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

JUDGMENT

Reportable

Case no: 12598/2024

In the matter between:

STEPHEN MALCOLM GORE N.O.	**First Applicant**
DONOVAN THEODORE MAJIEDT N.O.	**Second Applicant**
NONKULULEKO LAWRENCIA TWALA N.O.	**Third Applicant**
NICHOLAS TIMKOE N.O.	**Fourth Applicant**
GREG MICHAEL TIMKOE N.O.	**Fifth Applicant**

[In their capacities as the joint provisional liquidators
of Reeco Holdings (Proprietary) Limited (in liquidation)]

and

BOTLIERSKOP PRIVATE GAME RESERVE (PROPRIETARY) LTD	**First Respondent**
THOMAS ARNOLDUS NEETHLING	**Second Respondent**
GEDEELTE 68 ROOIPOORT (PROPRIETARY) LTD	**Third Respondent**

Neutral citation: *Gore NO and Others v Botlierskop Private Game Reserve (Pty) Ltd* (Case no 12598/24) [2026] ZAWCHC ___ (26/02/2026)

Coram: **DAVIS AJ**

Heard: 5 November 2025

Delivered: 26 February 2026

Summary: Claim based on the *condictio furtiva* – required to establish theft – simulated transaction being part of a scheme calculated to defraud the *fiscus* – payment by a company on the strength of a fictitious invoice dressed up to disguise the true nature of the payment – not to be equated with theft of company funds where there was no intention to despoil the company and the company received value for the payment in terms of the real agreement between the parties as opposed to the simulated transaction – need establish damages in order to succeed with the *condictio furtiva* – no damages suffered where the company received what it bargained for.

ORDER

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1 The main application under case number 12598/2024 is dismissed with costs, such costs to include the cost of Senior Counsel payable on Scale C and Junior Counsel payable on Scale B.

2 The respondents' counterapplication under case number 12598/2024 is dismissed.

3 The applicants are ordered to pay the respondents' wasted costs incurred in connection with the counterapplication on the party and party scale, such costs to include the cost of Senior Counsel payable on Scale C and Junior Counsel payable on Scale B.

4 The respondents' application for a stay of the main application under case number 12598/2024 is dismissed with costs, including the cost of Senior Counsel payable on Scale C and Junior Counsel payable on Scale B.

5 The Registrar is directed to send a copy of this judgment to the Director of Public Prosecutions and to the South African Revenue Service, for such investigation and further action as may be considered necessary.

JUDGMENT

DAVIS AJ:

Introduction

[1] This is an application based on the *condictio furtiva*,[1] alternatively the provisions of s 26(1) of the Insolvency Act.[2]

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[1] Despite its name, the *condictio furtiva* is a delictual action for the recovery of patrimonial loss as a result of theft; it is a remedy available to an owner of a thing, or someone with sufficient interest in it, against a thief and his heirs for damages (see *Crots v Pretorius* 2010 (6) SA 512 (SCA) para 3; *Chetty v Italtile Ceramics Limited* 2013 (3) SA 374 (SCA) para 10).

[2] Section 26(1) of the Insolvency Act 24 of 1936 reads as follows:

[2] The applicants are the liquidators of Reeco Holdings (Proprietary) Limited ('Reeco'), which was placed under a final winding-up order on 22 August 2023 on the basis that it was unable to pay its debts.

[3] The respondents are a company called Botlierskop Private Game Reserve (Proprietary) Limited ('Botlierskop') and Thomas Neethling ('Neethling'), the sole director and controller of Botlierskop, who was also a director of Reeco at all material times prior to 10 August 2022.

[4] Reeco promoted an ambitious scheme involving the development of a private game reserve near the Mokala National Park in the Northern Cape. The project envisaged the construction of 50 luxury villas in a conservation area of 500 hectares of land to be purchased by Reeco, which would require funding of some US$ 200 000 million (R3.4 billion) which Reeco did not have.

[5] Reeco commenced its operations by purchasing 5 farms in the Northern Cape, together with game and movable assets, at a total cost of some R 149

"(1) Every disposition of property not made for value may be set aside by the court if such disposition was made by an insolvent-

(a) more than two years before the sequestration of his estate, and it is proved that, immediately after the disposition was made, the liabilities of the insolvent exceeded his assets;

(b) within two years of the sequestration of his estate, and the person claiming under or benefited by the disposition is unable to prove that, immediately after the disposition was made, the assets of the insolvent exceeded his liabilities:

Provided that if it is proved that the liabilities of the insolvent at any time after the making of the disposition exceeded his assets by less than the value of the property disposed of, it may be set aside only to the extent of such excess."

million. As Reeco did not have its own capital, it acquired funding from a company called Fantom Operations Limited ('Fantom'), who is a proved creditor in the estate.

[6] Without the injection of vast sums of money, the project was doomed to fail. Predictably, Reeco ran out of money and collapsed. Not a single villa was built; indeed, construction had not even commenced by the time Reeco was wound-up.

[7] At the date of the winding-up, Reeco's liabilities exceeded its assets by over R 86.5 million. Reeco was indebted to Fantom and other creditors in an amount of some R 185.5 million, while the estimated value of its immovable and movable assets amounted to some R 98.9 million. There is no prospect that Recco's creditors will be paid in full.

[8] Wille J granted an order convening a commission of enquiry in terms of ss 417 and 418 of the 1973 Companies Act into the trade, dealings, affairs and property of Reeco ('the Enquiry') and appointing retired Mr Justice Brand as Commissioner of the Enquiry

[9] This application is founded on documents obtained at the Enquiry and portions of the record of the evidence given by Neethling at the Enquiry, which is admissible as proof of the fact that he testified to what was recorded at the Enquiry.[3] Reliance is also placed on the transcript of portions of the evidence given at the Enquiry by one Jonathan Engelbrecht, a former director of Reeco ('Engelbrecht'), and one Jaco Avenant, the former financial director of Reeco ('Avenant'). The applicants sought the admission

[3] *Du Plessis NO v Oosthuizen* 1995 (3) SA 604 (O) 621 F – G.

of the evidence given at the Enquiry in terms in terms of s 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988. The respondents did not oppose the admission of the evidence. Indeed, the respondents relied in argument on the evidence given by Neethling, Engelbrecht and Avenant at the Enquiry.

The relief sought by the liquidators

[10] In this application the liquidators seek to recover an amount of R 9.2 million which Neethling, in his capacity as a director of Reeco, caused to be paid to his company, Botlierskop, on 3 March 2022.

[11] The liquidators allege that the payment to Botlierskop was a fraudulent arrangement, in which Engelbrecht was complicit. Reeco did not owe Botlierskop the money, and had no obligation to pay it. The payment was an unlawful abstraction of Reeco’s funds. Neethling and Botlierkop are joint wrong-doers and are liable to repay the amount of R 9.2 million to the liquidators on behalf of Reeco.

[12] In the alternative, the liquidators allege that the payment was a disposition without value as contemplated in section 26(1) of the Insolvency Act 24 of 1936 (‘the Insolvency Act’) read with s 340 of the 1973 Companies Act. Reeco received no value for the payment, which therefore falls to be set aside as a disposition without value.

[13] In the hearing Mr Woodland, who appeared for the applicants together with Mr Harrington, abandoned reliance on the disposition without value. He nailed his colours firmly to the mast, choosing to rely solely on the delictual claim based on theft.

The circumstances surrounding the payment of R 9.2 million

[14] The facts and circumstances giving rise to the payment of R 9.2 million are not in dispute.

[15] As has been mentioned, the Reeco project involved the purchase of five farms adjacent to the Mokala National Park. One such farm was Waterval, which was owned by Gedeelte 68 Rooipoort (Proprietary) Limited ('Gedeelte 68'), a company controlled by Neethling.

[16] The purchase price orally agreed for Waterval was an amount of R 28 million. However, Englbrecht and Neethling devised a scheme whereby R 8 million of the purchase price could be siphoned off and paid to Neethling overseas. It was agreed that only R 20.3 million would be disclosed on the deed of sale and paid to Gedeelte 68, and R 8 million would be paid to a Dutch Stichting in the Netherlands controlled by Neethling, called EMJA Stichting ('EMJA'). (Needless to say, the transaction raises obvious red flags with regard to contraventions of foreign exchange regulations and the evasion of transfer duty and capital gains tax.)

[17] Pursuant to this scheme, a fictitious pre-emptive right was created in favour of EMJA to purchase Waterval, which right EMJA 'sold' to Reeco for R 8 million. The deed of sale entered into between Gedeelte 68 and Reeco in respect of Waterval only reflected a purchase price of R 20.3 million, instead of the true purchase price of R 28 million.

[18] However, Neethling subsequently bethought himself, having taken advice from his attorney, and he asked that the R 8 million be added to the purchase

price for Waterval. Engelbrecht told him that it was too late to change the deed of sale, and that they would have to find another way to deal with the R 8 million.

[19] Engelbrecht, Neethling and Avenant, all being directors of Reeco, then sought other ways to justify the payment of the additional R 8 million of the purchase price for Waterval. It was agreed that the R 8 million would be couched as a 'consultancy fee' payable to another entity controlled by Neethling, being Botlierskop.

[20] In pursuance of this revised scheme, Botlierskop issued a fictitious invoice to Reeco for R 9.2 million, comprising consultancy fees of R 8 million and Vat of R 1.2 million, and a simulated, back-dated consultancy agreement was signed by Engelbrecht, on behalf of Reeco, and Neethling, on behalf of Botlierskop. Avenant then paid the R 9.2 million to Botlierskop on the strength of the fictitious invoice, on 3 March 2022.

[21] One is therefore dealing with a scheme comprising two simulated transactions, one being the deed of sale for Waterval, which understated the true purchase price, and the other being the fictitious consultancy agreement and invoice reflecting a charge of R 9.2 million for consultancy fees which were never in fact rendered.

[22] The simulations were admitted by Neethling Engelbrecht and Avenant when they testified at the Enquiry.

The case based on theft

[23] The liquidator's case based on theft is founded on the allegation that Neethling, while under a fiduciary duty to act in Reeco's interests, caused a payment of R 9.2 million of Reeco funds to be made to Botlierskop in circumstances where no monies were owed to Botlierskop, the payment was unauthorised, was made in Neethling's interests, and did not benefit Reeco.

[24] In short, it is alleged that Neethling misappropriated Reeco funds and that Botlierskop, controlled by Neethling, received the funds in the knowledge that they were not owed to Botlierskop. Reliance was placed on *R v Milne & Erleigh* (7) 1951 (1) SA 791 (A), *S v Herholdt & Others* 1957 (3) SA 236 (A), *S v De Jager* 1965 (2) SA 616 (A) and *S v Hepker & Another* 1973 (1) SA 472 (W).

[25] Mr Van der Merwe, who appeared for the respondents with Mr Prinsloo, argued that there can be no theft because Reeco, represented by three of its four directors, understood the payment to be part of the purchase price for Waterval, and they authorised the payment to Botlierskop in the full knowledge of what it was actually for.

[26] In the circumstances, so it was contended, there was no fraud or misrepresentation as between the parties to the transaction (being Reeco, Gedeelte 68 and Botlierskop), and no theft, as the company, with the full knowledge of the facts, consented to the payment.

Analysis

[27] In order to succeed in the claim based on the *condictio furtiva*, the liquidators have to show, on a balance of probabilities, that there was a theft of Reeco funds.[4]

[28] In *R v Herholdt and Others*,[5] it was held that, in order to establish that two payments constituted a theft, the prosecution had to prove that the accused a) did not have the authority to make the payments, and b) did not *bona fide* believe that they were entitled to make the payments.[6]

[29] In order to establish theft, the liquidators are required to prove in this case '*not only that the thing should have been taken without belief that the owner … had consented or would have consented to the taking, but also that the taker should have intended to terminate the owner's enjoyment of his rights or, in other words, to deprive him of the whole of the benefit of his ownership.'* [7]

[30] It is clear from the evidence of Neethling, Engelbrecht and Avenant that the payment of R 9.2 made to Botlierskop was intended to be permanent, as the payment was intended as part payment of the agreed purchase price payable by Reeco for Waterval. Therefore, the requirements of an intention

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[4] *Chetty v Italtile Ceramics Ltd (supra)* para 10.

[5] *R v Herholdt and Others* 1957 (3) SA 236 (AD).

[6] *R v Herholdt (supra)* at 257.

[7] *Chetty v Italtile Ceramics Ltd (supra)* para 10. At common law, theft has a wider meaning and includes *furtum usus*, which involves the theft of the use of another person's thing with the intention of returning it. There is no question of *furtum usus* in this case, as the funds were not intended to be returned to Reeco at any time.

permanently to deprive the owner of the benefit of ownership has, in my view, been met.

[31] More problematic for the liquidators, however, is the requirement that the thing should have been taken without authority and without a *bona fide* belief that Reeco had authorised the payment to Botlierskop.

[32] A print-out from the records of the Companies and Intellectual Property Commission (‘CPIC’) reveals that, at all material times, Reeco had four directors, namely Neethling, Engelbrecht, Avenant and one Funokwakhe Mcineka, who is not mentioned in the affidavits.

[33] Having regard to the contents of the transcripts of the evidence given at the Enquiry by Neethling, Engelbrecht and Neethling, which the liquidators rely on and which the respondents do not dispute, it is clear that:

a) the real purchase price agreed for Waterval was some R 28 million;

b) it was agreed that the purchase price would be split into two payments, one of some R 20 million to Gedeelte 68 and one of R 8 million, first agreed to be payable to EMJA, and subsequently agreed to be payable to Botlierskop when Neethling grew cold feet about the payment to EMJA;

c) it was agreed that the purchase price disclosed on the deed of sale concluded between Reeco and Gedeelte 68 would be only R 20 million odd, in order to reduce liability for Capital Gains Tax;

d) the invoice for R 9.2 million rendered by Botlierskop to Reeco for consultancy services was fictitious, and was contrived to justify the payment of R 9.2 million in terms of the revised scheme regarding the payment of the purchase price for Waterval;

e) Neehling, Engelbrecht and Avenant all knew and understood that no consultancy services had in fact been rendered by Botlierskop to Reeco, and that the real reason for the payment of R 9.2 to Botlierkop was to discharge Reeco's obligation to pay the balance of the agreed purchase price for Waterval in the amount of R 8 million, to which Vat was added;

f) Avenant authorised the payment on the strength of a document signed by Neethling and Avenant that the payment was part of the structured purchase price for Waterval.

[34] The evidence shows that three of the four directors of Reeco were fully aware of the true reason for the payment to Botlierskop, and agreed to the payment. Avenant interrogated the transaction, and authorised the payment on the basis of what he understood to be the underlying agreement, namely that it was part of the purchase price for Waterval which was still owing. Leaving aside Neethling, who clearly had an interest in the matter and therefore could not participate in any decision whether or not to authorise the payment,[8] there is no evidence in the papers to show that, in terms of the company's Memorandum of Incorporation, two directors could not validly authorize such a payment. In the circumstances it seems to me that Reeco,

[8]See s 75(5)(e) and (f) of the Companies Act 71 of 2008.

duly represented by two of its four directors, namely Avenant and Engelbrecht, did in fact consent to the payment.

[35] Mr Woodland argued, however, that the company could not legally consent to the payment in the circumstances of this case. In this regard he referred me to *S v De Jager and Another*,[9] in which the Court rejected the proposition that a company shareholder could give valid consent, in his capacity as director, to the company being despoiled by him.[10] The Court reasoned, *inter alia*, that a director, who occupies a position of trust in relation to the company, has authority to act for the company's benefit, and not for his own benefit.[11]

[36] In my view, the reliance on the case is misplaced, as the facts are distinguishable. In *De Jager*, the Court found that the company had in fact been despoiled: company funds were in fact used for De Jager's own purposes, and not for the benefit of the company. The situation is different in this case. It cannot be said that the payment did not benefit Reeco, as it discharged Reeco's admitted obligation to pay the balance of the purchase price agreed for the acquisition of Waterval, in circumstances where there is no suggestion, let alone evidence on the papers, that the agreed price of R 28 million was excessive in relation to the value of what was purchased.

[37] On the facts of this case, I find that Reeco gave valid consent to the payment to Botlierskop. That is sufficient to dispose of the claim based on theft.

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[9] 1965 (2) SA 616 (A).

[10] *S v De Jager and Another (supra)* 624G – 625F.

[11] *S v De Jager and Another (supra)* 625B.

[38] Moreover, and in any event, I find that, in the circumstances of this case, Neethling could reasonably have entertained a *bona fide* belief that valid consent had been given for the payment. This negates the second leg of the test for theft referred to above.

[39] Having regard to the evidence, it seems to me that there was a series of simulated transactions calculated to defraud the *fiscus* – the purchase price for Waterval was understated in the deed of sale, which would have caused an underpayment of transfer duty and capital gains tax, and no consultancy services were in fact rendered by Botlierskop, so that Vat could not legitimately be charged or claimed in respect thereof. But all of that is irrelevant to the liquidators' claim based on the *condictio furtiva*. I agree with the submission by Mr Van der Merwe that a fraud on the South African Revenue Service ('SARS') cannot be equated with a theft from Reeco. Whatever else one might say about the payment to Botlierskop – and there is plenty to be said – it did not amount to a theft of Reeco funds.

[40] Besides the fact that the liquidators have not been able to establish the requirements of theft, in my view there is another reason why the claim based on the *condictio furtiva* must fail, namely that the liquidators have not established that Reeco suffered *damages* as a result of the payment. This is fatal to the claim based on the *condictio furtiva*, as the remedy is delictual claim for the recovery of patrimonial loss suffered as a result of theft.[12]

[41] In this regard:

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[12] *Crots v Pretorius (supra)* para 3; *Chetty v Italtile Ceramic Limited* (supra) para 10.

a) Firstly, as has already been mentioned, there is no evidence that the agreed purchase price of R 28 million for Waterval was inflated. Keystone Property Consultants valued the land and improvements at R 25 million in March 2022, and it appears that the sale price of R 28 million R 1.3 million owed to a neighbour for game and R 250 000.00 for the game lodge and hunting safari business carried out on the farm. The purchase price of R 28 million does not strike me as inflated or excessive in the circumstances. Reeco therefore did not suffer any damages, as it received the value of Waterval. It got exactly what it had bargained for.

b) Secondly, with regard to the Vat of R 1.2 million paid by Reeco on the strength of the fictitious invoice for consulting fees, Avenant testified at the Enquiry that the Vat was correctly handled in Reeco's books, that Reeco included the invoice in its Vat return (which I take to mean that Reeco claimed the R 1.2 million as an input credit), that SARS queried the invoice as Reeco's Vat registration number was incorrectly stated thereon, that the invoice was then corrected by the insertion of the correct Vat registration number, and was accepted by SARS (which I take to mean that SARS allowed the input credit of R 1.2 million).[13] That being the case, Reeco is not out of pocket in respect of the R 1.2 million.

[13] On the other side of the equation, Botlierskop would have had to account to SARS for the R 1.2 million as output Vat.

[42] Finally, Mr Woodland contended that there is a duty on the Court to uphold standards of commercial morality,[14] and that to deny the liquidators' claim would be giving effect to an unlawful transaction, inasmuch as the payment of R 9.2 million was 'dressed up' to disguise the true nature and purpose of the payment, which was to evade the payment of taxes. I take a different view of the matter.

[43] In my judgment, were this Court to uphold the liquidators' claim, it would be giving indirect effect to the simulated deed of sale which falsely reflects the purchase price for Waterval as R 20 million instead of R 28 million, resulting in a windfall of R 8 million for Reeco. That, in my view, is not the way to uphold standards of commercial reality.

[44] In my judgment, the way to uphold commercial morality in this case is firstly, to apply the well-established principle that, when a Court is confronted with a simulated transaction, it will give effect to what the parties really intended, rather than the simulation,[15] and secondly, to refer this matter to the Director of Public Prosecutions, and to the South African Revenue Service, for such investigation and further action as may be considered necessary.

[45] For all these reasons, I conclude that the liquidators' claim based on the *condictio furtiva* cannot succeed.

The respondents' counterapplication

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[14] *S v Hepker* 1973 (1) SA 472 (W) 484F.

[15] *Commissioner for the South African Revenue Service v NWK Ltd* 2011 (2) SA 67 (SCA) para 43.

[46] The respondents brought a counterapplication in which they sought the joinder of Gedeelte 68 as a third respondent, and the rectification of the deed of sale entered into between Reeco and Gedeelte 68 for the acquisition of Waterval, so as to reflect the correct purchase price of R 27 000 000.00 instead of R 20 347 000.00.[16]

[47] The remedy of rectification was sought as a defence against the liquidators' claim based on theft. The dismissal of the claim based on theft renders it unnecessary for me to determine the rectification issue. I shall therefore dismiss the counterapplication on the ground that the relief has become moot.

[48] It is not only unnecessary, but also undesirable, for me to decide the rectification issue at this juncture. I am mindful of the fact that the incorrect recordal of the true purchase price for Waterval may well give rise to difficulties in the future - for one, the understatement of the purchase price will likely result in an inflation of the liability for Capital Gains Tax when the farm is sold. However, the rights and interests of SARS are implicated in this case, and, since SARS has a clear legal interest in any claim for rectification of the deed of sale for Waterval, it must be joined as a party to any such proceedings.

The respondents' application for a stay of the application

[16] The difference between the amount of R 28 million referred to in the testimony at the s 417 Enquiry and the R 27 million is that the amount of R 20 347 000.00 reflected in the Deed of Sale included an amount of R 1 347 000.00 which Neethling owed to a neighbour for game, but which Reeco ultimately paid directly to the neighbour. Neethling testified that, in order to arrive at the correct purchase price, one had to add R 8 000 000.00 to the amount of R 20 347 000.00 and deduct R 1 347 000.00.

[49] The respondents also brought an application for the stay of the liquidators' application, pending the determination of the action brought by Neethling, Bottlierskop and Gedeelte 68, as plaintiffs, against the liquidators and others under case number 2025-037421 ('*the action*').

[50] In the action, the relief sought is a declaration that Fantom's claim proved in the winding-up of Reeco is invalid and of no force and effect, and an order expunging the claim, alternatively an order directing the liquidators properly to investigate the validity of Fantom's claim against Reeco and to report to the Court thereon.

[51] The thrust of the stay application is that Fantom was not a loan creditor of Reeco, but an investor, that Fantom's claim should have been challenged by the liquidators in terms of s 45(3) of the Insolvency Act, and that if Fantom's loan claim is bad, Reeco was not and is not in fact solvent, so that there can be no question of a disposition without value.

[52] The stay application was said to be relevant to the alternative claim brought by the liquidators on the basis of s 26(1) of the Insolvency Act. It was rendered moot when the liquidators abandoned that claim, and elected to stand or fall by the main claim based on theft.

[53] In the circumstances, the stay application likewise falls to be dismissed on the ground that it has become moot.

Costs

[54] It remains for me to deal with the question of costs.

[55] As regards the main application, I see no reason to depart from the usual rule that the costs follow the result.

[56] As regards the costs of the counterapplication, it is relevant to note that the respondents' answering affidavit in the main application served as the founding affidavit in the counterapplication, and that the respondents did not deliver a replying affidavit in the counterapplication. In the circumstances the wasted costs associated with the counterapplication are relatively insignificant. Very little of the answering affidavit, and very little time in argument, was devoted to the issue of rectification.

[57] In the circumstances, it seems to me that the respondents should be awarded the cost of the counterapplication, as it was rendered unnecessary by virtue of their success in defeating the main application on the grounds that the liquidators had failed to establish their claim based on theft. Thus, I propose treating the costs of the counterapplication as costs in the cause.

[58] As regards the stay application, I consider that the application was entirely unnecessary. While the respondents were entitled to take a belts and braces approach, the liquidators should not be burdened with the additional cost thereby occasioned.

[59] It is well-established that a party must pay such costs as have been occasioned by his taking wholly unnecessary steps.[17] Given that I consider the stay application an unnecessary exercise, it follows that, in my view, the

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[17] *Gamlan Investments (Pty) Ltd v Trillion Cape (Pty) Ltd* 1996 (3) SA 692 (C) 701D (citing *De Villiers v Union Government (Minister of Agriculture)* 1931 AD 206 at 214).

respondents should pay the costs incurred by the liquidators in opposing the stay application.

[60] I should add that I have serious doubts about the competence of the relief sought in the action, upon which the stay application is predicated. I say that because it is not in dispute on the papers that Fantom's claim was reflected in Reeco's Amended First Liquidation and Distribution Account, which was confirmed by the Master on 22 May 2025. In terms of s 408 of the 1973 Companies Act, when the Master has confirmed an account, his confirmation of that account is final and it cannot be re-opened save where a Court authorises the re-opening.[18] In order to succeed in an application to re-open a confirmed account, the applicant is required to establish a ground for *restitutio in integrum*, such as fraud or *iustus error*, or that irregularities have been committed.[19] It also has to be shown that there is merit in re-opening the account in the sense that there is some prospect of success in having the account varied or corrected.[20]

[61] Although it is not framed in those terms, in substance what is being sought in the action is a re-opening of the Amended First Liquidation and Distribution Account. Having had regard to the allegations in the particulars of claim in the action, I am far from convinced that a proper case has been made out for such relief. And given my doubts about the prospects of

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[18] *Kilroe-Daley v Barclays National Bank Ltd* 1984 (4) SA 609 (A) 627 F.

[19] See *Kilroe Daley v Barclays National Bank Ltd (supra)*, *Cronje NO and Others v Hillcrest Village (Pty) Ltd and Another* 2009 (6) SA 12 (SCA)

[20] *Wispeco v Herrigel NO and Another* 1983 (2) 14 (C).

success in the action, I would not have been inclined to grant the stay application.

Conclusion

[62] In the result it is ordered that:

6 The main application under case number 12598/2024 is dismissed with costs, such costs to include the cost of Senior Counsel payable on Scale C and Junior Counsel payable on Scale B.

7 The respondents' counterapplication under case number 12598/2024 is dismissed.

8 The applicants are ordered to pay the respondents' wasted costs incurred in connection with the counterapplication on the party and party scale, such costs to include the cost of Senior Counsel payable on Scale C and Junior Counsel payable on Scale B.

9 The respondents' application for a stay of the main application under case number 12598/2024 is dismissed with costs, including the cost of Senior Counsel payable on Scale C and Junior Counsel payable on Scale B.

10 The Registrar is directed to send a copy of this judgment to the Director of Public Prosecutions and to the South African Revenue Service, for such investigation and further action as may be considered necessary.

D M DAVIS

ACTING HIGH COURT JUDGE

<u>Appearances</u>:

For the applicants: G Woodland SC

M Harrington

Instructed by Gillan & Veldhuizen Inc

Mr P J Veldhuizen / Ms M Van Heerden

For the respondents: M P van der Merwe SC

B Prinsloo

Instructed by Van der Merwe Attorneys

Mr P Van der Merwe