

REPUBLIC OF SOUTH AFRICA



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

Case Number: **120493/2024**

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: YES
DATE 07 November 2025	
SIGNATURE	

In the matter between:

MARTHINUS JACOBUS BEKKER N.O.
JACQUES ANDER FISHER N.O.
LEBOGANG GRACE MPAKATI N.O.

First Applicant
Second Applicant
Third Applicant

and

WILLOWS BOUTIQUE HOTEL AND

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

Introduction

[1] The applicants in their capacity as the duly appointed provisional liquidators of Roderick Trade 9 (Pty) Ltd (in liquidation) (“the company”) pray for an order ejecting the respondent from premises known as the Willows Boutique Hotel and Conference Centre (“the Hotel”) situated at the Remainder of Portion 21 of the Farm The Willows 340, Registration Division JR. (“the premises”).

Common cause facts

[2] The following facts are common cause between the parties;

- 2.1 the company is the registered owner of the premises,
- 2.2 the company was placed under supervision and business rescue proceedings commenced on 14 May 2020,
- 2.3 an application for the winding up of the company was presented to court on 20 November 2020,
- 2.3 whilst the application was pending the Business Rescue Practitioner published a business rescue plan that was rejected by the creditors on 30 April 2021,
- 2.4 the Business Rescue Practitioner terminated the business rescue proceedings on 17 December 2021,

2.5 on 15 June 2022 the company and the respondent concluded a lease agreement in terms of which the respondent leased the premises from the company for purposes of conducting the Hotel business,

2.5 the company was provisionally wound up on 7 February 2023 and the order was made final on 26 January 2024.

Legal position

[3] In terms of section 348 of the Companies Act, 61 of 1973 (“the 1973 Act”), the winding-up of a company is deemed to commence when the application is presented to court, in *casu*, 20 November 2020.

[4] Section 341(2) of the 1973 Act provides that “*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.*”

[5] The lease agreement is a disposition of property for purposes of section 341(2) and in the result, the lease agreement concluded between the company and the respondent on 15 June 2022 is void.

Issue for determination and legal framework

[6] The respondent brought a counter-application and prays for an order declaring the lease agreement between the company and the respondent valid, in terms of the provisions of section 341(2) of the 1973 Act.

[7] In deciding whether to exercise the discretion conferred on the court in terms of section 341(2), it is apposite to have regard to prevailing authorities. In *Pride Milling Co (Pty) Ltd v Bekker NO and Another* 2022 (2) SA 410 (SCA), the court referred with approval to the following extract from *Lane NO v Olivier Transport* 1997 (1) SA 383 (C) at 386D-387B:

“ ‘(a) The discretion should be controlled only by the general principles which apply to every kind of judicial discretion. (See *Re Steane's (Bournemouth) Ltd* [1950] 1 All ER 21 (Ch) at 25.)

- (b) Each case must be dealt with on its own facts and particular circumstances.
- (c) Special regard must be had to the question of good faith and the honest intention of the persons concerned.
- (d) The Court must be free to act according to what it considers would be just and fair in each case. See *Herrigel's case* supra at 678 and see *Re Clifton Place Garage Ltd* [1970] Ch 477 (CA) at 490 and 492 ([1970] 1 All ER 353 at 356 and 357 – 8).
- (e) The Court, in assessing the matter, must attempt to strike some balance between what is fair vis-à-vis the applicant as well as what is fair vis-à-vis the creditors of the company in liquidation.
- (f) The Court should gauge whether the disposition was made in the ordinary course of the company's affairs or whether the disposition was an improper alienation. See *Re Wiltshire Iron Co; Ex parte Pearson* (1868) LR 3 Ch App 443 at 447.
- (g) The Court should investigate whether the disposition was made to keep the company afloat or augment its assets. See *Herrigel's case* supra at 679 – 80.
- (h) The Court should investigate whether the disposition was made to secure an advantage to a particular creditor in the winding-up which otherwise he would not have enjoyed or with the intention of giving a particular creditor a preference and which latter factor may be decisive. See *Wiltshire's case* supra at 447.
- (i) The Court should enquire whether the recipient of the disposition was unaware of the filing of the application for winding-up or of the fact that the company was in financial difficulties. See *Re Telsa Furniture (Pty) Ltd* (1984 – 85) 9 ACLR 869 (NSW).
- (j) Little weight should be attached to the hardship which will be suffered by the applicant if the payment is not validated, the purpose of the subsection being to minimise hardship to the body of creditors generally. See *Herrigel's case* supra at 680.
- (k) The payment should not be looked upon as an isolated transaction if in fact it formed part of a series of transactions. See *Herrigel's case* supra at 680.”

Facts

- [8] The premises on which the respondent conducts the Hotel business is part of a larger property in extent some 5 hectares. Save for the Hotel, there are multiple

immovable structures on the property, such as a large hall which is, *inter alia*, being utilised by a church to conduct services on Sundays, structures in which businesses are trading and residential properties (“plots”) which are occupied for residential purposes by third parties. Notwithstanding the mixed use and occupation of the property by various other entities / persons, the property has not been subdivided and the whole 5 hectares needs to be sold as one property.

- [9] One Mr Reader (“Reader”) was the sole director of the company which owns the property. The company experienced financial difficulties and Reader resolved to place the company in business rescue. At the time the company went into business rescue the Hotel was operated by an entity known as Yellowwisp 87 CC (“Yellowwisp”). Reader was the sole member of the close corporation.
- [10] When the applicants took control of the affairs of the company it was not clear whether Yellowwisp had a lease agreement with the company and/or whether it was paying any rent to the company. In the result and on 28 March 2023, the first applicant addressed a letter to Reader requesting a copy of the lease agreement between Yellowwisp and the company and advising Reader that all further rentals should be paid into the company’s bank account.
- [11] Reader provided the lease agreement between the company and the respondent that was signed on 15 June 2022. Although Reader is the sole director of the respondent, the lease agreement was signed on behalf of the respondent by Reader’s wife whereas Reader signed on behalf of the company. The lease agreement terminates on 30 June 2026. The monthly rental payable in respect of the lease is R 40 000, 00 and in terms of clause 4.3 of the agreement:
- “4.3 The monthly rental payable will take into account an offset amount of R 25 000, 00 which is paid by the Lessee for payment of gardener’s salaries (+-R10 000) plus appropriate use purchase of diesel for the generator (R+-15000) for the benefit to the Lessor and other tenants on the property. This Lessee will also perform all maintenance on the property and ensure general maintenance of the property during the remainder of the lease;”
- [12] Clause 11 provides a right to the respondent to renew the lease agree for a period of 12 months commencing on 1 July 2026.

- [13] The first applicant stated that the respondent has only made sporadic payments of the rent. No rental was paid for the period October 2023 to May 2024.
- [14] I pause to mention, that Reader attached another lease agreement to the counter-application, which lease agreement was signed in May 2022. Reader explained that it was a *bona fide* error and acknowledged that the June 2022 lease agreement is the correct agreement.
- [15] Insofar as the necessity for an eviction order is concerned, the first applicant stated that there were multiple creditors who lodged claims against the company, whilst the company was in business rescue. The Business Rescue Practitioner valued the claims in excess of R 45 000 000, 00. These creditors have not been able to lodge claims against the company in liquidation because, due to an administrative glitch in the Master's office, a first meeting of creditors have not been held. All or most of the creditors are expected to lodge claims at the first meeting of creditors.
- [16] Prior to business rescue and during the period that Reader managed the company, the company failed to make all necessary payments to the local authority and the municipality has a claim of R 12,9 million against the company. As a result, the water and electricity supply to the property has been terminated, a situation the applicants deem to be unacceptable and harmful to the property. Insurance cover on the property may be compromised and in the absence of municipal water supply, fire remains a serious hazard. The applicants submit that the situation is not in the interests of creditors.
- [17] The applicants state that the aforesaid circumstances led them to conclude that it would be in the best interest of the creditors to sell the property in a bid to minimise all the risks and uncertainties attached to the property. The property is valued at an amount of R 16 800 000, 00 on a forced sale basis, but the sale of the property is hamstrung by the fact that the respondent occupies the Hotel.
- [18] In support of the relief claimed in the counter-application, Reader states that the respondent maintains the premises and the equipment situated thereon to an acceptable standard. The respondent has a security guard doing access control and parking area control during the day and there are CCTV cameras across the

premises internally and externally. The maintenance, security and garden services amounts to R 22 500,00 and the remainder of the rental in the amount of R 15 000, 00 is paid monthly to the company. Reader contends that the upkeep of the premises enhances its value and is to the benefit of creditors.

[19] Furthermore, the respondent employs a number of employees who would lose their income if the respondent is evicted from the premises. The respondent makes use of borehole water and the fire hydrants on the property are connected to the water supply, eliminating any fears of a fire hazard. Water tanks with a capacity of approximately 60 000 litres have been installed by the respondent on the property and the tanks are continuously replenished with water from the borehole. According to Reader, should the respondent be evicted, there will be no drinking or sanitation water for the other occupants or tenants on the property.

[20] Lastly, Reader contends that a thriving Hotel business adds to the value of the property as a whole and will make the property much more attractive to potential buyers.

Discussion

[21] Having regard to the circumstances in *casu*, I am the view that the following two factors mention in*supra* are of particular relevance:

“(d) The Court must be free to act according to what it considers would be just and fair in each case. See Herrigel's case supra at 678 and see Re Clifton Place Garage Ltd [1970] Ch 477 (CA) at 490 and 492 ([1970] 1 All ER 353 at 356 and 357 – 8). and

(e) The Court, in assessing the matter, must attempt to strike some balance between what is fair vis-à-vis the applicant as well as what is fair vis-à-vis the creditors of the company in liquidation.”

[22] In facilitating the conclusion of the lease agreement between the company and the respondent, Reader clearly endeavoured to gain an advantage for the respondent in the winding-up of the company. A valid lease agreement would have guaranteed that the respondent remains in possession of the Hotel until at

least 30 June 2027, even if it would have been in the interest of creditors to sell the property unencumbered.

[23] On the other hand, the respondent has, on all accounts maintained the premises in a satisfactory condition and has paid, although sporadically, rent to the company. Notwithstanding the aforesaid and the respondent's wish to remain on the premises, the liquidators must execute their statutory duties, which clearly entail the sale of the property and in turn the obtainment of *vacuo possession*.

[24] The respondent maintained that even if it vacates the premises, the property as a whole cannot be sold because of the presence of the tenants. In view of an offer received from Laerskool Die Krans on 15 October 2024, the presence of tenants do not seem to be a problem. The occupation of the Hotel Business, however, are.

[25] Laerskool Die Krans stated as much in the offer letter: *"Our interest in this property arises from our desire to convert the existing structures, particularly the Willows Country Lodge, into a facility for our school...."* In respect of the tenants, the following was stated: *"Concluding new lease agreements with existing tenants on or before the Closing Date..."*

[26] In view of the aforesaid, I do not deem it in the interest of creditors to validate the lease agreement.

[27] I, however, deem it fair to allow the respondent a reasonable period to wound up its affairs. The respondent, no doubt, has bookings and functions over the festive period which should be honoured. The time allowed will also place the employees of the respondent in a better position to seek alternative employment in the event that the respondent does not relocate to another business premises.

[28] To this end, the respondent is granted a period of two months from 1 December 2025 to vacate the premises.

Costs

[29] The applicant prayed for costs on an attorney and client scale. I am not convinced that the respondent's conduct in opposing the application and claiming relief in

accordance with the counter-application is *mala fide* or for some other reason deserving of a punitive cost order.

ORDER

I grant the following order:

1. The respondent is ordered to vacate the premises known as Willows Boutique Hotel and Conference Centre on or before 28 February 2026.
2. The respondent is ordered to pay the costs of the application. Counsel's fees on scale C.
3. The counter-application is dismissed with costs. Counsel's fee's on scale C.


N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE HEARD:

08 September 2025

DATE DELIVERED:

07 November 2025

APPEARANCES

Counsel for the Applicant: Adv Van Der Merwe SC

Instructed by: Donn E Bruwer Attorneys

Counsel Respondents: Adv Calyn D'Alton

Instructed by:

Du Pre Le Roux Attorneys

