



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No:2025-181226

In the matter between

JULIAN PETER EMPEDOCLES

Applicant

and

ROSS ZONDAGH

First Respondent

NICHOLAS DREYER

Second Respondent

CALI BUNTU LLC

Third Respondent

MELISSA ANN HATTINGH

Fourth Respondent

PLAKKIE (PTY) LTD

Fifth Respondent

AURITI (PTY) LTD

Sixth Respondent

Neutral citation: *Julian Peter Empedocles v Ross Zondagh + 5 others* (Case no 2025-181226) [2025] ZAWCHC (17-11-2025)

Coram: **PATHER AJ**

Heard: 10, 14 November 2025

Delivered: 19 November 2025

ORDER

1. The Order of 20 October 2025 in this matter is put into operation immediately, subject to the provisions of Section 18(4) of the Superior Courts Act;
 2. The First Respondent forthwith deliver to the Applicant all export documentation in his or in the possession of the Third Respondent for invoices INV-65120 and INV-63859 (including SAD500s and courier export proofs), failing which the Sheriff is duly authorised to attach and remove such documents wherever they may be found within the Republic of South Africa.
 3. The First Respondent is directed to pay for the costs on the attorney/client scale with the costs of counsel to be on Scale B.
-

JUDGEMENT

PATHER, AJ

[1] The adage that justice must be seen to be done is never more closely expected than when an order is granted that is incapable of fulfilment, due to processes and rights that litigants have. This is particularly relevant when the Order deals with the livelihood of employees, and businesses and where it will be an injustice for the operation of the orders to be suspended based on the legal processes that are in place where there is a disgruntled litigant or more aptly stated, where the Order is not palatable. It is unquestionable that both parties must have access to the full extent of the law, however the Courts have to consider the principles that underpin the legislation and give effect to the legislation so that the administration of justice is met.

[2] This matter involves an Application instituted by the Applicant in terms of Section 18 (3) of the Superior Courts Act 10 of 2013. The application was brought on urgency and heard on 14 November 2025. The Applicant delivered a founding affidavit, which was responded to by the First Respondent. There was no opposition by any of the other Respondents. The Applicant delivered its founding affidavit despite relatively short time periods so as to ensure that the matter could be heard. On 9 November 2025, when the matter was to be heard, counsel for the Applicant appeared and he informed the court that the First Respondent's representative was unwell and could not be at court, and that the matter would have to be postponed to accommodate the First Respondent's counsel and attorney, without conceding that the matter was not urgent, as Applicant contended that the matter remained urgent. The Court read the papers, and the Court determined that the matter was indeed urgent and the matter was therefore postponed to be heard on the urgent roll of 14 November 2025.

[3] An application in terms of S18 (3) is by its nature urgent as the relief sought is to give effect to the Order granted pending the application for leave to appeal. In this matter, an application was heard by Njokweni AJ, on 20 October 2025. The Njokweni Order granted the Applicant relief to put into effect the Order granted by Bhoopchand AJ, whereby he placed Veldskoen (Pty) Ltd under supervision, and business rescue proceedings to commence, as contemplated under Section 131(4) of the Companies Act 71 of 2008.

[4] The Applicant, who is the business rescue practitioner has been unable to fulfil its mandate in regard to the mismanagement of Veldskoen, restore cash flow, implement financial systems, recover outstanding debts, and further, access financial digital systems that are operated by Google Workspace super admin, access to password controlled domains and information all of which are highly technological in nature and which are vitally important to the Applicant rescuing the company. This is what prompted the application for an order to Njokweni AJ, which order was granted however, the First Respondent delivered a Notice of Appeal to Njokweni's Order, thus suspending the operation of that Order.

[5] The Applicant in bringing the current application in terms of S18(3), relied on the following grounds:

- The balance of probabilities must suit the Applicant;
- Irreparable harm if the Order is not granted; and
- Exceptional circumstances.

[6] This court has had regard to the affidavits that have been delivered, the argument raised by both counsel and the various authorities that the court has been referred to. It is very important to note that the purpose behind business rescue is to ultimately rescue or save the entity, and in so doing, this will save jobs and sustain the business entity. This is more desirable compared to a liquidation of the business, as the liquidation process generally sees the end of the business, with creditors standing in a queue, based on where they rank in terms of the security that they may hold.

[7] This also something the court looked at as it would have thought that the First Respondent would want to comply and cooperate with the Order granted by Njokweni AJ and assist the Applicant to deal with the company, so that it could trade out of its dire financial circumstances. This is indeed telling. If the Order is not put in operation, and the Applicant has to wait for the Appeal to be finalised, then there is no doubt in my mind that the Applicant will suffer irreparable harm and prejudice.

In Incubeta Holdings (Pty) LTD and Another v Ellis And Another 2014 (3) SA 189 (GJ), the court held that a suspension of the business rescue order that exposes a company to imminent liquidation, that is quintessential exceptional circumstances.

[8] On a balance of probabilities, the Applicant will be more prejudiced than the First Respondent if the application is not granted in favour of the Applicant.

[9] Having satisfied myself as to the judgment of Bhoopchand AJ, the Order of Njokweni AJ, I am satisfied that there appears to be an incestuous relationship between the First Respondent and the other Respondents. The main purpose of the non-compliance with the Njokweni AJ Order is to delay and frustrate the Applicant thereby causing irreversible harm and prejudice to the Applicant.

[10] The Applicant has no security or relief in regard to the conduct of the First Respondent, whereas, as was pointed out in argument, any prejudice to the First Respondent can be claimed through the bond of security that the Applicant had to file with the Master of the High Court.

[11] The First Respondent's case is that he cannot hand over something that he has no control over, and that he has no authority over the remaining Respondents. It was submitted that the First Respondent is not the controlling mind, and there is a distinction between the operation of the entity in the United States of America and the entity in South Africa. The First Respondent's counsel argued that there are no prejudice and no exceptional circumstances to trigger the S18 (3) application and the subsequent relief sought.

[12] The Applicant however has provided proof that goods are being advertised for sale in foreign jurisdictions, orders are being placed, and funds are being paid by unsuspecting customers. These orders are being directed to the South African entity that is under business rescue, and this is creating a further prejudicial situation. There are obligations to South African Revenue Service and various other creditors. If the Order is not granted, then the purpose of the business rescue will prove to be a nullity. Any prejudice that the First Respondent alleges, outweighs the prejudice that the Applicant will suffer if the Order is not granted.

[13] Having regard to the facts of the matter, I am satisfied that the Applicant has demonstrated exceptional circumstances entitling him to an Order putting into operation the Order of Njokweni AJ, pending leave to appeal and the appeal that may follow through to its logical conclusion. As alluded to above the Applicant has shown

that on a balance of probabilities the First Respondent will not suffer irreparable harm. I consider the Order to be practical and necessary to keep the company in business rescue alive.

[14] The First Respondent has gone to extensive lengths to oppose the Order and indeed this application. This suggests that the First Respondent is deliberately using the court processes to avoid compliance with AJ Njokweni's Order. If the First Respondent did not have the information, he states does not exist, then there is no reason that he should not have complied with the Order and cooperated with the Applicant. The First Respondent does not do this and instead appeals the order of 20 October 2025 and then opposes this application. The Court finds that the First Respondent created the urgency and the necessity for this application.

[15] The Court therefore finds for the Applicant and directs that the First Respondent should be liable for the Applicant's costs.

PATHER AJ

ACTING JUDGE OF THE HIGH COURT

Appearances

For Applicant: Adv. CL Burke

Instructed by: Von Lieres, Cooper & Barlow

For First Respondent: Adv. L Zazeraj

Instructed by: Guthrie Theron Attorneys