



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

**JUDGMENT**

**Reportable/Not Reportable**

**Case no: 2025-207083**

In the matter between:

**THE CITY OF CAPE TOWN**

First Applicant

**LUNGELOMBANDAZAYO**

Second Applicant

*(in his capacity as the City Manager, City of Cape Town)*

**CARL JOSHUAPOPHAIM**

Third Applicant

*(in his capacity as the Mayoral Committee Member for  
Human Settlements, City of Cape Town)*

and

**THE MASTER OF THE HIGH COURT, CAPE TOWN**

First Respondent

**MELISSA CAROLINE**

Second Respondent

*(in her capacity as the Assistant Master of the High  
Court, Cape Town and the duly appointed Presiding  
Officer for the enquiry convened in terms of the  
provisions of the Companies Act, 1973 read with the  
Insolvency Act 24 of 1936 into the affairs of Catch The*

*Wind Trading (Pty) Ltd (In Liquidation))*

**SHONAEDNA LE ROUX-MARK N.O.**

Third Respondent

*(in her capacity as joint liquidator for the time being of  
Catch The Wind Trading (Pty) Ltd (In Liquidation))*

**MANKANANE VIOLET MAGAGANE N.O.**

Fourth Respondent

*(in her capacity as joint liquidator for the time being of  
Catch The Wind Trading (Pty) Ltd (In Liquidation))*

**THE WESTERN CAPE PROVINCIAL MINISTER  
OF HUMAN SETTLEMENTS**

Fifth

Respondent

**Neutral citation:** The City of Cape Town; Lungelo Mbandazayo; Carl Joshua Pophaim, The Master of the High Court, Cape Town; Melissa Caroline; Shona Edna Le Roux-Marx N.O.; Mankanane Violet Magagane N.O.; The Western Cape Provincial Minister of Human Settlements

**Coram:** MANGCU-LOCKWOOD J

**Heard:** 04 November 2025

**Delivered:** 12 December 2025

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## ORDER

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1. Pending the final determination of the relief sought in Part B of the notice of motion (including any appeals arising therefrom):
  - 1.1 The first respondent ('the Master') and/or the second respondent ('the Assistant Master') are interdicted and restrained from proceeding with the second meeting of creditors of Catch the Wind Trading (Pty) Ltd (*in liquidation*) ('the Company') only for the purposes of:
    - 1.1.1 the continued interrogation of the third applicant at the second meeting of creditors of the Company in terms of section 415 of the Companies Act 61 of 1973 ('the Companies Act') read with section 65 of the Insolvency Act 24 of 1936 ('Insolvency Act') concerning all matters relating to the Company, its business or affairs and concerning any property belonging to the Company; and
    - 1.1.2 requiring the second applicant to appear at the adjourned second meeting of creditors of the Company, to produce the documents listed in the subpoena issued to him, and to be interrogated concerning all matters relating to the Company, its business or affairs and concerning any property belonging to the Company.
  - 1.2 The Master and/or the Assistant Master are interdicted and restrained from issuing any further subpoenas in terms of the Companies Act read with the Insolvency Act to any councillor, official or employee of the City to appear at any adjourned second meeting of creditors of the Company to produce documents and/or to be interrogated concerning all matters relating to the Company, its business or affairs and concerning any property belonging to the Company, without providing the applicants' legal representatives with no less than 30 days' notice in writing of their intention to do so.
  - 1.3 The third and fourth respondents are interdicted and restrained from taking any action whatsoever to dispose of or sell the forty one immoveable properties

registered in the name of the Company that for part of the State housing scheme know as Olive Close which forms part of the Melkbos Village Housing Project.

2. Costs to stand over for later determination.

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## **JUDGMENT: REASONS**

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### **MANGCU-LOCKWOOD, J**

#### **A. INTRODUCTION**

[1] I hereby grant reasons for an order I granted whilst on urgent duty in the following terms:

- “1. Pending the final determination of the relief sought in Part B of the notice of motion (including any appeals arising therefrom):

- 1.1 The first respondent (‘the Master’) and/or the second respondent (‘the Assistant Master’) are interdicted and restrained from proceeding with the second meeting of creditors of Catch the Wind Trading (Pty) Ltd (*in liquidation*) (‘the Company’) only for the purposes of:

- 1.1.1 the continued interrogation of the third applicant at the second meeting of creditors of the Company in terms of section 415 of the Companies Act 61 of 1973 (‘the Companies Act’) read with section 65 of the Insolvency Act 24 of 1936 (‘Insolvency Act’) concerning all matters relating to the Company, its business or affairs and concerning any property belonging to the Company; and

- 1.1.2 requiring the second applicant to appear at the adjourned second meeting of creditors of the Company, to produce the documents listed in the subpoena issued to him, and to be interrogated concerning all matters relating to the Company, its business or affairs and concerning any property belonging to the Company.

- 1.2 The Master and/or the Assistant Master are interdicted and restrained from issuing any further subpoenas in terms of the Companies Act read with the Insolvency Act to any councillor, official or employee of the City to appear at any adjourned second meeting of creditors of the Company to produce documents and/or to be interrogated concerning all matters relating to the Company, its business or affairs and concerning any property belonging to the Company, without providing the applicants' legal representatives with no less than 30 days' notice in writing of their intention to do so.
- 1.3 The third and fourth respondents are interdicted and restrained from taking any action whatsoever to dispose of or sell the forty one immovable properties registered in the name of the Company that form part of the State housing scheme known as Olive Close which forms part of the Melkbos Village Housing Project.

2. Costs to stand over for later determination."

[2] The order relates to Part A of an application which was brought in two parts. In Part B the applicant will seek the following final relief:

- "1.1 An order declaring the decision of the first respondent ('the Master') taken on or about 9 October 2025 to issue a subpoena in terms of section 415 of the Companies Act 61 of 1973 ('the Companies Act') read with section 65 of the Insolvency Act 24 of 1936 ('the Insolvency Act') to the second applicant ('the City Manager') to appear at the adjourned second meeting of creditors ('the second meeting of creditors') of Catch the Wind Trading (Pty) Ltd (*in liquidation*) ('the Company'), to produce the documents listed in the subpoena, and to be interrogated concerning all matters relating to the Company, its business or affairs and concerning any property belonging to the Company to be unlawful, invalid and inconsistent with the Constitution.
- 1.2 An order reviewing and setting aside the Master's decision taken on or about 9 October 2025 to issue the subpoena referred to in paragraph 1 above.
- 1.3 An order directing the Master and/or the second respondent ('the Assistant Master') to discharge the third respondent ('Cllr Pophaim') from appearing and being further interrogated at the second meeting of creditors of the Company

concerning matters relating to the Company, its business or affairs and any property belonging to the Company.

- 1.4 Directing the third and fourth respondents ('the liquidators') to take all necessary steps to transfer the forty one immovable properties registered in the name of the Company that form part of the State housing scheme known as Olive Close ('the Olive Close properties') which form part of the Melkbos Village Housing Project to the City, alternatively to the Fifth Respondent ('the Provincial Minister') in compliance with the provisions of section 10A and section 10B of the Housing Act 107 of 1997 ('the Housing Act') read with section 26 of the Constitution".

[3] As indicated by paragraphs 1.1 and 1.2 of the order granted, the context for the relief sought is ongoing insolvency proceedings relating to a company in liquidation known as Catch the Wind Trading (Pty) Ltd ("the Company"), which was provisionally liquidated on 13 February 2024 and finally liquidated on 26 March 2024.

[4] Before its winding up, the Company had been awarded a tender from the first applicant ("the City") for the construction of 100 low-cost houses in a housing scheme known as the Melkbos village. The low-cost houses were earmarked for housing beneficiaries in the nearby informal settlements known as Ogieskraal and Rietvleibos.

[5] Pursuant to the award of the tender, the City sold to the Company an erf for the purchase amount of R9 6000 000, and the Company took transfer thereof on or about 14 September 2007. The Olive Close housing project ("the project") commenced in about 2008 and was completed during or about 2014. Whilst 59 of the houses constructed by the Company were transferred to the beneficiaries

during or about 2011, 41 are yet to be transferred and remain registered in the name of the Company.

[6] In the meantime, there has been an ongoing dispute between the Company and the City relating to outstanding municipal rates and service charges incurred in respect of the remaining 41 houses. The rates and charges were incurred during a period of delay resulting from some of the identified beneficiaries not timeously providing required documentation, and because certain beneficiaries took possession of the houses prior to transfer and incurred consumption charges which could not be paid. Until the Company was liquidated, there was a dispute between it and the City regarding which of the two entities was responsible for payment of outstanding rates and service charges which, by January 2023, had escalated to R607 325.00.

[7] At the first meeting of creditors of the Company held on 25 June 2024 two claims were proved. JC Marais Inc, a firm of attorneys proved a claim of R527 744.24 for services rendered, and Essa Development CC, a sole shareholder of the Company, proved a claim of R37 642 for monies lent and advanced to the Company. JC Marais Inc, which is now known as Christo Marais Attorneys, is both a petitioning creditor in the winding up as well as the legal representatives of the liquidators in the winding up proceedings.

[8] The City did not lodge a claim in the winding up and explains that it did not want to take the risk of being called upon to make a contribution to the costs of the winding up, of which it states there was a real likelihood as confirmed by the liquidators in their correspondence.

[9] During November 2024 the Master issued a subpoena calling on the third applicant, Cllr Pophaim, to appear at the adjourned second meeting of creditors of the Company on 27 November 2024, and at every adjourned meeting thereafter to be interrogated in terms of section 415 of the Companies Act read together section 65 of the Insolvency Act concerning all matters relating to the Company, its business or affairs and concerning any property belonging to the Company, and to produce the documents listed in items 2.1 to 2.11 of the subpoena issued to him.

[10] The third applicant is a proportional representation councillor for the City's Ward 7 and a member of the City's Mayoral Committee for Human Settlements. He attended the adjourned second meeting of creditors on 22 January 2025, whose presiding officer is the second respondent ("the Assistant Master"), and was cross-examined regarding the affairs of the Company and in relation to the project. He was thereafter warned to appear again on 27 March 2025, to which the applicants' legal representatives objected and addressed correspondence requesting his discharge from the proceedings and withdrawal of the subpoena, which were not granted.

[11] There followed various postponements of the insolvency proceedings, and much correspondence between the parties' legal representatives, as the parties could not agree on how to proceed with not only the adjourned second creditors' meeting, but also the fate of the 41 properties which have not been transferred to beneficiaries.

[12] On 7 October 2025, a subpoena substantially similar to the one issued to Cllr Pophaim was issued for the second applicant ("the City Manager") to attend

the adjourned creditors' meeting on 5 November 2025. Apart from complaining about the manner in which the set-down dates for the insolvency proceedings were arranged, the applicants challenge the lawfulness of the subpoenas issued to both the second and third applicants. In summary, they raise the following issues:

- a. They state that the issuing of the subpoenas is being utilised by the liquidators as leverage to compel the City to assume financial obligations unrelated to any of its legal obligations. In particular, they refer to a letter from the liquidators which proposed that the City should pay the liquidation costs and the claims of the Company's creditors as the 'purchase price' to acquire the Olive Close properties, failing which the liquidators would attempt to sell the properties on the open market.
- b. They state that the issuing of the subpoenas was not based on reasonable or rational reasons, and that there was a failure to take into account relevant considerations and consideration of irrelevant considerations.
- c. They raise certain procedural irregularities around the issuing of the subpoenas, including that the Presiding Officer and/ or the Master permitted Christo Murray attorneys to fetter their discretion relating to the issuing of subpoenas, summons and arranging the dates of the creditors' meetings.
- d. They state that the second and third applicants could not possibly be in a position to assist the insolvency proceedings as regards the project and the Company, and point to the evidence already provided by Cllr Popham at the proceedings in that regard, as well as the fact that several people who were originally involved in that project are no longer employed by the City.
- e. As for the documents itemized in the subpoenas, they state that some were already provided, some would only be within the knowledge of the Company, whilst some are irrelevant.

## **B. THE LAW**

[13] Rule 6(12) of the Uniform Rules of Court confers a discretionary power on a court to dispense with the forms and service envisaged in the Rules if an

applicant can show the circumstances which (s)he avers render the matter urgent.<sup>1</sup> Central to that determination is a consideration of whether the litigant will be afforded substantial redress in due course - whether the abridgement of time periods from those ordinarily prescribed by the Rules is commensurate with the urgency with which the redress is required.<sup>2</sup>

[14] As for interim interdicts, the requirements are well-known.<sup>3</sup> The applicants must establish (a) a *prima facie* right even if it is open to some doubt; (b) a reasonable apprehension of irreparable and imminent harm to the right if the interdict is not granted; (c) the balance of convenience must favour the granting of the interdict; and (d) the applicant must have no other available remedy.

[15] An interim interdict does not involve a final determination of the rights of the parties, and does not affect their final determination, but preserves or restores the *status quo* pending the final determination of those rights.<sup>4</sup>

[16] When weighing the evidence, the applicable test is that which is set out in *Webster v Mitchell*<sup>5</sup>, as qualified by *Gool v Minister of Justice and Another*<sup>6</sup>, in terms of which the applicants must show that on their version, together with the

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<sup>1</sup> *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011) paras 6 -7.

<sup>2</sup> *Luna Meubel Vervaardigers (Edms) Bpk v Makin & Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137F.

<sup>3</sup> *Setlogelo v Setlogelo* 1914 AD 221 at 227.

<sup>4</sup> *Apleni v Minister of Law and Order* 1989 (1) SA 195 (A) 201.

<sup>5</sup> *Webster v Mitchell* 1948 (1) SA 1186 (W) at 11189.

<sup>6</sup> *Gool v Minister of Justice and Another*, 1955 (2) SA 682 (C) at 688E.

allegations of the respondents that they cannot dispute, they should obtain relief at the trial. If, having regard to the respondents' contrary version and the inherent probabilities serious doubt is then cast on the applicants' case, the applicants cannot succeed. <sup>7</sup>It is not necessary for an urgent court to make a final determination on the legal issues.<sup>8</sup>

[17] In *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton and Another*<sup>9</sup> the Court explained the approach to be followed, as follows:

*“In exercising its discretion the Court weighs, inter alia, the prejudice to the applicant, if the interdict is withheld, against the prejudice to the respondent if it is granted. This is sometimes called the balance of convenience. The foregoing considerations are not individually decisive, but are interrelated; for example, the stronger the applicant's prospects of success the less his need to rely on prejudice to himself. Conversely, the more the element of 'some doubt', the greater the need for the other factors to favour him. The Court considers the affidavits as a whole, and the interrelation of the foregoing considerations, according to the facts and probabilities...Viewed in that light, the reference to a right which, 'though prima facie established, is open to some doubt' is apt, flexible and practical, and needs no further elaboration”.*

### C. THE INTERDICTS

[18] Paragraph 2.1 of the notice of motion<sup>10</sup> is an interdict against the Master and/or the Assistant Master as the presiding officer from continuing with the insolvency proceedings insofar as that requires the appearance of the second and third applicants. Paragraph 2.2 of the notice of motion<sup>11</sup> similarly seeks to

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<sup>7</sup> *Spur Steak Ranches Ltd and Others v Saddles Steak Ranch, Claremont and Another* 1996 (3) SA 706 (C) at 714E-H; See also *Gool v Minister of Justice and another* 1955 (2) SA 682 (C) at 688 (E).

<sup>8</sup> *Zulu v Minister of Defence and Others* 2005 (6) SA 446 (T) paras 41 - 42.

<sup>9</sup> *Eriksen Motors (Welkom) Ltd v Protea Motors & Others* 1973 (3) SA 685 (A) at 691E-G.

<sup>10</sup> Paragraph 2.1 of the notice of motion became paragraph 1.1 of the Part A order granted.

<sup>11</sup> Paragraph 2.2 of the notice of motion became paragraph 1.2 of the Part A order granted.

interdict the Master and/or the Presiding Officer from issuing of the subpoenas. Paragraph 2.3 of the notice of motion<sup>12</sup> seeks to interdict the liquidators from taking any action to dispose the 41 immovable properties.

[19] At the hearing of the matter, I was informed that the Master and the Assistant Master who is the Presiding Officer of the impugned insolvency proceedings would not be opposing the urgent application, and would abide the decision of the court. The third and fourth respondents (*“the liquidators”*), however, delivered an answering affidavit and persisted with their opposition.

[20] Self-evidently, the relief sought in terms of paragraphs 2.1 and 2.2 of the notice of motion was directed only against the Master and the Assistant Master. That is as a result of s 414(2) of the Companies Act 61 of 1973 which grants only the Master or presiding officer the power to subpoena persons other than the directors and officers of the company in liquidation to appear at creditors’ meetings for the purpose of being interrogated, or to produce documents. Unlike s 414(1) which permits the input of the liquidators in regard to the approved absence of directors and officers of the company in liquidation from creditors’ meetings, there is no such input required in relation to other persons being subpoenaed

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[21] Then, in terms of s 64 and s 65 of the Insolvency Act 24 of 1936 it is the presiding officer, in this case the Assistant Master, who is responsible for summoning persons for purposes of interrogation at creditors’ meetings, and for running those proceedings. The indication given by the Master and the Assistant Master to abide the outcome of Part A meant that they were not opposed to this

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<sup>12</sup> Paragraph 2.3 of the notice of motion became paragraph 1.3 of the Part A order granted.

court granting an interdict against the subpoena of the second and third applicants to the adjourned second meeting of 5 November 2025, and against the continued interrogation of the third applicant. Since neither the Master nor the Assistant Master opposed the interdict sought in terms of paragraphs 2.1 and 2.2, only the relief sought in paragraph 2.3 of the notice of motion remained live for urgent determination, and it was directed against the liquidators.

[22] It bears emphasizing that the issues raised in both paragraphs 2.1 and 2.2 of the notice of motion remain live for final determination in Part B, and as a result, the parties will have opportunity to deal with them then. Given that the main parties affected by those prayers were effectively agreed that those issues could be dealt with at a later stage as part of the Part B proceedings, there was no discernible reason given for why the same issues should be decided for interim purposes, only to be determined again for final purposes. That would manifestly be at odds with the effective administration of judicial resources and swift resolution of disputes which, in this case was provided by the parties themselves. Taking into account that all of this occurred on a busy urgent court roll, the granting of the interim interdict which was not opposed, was in the interests of justice and in line with the court's power to manage proceedings promptly, efficiently and effectively.

[23] Turning to the interdict sought against the liquidators, it is common cause that the liquidators have expressed an intention to sell the properties on the open market if the City was not willing to settle the cost of the liquidation, including their fees and two claims in the estate. They stated that intention in an e-mail dated 6 November 2024 in which they proposed to sell the 41 houses to willing

purchasers via private treaty or public auction, and the proceeds were to be used to cover the liquidation costs.

[24] They repeated that intention in a letter dated 27 January 2025, in which they suggested a public auction of 12 of the properties, to generate funds in the liquidated estate so that they could proceed with the transfer of the remaining 29 properties.

[25] Referring to correspondence dated 13 October 2025, the applicants state that they discovered ‘recently’ that the 41 houses had been advertised as being on auction. Pursuant to that discovery, the applicants’ legal representatives sent an e-mail dated 13 October 2025 to the liquidators stating as follows: “*Please advise what the status is with the sale of the properties that were advertised.*” Although the liquidators’ legal representatives responded to that e-mail on the same day, there was no response regarding the specific query relating to the advertised auction.

[26] In the answering affidavit, the liquidators do not deny the applicants’ averments above. However, they emphasize that the applicants have been aware of the liquidators’ intention to sell the 41 immovable properties since 27 January 2025. The difficulty with the liquidators’ terse response is that it does not deny what is stated in the founding papers, supported by the email of 13 October 2025, namely that the applicants discovered that the properties were advertised around 13 October 2025. That is not the same as the alleged applicants’ knowledge from 27 January 2025 of the liquidators’ intention to sell or to auction the properties.

[27] Secondly, the correspondence I have referred to above outlines at least 2 proposals from the liquidators regarding the 41 properties, with the last one suggesting the sale of only 12 of the properties. Yet in their answering affidavit the liquidators state that it has been known since 27 January 2025 that they intended to sell all 41 properties. This apparent contradiction is not explained. If anything, the contradiction fortifies the applicants' need for the update which was requested in the correspondence of 13 October 2025. The liquidators failed to provide it, and that is not disputed in the papers. Even though the applicants' own version does not specify exactly when and how they made discovery of the advertised auction in or about 13 October 2025, the fact is that they did request an update from the only people who could provide it, namely the liquidators, and none was provided.

[28] Seen in that light, it does not assist for the liquidators to now confirm in their answering affidavit that:

“None of the properties have been sold nor have any offers been received for any of them. There are no pending transfer processes in respect of any of the properties. There are also no ongoing negotiations in respect of the sale of any of the properties.”

[29] These averments provide cold comfort because they were provided only in the answering affidavit dated 4 November 2025. This is the information that was requested of it on 13 October 2025. It justifies the applicants' request for a court-ordered interdict on an urgent basis.

[30] As to the merits, it is not in dispute that the Olive Close housing project is part of the City's Breaking New Ground housing program, which was previously known as the Reconstruction and Development programme ('RDP'). The BNG

programme provides fully state-subsidised houses to low-income families on the housing waiting list – registered, state-housing beneficiaries who earn less than R3 500 per month. It is said that the objective is for the beneficiaries of the BNG houses to own the houses.

[31] It is not disputed that it was the Western Cape Provincial Department of Housing (‘the Department’) which finally approved the feasibility of the project, and funded the subsidy amounts to the Company. It is also common ground that certain conditions were attached in that regard, including that the Company was to ensure that the pre-emptive right referred to in section 10A(1) of the Housing Act 107 of 1997 was written into the sale agreement and title deed of every beneficiary, and it was to be phrased as follows:

*“It is hereby recorded that the Purchaser, on the strength of his/her personal information provided by him/her, will be granted a housing subsidy, as defined in the National Housing Code, for this property. As result, this sale shall be subject to the statutory condition, imposed by section 10A of the Housing Act, in favour of the Western Cape Provincial Government, which condition inter-alia prescribes that the Owner shall not sell or otherwise alienate the property withing a period of eight years from the date of sale, unless it has first been offered to the housing department of Western Cape Provincial Government at no cost to the said Provincial Government”.*

[32] Sections 10A and 10B provide as follows:

**“10A Restriction on voluntary sale of state-subsidised housing**

(1) Notwithstanding any provisions to the contrary in any other law, it shall be a condition of every housing subsidy, as defined in the Code, granted to a natural person in terms of any national housing programme for the construction or purchase of a dwelling or serviced site, that such person shall not sell or otherwise alienate his or her dwelling or site within a period of eight years from the date on which the property was acquired by that person unless the dwelling or site has first been offered to the relevant provincial housing department.

(2) The provincial housing department to which the dwelling or site has been offered as contemplated in subsection (1) shall endorse in its records that the person wishes to

vacate his or her property and relocate to another property and is entitled to remain on a waiting list of beneficiaries requiring subsidised housing.

- (3) When the person vacates his or her property the relevant provincial housing department shall be deemed to be the owner of the property and application must then be made to the Registrar of Deeds by the provincial housing department for the title deeds of the property to be endorsed to reflect the department's ownership of that property.
- (4) No purchase price or other remuneration shall be paid to the person vacating the property but such person will be eligible for obtaining another state-subsidised house, should he or she qualify therefor.

#### **10B Restriction on involuntary sale of state-subsidised housing**

- (1) Notwithstanding any provisions to the contrary in any other law, it shall be a condition of every housing subsidy, as defined in the Code, granted to a natural person in terms of any national housing programme for the construction or purchase of a dwelling or serviced site, that such person's successors in title or creditors in law, other than creditors in respect of credit-linked subsidies, shall not sell or otherwise alienate his or her dwelling or site unless the dwelling or site has first been offered to the relevant provincial housing department at a price not greater than the subsidy which the person received for the property.
- (2) Any such offer to the provincial housing department shall be made in writing and shall be accepted or rejected by the MEC within a period of 60 days from receipt thereof.
- (3) If such offer is accepted, the purchase price shall be determined, subject to the provisions of subsection (1), by agreement between the MEC and the person or creditor concerned or, in the event of no agreement being reached, by a valuer acceptable to both parties and registered in terms of the Valuers' Act, 1982 (Act 23 of 1982).
- (4) The purchase price as determined in terms of subsection (3) shall be financed by the MEC out of the provincial housing development fund.
- (5) An MEC may grant exemption from the provisions of subsection (1), either conditionally or unconditionally, in respect of any dwelling or site to which the provisions of that subsection apply.
- (6) The Registrar of Deeds concerned shall-

- (a) make such endorsements on the title deeds of any dwelling or site and such entries in his or her registers as may be necessary to indicate that the provisions of subsection (1) apply in respect of such dwelling or site;
  - (b) cancel any such endorsements or entries where an exemption has been granted unconditionally under subsection (5) or where satisfactory proof has been submitted that conditions imposed under subsection (5) have been complied with; or
  - (c) make such endorsements or entries as may be necessary to indicate any conditions subject to which an exemption has been granted under subsection (5).
- (7) No transfer of any dwelling or site in respect of which subsection (1) applies, shall be passed to a person other than the provincial government unless the Registrar of Deeds is provided with a certificate, signed by the head of department, to the effect that such dwelling or site has been offered for sale to the provincial department of housing in terms of subsection (1) and that-
- (a) the offer has been rejected; or
  - (b) an exemption has been granted under subsection (5), either unconditionally or subject to the conditions set out in the certificate.
- (8) The Minister may, by notice in the *Gazette*, make rules on the granting of exemption in terms of subsection (5) as well as the amount that must be paid by the person or creditor concerned for the granting of such exemption.

[33] The applicants state that the provisions of sections 10A and 10B of the Housing Act preclude the sale of the properties on the open market. They state that the fact that ownership was not transferred from the Company to the beneficiaries of the project is irrelevant, in that, unless the beneficiaries took occupation of the properties and remained in occupation for the full 8-year period, the properties would automatically revert to the Provincial Government as a matter of law.

[34] In their correspondence of 27 January 2025, the liquidators expressed a contrary view, the relevant extracts of which are as follows:

“5.1 The development of Melkbosch Village is a project-linked social housing scheme, which does not fall squarely into the definition of state-funded housing. The development of Olive Close was done by a market related developer, and built at its own expense, including erecting boundary walls, building roads, and procurement of civil infrastructure and services. The land was bought by the developer and the developer spent approximately R10 000 000,00 (ten million rand) to develop Olive close. The subsidy only covered the top structures. The development was therefore partially private and partially subsidised. Furthermore, the housing was not a national housing programme, but it was a project-linked housing scheme that was entered into between the City of Cape Town and the developer. Therefore, section 10A and 10B of the Housing Act does not find application.

5.2 The beneficiaries of Olive Close took occupation of the properties between 2009 and 2011. We can safely accept that all properties were occupied before 2017. Any reference to the sale of alienation of properties within eight years after acquiring the properties is therefore irrelevant, since more than eight years have lapsed since the beneficiaries acquired the properties.”

[35] It is not necessary or appropriate for this court to reach a conclusive view of the applicability of sections 10A and 10B at this stage. It is also evident from the liquidators’ response above that much of their stance is based on factual averments, which have yet to be fully traversed in papers and are not ripe for determination.

[36] But, based on the elementary rules of interpretation<sup>13</sup>, there can be little dispute about what s 10A and 10B of the Housing Act proscribe. Section 10A

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<sup>13</sup> See *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13 para 18. *Airports Company South Africa v Big Five Duty Free (Pty) Ltd and Others* [2018] ZACC 33; 2019 (5) SA 1 (CC) para 29. See *C:SARS v United Manganese of Kalahari (Pty) Ltd* (264/2019) [2020] ZASCA 16 (25 March 2020) para 8. *Cool Ideas 1186 CC v Hubbard and Another* [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) para 28.

prohibits the sale or alienation of property which is transferred to a housing beneficiary in terms of the City's housing policies for a period of 8 years from the date on which the property was acquired, *'notwithstanding any provisions to the contrary in any other law'*.

[37] Similarly, section 10B prevents the successors in title or creditors in law, from selling or otherwise alienating such a property unless it has first been offered to the relevant housing department at a price not greater than the subsidy which the person received for the property, *'notwithstanding any provisions to the contrary in any other law'*. In terms of section 10B no creditor is entitled to defray its costs as against the properties.

[38] As regards s 10A, the City's survey conducted in December 2024 revealed that only 29 of the original beneficiaries are living in the properties. Whilst the liquidators stated in their letter of 27 January 2025 that all beneficiaries took occupation between 2009 and 2011, implying that this includes the 29 properties, the papers are not clear on when exactly each of the properties were occupied by their rightful beneficiaries, or whether those occupants have continually remained at those properties. Accordingly, there is currently no conclusive evidence regarding whether, when and how the 8-year requirement set out in s 10A of the Housing Act has elapsed. In any event, the properties have yet to be transferred to the beneficiaries and it is therefore questionable whether they can be considered to have been 'acquired' by the beneficiaries within the meaning of that provision.

[39] As regards the remaining 12 properties the evidence is that the properties are occupied by persons who are not beneficiaries of the Olive Close project, and who are likely to be considered unlawful occupiers. Based on that evidence, the

8-year period has not begun to run, since the rightful owners are yet to take occupation. There is therefore a strong chance that these properties are to revert to the Provincial Government.

[40] In either event, whether in relation to the 12 or the 29 properties, there is a *prima facie* case established that the properties - which fall within a period of eight years from the date on which the property was acquired by the beneficiaries - are precluded from being sold or otherwise alienated unless they have first been offered to the Provincial Department. It is common cause here that no such offer has been made to the Department.

[41] In addition, there is a *prima facie* case established that the creditors of the Company who now wish to sell or auction the properties, are expressly prevented from doing so by the provisions of s 10B.

[42] That s 10A and s 10B were always intended to apply to these properties is reinforced by the inclusion of the pre-emptive right in terms of clause 21.10.1 of the agreement between the Company and the Provincial Department, quoted earlier, which expressly made reference to s 10A, precluding any sale if it was not in compliance with that provision.

[43] There is also to consider the fact that, as part of its agreement with both the City and the Provincial Department, the intention was for the Company to transfer the properties to the lawful beneficiaries of the project, which is what it was trying to do but was prevented by its dispute with the City regarding the outstanding rates and charges. The intention was not for the Company to retain the properties as its own assets. Thus, even though the 41 houses are yet to be

transferred to the names of the beneficiaries, as a matter of law they are not assets of the Company. Even in the Liquidation and Distribution account of the Company, the properties are not reflected as assets of the Company.

[44] All of the above considerations are sufficient to establish a *prima facie* case for the relief sought.

[45] The balance of convenience favours the granting of the relief. When weighing the potential harm to the applicants if relief is refused against the potential harm to the respondents if the relief is granted, constitutional considerations and obligations take prominence. It is not disputed that this municipality faces significant housing shortages, with housing beneficiaries who have been on waiting lists for many years, sometimes decades. The Olive Close properties are state assets which are meant to benefit housing beneficiaries as part of the State's obligations to fulfil the rights in section 26 of the Constitution. That obligation, which is meant to alleviate the pressing housing crisis, must be weighed against the needs of a private entity such as the Company or private individuals such as the creditors of the Company, to realise their financial losses. In my view, the balance of convenience favours the granting of the interdict, so that the issues raised by the relief sought, which are of national and constitutional significance can be properly ventilated. Given the housing shortages in this country, and the constitutional obligation placed upon the Municipality to provide housing, I consider the issues involved to be broader than the insolvency issue of the Company in question.

[46] It bears emphasis that the beneficiaries are low-income earners and will probably not be able to afford high rental payments. And as already discussed, it

appears that there are unlawful occupiers at least in relation to the 12 properties. It is therefore highly likely that, if the 41 properties are sold to third parties, those parties will seek to evict the beneficiaries and/or unlawful occupiers of the properties. In those circumstances, the City will probably be required to offer emergency housing to those persons, in terms of its constitutional duty to provide housing. Manifestly, this would not be in the interests of justice as this would have the effect of depriving the beneficiaries of permanent State subsidised housing to which they are entitled in lieu of emergency accommodation. Such an outcome is not only illogical but it also raises questions of constitutional obligations in compliance with s 26 of the Constitution.

[47] In any event, the effect of the order is not to finally prevent the liquidators from selling the properties in question, since Part B must still be determined. But there are questions of law relating to whether they are entitled to do so, and those questions warrant resolving before they embark upon the process of a sale or auction is embarked upon by the liquidators.

[48] And needless to say, any sale of the properties would affect many families and individuals who have already been earmarked as beneficiaries for the properties. There are questions of service delivery involved, which are sensitive. All of these issues weighed the balance of convenience in favour of granting the interim order.

[49] There is also reasonable apprehension of irreparable harm. During the proceedings, the liquidators were not willing to give any assurances that they will not proceed with the intended sale or auction of the properties. The City also stated that it had been advised that the liquidators have already sought to sell the

properties, albeit unsuccessfully to date. There can be no clearer instance of an injury reasonably apprehended. The injury is not only to the City, but to the lawful beneficiaries of the Olive Close project. The City had no alternative remedy but to approach this court on this issue given the liquidators' failure to engage on this issue, as I have already mentioned.

## **D. ORDER**

[50] For all these reasons, the following order was made:

1. Pending the final determination of the relief sought in Part B of the notice of motion (including any appeals arising therefrom):

1.1 The first respondent ('the Master') and/or the second respondent ('the Assistant Master') are interdicted and restrained from proceeding with the second meeting of creditors of Catch the Wind Trading (Pty) Ltd (*in liquidation*) ('the Company') only for the purposes of:

1.1.1 the continued interrogation of the third applicant at the second meeting of creditors of the Company in terms of section 415 of the Companies Act 61 of 1973 ('the Companies Act') read with section 65 of the Insolvency Act 24 of 1936 ('Insolvency Act') concerning all matters relating to the Company, its business or affairs and concerning any property belonging to the Company; and

1.1.2 requiring the second applicant to appear at the adjourned second meeting of creditors of the Company, to produce the documents listed in the subpoena issued to him, and to be interrogated concerning all matters relating to the Company, its business or affairs and concerning any property belonging to the Company.

1.2 The Master and/or the Assistant Master are interdicted and restrained from issuing any further subpoenas in terms of the Companies Act read with the Insolvency Act to any councillor, official or employee of the City to appear at any adjourned second meeting of creditors of the Company to produce documents and/or to be interrogated concerning all matters relating to the Company, its business or affairs and concerning any property belonging to the Company, without providing the applicants' legal representatives with no less than 30 days' notice in writing of their intention to do so.

1.3 The third and fourth respondents are interdicted and restrained from taking any action whatsoever to dispose of or sell the forty one immovable properties registered in the name of the Company that for

part of the State housing scheme know as Olive Close which forms part of the Melkbos Village Housing Project.

2. Costs to stand over for later determination.

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**N. MANGCU-LOCKWOOD**  
**Judge of the High Court**

Appearances:

For applicants:

M. Adhikari

Instructed by:

J. Jaftha, Fairbridges Wertheim Becker

For third and fourth respondents:

K. Meiring

Instructed by:

C. Redelinghuys, Christo Marais Attorneys