IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case number: 4437/2024

In the matter between:

FIRST RAND BANK LTD	**FIRST APPLICANT**
INVESTEC BANK LTD	**SECOND APPLICANT**
and	
AZRAPART (PTY) LTD	**FIRST RESPONDENT**
THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	**SECOND RESPONDENT**

Neutral Citation: *First Rand Bank Ltd and Another v Azrapart (Pty) Ltd and Another* (4437/2024) [2025] ZAFSHC 263 (27 August 2025)

Coram: Loubser J

Heard: 8 August 2025

Delivered: 28 August 2025

Summary: Application for leave to appeal – whether the trial court should have found abuse and ulterior motive on part of applicants instead of placing the first respondent under supervision and business rescue in terms of s 131 of the Companies Act 71 of 2008.

ORDER

1 The application for leave to appeal is dismissed.

2 Costs of the application shall be costs in the business rescue of the first respondent on the attorney and client scale.

JUDGMENT

Loubser J

[1] This is an application by the first respondent for leave to appeal against the order and judgment of this court on 5 June 2025 placing the first respondent under supervision and business rescue proceedings in terms of s 131 of the Companies Act 71 of 2008. The application is based on the premise that there is a reasonable prospect that an appeal would be successful.

[2] The first respondent owed the two applicants a total outstanding amount of R2.3 billion at the time the main business rescue application was heard by the court. This outstanding amount was not in dispute between the parties, nor was there any dispute concerning the fact that the first respondent was unable to pay it. Furthermore, it was the case for the applicants that the first respondent can be successfully rescued. On the papers before the court, such prospect was not disputed by the first respondent. The court consequently found that there were strong indications that the first respondent is in financial distress.

[3] These facts established the jurisdictional requirements for placing the first respondent under supervision and commencing business rescue proceeding as contemplated in s 131(4) of the Companies Act 71 of 2008. In terms of that section, a court may make such an order if it is satisfied the company is financially distressed, that the company has failed to pay over any amount in terms of an obligation under contract,

or it is otherwise just and equitable to do so for financial reasons, and there is a reasonable prospect for rescuing the company. In my view, there is no reasonable prospect that another court would find differently on the aforesaid facts that were before the trial court.

[4] Notwithstanding, the application for business rescue was vigorously opposed by the first respondent. It's defence mainly consisted in the allegation that it was in the process of finalizing a transaction with a company registered in the UK. In terms of this transaction the first respondent would receive a cash injection of R2.6 billion from the company, which is known as Redcore Hospitality Holdings Limited (Redcore). In an affidavit filed on behalf of the first respondent, it undertook to make payment of that R2.6 billion to the applicants, once received, which would be more than sufficient to cover the liability of the first respondent towards the applicants.

[5] As things turned out, different courts of this Division have postponed the business rescue proceedings for over a period of nine months to allow this transaction to come to fruition, because it speaks for itself that the first respondent would no longer be in financial distress upon receipt of the R2.6 billion. When the application was finally heard by this court on 28 November 2024, it was still not clear whether Redcore would definitely pay the amount in question to the first respondent. The court consequently made certain orders on 27 March 2025 for supplementary affidavits to be filed by the parties in order to be informed of the progress made by the first respondent in obtaining the promised Redcore funds.

[6] After the filing of the supplementary affidavits as ordered, the court came to the conclusion in its final judgment dated 5 June 2025 that, on a balance of probabilities, Redcore will not be able to provide the R2.6 billion injection to the first respondent soon, or at all. The court found that the matter then needed to be brought to finality in the interests of justice, and made the order placing the first respondent under supervision and business rescue proceedings.

[7] For reasons that will appear more fully later herein, it needs brief mentioning that three days before the application for business rescue was heard in court, the first respondent filed a substantive application for an order directing that oral evidence be heard on the issue whether the representative of the first respondent, Mr Georgiou, had signed the cross guarantees on which the applicants had also relied when claiming that

the first respondent owed them R2.6 billion. The application was made because the applicants had alleged that it is Mr Georgiou's signature that appeared on the cross guarantee papers, while the first respondent denied it vehemently. According to the first respondent, it had expert evidence at its disposal showing that the signatures of Mr Georgiou were forged on the documents. It was contended on behalf of the first respondent that this dispute could not be resolved on the papers and that a referral to the hearing of oral evidence was called for.

[8] However, at the hearing of the application, it was pointed out on behalf of the applicants that the quantum of the cross guarantees represented only a negligible 12% of the total indebtedness of the first respondent towards the applicants. The court was then informed that, as a result, the applicants were no longer relying on this debt in their application to have the first respondent placed in business rescue.

[9] Since there was subsequently no *lis* between the parties any more on the issue of the signatures of Mr Georgiou, the court found that the issue had become moot. It therefore dismissed the referral application in its judgment of 27 March 2025.

[10] I now turn to the application for leave to appeal itself. In the Notice of Application for leave to Appeal, it is contended on behalf of the first respondent that the court has erred in the following respects: by dismissing the application for the referral of the issue of Mr Georgiou's signature for oral evidence, and by placing the first respondent in business rescue. It is contended that a referral could have justified an inference of bad faith, ulterior purpose, and abuse of process on the part of the applicants, which would preclude them from seeking to place the first respondent into business rescue. As for the order of business rescue, it is contended that the court had erred in finding that the jurisdictional requirements had been satisfied, and in finding that the first respondent was in financial distress and unable to pay its debts. In this respect the court has failed to take into account that the applicant had an ulterior motive and that the application for business rescue constituted an abuse of process that was not supported by the facts or the law, it is contended.

[11] Further, that the court did not attach sufficient weight to Redcore's confirmation regarding its accessible funding of R2.6 billion, in particular that the court ignored

Redcore's written confirmation dated 8 May 2025 that the funding was in place. It is further contended that it was neither just nor equitable for the first respondent to be rescued for financial reasons.

[12] At the hearing of the application for leave to appeal, Mr. Lüderitz, appearing for the first respondent, focused mainly on the alleged abusive conduct of the applicants which placed it in a vulnerable position. He submitted that the first respondent had pleaded in its answering affidavit that the applicant sought to advance a strategy of placing it under financial pressure by accelerating all of the first respondent's debts, and that this amounted to an abuse. The first respondent had pointed out in their answering affidavit that this conduct started when the applicants proposed a deal in terms of which they would have been paid the indebtedness by the first respondent and would have retained significant equity in the first respondent, in exchange for not foreclosing on the first respondent as they had threatened. These terms were not acceptable to the first respondent initially, but under the pressure and following the coercion of the applicants, Mr Georgiou signed the deal. However, the other two trustees of the Michael Family Trust whose consent was also required, refused to sign the deal.

[13] Mr Lüderitz further pointed out that the first respondent claimed in its answering affidavit that the applicants then elected to invoke the acceleration clause in the agreements to demand the entire outstanding balance of their facility of more than R2.3 billion within three days of their demand. This was done only as a pretext for seeking to justify the business rescue application.

[14] Lastly, Mr. Lüderitz contended that the dispute of fact on the papers concerning the question whether Mr Georgiou's signatures on the cross guarantees are forged, was material to the adjudication of the application. The hearing of oral evidence in this respect might have justified an inference of bad faith and ulterior purpose against the applicants, which would preclude them from seeking to place the first respondent in business rescue.

[15] This court was also criticized because it did not mention or engage the first respondent's case concerning the abusive conduct of the applicants in its judgment. Here reference was made to what was stated by the Constitutional Court in *Vodacom (Pty) Ltd*

v Makate[1] as follows: 'a court will have failed in its constitutional duties to give the case proper consideration and to give reasons for its decision if the court's judgment does not contain adequate reasons evidencing such proper consideration.'

[16] The question now remains whether there is a reasonable prospect that a court of appeal would uphold all or some of these submissions and come to a different conclusion than the one reached by this court. I do not think that there is such a reasonable prospect for the following reasons:

a) Another court would not find that a referral for the hearing of oral evidence would have justified the inference of bad faith and ulterior purpose on the part of the applicants. This is so because there is no allegation or indication on the application papers that the applicants themselves were complicit in any forgery of the signatures of Mr Georgiou. They were only in possession of cross guarantees that *prima facie* appeared to bear his signatures, and they had available witnesses who would apparently confirm that they were present when he had signed. In any event, the cross guarantees and the signatures on it became irrelevant after the applicants had abandoned their reliance on them at the hearing of the application for business rescue.

b) No other court would find on the papers that the first respondent is not in financial distress and unable to pay the debts.

c) No other court would attach any weight to the submission that Redcore had confirmed that the funding of R2.6 billion was in place and that it had access to such funds. It would clearly appear from the papers that no affidavits by Redcore were presented by the first respondent, but only confirmatory letters that constituted inadmissible hearsay in the circumstances.

d) No other court would conclude that the applicants were acting with an ulterior motive when they proposed the deal mentioned above, simply because the deal never came to life because the other trustees refused to sign the deal. In addition, the applicants were entitled to accelerate the debt of the first respondent in terms of the acceleration clauses appearing in the agreements between the parties. Therefore, in my view, no other court would find an ulterior motive in the acceleration of the debt. It would rather be found that the applicants only wanted to get paid what they were entitled to.

e) As for the court's failure to engage the version of the first respondent in its judgment relating to abuse and ulterior motive on the part of the applicants, I am of the

---

[1] *Vodacom (Pty) Ltd v Makate* [2025] ZACC 13 para 61.

view that no other court would find that the version of the first respondent in these respects raised creditworthy, plausible and tenable issues, in light of what has been set out immediately above. After all, in *National Director of Public Prosecutions v Zuma*[2] the Supreme Court of Appeal has held that a court may only reject the respondent's version in motion proceedings if it consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.

[17] In the premises, the application for leave stands to be dismissed. As for costs, I regard it as appropriate to order costs on the attorney and client scale, to be costs in the business rescue of the first respondent.

[18] I make the following order:

1 The application for leave to appeal is dismissed.

2 Costs of this application shall be costs in the business rescue of the first respondent on the attorney and client scale.

[redacted]

PJ LOUBSER

JUDGE OF THE HIGH COURT

---

[2] *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA) para 26.

Appearances

For the applicants:	M Antonie SC
Instructed by:	Edward Nathan Sonnenbergs Inc.
	c/o Phatshoane Henney Inc.
	Bloemfontein
For the first respondents:	K W Lüderitz SC
Assisted by:	D Sive
Instructed by:	Fluxmans Inc,
	c/o EG Cooper Majiedt Inc.
	Bloemfontein