IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no: 3528/2025

In the matter between

VINCENT GREAME LEEACH	**FIRST APPLICANT**
THE EMPLOYEES OF THE FIRST RESPONDENT	**SECOND APPLICANT**

and

BLOEMFONTEIN ABATTOIR (PTY) LTD (In Provisional Liquidation)	**FIRST RESPONDENT**
ELRICH RUWAYNE SMITH N.O.	**SECOND RESPONDENT**
KARABO ANZER MOETSI N.O.	**THIRD RESPONDENT**
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	**FOURHT RESPONDENT**
MASTER OF THE HIGH COURT BLOEMFONTEIN	**FIFTH RESPONDENT**
STANDARD BANK OF SOUTH AFRICA	**INTERVENING CREDITOR**

Neutral Citation: *Vincent Graeme Leach and Another v Bloemfontein Abattoir (Pty) Ltd and Others* (3528/2025) [2025] ZAFSHC 314 (3 October 2025)

Coram: Van Rhyn J

Heard: 31 July 2025

Delivered: 3 October 2025

Summary: Semi-urgent application for order placing company (currently under provisional liquidation) into business rescue – s 131(4) of the Companies Act 71 of 2008 – opposed by intervening creditor on basis that company hopelessly commercially and factually insolvent and no reasonable prospects exists that company could be rescued or that better return for creditors could be obtained. Applicants have set out likely costs of rendering company able to resume its core business and availability of cash to meet its day-to-day expenditure and nature of the resources. Feasible turnaround strategy identified by proposed business rescue practitioners and viability addressed.

ORDER

1 The application is heard urgently in terms of rule 6(12) and applicants' failure to comply with the forms, service and periods as provided for in the Uniform Rules of Court is condoned.

2 The first respondent is placed under supervision and business rescue as contemplated in s 131(4) of the Companies Act 71 of 2008.

3 Stephanus Johannes Marthinus Steyn and Jaco Grobbelaar are appointed as business rescue practitioners of the first respondent as contemplated in section 131(5) of the Companies Act 71 of 2008, with all the powers and duties entrusted to them in terms of the Companies Act 71 of 2008 subject to ratification of such appointments by the majority of the independent creditors' voting interests at the first meeting of the first respondent's creditors.

4 Costs of this application, including the cost of counsel on Scale C shall be paid by the intervening creditor, Standard Bank of South Africa Ltd.

JUDGMENT

Van Rhyn J

[1] The company, Bloemfontein Abattoir (Pty) Ltd (in provisional liquidation) (the Company) historically operated as an abattoir and meat processing facility, specialising in the slaughtering, deboning, processing and packaging of red meat products with its operations conducted in Bloemfontein. The applicants brought a semi-urgent application in terms of s 131(1) read with s 131(4) of the Companies Act 71 of 2008 (Companies Act) to convert the liquidation proceedings of the Company, cited as the first respondent, into business rescue proceedings.

[2] The application is brought by the first applicant, Mr Graeme Vincent Leach (Mr Leach); he is an employee, shareholder as well as the managing and sole director of the Company. Mr Leach is the holder of 50% of the ordinary shares in the Company while the other 50% is held by the Leach Enterprise Trust of which he is a co-trustee. The second applicant is collectively approximately 38 of the employees of the Company who support the application for business rescue as they are of the opinion that the Company could be saved and that it would ensure that they would not form part of the statistics of unemployed members of the community.

[3] The application is opposed by the intervening creditor, Standard Bank of South Africa Limited (the Bank), the applicant creditor for the Company's liquidation. The Company was provisionally wound up in terms of an order of this Court on 29 November 2024. The second respondent, Elrich Ruwayne Smith NO, and third respondent, Karabo Anzer Moetsi NO, were appointed as provisional liquidators on 6 December 2024. The provisional winding up order was postponed and the rule *nisi* extended, by agreement between the parties, on numerous occasions since November 2024, with the final postponement for the matter to be heard on the 31st of July 2025.

[4] The urgent application for placing the provisionally liquidated Company into business rescue was issued on 9 July 2025. The parties exchanged affidavits and heads of argument were filed on behalf of the applicants and the Bank. Having regard to the fact that the rule *nisi* was extended to be heard on 31 July 2025, and that the proposed business rescue practitioners filed a report after investigating the affairs of the Company at the request of Mr Leach, I am satisfied that the matter was indeed ripe for hearing on the semi-urgent roll as submitted by Mr Zietsman SC, counsel on behalf of the applicants.

[5] However, subsequent to the hearing of the application on the 31st of July 2025 and after judgment was reserved, the parties once more attempted to settle the matter. On 8 August 2025 the parties requested the court to provide a further opportunity to settle the dispute with the result that the delivery of the reserved judgment was kept in abeyance pending a possible settlement of the matter. On 28

August 2025, the Registrar was informed that settlement of the matter could not be reached and that the adjudication of the matter by the court is awaited.

[6] It is common cause that the Company is financially distressed within the meaning of s 128(1)*(f)* of the Companies Act. The applicants admit that the deficiency of total liabilities to total assets amounts to R39 630 064. The total assets amount to R22 790 814, with the total liabilities being R62 420 878. The applicants admit that the Company is commercially insolvent in that it is unable to pay its debts as and when such debts become due.

[7] Mr Leech's father, who passed away during 2018, acquired the Company during 1998. At the height of its operations, the Company employed approximately 175 employees. The Company conducted its operations from a premises situated at Erf 2[...], R[...] G[...] Avenue, Bloemfontein under a long-term lease contract concluded with the Department of Rural Development and Land Reform. The lease is for a period of 30 years, 18 of which remain. The lease agreement allows for the Company to sublet the premises, or portions thereof, and affords considerable flexibility in its use and improvement of the premises. The Company is entitled to affect alterations and improvements required for operational purposes or by new legislation and, where such improvements enhanced the value of the premises, to deduct the costs thereof from the rental due. The expenses incurred towards maintaining the property could be applied as a rental credit since the lessor failed to maintain the property in any way. Due to the Company's maintenance toward the property, its rental credit is currently R9 469 798.

[8] According to Mr Leach, the reasons for the financial distress of the Company can be attributed to a combination of internal and external factors which, over time, eroded the Company's liquidity, undermining its ability to meet its financial obligations as they became due and rendered it commercially vulnerable. It is contended that the most significant cause of the financial distress was the outbreak of Foot and Mouth Disease during 2022 which severely disrupted the livestock supply chain across South Africa and particularly in the Free State Province. As a result of the restrictions implemented following the outbreak of the disease, the Company experienced substantial supply shortages, particularly in respect of cattle, which were central to its processing operations. The supply shortages lead to a

dramatic reduction in throughput, turnover and cash flow, while the fixed overhead costs of the Company remained constant and unrelenting.

[9] Several key suppliers were lost by the Company during and subsequent to the Foot and Mouth Disease period primarily due to the inability of the Company to match favourable payment terms, offered by a major competitor, to counter shortages. A further set back was experienced during 2023 when two major customers defaulted on payment of a substantial bad debt of approximately R4 million. This was compounded when Mr. Leech's brother's company failed to pay a debt in the amount of R20 million owed to the Company for stock.

[10] A further factor which, so it is contended, contributed to the financial problems experienced by the Company was operational inefficiencies. The Company was staffed for high-capacity utilisation, around 90%, despite only utilising between 20% and 25% of available capacity which declined even further following the outbreak and subsequent market disruptions.

[11] In addition, Mr Leach contends that his divorce and the fact that he moved from Bloemfontein to Cape Town during 2021 lead to serious deficits in management and left a leadership vacuum at the Company. During the 2022-2024 period, the Company operated without consistent, skilled executive leadership with appropriate turnaround expertise. This resulted in disorganized strategic planning, underperformance and a failure to timeously respond to material changes in the Company's trading conditions. The culmination of these factors led to mounting arrears on creditor accounts, the calling up of facilities by secured lenders, and ultimately, the institution of liquidation proceedings, not only by the Bank but also by an independent creditor, the South African Pork Producers Organisation. The Bank also obtained an order to perfect a General Notarial Covering Bond under Bond No. BN 3[...] under case no 6620/2024 for the sheriff to attach movable assets of the Company.

[12] As part of the founding papers, Mr Leach dealt with the draft business rescue plan (BR Plan) which, it is submitted by Mr Zietsman SC, meets all the practical requirements to satisfy a 'reasonable prospect' as defined in *Oakdene Square*

Properties (Pty) Ltd v Farm Bothasfontein (Kyalami) (Pty) Ltd[1] (*Oakdene Square*). The draft BR Plan, prepared by the proposed business rescue practitioners (BRPs), purports the introduction of post-commencement finance (PCF), secured from Mr. Craig Sumption (Mr Sumption), of R10 million under the auspices of s 135(3)*(b)* of the Companies Act.

[13] Mr Leach contends that the Company's business operations remain viable and capable of rehabilitation, and business rescue would enable debt restructuring, operational continuation and potentially a better outcome for creditors.

[14] In opposing the business rescue application on behalf of the Bank, Mr Van der Merwe argued that the Bank is the Company's single largest creditor and an affected person as contemplated in the Companies Act. The Bank opposes the relief sought on the basis that:

(a) the applicants have not made out a case on the papers for the relief which they apply for;

(b) the evidence proffered by the applicants does not show that there are reasonable prospects of the Company being rescued as contemplated in s 131(4)*(a)* of the Companies Act; and

(c) a liquidation, as opposed to supervision, of the Company would be to the advantage of creditors.

[15] The Bank's contentions for opposing the commencement of business rescue proceedings are, *inter alia*, the following: That the applicants have asserted that it is just and equitable that the Company be placed under supervision for financial reasons, i e a secondary fact, without advancing primary facts from which such conclusions can be drawn. Similarly, the applicants have not advanced any primary facts from which a conclusion can be drawn that there are reasonable prosects that the Company could be rescued. In this regard it is argued that even though the applicants allege that the 2022 Foot and Mouth Disease outbreak led to substantial supply shortages, dramatic reduction in throughput, turnover and cash flow, there is no primary evidence that the said disease had any effect whatsoever on the supply, throughput or cashflow. No financial statements and proof of cattle purchases during

[1] *Oakdene Square Properties (Pty) Ltd v Farm Bothasfontein (Kyalami) (Pty) Ltd* [2013] ZASCA 68; 2013 (4) SA 539 (SCA) (*Oakdene Square*) paras 29-31.

2022 and 2023 have been appended to the founding affidavit. On the contrary, so the argument goes, the applicants own evidence shows that the capacity utilisation for 2021 was 24%, for 2022 it was 25% and for 2023 it was 25%.

[16] Furthermore, the averment that the bad debts in the amounts of R4 million and R20 million caused further financial distress during 2023 lack credible primary evidence to show that these amounts actually constitute 'bad debts'. It is furthermore contended that the claim that the Company was 'over staffed' and that a reduction in the number of employees will significantly contribute to the reasonable prospect of rescuing the Company, has no factual basis in that no evidence as to the number of staff required for the processing of a specified number of units per hour, per day, per week etc., has been provided by the applicants. Therefore, the applicants' founding affidavit is bereft of any evidence to the effect that the reduced number of staff, whether it be 58, 60 or 75 employees, will in fact be capable of processing the number of animals required to meet the production forecast on which the applicants' BR Plan is premised. It is contended that the Company is so hopelessly commercially and factually insolvent that no reasonable prospects exist that the Company could be rescued and/or that a better return for creditors could be obtained in business rescue as opposed to liquidation. The liquidation process has progressed materially with the result that the timing of the application for business rescue is too late. Placing the Company under business rescue at this late stage would prejudice creditors, delay asset realisation and diminish the available estate.

[17] Section 131(4) of the Companies Act provides that a court may make an order placing a company under supervision and commencing business rescue proceedings if the court is satisfied that:

(a) the company is financially distressed;

(b) the company has failed to pay over any amount in terms of an obligation under or in terms of a public regulation, or contract, with respect to employment-related matters; or

(c) it is otherwise just and equitable to do so for financial reasons and there is a reasonable prospect of rescuing the company, or,

(d) it may dismiss the application, together with any further necessary and appropriate orders, including an order placing the company under liquidation.

[18] The definition of 'business rescue' in s 128(1)*(b)* of the Companies Act means: proceeding to facilitate the rehabilitation of a company that is financially distressed by providing for–

(a) the temporary supervision of the company, and of the management of its affairs, business and property;

(b) a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and

(c) the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or stakeholders than would result from the immediate liquidation of the company.

[19] The threshold criterion for deciding whether an order placing a company into business rescue is appropriate is whether there is a reasonable prospect of achieving a rescue and to facilitate the continued existence of a company in a state of solvency and, the secondary goal which is provided for as an alternative in the event that the achievement of the primary goal proves not to be viable, is to facilitate a better return for creditors and shareholders of the company than would result from immediate liquidation.[2]

[20] The concept of 'reasonable prospects' has been defined in *Southern Palace Investments 265* (*Pty*) *Ltd v Midnight Storm Investments 386 Ltd*[3] as follows:

'Whilst every case must be considered on its own merits, it is difficult to conceive of a rescue plan in a given case that will have a reasonable prospect of success of the company concerned continuing on a solvent basis unless it addresses the cause of the demise or failure of the company's business, and offers a remedy therefor that has a reasonable prospect of being sustainable. A business plan which is unlikely to achieve anything more than to prolong the agony, i.e. by substituting one debt for another without there being light at the end of a not too lengthy tunnel, is unlikely to suffice. One would expect, at least, to be given some concrete and objectively ascertainable details going beyond mere speculation in the case of a trading or prospective trading company, of —

[2] *Koen and Another v Wedgewood Village Golf & Country Estate (Pty) Ltd* 2012 (2) SA 378 para 14,

[3] *Southern Palace Investments 265* (*Pty*) *Ltd v Midnight Storm Investments 386 Ltd* [2011] ZAWCHC 442; 2012 (2) SA 421 (WCC).

24.1 the likely costs of rendering the company able to commence with its intended business, or to resume the conduct of its core business;

24.2 the likely availability of the necessary cash resource in order to enable the ailing company to meet its day-to-day expenditure, once its trading operations commence or are resumed. If the company will be reliant on loan capital or other facilities, one would expect to be given some concrete indication of the extent thereof and the basis or terms upon which it will be available;

24.3 the availability of any other necessary resource, such as raw materials and human capital;

24.4 the reasons why it is suggested that the proposed business plan will have a reasonable prospect of success.'[4]

[21] In *Prospec Investments (Pty) Ltd v Pacific Investments 97 Ltd and Another*[5] (*Prospec Investments*) Van der Merwe J held as follows:

'In my judgment it is not appropriate to attempt to set out general minimum particulars of what would constitute a reasonable prospect in this regard. It also seems to me that to require, as a minimum, concrete and objectively ascertainable details of the likely costs of rendering the company able to commence or resume its business and the likely availability of the necessary cash resource in order to enable the company to meet its day to day expenditure or concrete factual details of the source, nature and extent of the resources that are likely to be available to the company, as well as the basis and terms on which such resources will be available, is tantamount to requiring proof of a probability and unjustifiably limits the availability of business rescue proceedings.'[6]

[22] The principles pronounced in *Prospec Investments* was confirmed in *Oakdene Square* with reference to the express wording of s 128*:*

'According to this section 'rescuing the company' indeed requires the achievement of one of the goals in s 128(1)*(b)*. Self-evidently the development of a plan cannot be a goal in itself. It can only be the means to an end. That end, as I see it, must be either to restore the company to a solvent going concern, or at least to facilitate a better deal for creditors and shareholders than they would secure from a liquidation process. I have indicated my agreement with the statement in *Propspec* that the applicant is not required to set out a detailed plan. That can be left to the business rescue practitioner after proper investigation in

[4] Ibid para 24.
[5] *Prospec Investments (Pty) Ltd v Pacific Investments 97 Ltd and Another* [2012] ZAFSHC 130; 2013 (1) SA 542 (FB).
[6] Ibid para 15.

terms of s 141. But the applicant must establish grounds for the reasonable prospect of achieving one of the two goals in s 128(1)*(b)*.'[7]

[23] On behalf of the applicants it is contended that the opposition to the application is premised on the Bank's lack of appreciation between the difference of revenue and cashflow, and following on from this confusion, the Bank's contention that the PCF will be insufficient to pay the Company's expenses until such time as it starts generating revenue. Annexure FA11.1 to the BR Plan sets out the income statement indicating that revenue is projected from the first month after commencing with business rescue proceedings, referred to as Month One, and not only from Month Five, as contended by the Bank. From Month Two, however the Company will only become profitable. The inaccurate statement by the Bank is used to justify an argument that the PCF will run out before the fifth month.

[24] An aspect raised by the Bank is the amount owed to Centlec in respect of the Company's electricity account for the month of December 2024, which amounted to R2 922 556.90. As an abattoir, the Company by its very nature, requires a reliable, uninterrupted supply of electricity to process and refrigerate meat products. Electricity supply was disconnected during September 2024; Centlec indicated the possibility of reconnecting the Company to the electrical grid if 10% of arrears are paid. However, this would still require to Company to pay approximately R3 million to Centlec within 12 months. This would be in addition to servicing its other monthly indebtedness in amounts ranging between R394 595.32 and R693 748.59, in order to prevent further disconnection of the electricity supply. This will be the situation even if the Company only operates at 20% of its capacity. Accordingly, the Bank contends that an amount ranging between R3 million to R4.5 million will have to be expended in the first five months with the sole purpose of securing a constant supply of electricity and will, in any event, be contingent on a decision by Centlec to reconnect the electricity supply.

[25] In reply, Mr Leach explained that the Bank incorrectly assumes that the electricity consumption at the abattoir is directly linked to the level of capacity utilisation or production output. As part of the restructuring process, the Company will implement a number of measures to improve energy efficiency and reduce fixed

[7] *Oakdene Square* para 31.

costs. Previously, the largest portion of the Company's electricity consumption was attributable to the utilisation of two large compressors in the refrigeration plant which maintained the cooling temperature of the cold rooms. One such measure is the deactivation of one of the two compressors. The remaining compressor will be sufficient to meet the reduced storage demand under the scaled back production model proposed in the draft BR Plan. On behalf of the Company, it is contended that this intervention alone will result in an estimated monthly electricity saving of approximately R145 000. Mr Leach confirms in reply that there is an agreement with Centlec to reconnect the Company's electricity supply upon payment of a R250 000 reconnection fee and payment of the arear balance over a twelve-month period.

[26] The Bank contends that the plan that the BRPs will negotiate continued facilities with the Bank will not succeed in that the Bank is not prepared to provide any further credit or to make the facility available to the Company. The Senior Manager[8] submits that the manner in which the indebtedness to the Bank will be dealt with, specifically a once-off payment of approximately R270 000 for the fleet card facility and the recapitalization of arrears on vehicle and asset finance agreements, with ongoing monthly payments, will be wholly insufficient. According to the Bank the Company was unable to make payments of R250 000 per month in reduction of the overdraft facilities. The proposition that it will be able to pay a total amount of R1,5 million per month is regarded as 'fanciful' by the Bank. In any event, the Bank, with a voting interest in excess of 30%, argues that it will not vote in favour of the adoption of the proposed BR Plan.

[27] In the draft BR Plan, no additional credit facilities from the Bank are contemplated. Reference is merely made to the retention of the existing transactional banking infrastructure to support operations. However, given the Bank's refusal to assist and cooperate with the proposals, the Company has indicted that it will utilise alternative banking facilities held with Nedbank. Mr Sumption has committed to inject R10 million in PCF to enable the commencement of slaughtering, processing and sales while restoring the Company's ability to meet essential obligations, pay employees and generate positive cashflow. An amount of R3.3 million is set aside for

[8] Senior Manager: Business Support, Rescue and Recoveries, Personal Business Bank.

immediate payment of critical farmer suppliers to enable them to resume the supply of animals to the abattoir.

[28] The contention that the balance of R6.7 million will be sufficient to pay the Company's expenses until such time as it starts generating revenue from throughput of animals and the sale of meat is criticised by the Bank as being insufficient. In this regard, the month-by-month restart plan is set out in Annexure FA11.1 to the founding affidavit and the income statement, Annexure D to the draft BR Plan. The income statement sets out the revenue and expenses and not the cash-flow. Revenue will be derived from immediate customer sales as forecast and will be earned from Month One. In Month One, revenue of R8 344 000 is projected. Monthly, from Month Two through to Month Five, revenue of R17 880 000 is projected. From the revenue, direct product expenditure (costs payable to farmers who supply livestock), such as cost sales, are deducted. These are projected to be R6 720 000 in Month One and R14 400 000 monthly, from Month Two to Month Five. In addition, overhead costs must be deducted which results in an operating profit. From the operating profit, expenses arising from business rescue activities are deducted to reach a net profit or loss.

[29] The expected projected net loss in Month One of R12 359 434 is of an accounting nature and not a cash flow loss. It is projected that profit will be generated from Month Two, even though it is projected to be a small net profit up to Month Five. On the other hand, the cash-flow projections from the statement, being Annexure F to the BR Plan, are based upon a collection ratio of 65% of invoicing collected in the same month and thereafter further collections of the balances at 30 and 60 days. The projected cash received from customers amounts to R6 283 104 in Month One, R15 762 186 in Month Two, R20 738 817 in Month Three and R20 562 500 in each of Months Four and Five.

[30] According to the BRPs, whose calculations and contentions are supported by Mr Leach, the total cash-flow will be more than sufficient to meet the projected cash-flow expenses during Month One. It has to be kept in mind that the cash receipts will be bolstered by a PCF receipt of R6 301 672 in Month One. The evidence presented by the applicants shows that the draft BR Plan is premised on the Company's historical accounting data information for 2023 and 2024, sound accounting

principles and is furthermore supported by the confirmatory affidavit of Mr Steyn, one of the proposed BRPs. Therefore, the Bank's argument that revenue will only be received from Month Five is evidently based on a failure to appreciate the difference between revenue and cash flow.

[31] In the founding affidavit, Mr Leach states that the PCF will be advanced in tranches, subject to performance milestones and operational oversight and will be used to fund critical expenses such as the settlement of arrear utility accounts, restocking, working capital needs and the commencement of trading. The Bank's argument that Mr Sumption has not agreed to advance the PCF to the Company in business rescue unconditionally and that it can, therefore, only be assumed that security will be required in the form of a notarial bond, appears to be unfounded. Mr Sumption's confirmatory affidavit is appended to the replying affidavit, confirming his willingness and ability to provide a working capital facility of R10 million should the Company be placed in business recue as PCF without requiring any security for the PCF facility. Repayment of the PCF will only occur at the conclusion of the business rescue process after all creditors have been paid and Mr Sumption's claim will rank in accordance with s 135 of the Companies Act.

[32] A further contention raised by the Bank is that Mr Sumption requires that he must assume an executive oversight role working alongside the nominated BRPs. In reply, this contention is placed in perspective in that Mr Sumption will offer his financial expertise to support the Company's turnaround, but that full management and operational control will remain with the BRPs as prescribed by s 140 of the Companies Act.

[33] The Company has obviously suffered reputational damage as a result of the fact that creditors were not paid and the subsequent provisional liquidation order issued during November 2024. Mr Sumption was the Chief Financial Officer of a business with an annual turnover of R3 million and stated that his investment is based on the fact that the facilities of the Company are world-class. He indicated that with the correct production efficiencies implemented, the Company will deliver sustainable value and good returns for any investor. According to him, the abattoir was historically a good business and if production efficiencies had been in place during the past four to five years, it would have been able to generate an average

profit, before tax, of approximately R10 million annually. Clearly, Mr Sumption has investigated the cause of the demise of the Company and plans, with the full management and input of the BRPs, to offer a remedy for the past insufficiencies.

[34] A further argument raised by the Bank is that the Company has not been conducting business for approximately ten months and there is, therefore, no business which can be rescued. Furthermore, no employees will be available to revive the business having regard to the fact that an amount of R499 000 is earmarked for retrenchment packages to 78 employees. However, appended to the founding affidavit and referred to by Mr Leach, are letters of support and commercial interest from key stakeholders across the supply- and customer chain expressing support for the re-opening of the abattoir. Written commitments pertaining to the supply of stock on a weekly basis clearly reflect that the Company, with the assistance and financial expertise of both Mr Sumption and Mr Leach, will be able to commence trading with a secured customer base and a reliable income stream. Mr Sumption's belief in the underlying strength of the Company, combined with his commitment to invest both financially and strategically, makes him crucial to restoring profitability and long-term sustainability. The letters of support confirm that the quantities forecasted in the draft BR Plan are actually conservative and it appears that, in all likelihood, the output would exceed the expected volumes. A positive aspect raised in one of the letters of support is the complaint that the 'competing abattoir' at Bloemfontein is presently not valued highly due to its price structure. Farmers apparently travel long distances to other abattoirs to deliver stock. The excellent service provided by the staff of the Company is mentioned in the letters of support and is, to my mind, a positive factor in support of rendering the Company able to resume the conduct of its business.

[35] The Company has the necessary certification to export meat products to Africa, the Middle East and the Indian Ocean islands, and the Company has the highest certification for food safety management in place. The plan is to simplify the business into a single meat type, namely beef, and become the lowest cost producer of deboned beef trim products for food service customers locally. The aim is, furthermore, to become a major supplier of 'yellow fat' biltong meat for biltong manufacturers nationally. Due to the fact that the Company has export approval for

the rest of the world where South African red meat is accepted, for instance Hong Kong and the Asia-Pacific markets, the further objective as explained in the draft BR Plan is to expand on opportunities to export specific deboned beef products to Hong Kong. A further objective is to obtain Halaal-certification to supply beef products to the Western Cape, the Middle East and the Asia-Pacific markets. Future potential clients have already been identified to open further growth opportunities.

[36] According to the information contained in the draft BR Plan, the South African meat market is valued at R165 billion per annum. The red meat market continues to show good growth locally as more consumers enter the middleclass sector and migrate from plant protein to animal protein. The international market is showing a similar trend and is expected to continue showing strong growth year on year as the global population continues to increase and consumers from developing countries, like China and India, increase their annual per capita consumption of red meat. Therefore, the future opportunities identified by the BRPs who, with the close collaboration of Mr Sumption, aim to target these new export markets appear viable and rather convincing. The fact is that food production remains a key growth industry globally.

[37] Not only is the international market included in future business deals with the Company, but it is clearly stated in the draft BR Plan that the Company will initially focus on existing customers to maximise the volumes behind these customers and target quality approval from other selected beef trim customers identified by the BRPs.

[38] In deciding whether there is a reasonable prospect of rescuing a company, the court exercises a value judgment or, put differently, a wide discretion. The nature of the court's discretion under s 131 of the Act has been explained by Brand JA in para 21 in *Oakdene Square* in the following terms:

'. . . I can now revert to the pertinent question: does s 131(4) afford the court a discretion in the strict sense or not? I think the short answer is "no". In a case such as this, the court's discretion is bound up with the question whether there is a reasonable prospect for rescuing the company. The other pertinent requirement in s 131(4), namely, that the company must be financially distressed, seems to turn on a question of fact. As to whether there is a reasonable prospect of rescuing the company, it can hardly be said, in my view, that it involves a range of choices that the court can legitimately make; of which none can be described as wrong. On the contrary, as I see it, the answer to the question whether there is such a reasonable prospect can only be "yes" or "no".'[9]

[39] Business rescue proceedings offer an opportunity to restore an ailing company to financial health and functionality. In para 30 of *Oakdene Square* it was held that it was not practical nor prudent to be prescriptive on the way in which an applicant must show a reasonable prospect in every case. Mr Zietsman SC explained that the draft BR Plan appended to the founding affidavit is, in any event, a revised plan and depending on changing circumstances, further amendments and adjustments may come in play in future in the event that the Company is placed in business rescue and should the BR Plan be adopted. Business recue is intended to serve public interest and to avoid the deleterious consequences of liquidation in cases where a reasonable prospect of salvaging the business of the company exists. The proposed BRPs have investigated the Company's affairs, the reasons for its financial distress and financial situation and after having done so clearly consider that there is a reasonable prospect of recuing the Company.

[40] Should the Company be placed in liquidation it would most probably take, at the very least, between 24 and 36 months for creditors to receive a dividend. In the business rescue scenario, secured creditors will receive payment in full whereas, in the BRPs' opinion in a liquidation scenario, the secured creditors will only receive dividends to the value of their security after finalisation of the liquidation process. A further aspect which remains an important consideration is that a number of the employees support the application for the order to be granted as they do not wish to lose their employment. The lease agreement is still in place; stock will be available from the supply and customer chain and the availability of the necessary cash resources in order to enable the Company to meet its immediate day-to-day expenditure has been secured. The nature and extent of the PCF available to the Company has been adequately explained.

[41] I am satisfied that the applicants have placed before this Court a factual foundation for the existence of a reasonable prospect that the desired object of rescuing the Company can be achieved. The resumes for Mr Grobbelaar and Mr

[9] *Oakdene Square* para 21.

Steyn are appended to the founding affidavit, and both are, according to the information, seasoned business rescue practitioners with experience in operational restructuring, data-driven decision-making and success in helping businesses regain control of financial performance. The proposals put forward in the draft BR Plan are not purely speculative in nature and consists of a positive plan to protect the interest of a wider group of persons and to improve the prospects of the Company to being returned to solvency and commercial viability. The draft BR Plan, to my mind, entails a genuine attempt to achieve the aims of the remedy provided for in the Companies Act. Regarding the declared intention of the Bank to oppose the BR Plan, it appears that the applicants have accumulated facts and information pertaining to litigation and information held by the Bank regarding the debt that has not been collected by the Company and will, if need be, resort to the remedy provided for in s 153(1)*(a)*(ii) of the Companies Act.

[42] On behalf of the applicants it is argued that the Bank’s opposition to the application is *mala fide* and motivated by an ulterior purpose which justifies a cost order on the scale as between attorney and client. I am not convinced that the opposition to the urgent application for business rescue can be perceived as being vexatious, unscrupulous, dilatory or mendacious. The return date issued during November 2024 has been extended on numerous occasions, obviously in an attempt to settle the dispute. Even subsequent to the hearing of the matter, a further period was agreed upon in an endeavour to come to an agreement. Obviously, the Bank provided an opportunity to Mr Leach to come to some agreement in an effort to save the Company back into solvency. To my mind, the leniency by the Bank in this regard does not justify a punitive cost order.

[43] In my view it would be just and equitable to grant an order for the rescue of the Company sought by the applicants rather than to liquidate the business as it may be more prejudicial to the creditors. There is no reason why costs should not follow the result.

[44] In the result, the following order is made:

1 The application is heard urgently in terms of rule 6(12) and applicants’ failure to comply with the forms, service and periods as provided for in the Uniform Rules of Court is condoned.

2 The first respondent is placed under supervision and business rescue as contemplated in s 131(4) of the Companies Act 71 of 2008.

3 Stephanus Johannes Marthinus Steyn and Jaco Grobbelaar are appointed as business rescue practitioners of the first respondent as contemplated in section 131(5) of the Companies Act 71 of 2008, with all the powers and duties entrusted to them in terms of the Companies Act 71 of 2008 subject to ratification of such appointments by the majority of the independent creditors' voting interests at the first meeting of the first respondent's creditors.

4 Costs of this application, including the cost of counsel on Scale C shall be paid by the intervening creditor, Standard Bank of South Africa Ltd

I VAN RHYN

JUDGE OF THE HIGH COURT

Appearances

For the applicants:	J Zietsman SC
Instructed by:	Webbers Attorneys Bloemfontein
For the intervening Creditor:	R van der Merwe
Instructed by:	Phatshoane Henney Attorneys Bloemfontein