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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case no. 2023/041861
(1) REPORTABLE: NO
(2) OF INTEREST TO THE JUDGES: NO
(3) REVISED.
DATE: 17 NOVEMBER 2025
SIGNATURE:

In the liquidation application between:

BUSINESS PARTNERS LIMITED (Registration no. 1981/000918/06)	Applicant
and	
MK PROPCO (PTY) LTD (Registration no. 2012/185601/07)	Respondent

Case no. 025/017124

In the business rescue application between:

JUDITH CORNEY	Applicant
and	
MK PROPCO (PTY) LTD	First Respondent

BUSINESS PARTNERS LTD (Registration no. 1981/000918/06)	Second Respondent
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Third Respondent

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JUDGMENT

The judgment and order are published and distributed electronically.

PA VAN NIEKERK, AJ

INTRODUCTION:

[1] On 11 November 2025 this Court dismissed a business rescue application under case no.

2025/017124 and confirmed a provisional order for the liquidation of Respondent in the liquidation application under case no. 2023/041861. This judgment contains the reasons for such orders.

[2] In the matter under case no. 2023/041861 ("the liquidation application") the Applicant is a company with limited liability incorporated and registered in terms of the Company Laws of South Africa with principal place of business in Houghton, Johannesburg. The Applicant lends and advances money to entities and individuals for purposes, *inter alia*, of acquiring commercial or development properties.

[3] In that Application the Respondent is MK Propco (Pty) Ltd ("MKP"), a company with limited liability duly incorporated in terms of the Laws of the Republic of South Africa with registered address at Bryanston, Gauteng Province. MKP is not a trading enterprise but a property holding company and registered owner of an immovable property situate at Erf 2[...], Bryanston, Extension 1, Gauteng.

[4] On 4 May 2023 Applicant launched the liquidation application and therein sought an order that MKP be placed under a winding-up order in the hands of the Master of the High Court, and that costs of the application form costs in the winding-up of MKP.

[5] The Applicant's cause of action in the liquidation application can succinctly be summarised as follows:

[5.1] The sole director of MKP, Me. Judith Corney ("Corney") approached Applicant in 2020 for a loan for purposes of funding the purchase of the immovable property referred to above;

[5.2] On strength of security including a mortgage bond registered against the Title Deed of that immovable property, Applicant lent to Respondent the loan amount of R6 999 750.00 which was fully disbursed to Respondent by the 29th of July 2013.

[5.3] During or about 2019 Respondent fell in arrears with the monthly payments in terms of the Loan Agreement, and from February 2021 Respondent resumed payment of instalments but payments were made haphazardly and short payments were made from time to time;

[5.4] During November 2022 Respondent was in arrears with payments of amounts, due and owing and payable in terms of the Loan Agreement, in the amount of R1 252 213.00. The last payment which Respondent effected was on the 28th of February 2023 in the amount of R95 625.03.

[6] In terms of the Loan Agreement, in the event of any instalment remaining unpaid on due date, the total amount outstanding and other expenses arising from the agreement shall immediately become due and payable to Applicant.

[7] Applicant thereupon caused a notice in terms of Section 345(1)(a)(i) of the Companies Act to be served on Respondent on 13 February 2023. Respondent remained in default to settle all arrears and continued to fail to make payments in terms of the agreement to Applicant. Applicant therefore relies on Section 344 of the Companies Act no. 61 of 1973 to submit that the Respondent is deemed to be unable to pay its debts.

[8] In the Notice of Motion of the liquidation application Respondent was given notice and directed to serve a Notice of Intention to Defend within 5 days of service of the application on Respondent failing which the Applicant would proceed to apply for the winding-up of Respondent on 14 August 2023. The application was served at the registered address of Respondent on Corney, the sole director of Respondent, on 18 July 2023. Respondent failed to file a Notice of Intention to Oppose whereafter the application was enrolled for hearing on 14 August 2023 on the unopposed motion court roll. However, on 25 July 2023, Notice of Intention to Oppose the liquidation application was formally served on behalf of the Respondent on the Applicant's attorneys of record resulting in the matter being removed from that roll.

[9] Having failed to file an Answering Affidavit timeously after serving the Notice of Intention to Oppose, the Applicant re-enrolled the application for 19 February 2024. However, on the proverbial eve of the application to be heard on an unopposed basis, an Answering Affidavit was filed on behalf of the Respondent on the 18th of February 2024. In the Answering Affidavit deposed to by Corney the indebtedness of the Respondent to Applicant is admitted but it was denied that the Respondent is unable to pay its debts and/or commercially insolvent. Corney also deposed to the opposing affidavit in the liquidation application stating that she was in the process of arranging alternative funds in the amount of R2000 000.00 and would shortly settle the Respondent's liability to Applicant.

[10] The Respondent further sought a postponement of the matter on the basis that the Respondent sought leave to file a Supplementary Affidavit.

[11] The matter having become opposed on the basis as set out above, was then re-enrolled on the Opposed Motion Court roll of 11 February 2025. However, on 11 February 2025 Respondent adopted the stance that a business rescue application will be launched resulting in the court granting a provisional order for liquidation on 11 February 2025 with return date 28 July 2025, the purpose of which was to allow Corney to launch the envisaged business rescue application.

[12] On 6 March 2025, Corney in her capacity as applicant launched an application under case no. 2025/017124 against MKP as First Respondent, Business Partners Ltd (Applicant in the liquidation application) ("BPL") as Second Respondent and the Companies and Intellectual Property Commission as Third Respondent seeking the appointment of a Business Rescue Practitioner and placing MKP under business rescue.

[13] The business rescue application was struck off the roll for lack of urgency on 26 March 2025 and a punitive order for costs was made against Corney. On 28 July 2025 the return date in the liquidation application was further extended to the opposed Motion Court roll for hearing on 10 November 2025, specifically to enable the pending business rescue application to be heard simultaneously with the liquidation application.

[14] Corney took no further steps to have the business rescue application enrolled for hearing, and the business rescue application was thereafter enrolled by BPL to be heard simultaneously with the liquidation application of BPL against MKP.

[15] Corney is the sole director and shareholder of MKP. At all relevant times Corney deposed to the affidavit resisting the winding-up of MKP in the liquidation application, as well as the Founding Affidavit in the business rescue application and the Replying Affidavit in such application. From a consideration of the history of the matter as set out above, it is clear that Corney attempted to frustrate the liquidation application by failing to oppose the matter timeously, by then failing to file an Opposing Affidavit timeously, and then launching a business rescue application at a time strategically engineered to prevent the liquidation application to proceed on 11 February 2025.

[16] When the matter was called for hearing on 10 November 2025, Corney appeared in person in her capacity as the Applicant in the business rescue application and purported to represent MKP in the liquidation application after the attorneys who previously represented Corney as well as MKP withdrew as attorneys of record.

THE BUSINESS RESCUE APPLICATION:

[17] The business rescue application is premised on the averment that MKP will soon be able to settle the liabilities of BPL. In the Founding Affidavit which was deposed to on 9 February 2025 Corney made the following averments;

> [17.1] MKP is financially distressed as envisaged in section 131(4}(a) of the Companies Act.
>
> [17.2] MKP obtained post commencement finance in the amount of R275000.00 which are held in trust. No further particulars in relation to this bold averment is provided.
>
> [17.3] MKP is in the process of recuperating R300 000.00 of arrear rentals, has concluded two new lease agreements, and achieved sales of R2567048.85 from 1 March 2024 to date of the affidavit.
>
> [17.4] MKP will thus be able to settle the liability to BPL, the only creditor of MKP.

[18] Business reduce applies where there is a reasonable prospect for rescuing the company.[1] It was held in *Oakdene Square Properties (Pty) Ltd v Farm Bothasfontein (Kayalami) (Pfy) Ltd [2020] 3 All SA 303 (SCA)* that the term "*reasonable prospect of rescuing a company*" as contemplated in terms of Section 131(4) of the Companies Act is to be interpreted as follows:

> *"On the other hand, I believe it requires more than a mere prima facie case or an arguable possibility. Of even greater significance, I think, is that it must be a reasonable prospect - with the emphasise on 'reasonable' - which means that it must be a prospect based on reasonable grounds. A mere speculative suggestion is not enough. Moreover, because it is the applicant who seeks to satisfy the court of the prospect, it must establish these reasonable grounds in accordance with the rules of motion proceedings which, generally speaking, require that it must do so on its founding papers."*

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[1] *See: Section 131(4}(a) of the Companies Act 71 of 2008*

[19] A perusal of the Founding Affidavit contains the bold averments as set out above, but no supporting facts are provided to substantiate the averment that MKP would be in a position to settle is liability to BPL, when placed under business rescue. On the contrary, it was illustrated in the answering affidavit that Corney, the sole director of MKP, manage MKP for her own exclusive benefit by inter alia repaying a substantial loan account to the Corney Investment Trust, which is related to Corney, notwithstanding the fact that this loan is an interest-free loan with no specified time for re-payment, and that this repayment was effected during the period that Corney avers that MKP is financially distressed. This fact draws the inevitable inference that Corney is using the business rescue application and opposition to the liquidation application to indirectly benefit herself.

[20] During the hearing of the application on 10 November 2025 Corney, in her personal capacity, addressed the court and informed the court that a "business plan" was formulated by her which would enable MKP to continue as a viable concern. Apart from the fact that none of these issues raised by Corney during her address to this court is contained in any of the affidavits or substantiated by any tangible evidence, upon direct questioning from the court she confirmed that no payments were made to BPL since the launch of the proceedings. This confirmation proverbially flies in the face of the averments made in the founding affidavit as set out above, and which have been made 9 months ago.

[21] In my view, the failure of MKP to make any further payments to BPL is a clear indication that MKP remains unable to settle its debts and notwithstanding the averments made by Corney some 9 months ago, remains unable to do so. This fact is contra indicative of a reasonable prospect that MKP may recover from its inability to pay its liabilities.

[22] The application for business rescue therefore does not satisfy the requirements of section 131(4) of the Companies Act71 of 2008.

THE LIQUIDATION APPLICATION:

[23] Although Corney disputed the exact quantum of the alleged liability of MKP to BPL in the Opposing Affidavit in the liquidation application, it was admitted that MKP was substantially in arrears in terms of the original loan agreement, and unable to satisfy that liability. This inability to satisfy the liabilities of MKP to BPL was *de facto* confirmed by the fact that Corney launched the business rescue application and stated therein that MKP was "*financially distressed"*.

[24] In the premises, it follows that MKP failed to provide any proper reasons why the provisional winding-up order granted on 11 February 2024 should not be confirmed and I accordingly granted a final order of liquidation of MKP in terms of the draft order which was handed up by counsel acting on behalf of BPL.

PA VAN NIEKERK AJ

Acting Judge of the High Court

Gauteng Division, Pretoria