IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2024/037099

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: ***NO***
(2)	OF INTEREST TO OTHER JUDGES: ***NO***
(3)	REVISED.
(4)	Date: 19 February 2026
Signature: __[redacted]	

In the matter between:

JACOBUS CORNELIUS REYNEKE	Applicant
And	
WILLIAM OLIVER GRAHAM N.O.	First Respondent
ANNAMEY GRAHAM N.O.	Second Respondent
HERMANUS ALBERTUS DU TOIT N.O.	Third Respondent

In re:

WILLIAM OLIVER GRAHAM N.O.	First Applicant
ANNAMEY GRAHAM N.O.	Second Applicant
HERMANUS ALBERTUS DU TOIT N.O.	Third Applicant
And	
SAILING PUPPY (PTY) LTD	First Respondent
JACOBUS CORNELIUS REYNEKE	Second Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] This is my judgment on the Applicant's ("Reyneke") application for leave to appeal against the whole of the judgment and order delivered on 20 May 2025. In that judgment, the Court granted relief in terms of s 61(12) of the Companies Act 71 of 2008 ("the Act"), directing the First Respondent in the main application, Sailing Puppy (Pty) Ltd ("Sailing Puppy"), to convene a shareholders' meeting pursuant to the written demand made under s 61(3) by the Rodzina Carbonile Trust ("the Trust"), and appointed an independent chair to preside over that meeting.

[2] The application for leave to appeal is brought on the basis that the Court:

(i) entertained motion proceedings despite allegedly foreseeable disputes of fact,

(ii) misapplied Plascon-Evans,

(iii) assumed shareholder status in the Trust without deciding it, and

(iv) failed to grapple with written loan agreements that, on Reyneke's case, demonstrate a pledge rather than a transfer of ownership of shares. These submissions appear from the Applicant's written heads in support of leave.

[3] The Trust opposes the application, contending that no genuine dispute of fact exists on the central issue of share ownership; that Reyneke's version is, on the papers, palpably untrue and properly rejected on motion; and that the statutory test in s 17(1) of the Superior Courts Act 10 of 2013 ("the SCA Act") is not met. These contentions appear from the Trust's heads resisting leave.

B. The Governing Test

[4] Leave to appeal may be granted only if the Court is of the opinion that (i) the appeal would have a reasonable prospect of success, or (ii) there is some other compelling reason why it should be heard. See s 17(1)(a) of the SCA Act and the authorities that emphasise the heightened threshold.

[5] The Supreme Court of Appeal has explained that the test requires a "dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court". Prospects must not be remote; there must be a sound, rational basis to think the appeal would succeed. The Trust's heads collect these authorities, including *Ramakatsa v ANC*,[1] *MEC for Health, EC v Mkhitha*[2]*, and Mont Chevaux Trust*[3].

[1] *Ramakatsa and Others v African National Congress and Others* 2021 JOL 4993 (SCA)

[2] *MEC for Health, Eastern Cape v Mkhitha and Another* (1221/2015) [2016] ZASCA 176 (25 November 2016)

[3] *Goosen and 18 Others v Mont Chevaux* (148/2015) [2017] ZASCA 89 (6 June 2017)

C. Issues Raised

[6] The proposed grounds of appeal coalesce around four themes:

6.1 Whether this Court erred in entertaining the application on motion given alleged, foreseeable disputes of fact (invoking **Room Hire**[4]).

6.2 Whether the Court misapplied **Plascon-Evans**[5] in rejecting the Applicant's version on paper.

6.3 Whether the Court assumed, rather than decided, that the Trust is the sole shareholder of Sailing Puppy.

6.4 Whether the loan agreements (July and September 2020) and alleged pledge created a coherent defence precluding final relief.

[7] The Trust contends that the extensive, contemporaneous documentary record—much of it authored by or emanating from the Applicant or the incorporator —objectively establishes that, with effect from 15 October 2019, the Trust was the holder of all 100 issued shares; that copies of the executed CM42 and Share Certificate no. 2 were circulated and retained from March 2020; and that the later "pledge" thesis is not only unsupported by contemporaneous documentation, but is inconsistent with how a pledge of certificated shares lawfully operates.

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[4] *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA1155 (T).

[5] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

D. Brief Recapitulation of Salient Facts from the Record

[8] The judgment of 20 May 2025 recorded, inter alia, that: - The Trust demanded a meeting under s 61(3) on 12 March 2024 to consider a resolution under s 71 to remove Reyneke as director. - WPR (the incorporator) prepared, on instruction, the CM42 transferring the 100 shares to the Trust dated 15 October 2019, together with Share Certificate no. 2 issued to the Trust as “registered proprietor of 100 Ordinary Par Value Fully Paid Shares”. These documents were shared and retained in March 2020. - When the Trust’s s 61(3) demand issued, Reyneke for the first time asserted that he, not the Trust, was the sole shareholder; his attorneys recorded this position on 18 March 2024.

[9] The Trust’s opposing heads amplify the chronology via emails from 30 January 2020 to 12 March 2020 (including Reyneke’s own instructions to WPR to date the transfer 15 October 2019, and his subsequent transmittal of the share documents), as well as later confirmations from WPR in February 2023 identifying the Trust as the 100% shareholder. They also address the genesis of the 2020 “loan agreement” templates (said to have been generated for bank/regulatory KYC documentation), and explain why they do not, textually or contextually, dislodge the earlier transfer.

[10] The Applicant’s heads press the contrary view: that the Court treated the Trust as shareholder “as a premise”, failed to decide the ownership dispute, and that on Plascon-Evans the Court was bound to accept his version that the documents were delivered as part of a pledge for security under the later loan agreements. They also invoke **Room Hire** to submit the matter ought not to have proceeded on motion.

E. Analysis

E1. The procedural posture and Plascon-Evans

[11] The order granted was final in form and rested on the Court's assessment of the affidavits and the undisputed documentary trail. Motion proceedings may result in final relief where, applying **Plascon-Evans**, the respondnt's averments (to the extent admitted by the applicant) together with the applicant's version justify the order, unless the applicant's version is so far-fetched, clearly untenable, or fanciful that it can be rejected on the papers. Both sets of leave heads engage with these principles.

[12] In rejecting Reyneke's version at first instance, the Court set out the documents he himself generated or transmitted in February–March 2020, demonstrating an intention to (and the fact of) transferring the 100 shares to the Trust with effect from 15 October 2019, and the subsequent circulation of the executed CM42 and Share Certificate no. 2. The leave record discloses no contemporaneous document contradicting those steps or describing the arrangement as a pledge at the time of transfer.

[13] On the contrary, the Trust's opposing heads detail a consistent chronology from January 2020 through March 2020, and further confirmatory exchanges in February 2023, in which WPR again identifies the Trust as 100% shareholder—drawing a response from Reyneke not disputing that status, but instructing that it not be communicated externally without co-approval. That correspondence is materially inconsistent with the pleaded position that he "always" remained the sole shareholder or that the Trust merely held security.

[14] The loan agreements dated 28 July 2020 and 22 September 2020, on which Reyneke relies to ground a pledge narrative, post-date the transfer documents by several months. Even accepting their existence at face value, they cannot retrospectively convert an earlier executed transfer into a pledge; nor do they serve

as clear, primary evidence of a pledge executed in accordance with law (which, as the Trust points out, does not involve registering the shares into the pledgee's name absent default and realisation, and would ordinarily retain title in the pledgor with delivery of the certificate and transfer form as security only). These are precisely the points the Trust advances in resisting leave.

[15] In short, the "pledge" version must be assessed against an uncontested documentary trail generated before those loan agreements existed. The record discloses no contemporaneous minute, email, instruction to the incorporator, or board record describing the Trust's share certificate as a security device or reflecting that ownership remained vested in Reyneke. On that footing, the Court's original conclusion—that Reyneke's version was so inherently untenable on the papers as to be rejected—does not reveal a reasonable prospect of being overturned on appeal.

E2. The "Room Hire" point

[16] Reliance on **Room Hire** assumes a foreseeable, genuine dispute of fact on a material issue. The present papers reveal that the "dispute" arose only after the s 61(3) demand, and that it is contradicted by the objective documents marshalled by the Trust. The existence of a dispute, without more, is not dispositive; it must be real, bona fide and not contrived. On the record summarised in the parties' heads, the putative dispute was appropriately assessed as not genuine in the **Plascon-Evans** sense. That assessment discloses no reasonable prospect of appellate interference.

E3. Alleged assumption of shareholder status

[17] It is said that the Court "assumed" the Trust's shareholder status rather than deciding it. That submission is inconsistent with the reasoning and the material the judgment canvassed: the Court referred to the transfer documentation, the chain of custody of the share certificate, and the communications evidencing the state of affairs as at March 2020 and again in February 2023. The Trust's opposing heads tabulate these materials. Far from bypassing the point, the Court determined it on the papers,

concluding that the Trust was, and had been since 15 October 2019, the registered holder of all issued shares. No reasonable prospect has been shown that an appellate court would find that this was a mere assumption rather than a finding properly open on the documents.

E4. Section 61(12) discretion

[18] Both sides cite authorities that courts are slow to intrude in management absent special circumstances and a bona fide, proper purpose (e.g*., Yende v Orlando Coal Distributors (Pty) Ltd 1961 (3) SA 314 (W) and CDH Invest v Petrotank [2018] 1 All SA 450 (GJ)*). The judgment found those special circumstances present—chiefly the stalemate caused by Reyneke's refusal to cooperate in convening the shareholders' meeting, and the company's best interests in enabling shareholders to exercise rights under s 71. Nothing in the leave papers furnishes a compelling basis to conclude that a court of appeal would hold that the discretion under s 61(12) was improperly exercised on the proven facts.

F. Conclusion on Prospects

[19] Having carefully reconsidered the record, the grounds advanced in the Applicant's heads, and the answering submissions, I am not persuaded that another court would come to a different conclusion. Nor has any compelling reason been demonstrated to entertain an appeal in the interests of justice. The high-water mark of the application rests on a belated and document-thin pledge narrative that is irreconcilable with the earlier, contemporaneous record.

[20] Accordingly, the application fails to satisfy s 17(1) of the SCA Act.

G. Order

[21] The following order is made:

1. The application for leave to appeal is dismissed.

2. The Applicant is ordered to pay the costs of this application, including the costs of senior counsel, such costs to be taxed on scale C.

[redacted]

J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 19/09/2025
Date of Judgment: 19 February 2026

On behalf of the Applicants: Adv. AJP Els SC
With him: Adv JL Myburgh
Instructed by: Taljaard & De Oliveira
On behalf of the Respondents: Adv. N. Konstantinides SC
Duly instructed by: Van Hulsteyns Attorneys C/O Riaan Bosch Attorneys; Pretoria

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 19 February 2026.