

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2023-064626

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
19 SEPTEMBER 2025
DATE [REDACTED]
SIGNATURE [REDACTED]

In the matter between:

EVENING SHADE PROPERTIES 56 (PTY) LIMITED

Applicant

and

**LETS CARE SOUTH AFRICA NPC
SOCIAL HOUSING REGULATORY AUTHORITY**

First Respondent
Second Respondent

AND

In the matter between:

NEDBANK LIMITED

Applicant

and

**EVENING SHADE PROPERTIES 56 (PTY) LIMITED
LETS CARE SOUTH AFRICA NPC
SOCIAL HOUSING REGULATORY AUTHORITY**

First Respondent
Second Respondent
Third Respondent

AND

In the matter between:

SOCIAL HOUSING REGULATORY AUTHORITY

Applicant

and

EVENING SHADE PROPERTIES 56 (PTY) LIMITED
NEDBANK LIMITED
LETS CARE SOUTH AFRICA NPC

First Respondent
Second Respondent
Third Respondent

Delivered: *This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date and time for hand-down is deemed to be 10:00 on 19 September 2025.*

JUDGMENT

VAN EEDEN AJ

[1] Three interlinked opposed applications came before Court:

- a. In the first matter, Mr C Gibson appeared on behalf of the applicant, Evening Shade Properties 56 (Pty) Limited ("Evening Shade"). This is a winding-up application against Lets Care South Africa NPC ("Lets Care") where a provisional winding-up order had been issued by Vally J on 5 August 2024. Shortly thereafter and during August 2024, provisional liquidators were appointed.
- b. In the second matter, Nedbank Limited ("Nedbank") was represented by Mr NJ Horn and Ms LV Swandle. On 25 November 2024, Opperman J granted Nedbank leave to intervene in Evening Shade's application. Nedbank also seeks the final winding-up of Evening Shade.

- c. In the third matter, Mr BM Lecoge SC and Mr CI Mokwena represented the Social Housing Regulatory Authority (“SHRA”). SHRA launched what it termed a counter-application for an order in inter alia the following terms:

- “1. Declaring that once this Honourable Court has granted an order for the administration of a social housing institution in terms of section 12 of the Social Housing Act 16 of 2008, no creditor may bring an application for the provisional and final liquidation of the social housing institution in question until the Social Housing Regulatory Authority (“SHRA”) has completed the administration process, or without the leave of this Honourable Court.
2. Setting aside the provisional liquidation order in terms of section 149(2) of the Insolvency Act 24 of 1936 (“the Insolvency Act”).”

[2] I find it convenient to first deal with SHRA’s counter-application and its opposition to the final winding-up order sought by both Evening Tide and Nedbank. SHRA seeks the setting aside of the provisional liquidation order granted by Vally J on 5 August 2024. Given the appointment of provisional liquidators and the Master’s involvement following the provisional winding-up order, it seems obvious that the Master and the provisional liquidators are necessary parties and that SHRA’s failure to join them to its counter-application constitutes a material non-joinder. However, I do not intend to dismiss the counter-application solely on this ground.

[3] The parties have been at loggerheads since the provisional winding-up order was granted, SHRA claiming that the administration order that it had obtained on 23 June 2023 remained in place. It refused to acknowledge the authority of the provisional liquidators. The following terms of the administration order SHRA obtained before Tshombe AJ are relevant to these three applications:

- “2. The rights and obligations of **the chairperson, members of the board, managers, executive and/or senior staff** of the First Respondent are hereby suspended, pending the conclusion of the Applicant’s forensic investigations into the affairs of the First Respondent.
3. The first respondent is hereby placed under administration of the Applicant, in terms of section 12 of the Social Housing Act, 16 of 2008, with the following powers and duties:

- 3.1 *Applicant shall take immediate control of, and be in the place of, the board of directors of the First Respondent, manage the business and operations of and concerning the First Respondent, together with all assets and interests relating to the business of the First Respondent;*
- 3.2 *The Applicant shall take control of the cash, cash investments, shares and other security, as well as other assets owned, held or administered by or on behalf of the First Respondent; and*
- 3.3 *The Applicant is permitted to engage such assistance of a legal, accounting, actuarial, administrative or other professional as the Applicant may deem necessary, and to defray reasonable expenses and charges thus incurred from the assets owned, administered or held by or on behalf of the First Respondent.*
4. *The Applicant shall appoint, in its sole discretion, a suitably qualified person to manage and administer the First Respondent's affairs as administrator of the Sondela Village Housing Project, during the abovementioned period.*
5. *The Applicant's administrator shall run, at the Applicant's discretion, the administrative and managerial affairs of the Sondela Village Housing Project and shall be the sole representative dealing with third parties, including but not limited to the First Respondent's creditors.*
6. *The Applicant is authorised to take such further steps as may be necessary in terms of the Act and/or any other applicable law, during the administration of the First Respondent to achieve the First Respondent's restoration to viability."*

[4] Mr Lecoge SC argued that because the section 12 administration order that was granted, no order could issue in respect of the winding-up of Lets Care. In particular, he relied on section 12(9) of the Housing Act which reads as follows:

"12(9) If the High Court grants an order placing the institution under the administration of the Regulatory Authority, the Regulatory Authority –

- (a) must manage the institution effectively and efficiently;
- (b) may remove the accreditation of the social housing institution;
- (c) may transfer the housing stock or rights of the social housing institution to another social housing institution prepared to accept such transfer on such terms and conditions as may be agreed at the time; or

(d) where appropriate, institute legal proceedings for the winding-up of the institution.”

- [5] With reference to section 12(9)(d), Mr Lecoge submitted that only SHRA has the right to institute winding-up proceedings against an institution under its administration. Although the founding papers contained a contention that the effect of the administration order was that SHRA stepped into the shoes of Lets Care, during argument Mr Lecoge SC correctly conceded that that was not the case. Lets Care’s assets and liabilities remained vested in it and the effect of the administration order was limited to vest the management functions described in the Housing Act in SHRA. SHRA took over the “*rights and obligations*” of the persons highlighted in paragraph 2 of the administration order, namely the chairperson, members of the board, managers, executive and/or senior staff of Lets Care. The concession notwithstanding, Mr Lecoge argued that SHRA’s exercise of the powers and functions assigned to it in terms of the Housing Act and administration were being hampered by the provisional order.
- [6] The founding papers (paragraph 51) stated that there was uncertainty because the provisional liquidators insisted on acting in terms of the provisional liquidation order without regard to the existence of the administration order. It was stated (paragraph 52) that the administration order and the provisional liquidation order have conflicting and opposing objectives. On the one hand, the administration order contemplates the continued existence of Lets Care (or the Sondela Village Project as a social housing project), its restoration to financial viability for *inter alia* the benefit of creditors and beneficiaries of social housing and protecting the investment of the state in the underlying social housing stock. In contrast, so the argument went, a liquidation pursues the disposal of the assets of Lets Care for the benefit of creditors and culminates in the dissolution of the housing project itself, leaving the legitimate social housing beneficiaries destitute and again placing the liability of housing those beneficiaries on another state housing programme.
- [7] In this context, SHRA contended that section 12(9)(d) was to the effect that only it had the right to launch final liquidation proceedings. It contended (replying affidavit, paragraph 12) that the administration dispensation set out in the

Housing Act amounts to a special dispensation in terms of special legislation which finds application in respect of companies which fall under the regulatory purview of the applicant and the administration order. In consequence, so the argument went, the process pursued in terms of the regulatory purview must be given precedence in the circumstances. Finally, it was contended that during the time period when SHRA was still exercising its powers of administration, a moratorium was created preventing other creditors from seeking a winding-up of the entity under administration.

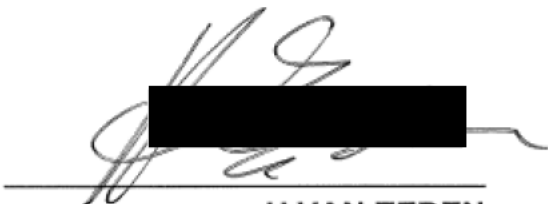
- [8] In its express terms, neither the Housing Act nor the administration order supports SHRA's argument. No moratorium is created by the Housing Act or the administration order. The rights of creditors are not dealt with at all. Section 12(9)(d) does not give SHRA the monopoly on the institution of liquidation proceedings contended for. It serves to provide standing to SHRA should it seek to launch liquidation proceedings. If anything, the scheme of the Housing Act serves to protect the rights of creditors. Section 12(4), for instance, requires SHRA to consult "*with the providers of any debt finance to the institution*" and then to apply to Court for the administration order.
- [9] The rights of creditors are firmly entrenched in insolvency and winding-up legislation. Both Mr Gibson and Mr Horn provided instructive arguments on the contention that the Housing Act amends existing statutory rights. In this matter, Lets Care is a company registered under the Companies Act, 61 of 1973 (the 1973 Act). This is what section 13(5) of the Housing Act requires. The Housing Act does not provide for Lets Care to be treated differently from any other company that is indebted to creditors. Section 344(f) of the 1973 Act provides that a company may be wound-up if it is unable to pay its debts as described in section 345. The 1973 Act continues to apply with respect to the winding-up and liquidation of companies by virtue of Item 9 to Schedule 5 of the Companies Act, 71 of 2008 (the 2008 Act). The moratorium created by business rescue comes with many safeguards relating to creditor participation, strict time periods and the overarching requirement of the need to demonstrate a reasonable prospect that the company will be rescued within the statutory framework if it receives some breathing space.

- [10] The Housing Act does not interfere with the rights of creditors in any manner – not even when a social housing institution is placed under the administration of SHRA. Its aim is different. As the preamble states, its aim is to establish and promote a sustainable social housing environment; to define the functions of national, provincial and local governments in respect of social housing; to provide for the establishment of the Social Housing Regulatory Authority in order to regulate all social housing institutions obtaining or having obtained public funds; to allow for the undertaking of approved projects by other delivery agents with the benefit of public money; to give statutory recognition to social housing institutions; and to provide for matters connected therewith. It follows that the counterclaim cannot succeed.
- [11] SHRA opposed both applications for winding-up. The essence of the opposition is the contentions that underpin the counter-application. SHRA contended that the administration order was granted prior to the provisional order and as such, that the provisional order should not have been granted by virtue of the existence of the administration order. It contended that the administration order overrides the provisional liquidation order. It stated that the two orders have conflicting and opposing objectives and cannot co-exist.
- [12] This reasoning is incorrect. The provisional liquidation order superseded the administration order. After the provisional liquidation order issued, SHRA had no more powers than the board of directors of any other company placed under provisional liquidation. SHRA was required to cooperate with the provisional liquidators, it having taken over the rights and obligations of Lets Care's chairperson, members of the board, managers, executive and/or senior staff.
- [13] SHRA's opposition to the two winding-up applications did not extend beyond the contentions in terms of the Housing Act and the relief claimed in the counter-application. In fact, it admitted Lets Care's indebtedness to Evening Shade and to Nedbank and there are no further grounds of opposition to a final winding-up order.
- [14] I have dealt with SHRA's contentions relating to its status in a final winding-up, as it appeared to me that the stand-off position it had adopted may continue if a

final winding-up order was issued. This was how I understood Mr Lecoge's submissions, and I consequently asked him whether he was inviting me to make an order that the administration order will be superseded by a final winding-up order and that SHRA had to render assistance to final liquidators. That prompted counsel for Evening Shade and Nedbank in reply to request such an order to provide clarity to the parties. Although an order along these lines do not form part of the papers, it was debated, and I consequently intend to incorporate orders on SHRA's future involvement in the affairs of Lets Care.

[15] I make the following orders:

1. Lets Care South Africa NPC is placed under final winding-up.
2. It is declared that the order granted by Tshombe AJ on 23 June 2023 placing Lets Care in administration was superseded by the provisional winding-up order granted by Vally J on 5 August 2023.
3. SHRA is directed to render such assistance to the final liquidators as could have been statutorily demanded of Lets Care's chairperson, members of the board, managers, executive and/or senior staff immediately prior to the order granted by Tshombe AJ on 23 June 2023.
4. The costs of the winding-up applications, including the costs of the extensions of the rule *nisi* issued on 5 August 2024 (with the return date of 18 September 2024, extended to 23 October 2024, then to 25 November 2024, then to 28 July 2025 and finally to 15 September 2025) shall be costs in the winding-up, including the costs of two counsel where so employed, on scale C.
5. The counter-application instituted by the Social Housing Regulatory Authority is dismissed and the Social Housing Regulatory Authority is to pay the costs thereof, including the costs of two counsel where so employed, on scale C.


H VAN EEDEN
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances:

For Evening Shade Properties 56 (Pty) Ltd: C Gibson instructed by Senekal Simmons Inc

For Nedbank Limited: NJ Horn and LV Swandle instructed by Werksmans

For Social Housing Regulatory Authority: MB Lecoge SC and CI Mokwena instructed by Galanzhele Sebela Attorneys Inc

Date heard: 17 September 2025

Date delivered: 19 September 2025