IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO: D3822/2025

In the matter between:

THE TRUSTEES OF THE INKWAZI TRUST	**FIRST APPLICANT**
WARTBURG INCORPORATED	**SECOND APPLICANT**

and

SKEMA HOLDINGS (PTY) LTD	**FIRST RESPONDENT**
THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	**SECOND RESPONDENT**
MACSTEEL SERVICE CENTRES SA (PTY) LTD and ROBERT FELLNER-FELDEGG	**THIRD RESPONDENT**
(AFFECTED PARTIES)	

(Application in terms of s 131 of the Companies Act 71 of 2008 for the commencement of business rescue proceedings)

ORDER

The following order is made:

1. The application to place the first respondent under supervision and to commence business rescue proceedings in terms of s 131 of the Companies Act 71 of 2008 is dismissed.

2. The applicants' application to strike out is dismissed.

3. The applicants are ordered, jointly and severally, the one paying the other to be absolved, to pay the costs of the application on scale B, including the costs occasioned by the interlocutory applications and the costs of two counsel where so employed.

JUDGMENT

Delivered: 13 April 2026

Masipa J

Introduction

[1] This is an application in terms of s 131 of the Companies Act 71 of 2008 ("the Companies Act") for an order placing the first respondent, Skema Holdings (Pty) Ltd ("Skema Holdings"), under supervision and commencing business rescue proceedings. The application is opposed principally by Macsteel Service Centres SA (Pty) Ltd ("Macsteel") and Mr Robert Fellner-Feldegg ("Fellner-Feldegg"), as affected parties, each of whom holds, or asserts, a substantial claim against Skema Holdings and each of whom contends that the application is devoid of merit and constitutes an abuse of the business rescue procedure.

[2] The application did not arise in a neutral setting. By the time it was launched, winding-up proceedings against Skema Holdings had already been argued and judgment in those proceedings had been reserved. Against that background, the applicants seek to invoke the statutory machinery of Chapter 6 of the Companies Act, contending that Skema Holdings is financially distressed but capable of rescue, and that the preservation of the enterprise, its assets, and its broader commercial ecosystem warrants intervention by the court.

[3] The opposing respondents contend, by contrast, that Skema Holdings has no meaningful business of its own to rescue, that the so-called rescue plan is speculative, reactive and dependent upon contingencies outside the company's control, and that the application was launched when it was because liquidation had become imminent. On that footing, they submit that the application is not a *bona fide*

invocation of the rescue procedure, but a last-minute attempt to avert or delay the consequences of winding-up.

[4] The matter is further complicated by extensive interlocutory skirmishing. There were applications to admit further affidavits, including supplementary founding and answering affidavits; contentions concerning the status of Macsteel and Fellner-Feldegg as creditors; arguments directed at the structure of the group, the location of the axle business, the ownership of immovable properties, the identity of the employer of the relevant workforce, and the practicality of realising property assets to discharge indebtedness; and an application to strike out allegations that the business rescue application is *mala fide* and abusive. In this matter, those interlocutory issues cannot sensibly be severed from the merits, because they illuminate the very character and reliability of the rescue case advanced.

[5] After the hearing, the parties drew to my attention a judgment delivered by Mossop J in *A1 Capital (Pty) Ltd v Urban Lifestyle Investment Holdings (Pty) Ltd and Others*[1] involving similar issues in which business rescue applications were dismissed and provisional liquidation relief was granted, as well as the application for leave to appeal against that judgment. That judgment is not binding upon me, and each matter must necessarily be decided on its own record. It nevertheless forms part of the broader factual context because it dealt with materially similar contentions concerning group structure, the movement of assets, and the asserted viability of rescue within the Skema corporate environment.

[6] The central question remains whether, on the facts properly established on these papers, the applicants have shown that Skema Holdings is financially distressed and that there is a reasonable prospect of rescuing it within the meaning of s 131(4)*(a)* of the Companies Act. Closely connected to that enquiry is the question whether the application is, in truth, a *bona fide* invocation of the statutory rescue process or whether it is being used to delay or avoid the consequences of liquidation.

[1] *A1 Capital (Pty) Ltd v Urban Lifestyle Investment Holdings (Pty) Ltd and Others* [2026] ZAKZDHC 21.

The factual background

[7] The applicants’ case, broadly stated, is that Skema Holdings forms part of a long-standing and asset-rich corporate structure involved in manufacturing, mining, and property-related activities. It is said that the group has generated substantial revenue over time, that it has a significant asset base, and that, although liquidity has come under strain because of the immediate enforcement of substantial debts, the underlying enterprise remains viable. The applicants emphasise that business rescue is intended by the legislature to permit rehabilitation rather than destruction where there remains a realistic possibility of preserving the company or yielding a better return to creditors than liquidation would.

[8] The opposing respondents approach the matter from a different premise. They emphasise that the application is not for the rescue of the group as a whole, nor for the rescue of Skema Mining or other subsidiaries, but for the rescue of Skema Holdings itself. They contend that, when the record is analysed with care, Skema Holdings is not shown to be carrying on a meaningful operational business of its own. On their case, the founding papers blurred the distinction between the holding company and other group entities, relied on assets held elsewhere, invoked employment considerations that related to subsidiaries rather than to Skema Holdings, and put forward a rescue strategy that matured only after answering affidavits exposed deficiencies in the founding case.

[9] One of the recurring themes in the papers and in oral argument was the way in which the applicants presented the group and the holding company almost interchangeably. The applicants argued that the collapse of Skema Holdings would have severe implications for the wider group, including mining operations and employment. The respondents argued that this was a deliberate or at least impermissible blurring of corporate personality and that what had to be shown was not that the group had value, but that Skema Holdings itself had a rescuable business, a workable restructuring pathway, and a factual basis for the contention that a business rescue practitioner could achieve either rehabilitation or a better return for affected persons.

[10] That criticism is not merely formalistic. The Companies Act recognises companies as separate juristic persons. A rescue application concerning one company cannot succeed merely because value, activity, or employment exists elsewhere in the group. The court must determine whether the company before it is itself financially distressed and capable of rescue, and whether the statutory intervention is justified on the evidence relating to that company.

Preliminary issues: further affidavits and the evolving case

[11] Before turning to the substantive merits, it is necessary to deal with the proliferation of affidavits. A striking feature of the application is the repeated filing of supplementary affidavits by the applicants. These affidavits were not merely explanatory in the sense of clarifying some minor ambiguity or providing an incidental update. Rather, they were filed, repeatedly, in response to concrete criticisms advanced by the respondents that exposed material deficiencies in the founding papers. The pattern that emerges is not of a case fully and coherently set out from the start, but of a case that evolved, and at times materially shifted, as weaknesses were identified.

[12] The first major difficulty raised by the respondents concerned the existence and location of the operational business, particularly the so-called axle business. Macsteel contended in its answering papers that the axle business had been transferred out of Skema Holdings and was no longer being conducted by it. The founding affidavit did not adequately explain the relationship between Skema Holdings and the entity said to be conducting that business, nor did it clearly identify the legal and commercial basis on which the business was said to remain attributable to Skema Holdings. In response, the applicants filed supplementary affidavits in which it was asserted, with greater clarity than before, that the arrangement was not a transfer of ownership but a lease or intra-group utilisation of assets. No comprehensive documentary foundation for this arrangement was provided in the founding papers, and the explanation emerged only after the difficulty had been squarely raised.

[13] The second major difficulty concerned the immovable properties on which the rescue strategy depended. The respondents pointed out that many of the properties

relied upon by the applicants were owned by subsidiaries and were subject to mortgage bonds. The founding affidavit did not clearly explain how those properties could lawfully and practically be brought within the control of Skema Holdings or be made available for the purposes of a rescue plan for that company. In later affidavits, the applicants sought to introduce further material suggesting that the properties could be transferred, sold, or otherwise utilised as part of a restructuring exercise. Those explanations were not part of the original case and did not satisfactorily engage the legal and practical constraints associated with such transfers, including the rights of secured creditors and the requirements of s 134(3) of the Companies Act.

[14] The third major difficulty concerned the identity of the employer and the number of employees said to be at risk. The applicants relied heavily, in both the papers and oral argument, upon the preservation of employment as a reason to prefer business rescue to liquidation. The respondents, however, pointed out that the employees relied upon by the applicants were not shown to be employees of Skema Holdings itself, but rather of other entities within the group. In response, the applicants filed further affidavits addressing the group structure and the interrelationship between entities. But what remained absent was a clear evidential basis demonstrating that Skema Holdings itself employed the identified workforce or that their continued employment depended upon the rescue of that company rather than of another corporate entity.

[15] The fourth major difficulty concerned the coherence and maturity of the rescue plan itself. The respondents criticised the founding affidavit for lacking binding agreements for the sale of properties, firm funding commitments, and a sufficiently concrete explanation of how the indebtedness would be managed. In reply and supplementary papers, the applicants sought to bolster the case by attaching or referring to expressions of interest, indicative offers, prospective funding arrangements, and further detail about property sales. Many of these materials were conditional, incomplete, unsigned, lapsed, or otherwise non-binding. They were also introduced only after the deficiencies had been identified. That matters because the court is not asked to assess a hypothetical plan that may one day solidify; it is asked to grant final relief on motion on the strength of a present factual foundation.

[16] The fifth difficulty concerned the true financial position of Skema Holdings, including the treatment of major debts and the absence of sufficiently reliable and current financial information. The respondents pointed to what they contended were inconsistencies in the financial statements, including the classification of judgment debts as non-current liabilities and the absence of proper reflection of the immediacy of the indebtedness. In supplementary affidavits, the applicants sought to explain the financial position and emphasise the company's asset base and the liquidity nature of the distress. But the problem remained that the case continued to be shaped and reshaped in reaction to attack, rather than presented as a fully formed business rescue case from inception.

[17] The final difficulty concerned timing. The respondents stressed that the application was launched only after the winding-up proceedings had been argued and judgment reserved. The applicants responded that business rescue can be invoked at any stage, even late in the day, and that timing alone cannot render an application abusive. That proposition is correct as a matter of law. But the explanation for why business rescue was not pursued earlier, when the debts had long been due and when the company's alleged financial distress had already manifested, did not appear with any force in the founding affidavit. It emerged more fully only later, including through oral submissions.

[18] It is so that the court retains a discretion to admit further affidavits in the interests of justice. Given the magnitude of the matter and the fact that the parties themselves engaged with the expanded record, I am prepared to admit the further affidavits. But the very fact that the applicants repeatedly sought to patch, supplement, and elaborate their case after deficiencies had been pointed out has a direct bearing on the weight to be attached to the alleged rescue prospects. As was stated in *Director of Hospital Services v Mistry*,[2] an applicant must stand or fall by its founding papers. A case constructed incrementally in response to criticism undermines the claim that there existed, at the time of launch, a coherent factual foundation for the relief sought.

---

[2] *Director of Hospital Services v Mistry* 1979 (1) SA 626 (A) at 635H–636A. See also *Pountas' Trustee v Lahanas* 1924 WLD 67 at 68.

The legal framework

[19] Section 131(4)*(a)* of the Companies Act provides that a court may make an order placing a company under supervision and commencing business rescue proceedings if the court is satisfied that the company is financially distressed and there is a reasonable prospect for rescuing the company. The section confers a judicial power, and not a mechanical function. The court is not called upon merely to defer everything to a future creditors' meeting; it must perform a gatekeeping role at the point where a company seeks access to the statutory moratorium and restructuring machinery.

[20] The meaning of "reasonable prospect" has been considered in several authorities. In *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others*,[3] Brand JA explained that the requirement does not demand proof on a balance of probabilities that rescue will succeed, but neither is mere speculative optimism enough. At para 29-31 the Supreme Court of Appeal ("the SCA") stated, in essence, that what is required is a reasonable possibility grounded in objectively ascertainable facts. That formulation is important because it recognises that business rescue is forward-looking while simultaneously insisting that the future-looking case be anchored in evidence.

[21] In *Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 Ltd*,[4] Eloff AJ emphasised that it is not enough merely to assert that the company can be rescued. There must be a factual basis for the contention. The court held that business rescue is not intended to suspend the ordinary consequences of commercial failure simply because a company wishes for time, but only where there is a demonstrable factual platform for believing that the intervention has some real prospect of utility.

[22] The concern that business rescue may be used improperly to delay liquidation has also been recognised. In *Van Staden NO and Others v Pro-Wiz Group (Pty)*

---

[3] *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA); [2013] ZASCA 68 (*Oakdene Square Properties*) para 29.
[4] *Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 Ltd* 2012 (2) SA 423 (WCC) (*Southern Palace*) paras 21-23.

Ltd,[5] the SCA warned against the abuse of business rescue to postpone the inevitable demise of a company that cannot be rescued. The purpose of Chapter 6 is not to create a sanctuary against creditors while a company continues without a realistic path to rehabilitation.

[23] The applicants argued that the threshold is low and that this Court is not required to determine the final sustainability of the business rescue plan because those issues are for a later meeting of creditors and, if necessary, later court oversight under the Companies Act. That submission is only partly correct. It is true that a court hearing a s 131 application is not required to approve a final plan or to insist on certainty. But it is not correct that the court need not examine whether the proposed route to rescue has an adequate factual basis. If that were so, the statutory requirement of a reasonable prospect would be deprived of meaningful content.

Macsteel's status as a creditor

[24] The applicants contended that Macsteel should not be treated as a creditor for purposes of this application because the judgment obtained by it is under appeal and because Skema Holdings has a counterclaim against Macsteel which, so it is said, exceeds Macsteel's claim. The applicants argued that, in substance, Macsteel is therefore not a *de facto* creditor and that its opposition should be viewed through that lens.

[25] This submission cannot be sustained. The noting of an appeal does not render a judgment a nullity. It is well established that an appeal suspends the operation and execution of a judgment but does not affect its existence. In *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd*,[6] the Appellate Division explained that the effect of an appeal is to suspend the execution of the judgment, not to extinguish it. The judgment accordingly remains extant and continues to exist in law unless and until it is set aside on appeal.

[5] *Van Staden NO and Others v Pro-Wiz Group (Pty) Ltd* 2019 (4) SA 532 (SCA); [2019] ZASCA 7 para 22.
[6] *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (A) at 545H–546A.

[26] Section 18(1) of the Superior Courts Act 10 of 2013 suspends the operation and execution of a decision pending appeal, unless a court orders otherwise, but it does not extinguish the underlying judgment debt. What is suspended is enforceability in the execution sense, not the legal existence of the judgment. That distinction is important because the applicants' argument tended to conflate the two.

[27] The counterclaim relied upon by the applicants does not alter the position. It was common cause in argument that the counterclaim was dismissed by the relevant court and is itself the subject of an appeal. Until that dismissal is set aside, the counterclaim does not constitute an enforceable claim capable of neutralising Macsteel's judgment. In *Kalil v Decotex (Pty) Ltd and Another*,[7] the Appellate Division made it clear that a party seeking to rely on a defence or counterclaim must demonstrate a *bona fide* and reasonable basis for it. A dismissed claim cannot simply be elevated into a present offset against an extant judgment debt.

[28] It follows that Macsteel remains, for purposes of this application, a judgment creditor whose claim must be taken into account in assessing the company's financial position, the likely voting dynamics in any rescue process, and the realism of the alleged rescue prospects. That does not mean Macsteel's position is beyond scrutiny; it simply means that the applicants' attempt to write Macsteel out of the creditor picture cannot succeed.

Fellner-Feldegg's status as a creditor

[29] The applicants likewise sought to minimise the significance of Fellner-Feldegg's claim, contending that various disputes, defences, and alternative payment options exist and that his insistence on immediate payment has itself contributed to the company's predicament. But it is common cause that Fellner-Feldegg obtained judgment against Skema Holdings and that the indebtedness remains unpaid.

[30] The applicants referred to the principles applicable where a creditor seeks winding-up on a debt that is *bona fide* disputed on reasonable grounds. Those principles are well established. In *Badenhorst v Northern Construction Enterprises*

[7] *Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (A) (*Kalil*) at 979H–980B; 980D–G.

(Pty) Ltd,[8] it was held that liquidation proceedings are not to be used as a means of enforcing payment of a debt that is genuinely disputed on reasonable grounds. That principle was reaffirmed in *Kalil* at 979H–980B.

[31] But that is not the present situation. This is not a case in which a creditor seeks winding-up on a debt whose existence is genuinely uncertain. The debt in question has already been reduced to judgment. The point of present relevance is not whether Fellner-Feldegg was entitled to sue, but whether his judgment debt is a material fact in assessing Skema Holdings' financial distress and the plausibility of the asserted rescue path. Plainly it is.

[32] To the extent that the applicants have defences, complaints, or criticisms of his enforcement stance, those do not detract from the fact that Skema Holdings has failed over an extended period to satisfy substantial indebtedness. That circumstance weighs heavily in the present enquiry. The further contention that Fellner-Feldegg's conduct in enforcing his judgment constitutes an impediment to rescue must be evaluated against that background. A creditor is entitled to enforce a valid judgment. The fact that such enforcement creates commercial pressure does not, without more, convert a speculative restructuring proposal into a viable rescue plan.

Property realisation and the alleged obstruction by Fellner-Feldegg

[33] A central plank of the applicants' case was that the property component of the business is viable and that the company's financial difficulties are capable of being addressed through the structured sale of immovable properties. It was submitted that a number of transactions had already been concluded that further deals were under negotiation, and that the reason the strategy had not already yielded the intended result lay largely in the conduct of Fellner-Feldegg. According to the applicants, he insisted upon full immediate payment of the judgment debt and refused to cooperate with mechanisms involving releases against specific properties or phased payment through mortgage-related arrangements.

[34] That argument cannot simply be dismissed, because it was one of the applicants' principal substantive answers to the charge that the rescue plan is

[8] *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T) at 347H–348A.

speculative. The applicants' case was not merely that there are properties of value, but that there exists a practical route to convert that value into liquidity. They further argued that business rescue is intended to operate in the collective interests of affected persons and that a single creditor ought not to be permitted to frustrate a viable restructuring to the prejudice of the enterprise, other creditors, shareholders, and employees.

[35] There is some force in the proposition that Chapter 6 of the Companies Act seeks to balance the rights and interests of all relevant stakeholders. The applicants relied in argument upon the statutory purpose in s 7*(k)* of the Companies Act, which indeed reflects a legislative preference for rescuing viable distressed companies where that can be achieved efficiently and fairly. They also argued that the mere insistence of a creditor upon its own immediate recovery does not, without more, answer the statutory question whether rescue would better serve the interests of all affected persons.

[36] But that is not the end of the matter. Fellner-Feldegg is a judgment creditor. He is legally entitled to insist upon the rights flowing from that judgment. The Companies Act does not compel a creditor, prior to the adoption of a lawful rescue plan, to accept a phased arrangement or to release security incrementally simply because the company considers that commercially preferable. The court must therefore be careful not to convert the applicants' complaint about creditor intransigence into a substitute for proof of rescue prospects.

[37] The real question is not whether Fellner-Feldegg ought, as a matter of commercial reasonableness, to have been more accommodating. The question is whether, on the objective facts placed before the court, there exists a reasonable prospect that the company can be rescued. When the matter is approached in that way, the difficulty for the applicants becomes apparent. The proposed sales are not shown to be uniformly binding, unconditional, immediately executable, or sufficient in themselves to discharge the debts in the time and manner suggested. In several instances the material relied upon consists of expressions of interest, indicative arrangements, or transactions requiring further steps. The implementation of the

strategy depends upon contingencies outside the company's unilateral control, including releases, transfers, and creditor cooperation.

[38] *Oakdene Square Properties* makes it plain that a reasonable prospect of rescue must be founded upon objectively ascertainable facts. A plan that depends materially upon hoped-for concessions by a creditor, or upon uncertain future events which are not shown to be sufficiently concrete, does not satisfy that standard merely because it is commercially imaginable. The applicants' argument about obstruction therefore does not ultimately strengthen the case; it exposes its dependence upon events that the company cannot compel and that are not shown to be sufficiently secure.

The axle business, assets, and employees

[39] The axle business featured prominently in the papers and oral argument because it went directly to the question whether Skema Holdings has any real business to rescue. The applicants' position was that there had been no true transfer of the axle business out of Skema Holdings. Rather, so it was said, the assets remained owned by Skema Holdings and were used within the group pursuant to a leasing or internal operational arrangement. The applicants sought to use this contention to answer the charge that Skema Holdings is an empty shell or merely a passive holding company.

[40] The difficulty for the applicants is that this explanation was neither clearly nor fully articulated in the founding affidavit. One would have expected that, if the continued existence of the axle business within Skema Holdings was central to the rescue case, the founding papers would have set out with precision the ownership of the assets, the identity of the operating entity, the contractual terms of the alleged lease or use arrangement, the revenue flow, the employee allocation, and the practical consequences for rescue. Instead, those matters only came into focus after the respondents had challenged the applicants on them.

[41] The respondents, on the other hand, contended that the axle business had effectively moved to another entity, and that the applicants' later attempt to characterise the arrangement as a lease was reactive and inadequately

documented. They argued that this was symptomatic of a broader problem in the applicants' case: the blending together of the businesses and assets of different entities as if the group were a single undifferentiated economic unit.

[42] On the papers before me, the respondents' criticism has force. The applicants have not provided a sufficiently clear and contemporaneous documentary foundation for the alleged continued location of the axle business within Skema Holdings. Nor have they established, with the required clarity, that the revenue-generating features of that business remain attributable to Skema Holdings as opposed to another group entity. This uncertainty is not peripheral. It goes to the core enquiry whether the company sought to be rescued is itself carrying on a viable business capable of rehabilitation.

[43] The same applies to the asset structure more broadly. The applicants sought to rely on substantial value said to reside in immovable property. But value somewhere in a corporate group is not the same as value available to the company under rescue. The respondents' contention that many properties are held by subsidiaries and are encumbered was not convincingly displaced. That matters because the applicants' rescue theory depends heavily on using property values to generate liquidity, yet the practical and legal route for doing so on behalf of Skema Holdings was never clearly and fully mapped in the founding papers.

[44] Employment considerations also require proper treatment. The applicants argued that approximately 190 employees would be affected if liquidation occurred and that Chapter 6 was designed precisely to protect such interests where possible. That is an important policy consideration. But once again, the question is not whether jobs in the wider group matter; they plainly do. The question is whether the employment considerations relied upon establish that Skema Holdings itself has a rescuable business. The respondents' challenge, namely that the employees relied upon are not shown to be employees of Skema Holdings, was not satisfactorily answered on the papers.

Plascon-Evans and disputes of fact

[45] This application is brought on motion for final relief. Where disputes of fact arise, the principles stated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [9] apply. The Appellate Division held:

'… where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order … may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order...'[10]

[46] This does not mean that a respondent can defeat final relief by any fanciful denial. But where the respondent's version is not far-fetched, clearly untenable, or demonstrably false, the court is bound to determine the application on that footing. In this matter, the respondents' version that Skema Holdings does not conduct a meaningful operational business of its own, that many of the assets relied upon lie outside it or are encumbered, and that the alleged rescue plan is speculative and dependent upon contingencies, cannot be rejected as far-fetched or untenable. On the contrary, that version is supported by the objective difficulties already discussed.

[47] The *Plascon-Evans* rule is of particular significance here because the applicants sought final relief while presenting a case that depended upon contested assertions regarding the axle business, the location of employees, the availability of properties, and the workability of the realisation strategy. Where those contested features are not conclusively established in the applicants' favour and the respondents' contrary account is plausible and supported, the court cannot simply prefer the applicants' more hopeful characterisation of matters.

Evaluation

[48] The enquiry into whether there is a reasonable prospect of rescuing the company must be grounded in the facts as established on the papers. Once one strips away general references to the strength of the group and focuses on Skema Holdings itself, the applicants' case becomes significantly weaker.

---

[9] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) (*Plascon-Evans*) at 634E–635C.

[10] Ibid at 634H-I.

[49] First, the evidence demonstrates that Skema Holdings has failed to satisfy substantial debts over a prolonged period. The indebtedness to Fellner-Feldegg remains unpaid notwithstanding judgment. Macsteel likewise holds a judgment which, although under appeal, remains extant. This state of affairs is indicative of commercial insolvency. The applicants sought to characterise the problem as one of liquidity only, but the practical inability to meet major obligations over time is itself the hallmark of financial distress in the sense relevant to Chapter 6.

[50] Secondly, the existence of a viable business within Skema Holdings has not been satisfactorily established. The explanation relating to the axle business is unclear and unsupported by the founding papers. The respondents' version that the operational business resides elsewhere in the group is consistent with the objective facts and with the applicants' need to supplement their case once the point was raised. A company whose own operational identity remains uncertain is not easily shown to be rescuable in the statutory sense.

[51] Thirdly, the reliance on immovable property is problematic. The properties are not all shown to be owned by Skema Holdings and many are encumbered. The proposed restructuring is contingent upon events not shown to be achievable as of right, including the availability of assets held by other entities, the cooperation of secured creditors, and the orderly completion of transactions that are in several instances conditional or incomplete. Value in property does not by itself establish rescue prospects; what matters is the realistic ability of the company to convert that value into a lawful and workable rescue outcome.

[52] Fourthly, the issue of employees does not materially advance the applicants' case on the facts. The preservation of employment is an important statutory consideration, but the employees relied upon are not shown, with the required clarity, to be employees of Skema Holdings itself. The applicants' invocation of employment consequences therefore demonstrates the broader group significance of the matter but does not resolve the narrower question whether Skema Holdings itself has a rescuable enterprise.

[53] Fifthly, the proposed rescue plan is speculative. It relies upon contingent arrangements, hoped-for cooperation, developing property deals, prospective funding, and assumptions about the availability and deployment of assets. It was also developed incrementally in response to criticism. That matters not merely as a procedural point, but because it shows that the factual foundation required by *Oakdene Square Properties* and *Southern Palace* was not present in coherent form when the application was launched.

[54] Sixthly, the applicants' submission that this Court need not assess the sustainability of the plan because that will be determined by creditors at a later stage is incorrect. It is true that the court is not called upon now to approve a final rescue plan. But it is very much called upon to decide whether there is a reasonable prospect of rescue. That jurisdictional requirement cannot be postponed to a future meeting. To do so would allow the statutory moratorium to be triggered on the basis of little more than aspiration.

[55] Seventhly, the timing of the application is significant. It was launched after the winding-up proceedings had been argued and judgment reserved. Timing alone does not prove abuse, and the law permits business rescue to be invoked late. But timing is a relevant fact in evaluating *bona fides*. Here, when the timing is considered together with the evolving nature of the applicants' case, the lack of a coherent founding plan, and the prolonged non-payment of debts, the inference that the application is at least in part designed to delay liquidation is a compelling one.

[56] When all these considerations are taken together, the applicants have not established that there is a reasonable prospect of rescuing Skema Holdings. At best for them, they have shown that there may be value somewhere in the wider group and that, if a range of favourable contingencies were to materialise, some restructuring might be conceived. That is not enough. Chapter 6 requires a factual foundation for a reasonable possibility of rescue of the company before the court. That foundation is lacking.

The application to strike out

[57] The applicants sought to strike out various allegations by the respondents to the effect that the application was *mala fide*, self-serving, or an abuse designed to delay liquidation and prejudice creditors. The applicants argued that such allegations were scandalous, defamatory, and calculated to poison the court's view of the rescue application.

[58] Uniform rule 6(15) permits the court to strike out matter from affidavits that is scandalous, vexatious, or irrelevant, with an appropriate costs order. The applicable principles are settled. The mere fact that the matter is unflattering or strongly expressed does not render it strikable. Relevance is the controlling consideration. In *Vaatz v Law Society of Namibia*,[11] the court held, in substance, that relevant matter ought not to be struck out merely because it is unpleasant or prejudicial in tone.

[59] In the present matter, the allegations sought to be struck out go directly to the heart of the dispute. Whether the application is a *bona fide* rescue application or an abuse intended to delay liquidation is not a side issue; it is integral to the court's evaluative task. The facts relied upon by the respondents in support of those allegations include the timing of the application, the evolving and reactive nature of the applicants' case, the lack of a coherent founding plan, and the company's failure to satisfy long-standing debts. Those matters are plainly relevant.

[60] It may be accepted that some of the language employed by the respondents is forceful. But forceful language, where it is directed at a live issue and supported by factual allegations, does not justify striking out. To excise those allegations would artificially sanitise the record and prevent the court from considering a material aspect of the respondents' opposition. Once the facts are examined, it becomes clear that the allegations of abuse are not gratuitous rhetoric; they are part of the substantive case advanced against the grant of business rescue.

[61] For those reasons, the application to strike out cannot succeed. The proper course is to consider the allegations in context, attach to them such weight as the facts justifies, and determine the merits accordingly. I have done so. The

---

[11] *Vaatz v Law Society of Namibia* 1991 (3) SA 563 (NM) at 566H–567C.

respondents' allegations were relevant, and, on the facts ultimately established, they were not unfounded.

Conclusion

[62] The applicants have failed to establish that there is a reasonable prospect of rescuing Skema Holdings within the meaning of s 131(4)*(a)* of the Companies Act. The evidence demonstrates prolonged non-payment of substantial indebtedness, uncertainty as to the existence and location of the operational business, problematic reliance on assets held outside the company or subject to encumbrances, unproven employment consequences so far as Skema Holdings itself is concerned, and a rescue case that evolved incrementally in response to attack.

[63] The application was also brought at a stage that strongly suggests an attempt to avert or delay the consequences of winding-up proceedings already ripe for judgment. While lateness alone is not determinative, in the context of this record it reinforces the conclusion that the statutory process is being invoked without the factual foundation required by the authorities.

[64] In the result, the application for business rescue must be dismissed. The interlocutory attempt to strike out allegations of abuse must likewise fail. There is no reason, in the circumstances of this case, why costs should not follow the result, including the costs of two counsel where employed.

Order

[65] The following order is made:

1. The application to place the first respondent under supervision and to commence business rescue proceedings in terms of s 131 of the Companies Act 71 of 2008 is dismissed.
2. The applicants' application to strike out is dismissed.
3. The applicants are ordered, jointly and severally, the one paying the other to be absolved, to pay the costs of the application on scale B, including the costs occasioned by the interlocutory applications and the costs of two counsel where so employed.

MASIPA J

Details of the matter:

Date of Hearing:	13 March 2026
Date of Judgment:	13 April 2026

Appearances:

For the applicant:	Mr GD Harpur SC
Instructed by:	Shepstone & Wylie, Umhlanga Rocks
For the Affected Party:	Hay & Scott Attorneys, Pietermaritzburg
(**ROBERT FELLNER-FELDEGG)**	
Instructed by:	Mr GME Lotz SC
For the Affected Party:	Bentley Attorneys, Mount Edgecombe
(**MACSTEEL SERVICE CENTRES SA (PTY) LTD)**	
Instructed by:	Mr IJ Zidel SC with Mr M Mostert