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

~~**Reportable**~~**/Not Reportable**

Case no: 8249/2024

In the matter between:

ANDRE CARL NEETHLING	**APPLICANT**
and	
LOUIS GROUP (SA) (PTY) LTD **(In Business Rescue)** Registration Number: 1999/017615/07)	**FIRST RESPONDENT**
STUART NICOLAAS ROBINSON N.O. (in his capacity as the business rescue practitioner of Louis Group (SA) (Pty) Ltd)	**SECOND RESPONDENT**
STUART NICOLAAS ROBINSON	**THIRD RESPONDENT**
THE COMPANIES & INTELLECTUAL PROPERTY COMMISSION	**FOURTH RESPONDENT**
DOLE SOUTH AFRICA (PTY) LTD (Registration Number: 1997/020817/07)	**FIFTH RESPONDENT**
THOMAS CHRISTOPHER VAN ZYL N.O. (in his capacity as co-trustee of the sequestrated Estate	**SIXTH RESPONDENT**

of Mr Alan Louis (identity number: 6[...])

CORNELIA MARIA CLOETE N.O. (in her capacity as co-trustee of the sequestrated Estate of Mr Alan Louis (identity number: 6[...])	**SEVENTH RESPONDENT**
IN THE LOOP PROPERTY (PTY) LTD (Registration Number: 2008/006052/07)	**EIGHTH RESPONDENT**
ROSEVEAN INVESTMENTS 0048 (PTY) LTD (Registration Number: 2003/017181/07)	**NINTH RESPONDENT**
TAHLULA 002 (PTY) LTD (Registration Number: 2006/038915/07)	**TENTH RESPONDENT**
UKOSOLA TRADING & INVESTMENTS (PTY) LTD (Registration Number: 2008/023237/07)	**ELEVENTH RESPONDENT**
DEON VAN SCHALKWYK N.O. (in his capacity as trustee of the LGCF Trust)	**TWELFTH RESPONDENT**
LG RESOLUTION LTD	**THIRTEENTH RESPONDENT**
THE SOUTH AFRICAN REVENUE SERVICES	**FOURTEENTH RESPONDENT**
THE AFFECTED PERSONS OF LOUIS GROUP (SA) (PTY) LTD (in Business Rescue)	**FIFTEENTH AND FURTHER RESPONDENTS**

Neutral citation: Neethling v Louis Group (SA) (Pty) Ltd (in business rescue) and Others (Case No. 8249/2024) [2026] ZAWCHC (18 May 2026)

Coram: **SALLER AJ**

Heard: 17 February 2026

Judgment: 18 May 2026

ORDER

1. The fifth to fifteenth respondents are joined to the proceedings, with the costs of the joinder application being costs in the cause.

2. The application for striking out is dismissed, with each party to pay its own costs.

3. The application to set aside the votes by creditors on 5 April 2024 rejecting the business rescue plan is dismissed, with costs on Scale C.

4. The business rescue proceedings which commenced by way of resolution dated 17 May 2023, filed on 18 May 2023, are converted into liquidation proceedings, and the first respondent, Louis Group (SA) (Pty) Ltd, is hereby placed under provisional liquidation in the hands of the Master of the High Court.

5. A rule *nisi* is issued calling upon all interested parties to show cause, if any, on 20 July 2026, as to why the following order should not be made:

    a. That Louis Group (SA) (Pty) Ltd be placed in final liquidation; and

    b. That the costs of the main application be costs in the final liquidation in the event of no opposition.

6. Service of the Order is to be effected:-

    a. By one publication in each of the Cape Times and Die Burger newspapers;

    b. By service on the South African Revenue Services at 2[…] H[…], S[…] Avenue, Cape Town; and

    c. By service on Louis Group (SA) (Pty) Ltd at its registered address at N1 House, […] L[…] R[…] Street, Goodwood, Western Cape.

d. By service on the employees of the First Respondent if any; and

e. By service on all registered trade unions, if any.

JUDGMENT

Saller AJ

[1] This matter concerns two substantive applications.

[2] In what I will refer to as the main application, since it was filed first, the applicant Mr Neethling asks the court to set aside the resolution dated 17 May 2023, which was filed on 18 May 2023 ('the resolution'), whereby the board of directors of the first respondent, the Louis Group (SA) (Pty) Ltd ('LGSA'), resolved to place LGSA in business rescue, and to place LGSA in provisional liquidation as provided by the Companies Act, 71 of 2008 ('the Companies Act').

[3] In the alternative, the applicant asks for the removal and replacement of the current business rescue practitioner nominated in the resolution and appointed on 1 June 2023, Mr Robinson, with a practitioner nominated by the applicant.

[4] The applicant is one of the independent creditors of LGSA, with a recognised claim against LGSA of R24 million. Independent creditors make up 24% of LGSA's creditors.

[5] LGSA is the first respondent in the main application. Mr Robinson is the second respondent in his capacity as business rescue practitioner, and also the third respondent in his personal capacity. The first to third respondents oppose the main application. The fourth respondent is the Companies and Intellectual Property Commission ('CIPC') established by the Companies Act. The CIPC does not take part in the proceedings.

[6] The first and second respondents have also brought a counter-application for an order declaring as inappropriate the rejection by LGSA's independent creditors of the second respondent's proposed business rescue plan ('the proposed plan') on 5 April 2024, and setting that vote aside under section 153(7) of the Companies Act. The affidavit in support of the counter-application is deposed to by Mr Robinson, and I refer to the first and second respondents collectively as the second respondent unless it is necessary to distinguish them as will appear from the context.

[7] The applicant opposes the counter-application.

[8] The parties are in agreement that the outcome of both substantive applications hinges on the success of the counter-application which must consequently be determined first. If it fails, they agree, the main application should succeed.

[9] There are also two interlocutory applications. The second respondent applies for the joinder of the fifth to further respondents, who are other creditors and affected persons. The joinder application is not opposed.

[10] The second respondent also asks to have portions of the applicant's answering affidavit in the counter-application struck out, on the grounds that such portions are scandalous, and vexatious. The striking out application is opposed. In the counter-application's reply, the second respondent asks that if such portions are not struck out, they ought to be disregarded.

[11] I deal with the substantive applications first.

THE LEGAL FRAMEWORK: PART A OF CHAPTER 6 OF THE COMPANIES ACT

[12] The relevant statutory provisions form part of Part A of Chapter 6 of the Companies Act, which provides for the business rescue of companies in financial distress and compromise with creditors. Their aim is to provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all stakeholders (see *Diener NO v Minister of Justice and Correctional Services and Others* [2018] ZACC 48; 2019 (4) SA 374 (CC) para 38).

[13] Section 132(1) of the Companies Act provides for the commencement of business rescue in one of two ways. Under section 129 of the Companies Act, the company's board may adopt and file a resolution to that effect, thereby initiating the company's business rescue. Or, under section 131, a court may make an order to that effect, either on application by an affected person or during the course of liquidation proceedings.

[14] Common to both routes into business rescue is that the company must be financially distressed, and that there must be a reasonable prospect of rescuing the company.

[15] What is meant by rescuing the company is defined in section 128(1)(h), read with subsection (1)(b)(iii), to mean "restructuring [the company's] affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company."

[16] Under section 132(2) of the Companies Act, business rescue ends in one of three ways. A court may set aside the board's resolution which initiated the business rescue or convert these proceedings to liquidation proceedings. The business rescue practitioner may file a notice of termination with the CIPC. Third, business rescue ends when a business rescue plan has been, either, adopted and substantially implemented, or proposed and rejected and no steps have been taken to extend the proceedings.

[17] Under section 152(2), a business rescue plan that is proposed will be approved only if it was supported by the holders of more than 75% of the creditors' voting interests that were voted, <u>and</u> the votes in support of the proposed plan include at least 50% of the independent creditors' voting interests. The present matter concerns the latter requirement. Here, all of the independent creditors who voted on the proposed plan, rejected it.

[18] The manner in which a business rescue plan is compiled and proposed (section 150), considered at a meeting of creditors and other persons holding a

voting interest in the company under business rescue (sections 151 and 152(1)), and either approved and implemented (sections 152(2), (4)-(8)) or rejected (section 152(3)) are comprehensively dealt with in the legislation.

[19] So, too, are the consequences of a rejection of a proposed business rescue plan. Section 153 of the Companies Act is headed "Failure to adopt business rescue plan". That section sets out in detail the processes to be followed once a business rescue plan has been rejected as contemplated in section 152(3).

[20] At that point, the practitioner may either seek approval to publish a revised business rescue plan (section 153(1)(a)(i)) or advise the meeting which has rejected the business rescue plan that the company will apply to court to set aside the result of the vote "on the grounds that it was inappropriate". (If the practitioner does not make such an election, affected persons have further remedies under the section that are not presently relevant.)

[21] If the practitioner has informed the meeting that the company intends making application to have the rejecting vote set aside, the practitioner must adjourn the meeting for five days, or until a court has disposed of the application (section 153(2)(b)).

[22] If the practitioner has gained approval for the publication of a revised plan, this must be published within ten business days (section 153(3)(a)), and that plan must be dealt with afresh in accordance with the statutory provisions.

[23] Most significant for present purposes is section 153(7). That section empowers the court to order that the vote rejecting the business rescue plan be set aside "if the court is satisfied that it is reasonable and just to do so" having regard to the interests represented by the persons who rejected the plan (section 153(7)(a)), the provision made in the plan with respect to those interest (section 153(7)(b)), and "a fair and reasonable estimate of the return to that person, or those persons, if the company were to be liquidated." (section 153(7)(c)).

[24] The SCA has considered the proper interpretation of section 153(7), read with section 153(1)(a)(ii), on a number of occasions. In *FirstRand Bank v KJ Foods CC* 2017 (5) SA 40 (SCA) at paras 75 to 80, the majority developed what has

since become the settled test. The majority proceeded from the position that a proper interpretation of these sections takes place with reference to the objects of the Companies Act including, in section 7(k), enabling the efficient rescue and recovery of financially distressed companies in a manner that balances the rights and interests of all stakeholders. The SCA then endorsed the cautionary note as it was expressed by Gorven J in *DH Brothers Industries (Pty) Ltd v Gribnitz NO & Others* 2014 (1) SA 103 (KZP) at para 10, namely that the provisions of the chapter were aimed at the rescue of viable companies only, not all companies placed under business rescue.

[25] On the specific interpretation of section 153(1)(a)(ii), the majority in *FirstRand* accepted that the word "unsuitable" in that section bore the ordinary dictionary meaning of "not suitable or proper in the circumstances". The SCA rejected a two-stage approach which would have focused, as a first step, on the subjective opinions of creditors.

[26] Instead, 153(1)(a)(ii) had to be linked to the enquiry mandated by section 153(7) as to what is "*reasonable and just*", for the Court to arrive at a single value judgment:

> "[80] It is clear that s 153(1)*(a)*(ii) and s 153(1)*(b)*(i)*(bb)* are inextricably linked to s 153(7). On an application to set aside the result of a vote in terms of any of these subsections, the court is enjoined by s 153(7) to determine only whether it is reasonable and just to set aside the particular vote, taking into account the factors set out in s 153(7)*(a)–(c)* and all circumstances relevant to the case, including the purpose of business rescue in terms of the Act. Put differently, the vote would be set aside on application on the grounds that its result was inappropriate, if it is reasonable and just to do so in terms of s 153(7). To my mind this entails a single enquiry and a value judgment."

[27] Subsequently in the case of *Ferrostaal GmbH and Another v Transnet SOC and Another* 2021 (5) SA 493 (SCA), the SCA endorsed the test it had formulated in *FirstRand*, and again emphasised, in paras 17 to 19, the statutory purpose of business rescue proceedings namely the restoration of viable companies and the recognition of the wider interests of stakeholders such as employees in such restoration.

[28] In *Ferrostaal*, the applicant had argued that the proposed business rescue plan was dependent on uncertain future events, such as the successful conclusion of contractual obligations and the securing of sub-tenancies for the payment of future rental amounts (paras 20 to 27), and its rejection of the proposed plan was consequently unobjectionable. The Court agreed, concluding at para 29 that "nothing in [the applicant's] papers suggests that this concern about the implementation of the revised BRP and the future commercial viability of [the company in business rescue] are unsustainable or far-fetched." I also mention that the Court was fortified in its conclusion by the fact that the shareholders of the company in business rescue had failed to provide information which lay in their exclusive knowledge regarding funding on which the proposed plan relied (para 26).

[29] Turning, then, to the nature of the Court's value judgment under section 153(7), this was considered in *Reiscor Two (Pty) Ltd t/a Bootleggers v Anheuser-Busch Inbev Africa (Pty) Ltd and Others* 2025 (1) SA 315 (GJ) ('*Reiscor*'). In that matter, one of the issues which arose was whether or not the creditors had voiced a particular complaint (what the Court terms the "commercial morality point") during the meeting of creditors at which the proposed plan was tabled, and whether their failure to do so precluded them from raising this issue on their papers. The Court found not. At paras 40 and 42, the Court set out its reasoning as follows:

> "[40] In my view, the timing of the raising of the complaint does not have a bearing on whether the decision was appropriate or not but rather on the *bona fides* of the objection and on costs. This is so as the appropriateness of the decision is to be viewed objectively and thus, factors which became known after the date of the meeting or only considered after the date of the meeting should, if relevant, weigh in on the evaluation of whether the decision to reject the plan was appropriate. All circumstances relevant to the case are to be considered.
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> …
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> [42] In the supplementary heads of argument filed post the hearing on this point, counsel for the business rescue practitioners argued that the commercial morality point could not have been a consideration for voting against the business rescue plan and cannot be regarded when

> this court considers the appropriateness of the major creditors' vote. I cannot agree with this latter proposition. The consequence of such an approach would be that if this court were to find that the implementation of the plan would be against public policy based on the commercial morality point, it would be precluded from having regard to that finding because it was not a consideration of the major creditors at the time when the decision to reject the plan was communicated, being 12 November 2021. In my view, this is exactly what this court is not to do as this approach would not be an objective assessment and would incorrectly limit the facts and circumstances the court should consider in making a value judgment as required in terms of the New Act. It should look at all the interests and all the facts as they exist at the time of adjudication by the court. I will thus consider the commercial morality point later in this judgment."

[30] Insofar as *Reiscor* mandates an objective enquiry unbound by the subjective motivations of the creditors at the time they voted against the proposed plan, that appears to me to be plainly correct. If the two-stage approach to the interpretation of section 153(7) is rejected as held in *FirstRand* and *Ferrostaal*, and sections 153(7) and 153(1)(a)(ii) collapse into a single value judgment to be exercised by the Court, then the subjective beliefs and motivations of creditors at the meeting at which the proposal is rejected are not relevant to the determination.

[31] This approach is supported by the language of section 153(7), which sets out in terms the considerations which the Court is required to consider in subsections (a) to (c). Such facts relate to the creditors' interests, but not their motivation.

[32] It also supports the chapter's statutory purpose, having regard to the interests which stakeholders such as employees and trade unions may have in the continued existence of the business. While such parties are "affected persons" under section 128 and must be notified and given an opportunity to address the meeting which considers the proposed business rescue plan under section 151, they do not hold a voting interest in their capacity as employees or representatives. It may be, as the SCA pointed out in *FirstRand* and *Ferrostaal*, that their interests are relevant to the Court's consideration under section 153 of what is appropriate, just and reasonable.

[33] I do not read *Reiscor* as mandating a *de novo* enquiry into the prospects of rescuing the company through business rescue, unmoored from what is proposed in the business rescue plan which was rejected. That enquiry is properly located at the commencement of business rescue. Re-litigating that question would emasculate the statutory scheme. Once business rescue has commenced, section 150(2) requires a proposed business rescue plan to "contain all the information reasonably required to facilitate affected parties in deciding whether or not to accept or reject the plan", and sets out what information must be included at a minimum. As already mentioned above, sections 151 to 153 then deal in some detail with the procedures to be followed in considering, approving and implementing, or rejecting the plan, and attendant consequences. The statutory preference as it appears to me from those provisions is for a business-like, efficient and informed engagement among creditors (and, potentially shareholders) on the merits of the proposed plan, with litigation as the fall-back position.

[34] On this interpretation, the Court will step in to set aside the vote rejecting a business rescue plan where this is required to achieve a just and reasonable outcome in the circumstances of the particular case, but will not lose sight of what it is that the plan proposed and how, and whether, that might be achieved with particular reference to the interests of creditors who rejected it.

THE FACTUAL BACKGROUND: THE FIRST BUSINESS RESCUE

[35] A significant portion of the applicant's founding papers concerns the affairs of the Louis Group, described as a family-owned South African and international group of companies, of which LGSA is a part. The applicant alleges the Louis Group collapsed as a result of financial mismanagement and misappropriation of investor funds, relying *inter alia* on the 2013 liquidation of Louis Group entities in the Isle of Man, findings of the Isle of Man courts against Alan Louis as director of the Isle of Man entities, and a Financial Services Board investigation in South Africa. The respondents' position is that such allegations are largely unsubstantiated, irrelevant, and based on hearsay.

[36] I agree that such issues are not necessary for the determination in the present proceedings, and particularly the counter-application. Suffice to say that the Louis Group is facing regulatory and legal headwinds in South Africa and abroad, which remain, at least in part, subject to dispute. Absent admissible evidence of specific and relevant wrong-doing on the part of LGSA's directors or SSW's directors, such issues do not have a bearing on the question whether it is just and reasonable to set aside the independent creditors' vote on the proposed business rescue plan.

[37] LGSA is described as a finance and holding company within the Louis Group. At one point it owned significant commercial and residential properties, and was the holding company to a range of operational subsidiary companies. By the time that the current business rescue commenced in 2023, however, the only operational subsidiary of LGSA was Smartsurv Wireless (Pty) Ltd ('SSW'), described in the papers as operating in the telecoms and data management spheres. LGSA holds SSW indirectly through its shareholding of a company called iCat (Pty) Ltd ('iCat'), which in turn is the sole shareholder of SSW. LGSA has no employees and is not operational other than as a holding company.

[38] At the commencement of the current business rescue, the section 129 board resolution identified LGSA's directors as Brian Louis, Michael Louis, and Colia Louis.

[39] In addition to its indirect interest in SSW, it appears that LGSA holds loan claims of some R 170 million, of which the second respondent has said that only approximately R 18 million are capable of collection.

[40] The current business rescue was preceded by what was initially a winding-up application brought by Investec Bank Limited ('Investec') in February 2013. Investec had funded various property syndication schemes and had taken mortgage bonds as cross-collateral over many, if not all, of the Louis Group's properties in South Africa, including hotels and other commercial and residential properties. The liquidation proceedings were converted into a business rescue by agreement ('the first business rescue'). Mr Trevor Glaum

was appointed as the business rescue practitioner in the first business rescue. His initial focus was on paying Investec and Standard Bank as secured creditors from funds realised for that purpose through the sale of LGSA's assets.

[41] A business rescue plan in the first business rescue was belatedly published on 29 November 2019. It was tabled on 14 February 2020 and rejected by the independent creditors.

[42] The trustees of the Alan Louis Family Trust made binding offers to some independent creditors as envisaged by section 153(1)(b)(ii) of the Companies Act, but these were rejected. This prompted Mr Glaum to close the meeting, and inform creditors of the intention to apply for the conversion of the first business rescue to liquidation proceedings.

[43] The Alan Louis Family Trust and related parties then launched an application for, among other relief, declarators relating to their offers which they had made. They failed in High Court but obtained leave to appeal to the Supreme Court of Appeal. While the appeal was pending, Mr Glaum passed away and was replaced by another business rescue practitioner. On 28 April 2023, the SCA dismissed the appeal.

THE SECOND, CURRENT BUSINESS RESCUE

[44] Independent creditors, including the applicant, then began to prepare papers for the liquidation of LGSA. But, as mentioned, on 18 May 2023 LGSA's directors filed the section 129 resolution, placing LGSA in business rescue once more.

[45] Although the liquidation papers were filed the following day, on 19 May 2023, the matter was removed from the roll as a result of the moratorium on liquidation proceedings provided for by section 133 of the Companies Act.

[46] In the current business rescue, the applicant's claim against LGSA was initially rejected by the second respondent, which led the applicant to file an urgent application. On 10 January 2024, the second respondent then confirmed the applicant's claim and the urgent application was withdrawn.

[47] On 5 March 2024 the second respondent circulated a proposed business rescue plan for the creditors' consideration. It reflects creditor claims in a total amount of R 315,688,942 (that amount has subsequently increased through the recognition of SSW's claim arising from its provision of post-commencement finance in an amount of R 30 million in the first business rescue proceedings, as well as interest), proposing settlement payments of just over R 71 million to creditors, dependent on their respective categories (of which there are eight).

[48] The proposed plan envisaged the restructuring and replacement of LGSA debt with, on the one hand, redeemable preferent shares (class A) issued primarily to independent creditors (identified as categories C, D1, D3 and E), and, on the other, convertible preferent shares (class B) issued mainly to subsidiaries and shareholders of LGSA. The equity in class A shares would amount to approximately R 43 million, and in class B shares to approximately R 26 million. Class B shares would share in dividends, but be subordinated in favour of redeemable preferent shares (class A) being settled first.

[49] So-called statutory creditors, operations suppliers and small trade creditors (of less than R 100 000) would not be issued shares, but paid cash in monthly instalments. The total proposed cash settlement would amount to just over R 1.4 million.

[50] Importantly, the cash flow necessary for the redemption of the redeemable preferent shares and payment of the cash settlement will be derived primarily from future dividends received from SSW, which would become a direct subsidiary and underlying asset of LGSA, without the intercession of iCat. SSW's future revenue forecasts are therefore key. The plan includes a summary forecast of SSW's revenue, but does not otherwise provide any meaningful substantiation of the forecast. All parties accept that the success of the proposed business rescue plan hinges entirely on the success of SSW's future business over a 5 to 7 year horizon – which is the time the plan envisages for the redemption of the preferent shares.

[51] The current directors of SSW are members of the Louis family, Dean and Emile Louis. They appear to be shareholders in LGSA, and may be debtors. It

is fair to say that the applicant treats unsubstantiated information provided by SSW's directors with suspicion. The second respondent identifies them as the nephews of Alan Louis, pointing out that there is no evidence of any wrongdoing on their part. Upon adoption and execution of the proposed plan, the proposed plan envisages the second respondent taking up a position on SSW's board.

[52] The proposed plan records that there had been no progress on the collection of debts (loan receivables) from entities and persons related to the Louis family since the commencement of the first business rescue, that records relating to such loans were unsatisfactory, and that proceedings had not been instituted during the first business rescue and had likely prescribed. The plan indicates an anticipated collection of no more than R 18 – R 22 million.

[53] The proposed plan further records that the cost of the current business rescue is funded by the Alan Louis Family Trust, a major shareholder and creditor, by way of post-commencement funding ('PCF') as envisaged by section 135 of the Companies Act. It further records an agreement with the Trust for payment of a success fee upon adoption of the proposed plan of R 2.5 million (when the plan was presented, the second respondent proposed an amendment to reduce that to R 1.5 million, which was not adopted). The proposed plan points out that the costs of the first business rescue proceedings, in an amount of R 30 million, were funded by way of PCF from SSW, which enjoys a preferent claim in the event of a liquidation of LGSA, but which will constitute a concurrent claim in the event of the proposed plan being approved.

[54] The proposed plan concludes that, for comparative purposes, the liquidation dividend would be 4 cents in the Rand in which independent and non-independent creditors would share alike, as against a realised business rescue dividend of approximately 25 cents in the Rand, favouring independent creditors. The calculation of the liquidation dividend is not set out in detail. However, on the basis of this comparison, the second respondent recommended the adoption of the proposed business rescue plan.

[55] On 11 March 2024, the applicant requested signed annual financial statements and management accounts for SSW, as well as signed annual financial statements for iCat, in order to consider the merits of the proposed business rescue plan for LGSA. The second respondent declined the request on the basis that the directors of those entities had refused to provide those documents, and he was not in a position to demand that they be provided as SSW did not fall under the business rescue. He later also said that current audited financial statements were not yet available.

[56] After initially being set down for 15 March 2024, the meeting contemplated in section 151 of the Companies Act was held on 19 March 2024, at the offices of SSW. The transcript of the meeting is on record. The independent creditors raised two principal concerns (these were by no means the only points of contention, but they are the ones which have crystallised on the papers): the position which the second respondent adopted towards what the independent creditors said were more than R170 million in loans owed to LGSA by members of the Louis family and related entities, and the absence of historical financial information for SSW.

[57] As regards SSW, at one point, the trustee for the Alan Louis sequestrated estate complains: "How can we possibly make an informed decision about these hockey stick forecasts, if you won't disclose what's going on in the company, …". The complaint is illustrative of the attitude adopted by independent creditors – they required much fuller, independently audited supporting documentation. The second respondent reiterated that he did not have the authority to force disclosure of SSW's historical financial statements over the objections of its directors, since SSW was not in business rescue, and that he was advised that its current financials had not yet been signed off.

[58] While there can be no doubt that the ensuing engagement was heated, it cannot be said that the request for SSW's verified financial information was unreasonable. It is correct that the second respondent is not in a position to issue instructions to SSW's directors. But where the business plan he proposes hinges entirely on SSW's future financial performance, he cannot complain

when, as a consequence of supporting information being unavailable, creditors feel unable to approve the plan.

[59] On the debit loan accounts, the independent creditors were not satisfied that LGSA’s claims had prescribed to the extent which the second respondent claimed. They accused the second respondent of relying solely on the say-so of the debtors, and that this did not meet his obligations to investigate the claims.

[60] The independent creditors indicated that they were dissatisfied with the plan. They did, however, request further information to assess whether they may be persuaded to adopt the plan. The second respondent undertook to provide the debit loan information sought, including historic ledgers, and, within his legal constraints, the historic financial statements for SSW. The meeting was adjourned to 5 April 2024.

[61] A limited amount of further information was provided in the run-up to the following meeting. Neither the debit loan information nor audited financial statements for SSW were provided in the form that had been requested.

[62] In a circular on 31 March 2024, the second respondent indicated that the financial statements would be provided in “concise format”, and that he had been unable to extract the ledger information relating to the debit loans in the time available. The circular included a spreadsheet said to be extracted from SSW’s historic financial statements, together with notes and assumptions used for SSW’s future revenue forecast.

[63] The circular also introduced an option whereby independent creditors would obtain shareholding in a special purpose vehicle that would take cession of R75.9 million of LGSA's loan debts, in exchange for those creditors releasing LGSA from any further obligation.

[64] At the meeting on 5 April 2024, the second respondent stated that he was satisfied that the bulk of the claims had prescribed or were not recoverable. He said he had conducted his own investigation, he had considered the supporting documentation made available during the first business rescue and took account of the fact that Mr Glaum had attempted recovery and had decided, on legal

advice, not to prosecute the claims further. But the independent creditors were not satisfied in the absence of substantiation. In those circumstances the special purpose vehicle proposed would not address their concerns.

[65] Nor were they content to rely on what they regarded as the say-so of SSW's directors to substantiate the assumptions on which the SSW financial forecast relied, which were now spelled out but not supported by audited statements. It is clear they regarded SSW's directors with considerable scepticism due to their family relationships.

[66] The business rescue plan was put to a vote. It was rejected by 100% of the independent creditors present at the meeting, representing 23% of claims. As envisaged by section 153(1)(a)(ii) of the Companies Act, the second respondent then advised the meeting that LGSA would apply to set aside, as inappropriate, the rejection of the proposed plan.

THE PRESENT PROCEEDINGS

[67] By the time the applicant launched the main application on 23 April 2024, LGSA had still not applied under section 153(7). On 15 May 2024 LGSA and the second and third respondents filed their notice of opposition in the main application, which was consequently removed from the unopposed roll.

[68] On 24 May 2024 the second respondent sought once more to persuade the independent creditors of the merits of the continued business rescue and adoption of the proposed plan, under which, he said in correspondence, independent creditors would receive 23c in the Rand on average.

[69] He re-iterated that the amount required to settle these claims, some R 45.4 million, would be recovered from dividends out of SSW as well as some R 18 million from debtors. The second respondent maintained that the "feasibility and viability of the R45.4million is supported by the future growth plans and current performance of SSW". He did not provide any additional information regarding either debtors or SSW's current or projected earnings forecast. He did, however, point out that business rescue offered the efficient restructuring of LGSA and its subsidiaries, and that liquidation of LGSA would

have a negative impact on SSW's contract revenue stream and be detrimental to all affected parties.

[70] The second respondent concluded by saying that unless the proposed plan was accepted, he would terminate the business rescue and apply for liquidation.

[71] One month later, on 21 June 2024, LGSA and the second respondent together launched the counter-application. The applicant filed his answer in the counter-application late in October 2025.

[72] The main application and counter-application were set down for hearing on 17 February 2026. On 11 February 2026 the second respondent filed an extensive replying affidavit in the counter-application. The accompanying application for condonation of the late filing thereof is not opposed and the applicant did not ask for leave to respond by way of a further affidavit.

[73] In the reply, the second respondent has refined his case, based on steps he has taken since the litigation commenced. The case he puts up deserves careful consideration.

SSW's revenue forecast and the business rescue dividend

[74] As regards SSW, the second respondent says that from November 2024 to January 2025 he engaged with the directors of SSW regarding the outstanding audited accounts for 2022 and 2023, and he now attaches them to the reply. He says they bear out the revenue forecasts on which the proposed plan relies, at net present value.

[75] In the reply, the second respondent also provides greater specificity regarding what he says is the business rescue dividend for independent creditors. This ranges from 12.9 c/Rand for the applicant (category E) to 27.2 c/Rand for other independent creditors, redeemed over four years, if the business rescue plan is implemented. These figures and time scales differ somewhat from what the second respondent has previously put up, and there is no explanation.

[76] The applicant did not seek to file a further affidavit to take issue with these revised figures put up in reply.

[77] In supplementary written argument, counsel sought to present updated calculations of the business rescue dividend, engaging on a factual level with what he said were discrepancies between the figures presented in reply and those presented in the proposed plan. Counsel for the second respondent objected, and rightly so. It is trite that submissions do not constitute evidence. This is not to question the integrity of counsel making the submissions. The point is a different one: the Court has no way of knowing whether the facts given to counsel, and repeated from the Bar, are correct or complete. In motion proceedings, it is the affidavits which constitute both the pleadings and the evidence (see *Chairperson, Council of the University of South Africa and others v Afriforum NPC* 2022 (2) SA 1 (CC) para 70; *Fischer and Another v Ramahlele and Others* 2014 (4) SA 614 (SCA) para 13).

[78] The second respondent also presents for the first time an explanation, albeit still in general terms, of SSW's subscription-based business model, which, he says, supports revenue growth through a combination of subscription rates escalating, new contracts added at higher rates, and additional services added on to existing subscriptions. In combination with the cost of hardware reducing relatively as a direct cost component, he explains that this results in contribution income increasing annually at a greater rate than the overhead costs. This, he says, explains what some of the independent creditors have referred to as SSW's "hockey-stick" forecasts (i.e. the steep increase in revenue in later years) on which the business rescue plan hinges, and, he says, renders it viable.

[79] In reply to the applicant's complaint in the answering affidavit that the second respondent has failed to explain precisely how revenue increases will be achieved, or what capital will be required to achieve it, the second respondent says that he "cannot control the growth of SSW". That is true, and, as the applicant has pointed out, it will remain true even if SSW becomes a direct subsidiary of LGSA and the second respondent joins SSW's board as one of three directors with greater influence over SSW's affairs than he currently holds.

[80] In heads of argument, counsel for the second respondent points out that under business rescue any company must invariably trade its way out of financial distress over a period of time. As a statement of legal principle, that is unassailable. I also accept that this will entail some risk as a matter of course, and I am not convinced that it is appropriate, as the applicant would have it, to apply a risk contingency to the calculation of the likely business rescue dividend.

[81] The difficulty I have is a different one, namely that it is not LGSA that will trade its way out of business rescue. LGSA's rescue relies entirely on the financial performance of another entity, SSW, controlled by a majority of directors who neither are, nor will be, under the authority and direction of the second respondent as envisaged in business rescue proceedings under the Companies Act.

[82] Put differently, I am less concerned with the precise numeric value of the business rescue dividend (although that is relevant), than with the fact that LGSA relies on SSW for its rescue, in circumstances where the second respondent will have only limited control over SSW's operations, and certainly not the kind of authority envisaged by the business rescue provisions of the Companies Act.

[83] When the applicant in answer raised the concern that the second respondent would be only one of three directors of SSW, the second respondent's reply does no more than to assert his independence, and to say that "The Louis family will not be involved. The directors of SSW are Dean and Emile Louis." That does not address the issue.

[84] In those circumstances I would want to be satisfied of a clear and persuasive case made out of SSW's revenue prospects, considered in light of the interests referred to in section 153(7) and/or the objects of business rescue more generally. I am not satisfied that the a general, if detailed, explanation of SSW's business model and the filing of record of historical audited financial statements clears that hurdle, even having regard to the business rescue

dividend which the second respondent now puts up (12 c/R over four years for the applicant, 27 c/R for other independent creditors, over four years).

The loan accounts and the liquidation dividend

[85] As regards the loan accounts, in the reply the second respondent sets out in more detail his reasons for saying that the bulk of the loan accounts are irrecoverable.

[86] He says this is because most of the debit loan accounts concern a farming enterprise, Kamsberg Farming (Pty) Ltd ('Kamsberg'), now in liquidation. He engaged with the liquidator of Kamsberg over the period January 2025 to May 2025, and established that this entity is, to a large extent, the cause of the debit loan accounts. The loan debtors invested in this entity and advanced loans through various Louis trusts. Kamsberg's liquidator rejected the Louis trusts' claims, however, and the second respondent says the rejection has been upheld in the Namibian courts. LGSA's claim was rejected outright, as it was not a creditor of Kamsberg.

[87] The second respondent says that in his view, claims against the loan debtors, which will have to be instituted in Namibia, either prescribed during the first business rescue, or will fail because, as he explains with reference to specific claims and debtors, there are no longer executable assets or the debtors have been wound up.

[88] The second respondent further says that his investigations have not revealed any direct loan claims against any Louis family members, including LGSA's directors. This is despite several of them appearing on the list of debtors which was compiled in the first business rescue, as he admits; that their names still appeared on the Excel working notes which the second respondent inadvertently presented to the meeting on 5 April 2024; and that the applicant has taken the point on the papers that prescription will not run against LGSA's directors, which he says includes not only the current directors but also Dean Louis and Emile Louis.

[89] The second respondent says the fact that the names of various Louis family members appear on his work notes shows that he has given these claims due consideration. Unfortunately, he does not find it necessary to deal with each respective claim (there are only eleven on the list which was compiled in the first business rescue, five of which are natural persons), and to take the Court into his confidence as to the specific reason he has discounted each of them.

[90] A second aspect of the liquidation dividend (which the second respondent continues to set at approximately 4 c/Rand in the reply) is the value placed on a possible sale of SSW. In the proposed business rescue plan, the gross value of this sale is said to be R 35 million (elsewhere, the figure is said to be R 30 million), with a net return to LGSA of R 5.5 million taking into account SSW's PCF in the first business rescue of R 29.5 million

[91] In the reply, the gross value of such a sale is now said to be R 65 million, and its net value is variously said to be R12 million or R 28 million, depending on the claims and costs to be deducted, or, still, R 5.5 million. The discrepancy is not fully explained.

[92] The most that can be said in those circumstances is that I agree with the applicant that the liquidation benefit on which the second respondent relies of 4 c/Rand is likely understated, when this is considered against the business rescue dividend on which the second respondent relies (12 c/R for the applicant, and 27 c/R for other independent creditors), having regard to the concerns I raised above.

[93] In those circumstances, I do not find it just and reasonable to set aside the independent creditors' vote under section 153(7).

The DVH offer

[94] In the reply, the second respondent places on record an offer received from Stellenbosch Valley Estates & Vineyards (Pty) Ltd ('DVH') for the purchase of 10% of LGSA's shares in SSW and all its other shareholdings, 20% of its loan claim against iCat, all its loan claims against other debtors, and all outstanding payments due to LGSA, in consideration for a payment of R 18 million. The

offer is contingent, in substance, upon the independent creditors accepting the proposed business rescue plan and the applicant withdrawing the main application and his opposition to the counter-application, or the second respondent succeeding in the counter-application.

[95] The second respondent calls on the applicant to withdraw his opposition to the counter-application, which would allow the vote rejecting the business plan to be set aside, in which case LGSA offers to pay the applicant's wasted costs. The applicant has not taken up the offer.

[96] The second respondent says, rightly, that the sale of SSW's equity is provided for under the plan as an alternative.

[97] It appears the primary impact of the DVH offer, if accepted, is to shorten the time periods for the payment of the independent creditors "from five and six to two years" through an early cash injection. In heads of argument the applicant accepts that the DVH offer alters the position only slightly.

[98] In those circumstances, the DVH offer does not sufficiently alter the position for me to find that it is just and reasonable to set aside the vote of independent creditors to reject the proposed plan.

The continued control of the Louis family

[99] The second respondent in reply also deals with the applicant's allegation that he is not acting independently but on instruction of members of the Louis family. The applicant here relies on an email of one of the directors of LGSA, Mr Brian Louis, dated 23 November 2023. The context of the email is the request by Mr Andrew Stewart, the attorney representing the insolvent estate of Alan Louis, requesting the loan account ledgers I have already referred to above.

[100] It appears that Mr Brian Louis inadvertently replied to Mr Stewart instead of the second respondent. In the reply, Mr Brian Louis said among other things that "I am undecided whether to suggest we ignore him or retort with a legal opine and an account for services. You can relay that AL Trust is loathed to pay you for time to respond to empty threats and false alarms."

[101] The applicant relies on this email as evidence that Mr Brian Louis is issuing instructions to the second respondent regarding his engagement with creditors and the performance of his functions, and that the second respondent lacks independence.

[102] The second respondent's position is that he did not act on the instruction, that he does not take instructions from LGSA's directors, and that Mr Brian Louis has apologised. Any apology would take the matter no further, and in any event it appears that Mr Brian Louis has apologised for sending the email to the incorrect recipient rather than overstepping.

[103] More convincingly, the second respondent points out that he is required to maintain a working relationship with the directors of LGSA which, he says, explains his consultation with them and his reliance on information obtained from them regarding LGSA's affairs.

[104] It is hard to fault the conclusion of the applicant that Mr Brian Louis' email strongly suggests that he does not consider himself, in the language of section 137 of the Companies Act, to be under the authority and subject to the directions of the second respondent. The tone of the email suggests an expectation of being obeyed that is not easy to reconcile with the authority structure imposed by the Companies Act on directors who operate under business rescue. But, in the end, it does not follow that Mr Brian Louis' attitude constitutes evidence that the second respondent is acting improperly.

[105] I also accept that the applicant, and the independent creditors more widely, approach any information which the second respondent obtains from members of the Louis family with suspicion unless it is objectively substantiated. It may be that they would not insist on such substantiation if SSW's directors were not members of the Louis family, or if LGSA's debtors were not members of, or related to, the Louis family. But it cannot be said that they have closed their minds to a fair assessment of such information, had they received it.

[106] Independent creditors have been faced with delays in realising their claims for many years – this is through no fault of the second respondent, but that does not avail the independent creditors. They were presented with a business

rescue plan which the second respondent knew, on his own version, he would be unable to properly substantiate with financial information which the directors of SSW refused to provide. The second respondent appears to have been galvanised into a proactive investigation of LGSA's loan claims only through ongoing pressure, including this litigation. Even now, there is no clear evidence of what he has found with reference to specific claims. The attitude of Mr Brian Louis as it appears from the email of 23 November 2023 does not suggest a director who submits to the authority of a business rescue practitioner. Taken cumulatively, one can understand that the independent creditors' experience would colour their perception of the continued involvement of the Louis family in LGSA's affairs, and engagement with the second respondent.

[107] They are not required to bring a wholly dispassionate mindset to bear on these issues, so long as they remain open to a fair and rational consideration of the proposed plan. In the present matter, the second respondent's allegation of a stubborn ulterior purpose on the part of the independent creditors (namely, to achieve liquidation of LGSA at all costs) is belied by their repeated and insistent requests that they be provided with the necessary information to properly consider the proposed business rescue plan's assumptions and conclusions.

[108] I am not satisfied that this constitutes grounds for setting aside the independent creditors' vote under section 153(7).

CONCLUSION

[109] On balance, for the reasons given above, I am not satisfied that the second respondent has shown on an objective enquiry of all the facts on record that the independent creditors' votes to reject the business rescue proposal for LGSA were inappropriate, and that it is just and reasonable to set aside their vote.

[110] It follows, and the parties were agreed, that the main application must succeed.

STRIKING OUT

[111] The second respondent has asked that various allegations regarding the propriety of his conduct be struck out on the grounds that they are scandalous, and vexatious.

[112] The applicant points out that in order to substantiate the alternative relief he sought for the second respondent's removal, he had to present to the Court his reasons for doubting the second respondent's impartiality.

[113] There can be little doubt that the relationship between the parties is acrimonious, and characterised by a high degree of distrust. The reasons are not difficult to see from what I have set out above.

[114] This is the context against which I have considered the applicant's allegations of malfeasance. I do not find them to be substantiated on the evidence, and have disabused my mind of such allegations. There is no prejudice to the second respondent, and consequently no call for striking out (see *Beinash v Wixley* 1997 (3) SA 721 (SCA) at 734B).

COSTS

[115] Both parties were in agreement that costs on Scale C are appropriate in respect of the main application and the counter-application. There is no reason for costs not to follow the result.

[116] The application for joinder was not opposed. I do not consider it necessary to make a costs order in respect thereof.

[117] The application for striking out did not succeed, though not for want of serious allegations which I have found to be unproven. In those circumstances it is appropriate that both parties pay their own costs.

ORDER

[118] In the premises I make the following order:

1. The fifth to fifteenth respondents are joined to the proceedings, with the costs of the joinder application being costs in the cause.

2. The application for striking out is dismissed, with each party to pay its own costs.

3. The application to set aside the votes by creditors on 5 April 2024 rejecting the business rescue plan is dismissed, with costs on Scale C.

4. The business rescue proceedings which commenced by way of resolution dated 17 May 2023, filed on 18 May 2023, are converted into liquidation proceedings, and the first respondent, Louis Group (SA) (Pty) Ltd, is hereby placed under provisional liquidation in the hands of the Master of the High Court.

5. A rule *nisi* is issued calling upon all interested parties to show cause, if any, on 20 July 2026, as to why the following order should not be made:

    a. That Louis Group (SA) (Pty) Ltd be placed in final liquidation; and

    b. That the costs of the main application be costs in the final liquidation in the event of no opposition.

6. Service of the Order is to be effected:-

    a. By one publication in each of the Cape Times and Die Burger newspapers;

    b. By service on the South African Revenue Services at 2[…] H[…], S[…] Avenue, Cape Town; and

    c. By service on Louis Group (SA) (Pty) Ltd at its registered address at N1 House, […] L[…] R[…] Street, Goodwood, Western Cape.

    d. By service on the employees of the Louis Group (SA) (Pty) Ltd, if any; and

    e. By service on all registered trade unions, if any.

K S SALLER

ACTING JUDGE OF THE HIGH COURT

Appearances:

Applicant:	Adv D Baguley
	Taitz & Skikne Inc
1st to 3rd Respondent:	Adv A Oosrhuizen SC
	Adv R Fitzgerald
	Rubensteins Attorneys