr. Bezuidenhout and introduced him to Mr. Fourie, the director of CGB.
- [4] An agreement was reached that, acting as a consultant, Mr. Bezuidenhout would provide legal and other advice to Mr. Fourie and CGB. The scope of the advice was not limited but germane to the present proceedings and encompassed advice regarding the disposition of the proceeds of the insurance policy and subsequently thereto regarding the liquidation proceedings which were unsuccessfully opposed by CGB. It is not in dispute that Mr. Pienaar and Mr. Fourie both knew that Mr. Bezuidenhout had previously practiced as an advocate and had been removed from the roll during 2011.²
- [5] The onus is on the person who opposes the granting of the order to establish circumstances which would move the Court not to grant otherwise.³ Put differently, in the present case, since Mr. Bezuidenhout has already been paid, he need only establish that the applicants are not entitled to the order sought.

² *Pretoria Society of Advocates and Another v Geach and Others* 2011 (6) SA 441 (GNP); *General Council of the Bar of South Africa v Geach and Others* 2013 (2) SA 52 (SCA).

³ *Lane NO v Olivier Transport* 1997 (1) SA 383 (C).

- [6] The terms of the agreement entered by Mr. Bezuidenhout and Mr. Fourie were that:
- [6.1] He would, as a legal consultant, provide advisory services to Mr. Fourie and the entities in which he was involved for an agreed hourly fee.
- [6.2] He would be paid by Mr. Pienaar after he had rendered an invoice for work done and services rendered and that such payment would be made from the trust account of Mr. Pienaar.
- [6.3] He would only render an invoice when at least ten hours of work had been done; and
- [6.4] His invoices would be payable upon presentation.
- [7] Mr. Bezuidenhout described the entirety of the scope of the work done by him in the following terms:

"Over the course of the following months, until the company was liquidated, and Mr. Fourie was sequestered in February 2024, I advised on many issues. These included the policy, many attempts at formulating a repayment plan to creditors, the looming liquidation and sequestration applications and the consequences thereof, various legal actions instituted, and the effect on all the companies which were inter-linked with CGB Capital (Pty) Ltd. I also drafted documents which I provided to Mr. Pienaar and Mr. Fourie in draft form for their consideration and use should they wish to do so. If they wished to make amendments, I would amend the documents as they wished, and then provide the document in finalized form."

[8] Over the period 14 January 2023 until 5 December 2023, Mr. Bezuidenhout delivered 18 invoices to Mr. Pienaar. Each invoice was addressed to Mr. Pienaar's law firm, Pienaar Kemp Inc and reflected that it was in respect of "CGB Capital (Pty) Ltd" or "CGB Capital and Others." It is not in issue that the money held in the trust account on behalf of CGB by Mr. Pienaar was the property of the company or that the payments or dispositions were made from it to settle the invoices of Mr. Bezuidenhout. For purposes of the present case, whether the payments themselves were made from the bank account of CGB or by Mr. Pienaar on its behalf is of no moment.⁴

[9] The case for the applicants is that the payments made to Mr. Bezuidenhout constitute dispositions which are void. It was argued that they are void on two grounds. The first is that because Mr. Bezuidenhout was unable to produce satisfactory proof to the enquiry of the fact that he had done the work and rendered the services in respect of the invoices, the payments made to him are void. The second is that insofar as it may be found that he did in fact render the services and render the work reflected in the invoices, this was done in contravention of the Legal Practice Act⁵ (LPA). I intend to deal with each of these in turn.

[10] Section 341(2) of the Companies' Act provides:

"Every disposition of its property (including rights of action) by any company being wound-up and unable to pay its debts made after the commencement of the winding-up, shall be void unless the court otherwise orders."

[11] In *Gazit Properties v Botha & Others NNO*,⁶ it was held that:

⁴ *Van Wyk Van Heerden Attorneys v Gore NO and Another* 2023 (1) SA 80 (SCA) at para [16] & [23].

⁵ 28 of 2014.

⁶ 2012 (2) SA 306 (SCA) at para [11].

"The general test of what constitutes a disposition in the ordinary course of business is well established. In Estate Wege v Strauss 1932 AD 76 the matter concerned a transaction between a professional bookmaker (Strauss) and his client (Wege) and this court had to determine whether the transaction had been concluded in Strauss' ordinary course of business. Wessels ACJ found that in the special type of business of that kind it is not normal for a bookmaker to permit the settlement of betting debts to stand over for an unlimited period of time and that the late payment therefore was not done in Strauss' ordinary course of business. He said that 'if a debtor pays a debt in accordance with the stipulations of his contract, then such payment is prima facie made in the ordinary course of business.' This means that one first has to have regard to the nature of the obligation in terms of which the disposition or payment was made. This was made clear by Van Winsen JA in Hendriks NO v Swanepoel 1962 (4) SA 338 (A) at 345B where he said the following:

"Die Hof benader die vraag of 'n transaksie in die gewone loop van sake geskied het, objektief waneer hy hom afvra, in ag genoeme die voorwaardes van die ooreenkoms en die omstandighede waaronder dit aangegaan is, die bedoelde ooreenkoms een is wat normaalweg tussen solvent besigheids mense aangegaan sou word."

[12] In *Griffiths v Janse van Rensburg and Another NNO*,⁷ the position was expressed as follows:

"It seems to me that what the cases primarily focus on, and what was overlooked in Klerck v Kaye, is the nature of the business relationship between the insolvent and the recipient at the time the disposition was made, rather than the general nature of the business taken by the insolvent. Thus, in Gazit Properties, although the manner in which the business in question was conducted fell foul of the Bank's Act, the relationship between the parties was one constituted by an enforceable contract of loan. The disposition was the repayment of the loan in accordance with

⁷ 2016 (3) SA 389 (SCA) at para [18].

the terms of the contract. Ordinary, solvent business people would not shrink from such a transaction."

- [13] It is clear from the authorities quoted that for a disposition to be void and for a Court to decline to exercise its discretion to order otherwise, the disposition must not have been made *inter alia* in the ordinary course of business of the insolvent party.
- [14] In the present matter, it is not in issue that the purpose for which Mr. Fourie had engaged Mr. Bezuidenhout – to give advice about the payment of creditors from the proceeds of the insurance policy and thereafter in respect of both advice and the drafting of documents in respect of the liquidation proceedings was in the ordinary course of the business of CGB. The terms of the agreement entered between Mr. Fourie and Mr. Bezuidenhout were that he would furnish invoices after 10 hours' worth of work and that these would be paid on demand, and it is undisputed that this is in fact what occurred.
- [15] Insofar as the dispute as to whether the work was done or not is concerned, this was raised in direct consequence of the inability of Mr. Bezuidenhout to provide documentary proof that he had in fact done the work for which he had invoiced. The applicants were aware of the reasons that Mr. Bezuidenhout was unable to provide proof to their satisfaction having been informed of these at the enquiry. He re-iterated these in the present matter as follows:

"At present, I reside in a rondavel with very limited space. I do my work on an old Toshiba laptop which has very limited storage capacity. Therefore, as soon as I had finalised any work, forwarded same to the party concerned, and received payment, I delete everything from the laptop save for the invoice, to clear space for future work."

- [16] It is not in issue that all the work that was done by Mr. Bezuidenhout for Mr. Fourie, was done in circumstances where Mr. Pienaar was able to ascertain what was done. Mr. Pienaar is a practicing attorney and there is an obligation upon him to keep proper records of all work done or procured by him on behalf of his client. He after all, was the attorney for both Mr. Fourie and CGB.⁸
- [17] In the present matter, Mr. Bezuidenhout made clear that he was not a legal practitioner and disclosed that his name had been removed from the roll. At all material times, Mr. Fourie and Mr. Pienaar were aware of this. On several occasions, besides consulting with Mr. Fourie and Mr. Pienaar, Mr. Bezuidenhout also consulted with Mr. Gert van der Merwe who was the attorney for the liquidating creditor and the attorney who conducted the enquiry and who now acts on behalf of the applicants.
- [18] In at least two of his invoices, dated 14 February 2023 and 23 February 2023, Mr. Bezuidenhout recorded that he had consulted with Mr. van der Merwe.
- [19] Mr. van der Merwe did not depose to an affidavit in support of the allegations contained in the founding affidavit. He instead deposed to an affidavit which was attached to the replying affidavit in which he confirms that he conducted the insolvency enquiry.
- [20] Inexplicably, neither the applicants nor he, shed any light on his personal knowledge of what was or was not done (and its nature) by Mr. Bezuidenhout considering he consulted with him. There is no denial that at least insofar as the two invoices are concerned, that Mr. Bezuidenhout did not do what he set out therein and for which he was paid.

⁸ *Symes NO and Another v De Vries Attorneys Incorporated and Another* [2023] ZAGPJHC777 10 July 2023 at para [13].

[21] There is no suggestion that the relationship between Mr. Fourie, CBG and Mr. Pienaar with Mr. Bezuidenhout was ever anything other than an arm's length commercial transaction. Had Mr. Bezuidenhout not done the work for which he had invoiced, Mr. Pienaar would not have effected payment to him on each of the invoices that were presented to him.⁹ For this reason, I am of the view that the dispositions made to Mr. Bezuidenhout by way of payment of his invoices are not void. This is however not dispositive of the matter.

[22] The second ground upon which the applicants argued that the dispositions made to Mr. Bezuidenhout are void is because the services rendered by him were done so in circumstances where he breached section 33 of the LPA.

[23] The section provides:

- "(1) Subject to any other law, no person other than a practicing legal practitioner who has been admitted and enrolled as such in terms of this Act may, in expectation of any fee, commission, gain or reward –*
- (a) appear in any court of law or before any board, tribunal or similar institution in which only legal practitioners are entitled to appear; or*
 - (b) draw up or execute any instruments or documents relating to or required or intended for use in any action, suit or other proceedings in any court of civil or criminal jurisdiction within the Republic.*
- (2) No person other than a legal practitioner may hold himself or herself out as a legal practitioner or make any representation or use any type of description indicating or implying that he or she is a legal practitioner.*
- (3) No person may, in expectation of any fee, commission, gain or reward, directly or indirectly, perform any act or render any service which in terms of any other law may only be done by an advocate, attorney, conveyancer or notary, unless that person is a practicing advocate, attorney, conveyancer or notary, as the case may be.*

⁹ *Die Dros (Pty) Ltd and Another v Telefon Beverages CC and Others* 2003 (4) SA 207 (C) at para [28].

(4) *A legal practitioner who is struck off the Roll or suspended from practice may not –*

- (a) *render services as a legal practitioner directly or indirectly for his or her own account, or in partnership, or association with any other person, or as a member of a legal practice; or*
- (b) *be employed by, or otherwise be engaged in a legal practice without the prior written consent of the Council, which consent may not be unreasonably withheld, and such consent may be granted on such terms and conditions as the Council may determine."*

[24] It is not in issue that Mr. Bezuidenhout did not hold himself out to be a legal practitioner or appear as such or purport to represent himself as rendering legal services. Furthermore, he was neither employed nor otherwise engaged by Mr. Pienaar. He was engaged by Mr. Fourie.

[25] The crux of the argument as to what was contended to be Mr. Bezuidenhout's breach of section 33 of the LPA was that he had breached section 33(1)(b) where he had drafted documents or effected amendments to documents at the instance of Mr. Fourie or Mr. Pienaar. In this regard, the applicants pointed to the invoices that had been submitted by Mr. Bezuidenhout.

[26] The invoices, besides recording the hours and the hourly rate contained descriptions of what was done and included:

"Consultations with attorney, client, attorney Gert van der Merwe, draft and finalise documents and oral and telephonic advice."

And

"Peruse and consider urgent application, draft and finalise application."

And

"Consultations with attorney, client, draft and finalise correspondence and oral advice."

And

"Consultations with attorney, client, draft and finalise repayment plan and correspondence."

And

"Consultations with attorney, client, draft and finalise documentation and correspondence, oral advice, peruse documentation and draft answering affidavits."

[27] What is clear from the way in which the work is described, is that this has been formulated in a way legal practitioners and in particular referral advocates invoice the firms of attorneys that instruct them. This is hardly surprising given that prior to his removal from the roll in 2011, Mr. Bezuidenhout had practiced as an advocate for 25 years. It is therefore not unreasonable that he chose to formulate the description of the work done in his invoices in this way. However, does the mere description of the work in the way that it was, elevate it to a breach of section 33(1)(b)?

[28] It was argued for the applicants that because Mr. Bezuidenhout had now "admitted" to the preparation of documents which Mr. Fourie "intended for use" in the liquidation proceedings, he had breached section 33(1)(b) of the LPA. However, section 33(1)(b) cannot be regarded in isolation. It must be read together with section 33(3) which provides that it is only in respect of services

rendered where in terms of the law, these may only be rendered by a legal practitioner.

- [29] It is self-evident that the preparation of any draft document is not the exclusive preserve of legal practitioners. There would be nothing untoward were Mr. Fourie (in the present case) to have sent to Mr. Pienaar a draft letter or draft affidavit or for that matter even a draft point by point answer to a summons for his consideration. This occurs routinely in legal practice where in particular corporate clients who often have persons who are legally qualified, although not admitted or in practice, preparing draft documents.
- [30] Documents are only "intended for use" in legal proceedings when they are introduced into the legal proceedings. For example –
- [30.1] In the case of affidavits, once the deponent has signed the affidavit before a commissioner of oaths.
- [30.2] In the case of a summons, only once this has been signed by an attorney¹⁰.
- [30.3] In the case of a plea or other pleadings in the High Court, by an attorney with rights of appearance or by both an attorney and an advocate.
- [31] Until properly signed the document can never be said to be "intended for use" in court proceedings. The drawing up of draft documents of whatever nature is not something that is reserved in law to be done only by a practicing legal practitioner. For this reason, I find that Mr. Bezuidenhout did not act in contravention of section

¹⁰ Of course, where private persons litigate in person without the services of a legal practitioner, they are entitled to sign any documents they file but this is not the case in the present matter.

33 of the LPA and that *ipso facto*, any payments made to him are in consequence of that void.

[32] For the reasons set out above, I find that the dispositions made by CGB to Mr. Bezuidenhout are not void and for that reason, the application fails.

[33] Since Mr. Bezuidenhout appeared in person, there will be no order for costs.

[34] It is ordered:

[34.1] The application is dismissed.

[34.2] There is no order for costs.


A MILLAR

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:

18 AUGUST 2025

JUDGMENT DELIVERED ON:

25 AUGUST 2025

COUNSEL FOR THE APPLICANTS:

ADV. HP WESSELS

INSTRUCTED BY:

VAN DER MERWE & ASSOCIATES

REFERENCE:

RESPONDENT:

IN PERSON