REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2026-018019

(1) REPORTABLE: NO/~~YES~~

(2) OF INTEREST TO OTHER JUDGES: NO/~~YES~~

(3) REVISED: ~~NO~~/YES

SIGNATURE

DATE 23 February 2026

In the matter between:

PROJECT SPARKLE SECURITY SPV (RF) PROPRIETARY LIMITED Applicant

and

HAROLD TOOCH N.O. First Respondent
[Identity number: 5[...]]

LORRAINE TOOCH N.O. Second Respondent
[Identity number: 5[...]]

ALAN JULIAN MENACHEMSON N.O. Third Respondent
[Identity number: 5[...]]

DARIO ZUCCOLOTTO N.O Fourth Respondent
[Identity number: 5[...]]

Cited in their capacities as the trustees for the time being of the

HAROLD TOOCH FAMILY TRUST, WITH TRUST REGISTRATION NUMBER IT265/91

JUDGMENT

STAIS AJ:

This judgment is handed down electronically by circulating it to the parties' representatives by email and by uploading on CaseLines.

[1] This is an urgent application for the provisional sequestration of the estate of the Harold Tooch Family Trust ("Trust").

Urgency

[2] The first and second respondents ("Mr Tooch" and "Mrs Tooch") are husband and wife, and have at all relevant times been duly appointed trustees of the Trust. The third respondent ("Mr Menachemson") resigned as trustee and was substituted by the newly appointed trustee, Mr Dario Zuccolotto NO ("Mr Zuccolotto"), who was joined as the fourth respondent pursuant to an unopposed joinder application. The order below provides for the current position. I shall, as a matter of convenience and where appropriate, refer to the trustees at the relevant time as the "Trust".

[3] Having considered the papers, I held the matter to be urgent. Mr Hoffmann (who appeared for the Trust) accepted this without too much demur. My view on urgency was primarily informed by the first respondent's admission in the founding affidavit that he had committed a fraud in relation to trust matters and the common cause facts that the Trust had committed an act of insolvency by selling immovable property and refused to furnish to the applicant an undertaking that it would not continue to dissipate assets. I shall return to the aspect of the fraud.

[4] Whilst criticism has been expressed regarding the oft-stated suggestion that insolvency applications are by their very nature urgent [see *Volvo Financial Services Southern Africa (Pty) Ltd v Adams Tkolose Trading CC* 2023 JDR

2806 paras 2-8], this application involves an admitted fraud on the applicant and the added prejudice to creditors caused by a dissipation of assets. To my mind, urgency was justified. This disposed of the Trust's first defence.

[5] I shall deal below with the only other defence – the applicant's lack of *locus standi* as creditor of the Trust. The Trust contends that there exists a *bona fide* dispute regarding the first respondent's ("Mr Tooch") authority to execute, on behalf of the Trust, the security documents that found the applicant's claim.

Relevant Facts

[6] The Trust holds 100% of the issued shares in Prominent Sites (Pty) Ltd, which in turn holds 100% of the issued shares in KT Wash Detergents (Pty) Ltd (in business rescue) ("KT Wash").

[7] The applicant claims to be a creditor of the Trust pursuant to loan funding received by KT Wash in 2021 and 2025 from Tamela Mezzanine Debt Fund 1 Partnership ("Tamela") in terms of agreements that were respectively described as a Term Facilities Agreement and a PCF Agreement. The loans are independently secured by a suit of security agreements *inter alia* containing cross guarantees and indemnities provided by KT Wash and the Trust in favour of Tamela and the applicant ("security agreements").

[8] The Facilities Agreement and related security agreements were concluded on 10 September 2021, and the PCF and related security agreements were concluded on 15 April 2025. On 10 September 2021, the Trust also concluded a cession whereby it ceded to the applicant *in securitatem debiti* the net proceeds from the sale of any 'relevant property' ("Cession").

[9] The applicant was established as a special purpose vehicle for the purposes of the security arrangements to realise the security in terms of the security agreements for the sole benefit of Tamela and to guarantee the obligations of KT Wash to Tamela.

[10] All the agreements executed by the Trust were signed by Mr Tooch, who did so ostensibly representing the Trust.

[11] KT Wash failed to make payments due in terms of the Term Facilities Agreement and commenced voluntary business rescue proceedings in March 2025. This constituted an event of default and Tamela duly demanded payment from KT Wash. The applicant in turn duly made demand on the Trust, which failed to pay the sum of R205,430,906.73 then due in terms of the Term Facilities Agreement.

[12] Despite demand from Tamela, KT Walsh also failed to make payments due in terms of the PCF Agreement. The applicant in turn duly made demand on the Trust, which failed to pay the sum of R97,070,748.00 then due in terms of the PCF Agreement.

[13] It is not in dispute that: (a) the Trust committed an act of insolvency as contemplated in s 8(c) of the Insolvency Act, 1936 ("Act") by making and attempting to make dispositions of immovable property which had (and will have) the effect of prejudicing its creditors or preferring one creditor above another; (b) a default judgment was granted against the Trust in October 2025 for payment of approximately R7½ million to Investec Bank Ltd ("Investec"); (c) the Trust is factually and commercially insolvent; and (d) sequestration of the trust will be to the advantage of creditors. The amounts of the two claims that found the Trust's debt to the applicant are also not disputed.

[14] The dispute as to the applicant's standing as creditor turns on the authenticity of two resolutions which purport to have authorised Mr Tooch to sign the 2021 and 2025 security documents on behalf of the Trust. It is the respondents' case that the resolutions are invalid and that the security agreements are therefore void. The first resolution is dated 7 September 2021 ("2021 resolution") and the second is dated 14 and 15 April 2025 ("2025 resolution").

[15] It bears mentioning that the Trust Deed allows that a resolution signed by all trustees shall be valid and effective as if passed at a meeting of trustees duly called and constituted.

The 2021 resolution

[16] The 2021 resolution is a formally typed-up document. It records several resolutions that are stated to have been passed in accordance with the provisions of the Trust Deed and informs that the trustees wish to authorise and approve the Trust's entry into, and implementation of, the transactions contemplated therein. The transactions include the Cession, Term Facility Agreement and security agreements. The 2021 resolution, which further authorises any trustee to negotiate and execute the relevant documents and authorises any one of the authorised signatories to sign the necessary documents, purports to be signed by Mr and Mrs Tooch and Mr Menachemson.

[17] The Trust's defence to the applicant's claim arising from the Term Facilities Agreement and related security agreements, is premised on the allegation that only Mr Tooch signed the 2021 resolution. It is alleged by Mr Tooch that Mrs Tooch and Mr Menachemson did not sign the 2021 resolution, but that it was he (Mr Tooch) who signed above the signature lines reserved for their respective signatures. The 2021 resolution records what purports to be their respective signatures in manuscript. Despite the respondents' (and Mr Hoffman's) protestations at Mr Tooch's conduct being labelled a fraud (because he lacked 'criminal' intent), that is what it is. The undisputed facts are entirely consistent with the existence of a misrepresentation made by Mr Tooch that the resolution was duly signed by all the trustees, knowing that the representation was false and intending that the counterparties would act on the representation.

[18] I was invited by Mr Hoffman to compare Mrs Tooch's signatures on various documents in the papers, in an attempt to persuade me that the signature on

the 2021 resolution is quite clearly not her signature. However, assuming for purposes of the present argument the veracity of Mr and Mrs Tooch's evidence that it is not her signature, I should then perform the same exercise in respect of Mr Menachemson's signature. I am unable to infer that his signature on the 2021 resolution does not compare favourably with the signature on his resignation letter. I say this merely to illustrate the difficulties with attempting the suggested exercise. I agree with Mr Daniels SC (who appeared with Mr Vetter, for the applicant) that I should refrain from doing so. But the evidence of Mr and Mrs Tooch is factually uncontested on this issue, and I accept, for the purposes of this application, that she did not sign the 2021 resolution.

[19] But it does not follow that Mrs Tooch was not aware of, and did not agree with, the purpose of the 2021 resolution. The answer to that question is a matter of fact to be determined from the probabilities. Mr Hoffman, referring to *Kalil v Decotex (Pty) Ltd & Anor* 1988 (1) SA 943 (AD) at 981D-J, argued that the issue should be referred for the hearing of *viva voce* evidence. However, on my analysis of the facts, the probabilities on this issue are not evenly balanced but speak rather to her knowledge of, and agreement with, the 2021 resolution. On 13 May 2021 she co-signed a trustees' resolution that authorised Mr Tooch to have the Trust provide "*one or more guarantee/s*" to secure funding for KT Wash from Investec. This was mere months before the further loans were acquired from the applicants (and also from ABSA Bank Ltd). She has been a trustee and a beneficiary since inception of the Trust, and she acted in both capacities when she signed a resolution on 22 January 2022 that amended the Trust Deed to provide specifically for a chartered accountant to be appointed in Mr Menachemson's stead in the event he resigned as trustee. She was clearly kept abreast of Trust matters because in October 2025 she filed an affidavit in support of the Trust's application to rescind the default judgment that Investec had obtained against the Trust the previous month based on the 2021 guarantee that she had co-authorised. The founding affidavit in the rescission application referred to the urgent and complex business rescue proceedings of KT Wash and multiple related

litigations. In company parlance, KT Wash is a full sub-subsidiary of the Trust, which was in serious financial difficulties for many years. It is, to my mind, improbable that she was at not aware of these facts that ultimately culminated in the PCF Agreement and the 2025 resolution, matters to which I shall return below. The Trust Deed requires of the trustees to maintain proper records and books of account, and an annual balance sheet of assets and liabilities. As a trustee she holds a fiduciary position to be performed with utmost good faith. I am not persuaded that she was at the time oblivious to the 2021 resolution, and the Term Facility Agreement and related security agreements. The aforementioned circumstances provide context to why Mr Tooch would, at the time of signing the resolution, have "*verily believed*" that Mrs Tooch "*would have no problem signing the resolution if I presented it to her*". He could not express such confidence, under oath, unless he knew that she was, at the time, aware that the resolution was required to release the loan funding and that he had her implied authority to act on behalf of the Trust [*Nieuwoudt & Anor NNO v Vrystaat Mielies (Pty) Ltd* 2004 (3) SA 486 (SCA) at para 23].

[20] However, even if I am wrong in rejecting Mrs Tooch's version on the probabilities, that is not the end of the 2021 resolution. It is a trite principle that trust law allows for a trust deed to provide for majority or quorate decision-making. It has now been reaffirmed that a trust deed can provide for something other than joint action by trustees and it can do so through a majority clause. [*Shepstone & Wylie Attorneys v de Wit & Others NNO* 2026 (1) SA 349 (CC)]. The Trust *in casu* is a majority-decision trust: if at any time there are more than two trustees, a quorum for meetings shall be two trustees, and a decision of the majority of such trustees shall be deemed to be the decision of them all [*Shepstone & Wylie supra* at paragraphs 57-59].

[21] This brings Mr Menachemson's status to the fore. Mrs Tooch confirms Mr Tooch's allegation that she did not know that he had signed the 2021 resolution and would not have allowed him to conclude the Term Facility Agreement and related security agreements has she been aware thereof. But Mr Tooch does not repeat this narrative in respect of Mr Menachemson. It is

not alleged that Mr Menachemson was unaware of the 2021 resolution (and that he would not have agreed to the execution thereof). Despite being cited as third respondent, Mr Menachemson did not file an affidavit in these proceedings. These *lacunae* are fatal to the respondents' version. I cannot discern from the papers whether the signature on the 2021 resolution is that of Mr Menachemson or was replicated by Mr Tooch and I am not prepared to accept only Mr Tooch's word on the issue. My reluctance stems not only from his admitted fraudulent conduct, but also from the manner in which he appears to have acted out of self-interest (and to the prejudice of creditors) in the Investec action and in this matter (*inter alia* warranting that he was duly authorised to execute the loan and related security agreements on behalf of the Trust, and marketing and selling trust assets during negotiations that preceded this application). Despite various letters and meetings between the parties' attorneys since mid-2025 in the run-up to this application, the defence that the trustees did not authorise the Cession was raised for the first time in a letter from the Trust's attorneys on 26 January 2026. Mr Tooch has now admitted to falsifying trust resolutions and has fraudulently misrepresented the authority of his co-trustees. The contention that this is not a justified conclusion from the admitted facts, rings hollow.

[22] Mr Tooch alleges that he signed the 2021 resolution "*on behalf of*" Mr Menachemson and that the latter was not a trustee at the time. It is therefore not necessary to consider whether Mr Nochemson authorised Mr Tooch to sign the 2021 resolution on his behalf (Mr Tooch says as much), but it does beg the further question whether Mr Menachemson was a trustee at the time?

[23] The Trust Deed permits a trustee to resign without a court order, to be appointed upon written acceptance of the appointment and is deemed to be vested with and bound by the powers of a trustee. However, s 6(1) of the Trust Property Control Act,1988 ("TPC Act") provides that a person appointed as trustee in terms of a trust instrument shall act in that capacity only if authorized thereto in writing by the Master; s 20(3) provides that if a trustee so

authorized resigns, he shall without delay return his written authority to the Master; and s 21 provides, irrespective whether or not the trust instrument provides for the trustee's resignation, that the trustee may resign by notice in writing to the Master and to the ascertained beneficiaries who have legal capacity.

[24] It is alleged that Mr Menachemson resigned as trustee on 1 March 2021 and that the Trust resolved on the same date to appoint Mr Zuccolotto in his stead. Mr Menachemson's letter of resignation and a Trust resolution noting his resignation, and appointing Mr Zuccolotto, were provided in support of these allegations. The resignation letter, which is addressed to the Trust (and not to the Master and the Trust beneficiaries), bears two stamps. The first is that of a commissioner of oaths, who signed on 18 November 2021, and which appears side-by-side with a second stamp confirming that it is "*Certified a true copy of the original*". The purpose of the certification is not explained. The Master's letter appointing Mr Zuccolotto is stamped 24 January 2022. There are further unexplained (but undisputed) facts that reveal that Mr Menachemson continued to act as trustee after 1 March 2021, and even after 24 January 2021. On 13 May 2021, Mr Menachemson signed the Trust resolution that authorised the Investec loan. Even if that was also a fraudulent replication of Mr Menachemson's signature by Mr Tooch, one may ask why the latter would include the former as a trustee, instead of Mr Zuccolotto.

[25] The facts of this matter underscore the importance of holding a trustee to the appointed position until formally removed from office, and the issuance of new letters of authority, by the Master [*Soekoe NO v Le Roux* [2007] ZAFSHC 135 (29 November 2007); *Die Orffer Landgoed (Pty) Ltd v Orffer NO & Others* (17494/2024) [2025] ZAWCHC 4]. The Master appointed Mr Zuccolotto on 24 January 2022 and that is when Mr Menachemson ceased to be a trustee.

[26] I find that the 2021 resolution was duly signed by Messrs Tooch and Menachemson as majority trustees at the time. It was therefore valid, and it

authorised Mr Tooch to conclude the Term Facility Agreement and related security agreements (including the Cession) on behalf of the Trust.

<u>The 2025 resolution</u>

[27] Similar to the 2021 resolution, the 2025 resolution is a formally typed-up document which records several resolutions that are stated to have been passed in accordance with the provisions of the Trust Deed and informs that the trustees wish to authorise and approve the Trust's entry into, and implementation of, the transactions contemplated therein. These transactions include the PCF Agreement and related security agreement. The 2025 resolution, which further authorises any trustee to negotiate and execute the relevant documents and authorises any one of the authorised signatories to sign the necessary documents, purports to be signed by Mr and Mrs Tooch and Mr Zuccolotto.

[28] Both Mr and Mrs Tooch deny signing this resolution, although Mr Tooch's denial is tenuous because he says that he is not able to recall signing the 2025 resolution.

[29] For reasons already stated I am not prepared to accept the veracity of Mr Tooch's version. On this particular issue, he does not attempt to explain why the Trust's appointed attorneys would insert electronic signatures on the 2025 resolution without the trustees' mandate, an aspect I deal with further below. I have also dealt with the fact, in accordance with establish legal principles, that Mr Zuccolotto was an appointed co-trustee with Mr and Mrs Tooch at the time the 2025 resolution was executed. Whilst Mr Zuccolotto deposed to an affidavit that is said to confirm and corroborate the contents of Mr Tooch's answering affidavit insofar as it relates to Mr Zuccolotto, it is of no real assistance for the respondents' defence. That is because Mr Tooch does not touch upon the issue of Mr Zuccolotto's signature on the resolution. Having read Mr Tooch's affidavit and having seen that both Mr and Mrs Tooch

disown their electronic signatures on the 2025 resolution, Mr Zuccolotto's silence on the issue of his own signature is deafening.

[30] The respondents raised the defence of the trustees' alleged unauthorised conduct for the first time in the Trust attorneys' letter of 26 January 2026. But it was raised only in relation to the Cession that was concluded pursuant to the 2021 resolution. Nothing was said about the 2025 resolution. The applicant, being unaware this belated dispute, did understandably not deal with it in the founding affidavit. It was first raised in the answering affidavit of Mr Tooch, who denied that he and Mrs Tooch digitally signed the 2025 resolution. I pause to mention that the denial is evidently based on a pre-existing knowledge that the signatures were in fact digital.

[31] In reply, the applicant responded by presenting evidence of correspondence in relation to the finalisation of the PCF Agreement and related security agreements at the time. The evidence is that the Trust attorneys confirmed that two of the trustees (a reference to Mr and Mrs Tooch) had signed the 2025 resolution electronically on 14 April 2025 and that they were following up with the third "*independent*" trustee (a reference to Mr Zuccolotto), who they subsequently advised had signed on 15 April 2025. A "*duly authorised resolution*" together with an electronic signature authentication certificate was received by the applicant's attorneys. The certificate records the electronic signatures of each trustee (together with e-mail addresses and dates on which the signatures were appended to the 2025 resolution). Mrs Tooch filed a rejoinder affidavit "*to address certain new (and indeed false) allegations made*" in the applicant's replying affidavit. Conspicuous by its absence, is any attempt by Mrs Tooch to challenge or address the evidence regarding the electronic signatures. Mr Hoffman's attempts to do so by illative argument do not detract from the undisputed evidence on this issue.

[32] I find that the trustees signed the 2025 resolution and that Mr Tooch was duly authorised to sign the PCF Agreement and related agreements on behalf of the Trust.

[33] In the result, and the applicant is a creditor of the Trust and has *locus standi* to bring this application.

[34] The following order is issued:

1. The matter is urgent.

2. Mr Dario Zuccolotto N.O., in his capacity as a trustee for the time being of the Harold Tooch Family Trust (IT265/91) ("the Trust"), is joined as the fourth respondent in this application.

3. The estate of the Trust is placed under provisional sequestration in the hands of the Master.

4. A *rule nisi* is issued, calling upon all persons concerned to appear and to show cause, if any, on 11 May 2026 as to why:

    4.1. the Trust should not be finally sequestrated; and

    4.2. the costs of this application should not be costs in the sequestration of the Trust.

5. Service of this order must be effected as follows:

    5.1. by the sheriff on the first respondent at 44, […] Avenue, Vorsterkroon, Nigel (*domicilium citandi et executandi*) and Unit 2, 1[...] S[...] Avenue, Atholl, Johannesburg (*residential address*);

    5.2. by the sheriff on the second respondent at 44, […] Avenue, Vorsterkroon, Nigel (*domicilium citandi et executandi*) and Unit […], 1[...] S[...] Avenue, Atholl, Johannesburg (*residential address*);

    5.3. by the sheriff on the fourth respondent at 44, […] Avenue, Vorsterkroon, Nigel (*domicilium citandi et executandi*);

    5.4. by the sheriff on any employees of the Trust that may be located at 44, […] Avenue, Vorsterkroon, Nigel (*domicilium citandi et *executandi*) and Unit […], 1[...] S[...] Avenue, Atholl, Johannesburg (*residential address*);

5.5. by the sheriff on any registered trade union representing the employees of the Trust;

5.6. by the sheriff or via email upon the South African Revenue Service.

6. The costs of this application are costs in the sequestration of the Trust's estate.

P STAIS
Acting Judge of the High Court
Johannesburg

APPEARANCES:

Applicant:	AJ Daniels SC, with CT Vetter
Instructed by:	Bowman Gilfillan Inc
Respondents:	JT Hoffman
Instructed by:	Witz Inc
Date of hearing:	12 February 2026
Date of judgment:	23 February 2026