IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no: 3201/2023 and 3202/2023

In the matter between:

FRANCOIS STRAUSS	**FIRST APPLICANT**
HENRY ARDEN SMITH	**SECOND APPLICANT**
and	
ORTHOTOUCH (PTY) LTD	**FIRST RESPONDENT**
ZEPHAN PROPERTIES (PTY) LTD	**SECOND RESPONDENT**
LUKE BERNARD SAFFY N.O.	**THIRD RESPONDENT**
MICHAEL NICOLAS GEORGIOU	**FOURTH RESPONDENT**
GEORGE NICOLAS GEORGIOU	**FIFTH RESPONDENT**
JOHANNES FREDERICK KLOPPER N.O.	**SIXTH RESPONDENT**
JACQUES DU TOIT N.O. replaced by	
LEBOGANG GRACE MPAKATI N.O.	**SEVENTH RESPONDENT**
DEREK PEDOE COHEN N.O.	**EIGTH RESPONDENT**
HIGHVELD SYNDICATION NO 15 LIMITED	**NINTH RESPONDENT**

HIGHVELD SYNDICATION NO 16 LIMITED	**TENTH RESPONDENT**
HIGHVELD SYNDICATION NO 17 LIMITED	**ELEVENTH RESPONDENT**
HIGHVELD SYNDICATION NO 18 LIMITED	**TWELFTH RESPONDENT**
HIGHVELD SYNDICATION NO 19 LIMITED	**THIRTEENTH RESPONDENT**
HIGHVELD SYNDICATION NO 20 LIMITED	**FOURTEENTH RESPONDENT**
HIGHVELD SYNDICATION NO 21 LIMITED	**FIFTEENTH RESPONDENT**
HIGHVELD SYNDICATION NO 22 LIMITED	**SIXTEENTH RESPONDENT**
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION OF SOUTH AFRICA (CIPC)	**SEVENTEENTH RESPONDENT**
ALL INVESTORS in the so-called Highveld Syndication Property Schemes	**EIGHTEENTH RESPONDENT**

Neutral citation: *Strauss and Others v Orthotouch (Pty) Ltd and Others* (3201/2023 and 3202/2023) [2026] ZAFSHC 277 (7 May 2026)

Coram: REINDERS ADJP

Heard: 28 November 2025

Delivered: This judgment was handed down in open court and electronically by circulation to the parties' representatives by email and released to SAFLII. The date hand-down is deemed to be 07 May 2026.

Summary: Business rescue proceedings – conversion in terms of s 132(2)*(a)*(ii) of the Companies Act 71 of 2008 – provisional liquidation – *locus standi.*

ORDER

In application 3201/2023

1 Leave is granted to the applicants to commence and proceed with their application against the second respondent company in terms of s 133(1)*(b)* of the Companies Act 71 of 2008;

2 The business rescue proceedings in respect of the second respondent company are converted into liquidation proceedings in terms of s 132(2)*(a)*(ii) of the Companies Act 71 of 2008;

3 The second respondent company is placed under provisional liquidation in the hands of the Master of this Court.

4 A provisional liquidation order is hereby issued calling upon all interested parties to show cause, if any, to the court on the **18th** day of **JUNE 2026** at **09h30** why a final order of liquidation should not be granted against the second respondent company.

5 Service of this rule *nisi* and a copy of the notice of motion and annexures shall be effected on the second respondent company at its registered office or its principal place of business within the court's jurisdiction.

6 This order shall, without delay, be published in the *Citizen* and the *Government Gazette*.

7 The sheriff shall ascertain whether the employees of the second respondent company are represented by a trade union and whether there is a notice board on the premises to which the employees have access.

8 A copy of the provisional liquidation order shall be served on –

8.1 every registered trade union that as far as the Sheriff can reasonably ascertain, represents any of the employees of the second respondent company.

8.2 the employees of the second respondent company by affixing a copy of the application and provisional liquidation order on any notice board to which the employees have access inside the second respondent company's premises or if there is no access to the premises by the employees, by affixing a copy to the front gate or front door of the premises from which the second respondent company conducts any business.

8.3 The South African Revenue Services.

9 Costs to be in the liquidation.

In application 3202/2023

1 Leave is granted to the applicants to commence and proceed with their application against the first respondent company in terms of s 133(1)*(b)* of the Companies Act 71 of 2008;

2 The business rescue proceedings in respect of the first respondent company are converted into liquidation proceedings in terms of s 132(2)*(a)*(ii) of the Companies Act 71 of 2008;

3 The first respondent company is placed under provisional liquidation in the hands of the Master of this Court.

4 A provisional liquidation order is hereby issued calling upon all interested parties to show cause, if any, to the court on the **18th** day of **JUNE 2026** at **09h30** why a final order of liquidation should not be granted against the first respondent company.

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8.3 The South African Revenue Services.

9 Costs to be in the liquidation.

JUDGMENT

Reinders ADJP

[1] Before me serves two separate but almost identical applications initiated by the applicants, to wit case numbers 3201/2023 (in respect of the second respondent company) and 3202/2023 (in respect of the first respondent company). The relief sought in both are similar. It is common cause that both respondent companies were placed in business rescue during November 2019. The applicants now move for orders that such business rescue proceedings be converted into liquidation proceedings in terms of s 132(2)*(a)*(ii) of the Companies Act 71 of 2008 (the Act) and the first and second respondents' estates be placed in final, alternatively provisional, liquidation in the hands of the Master of the High Court, together with ancillary relief.

[2] The applications are opposed by the first, second and seventh respondents (with the latter cited in a capacity as business rescue practitioner), as well as the fourth and fifth respondents. The opposition is based on contentions that the applicants have no *locus standi*, that the relief sought is *lis pendens* due to an application pending in the High Court in Pretoria for relief that a business rescue plan which was adopted in 2023 was unlawful, alternatively converting the business rescue to liquidation, and that no case for a conversion into liquidation is made out *in casu*. It is further alleged that a new business rescue practitioner has since been appointed, replacing the seventh respondent. I mention in passing that the third respondent (the executor of the estate of the late Mr Georgiou) filed an answering affidavit, supporting the applicants in the relief sought.

[3] The history of the matter is not seriously in dispute. Between 2005 and 2009, members of the public were invited to invest in immovable property. The applicants aver that over 18 000 investors invested more than R4,6 billion. However, only a mere 3,5% thereof (being R164 537 278.00) appears to still exist. There is no indication of any immovable property to the value of the investments, nor are there any answers as to what happened to the capital. It is common cause that a new business rescue plan pertaining to the affairs of both the first and second respondents was adopted on 31 March 2023. It is also common cause that said business plan did not yield the required results and, on the

version of the seventh respondent as appointed on 11 March 2025, no finalized annual financial statements of the respondent companies exist beyond the financial years ending February 2015 (for the first respondent) and February 2019 (for the second respondent).

[4] The aim of business rescue in terms of s 128(1)*(b)*(3) of the Companies Act is to restructure the affairs of a company in such a way that it either maximizes the likelihood of the company continuing in existence on a solvent basis or yield a better return for the creditors of the company than would result from the liquidation of the company. Such proceedings are meant to facilitate the rehabilitation of a financially distressed company within a short space of time.[1] Business rescue proceedings should be dealt with expeditiously by the business rescue practitioner.[2]

[5] In *Ex Parte: Target Shelf 284 CC; Commissioner South African Revenue Services and Another v Cawood N.O. and Others*,[3] the court remarked:

'. . . I, however, take cognizance of the delay that has been occasioned in finalising the business rescue process. The business rescue process was initiated as far back as 2013, nearly two years ago. This was most definitely not the idea of the legislature that creditors should be held to ransom and be prevented from exercising their normal contractual rights for such an extraordinary long period of time. If the process is allowed to go back for the practitioners to commence the liquidation procedure, it would be highly prejudicial to the creditors. In order to fast track the process, I have to immediately grant an order for conversion to liquidation proceedings.'[4]

[6] In *Cawood N.O. v Claassen*,[5] Daffue J stressed the urgency of business rescue proceedings as follows:

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1 *Standard Bank of South Africa v Remitto (Pty) Ltd and Others* [2023] ZAFSHC 25 para 11.
See also: Commissioner for the South African Revenue Services and Louis Pasteur Investments (Pty) Ltd and Others [2022] ZAGPPHC 230; 2022 (5) SA 179 (GP) (*Louis Pasteur Investments*) where Millar J remarked as follows on the duration of a business rescue plan at para 63.2:
'. . . It is clear from a consideration of sections 128 to 137 of the Act which deal with business rescue proceedings, as a whole that such proceedings were designed and intended to be implemented within a limited period of time. Regard need only be had to the definition of 'business rescue' in section 128(b) and the use of the word 'temporary' in sections 128(1)(b)(i) and (ii).' (footnote omitted.)

2 *Koen and Another v Wedgewood Village Golf and Country Estate (Pty) Ltd* [2011] ZAWCHC 464; 2012 (2) SA 378 (WCC) para 10. See also: *Southern Palace Investments 265 Ltd v Midnight Storm* [2011] ZAWCHC; 2012 (2) SA 423 (WCC) paras 24 and 25; *Absa Bank Limited v Caine N.O. and Another, In Re Absa Bank Limited v Caine N.O. and Another* [2014] ZAFSHC 46. *South African Bank of Athens Limited v Zennies Fresh Fruit CC* [2018] ZAWCHC 11; 2018 (3) SA 278 (WCC) para 36.

3 *Ex Parte: Target Shelf 284 CC; Commissioner South African Revenue Services and Another v Cawood N.O. and Others* [2015] ZAGPPHC 740 (*Target Shelf*).

4 Ibid para 74.

5 *Cawood N.O. and Another v Claassen and Others* [2022] ZAFSHC 119.

'[24] A substantial degree of urgency is envisaged once a company has decided to adopt a resolution to institute business rescue proceedings. While sentiments expressed in adopting business rescue procedure to avoid liquidation of a company may be noble, it should not lead to a situation that an extraordinary amount of time is taken in an attempt – often futile - to achieve this result. Delay is often at the expense of the rights of creditors. Although this is not an application to terminate business rescue proceedings, I respectfully agree with the following *dictum* of Kusevitski [sic] AJ in *South African Bank of Athens v Zennies Fresh Fruit CC:*

"In my view the mechanisms of business rescue proceedings were not designed to protect a company indefinitely to the detriment of the rights of its creditors. The delay in the finalisation of the business rescue proceedings is unreasonable in the circumstances and I am satisfied that an order terminating the proceedings is justified."'[6] (Footnote omitted.)

[7] An application for winding-up of a company may be brought by a creditor of a company. Such creditor includes a contingent or prospective creditor. A prospective creditor is a creditor with regards to a liability which by reason of an existing *vincilum juris* will become an enforceable liability on a future date or on a date determinable by reference to future events.[7] The applicants are investors who have a buy-back agreement claim against inter alia the second respondent, and the first and second respondents were and still are, treated as one entity in the business rescue plans.[8]

[8] It suffices to say that I am satisfied on the facts presented that the applicants have the necessary *locus standi* to apply for the orders they seek and I do not deem it necessary to deal with all the grounds upon which they rely for the orders sought. At the time of the hearing of this application, more than six years have already lapsed since the first and second respondents have been placed in business rescue, without any purposeful result. The authorities alluded to above are clear – I am of the view that the business rescue proceedings should be terminated[9] and the respective respondents' estates be placed in provisional liquidation in the hands of the Master of the High Court. The usual order granted

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[6] On the urgency of the proceedings see also s 132(3)*(a)* of the Act which mandates the business rescue practitioner to prepare a report on the progress of such proceedings (and update the same monthly) to affected persons in the event that the business rescue proceedings have not ended within three months.

[7] *Choice Holdings Ltd v Yabeng Investment Holding Co Ltd* 2001 (3) SA 1350 (W) para 21.

[8] See also *Louis Pasteur Investments* fn 1 where Millar J_entertained arguments on who may bring an application for conversion in terms of s 132(2)*(a)*(ii) of the Act and, having interpreted the said section, concluded that SARS (as a creditor) could have brought such application in terms of the Act. See also *Target Shelf* fn 4 paras 72 and 73.

[9] See *Louis Pasteur Investments* fn 1 wherein Millar J held at para 45: 'The Act clearly envisages three separate scenarios in which business proceedings, one commenced in terms of section 132(1) may be *terminated*. . .'. (emphasis added.)

in this division in respect of a provisional liquidation, shall follow below. In my discretion, I deem an appropriate order in respect of costs to be that such be in the liquidation.

[9] The following orders will issue:

<u>In application 3201/2023</u>

7 Leave is granted to the applicants to commence and proceed with their application against the second respondent company in terms of s 133(1)*(b)* of the Companies Act 71 of 2008;

8 The business rescue proceedings in respect of the second respondent company are converted into liquidation proceedings in terms of s 132(2)*(a)*(ii) of the Companies Act 71 of 2008;

9 The second respondent company is placed under provisional liquidation in the hands of the Master of this Court.

10 A provisional liquidation order is hereby issued calling upon all interested parties to show cause, if any, to the court on the **18th** day of **JUNE 2026** at **09h30** why a final order of liquidation should not be granted against the second respondent company.

11 Service of this rule *nisi* and a copy of the notice of motion and annexures shall be effected on the second respondent company at its registered office or its principal place of business within the court's jurisdiction.

12 This order shall, without delay, be published in the *Citizen* and the *Government Gazette*.

7 The sheriff shall ascertain whether the employees of the second respondent company are represented by a trade union and whether there is a notice board on the premises to which the employees have access.

8 A copy of the provisional liquidation order shall be served on –

8.1 every registered trade union that as far as the Sheriff can reasonably ascertain, represents any of the employees of the second respondent company.

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8.3 The South African Revenue Services.

9 Costs to be in the liquidation.

In application 3202/2023

7 Leave is granted to the applicants to commence and proceed with their application against the first respondent company in terms of s 133(1)*(b)* of the Companies Act 71 of 2008;

8 The business rescue proceedings in respect of the first respondent company are converted into liquidation proceedings in terms of s 132(2)*(a)*(ii) of the Companies Act 71 of 2008;

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8.3 The South African Revenue Services.

9 Costs to be in the liquidation.

[redacted]

C REINDERS

ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

Appearances

For the Applicants:	CHJ Maree
Instructed by:	Theron & Partners Attorneys c/o Horn van Rensburg Attorneys, Bloemfontein.
For the First, Second and Seventh Respondents:	AJ Daniels SC C de Villiers-Golding
Instructed by:	Richters Attorneys Johannesburg
For the Third Respondent:	SB Coetzer
Instructed by:	Coetzer & Partners c/o Phatshoane Attorneys, Bloemfontein
For the Fourth Respondent:	PG Cilliers SC RJ Groenewald SC
Instructed by:	Fluxmans Inc. Attorneys c/o EG Cooper Majiedt Inc, Bloemfontein.
For the Fifth Respondent:	CM Eloff SC
Instructed by:	MHI Attorneys c/o McIntyre van der Post, Bloemfontein.