REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2026/064787

(1) REPORTABLE: **no**
(2) OF INTEREST TO OTHER JUDGES: **no**
(3) REVISED: yes

19 May 2026 **GB ROME**

In the matter between:

OCEANS PRIVATE SCHOOL (PTY) LTD	
(IN LIQUIDATION)	First Applicant
BENNIE KEEVY N.O.	Second Applicant
YUSUF AHMED SAYED PATEL N.O.	Third Applicant
and	
RANDBURG NORTH SCHOOL (PTY) LTD	First Respondent
MIDRAND NORTH SCHOOL (PTY) LTD	Second Respondent

OCEANS INDEPENDENT SCHOOL (PTY) LTD	Third Respondent
GERAD ZUZE MASEKO	Fourth Respondent
RINAE PHASWANA	Fifth Respondent
ETHEL PKHUMO DUBE	Sixth Respondent
MURCUS MPANDE	Seventh Respondent
FIRSTRAND BANK LIMITED	Eighth Respondent
THE MINISTER OF BASIC EDUCATION	Ninth Respondent

JUDGMENT

This judgment was handed down electronically by circulation to the parties' and/or the parties' representatives by email and by being uploaded onto CaseLines. The date and time for hand-down is deemed to be on 19 MAY 2026

Introduction

[1]. This urgent application concerns the alleged post-liquidation transfer, without value, of the business of **Oceans Private School (Pty) Ltd (in liquidation)** ("**Oceans**") to three recently incorporated companies: **Randburg North School (Pty) Ltd** ("**Randburg**"), **Midrand North School (Pty) Ltd** ("**Midrand**") and **Oceans Independent School (Pty) Ltd** ("**Oceans Thohoyandou**").

[2]. Oceans was a private school. That description is too spare. The evidence is that it operated from three campuses, educated approximately 2 000 learners, employed approximately 80 persons, and held a Department of Education EMIS registration number, 700400467. Its business, including its goodwill, learner base, staff complement, records, physical assets, operational infrastructure, website traffic, accreditation and income stream,

was plainly property of value. Oceans was wound up by an order of this Court granted on 26 August 2025. The effective date of the winding-up was 30 January 2025, being the date on which the winding-up application was presented to Court. The second and third applicants are the appointed liquidators of Oceans.

[3]. The applicants contend that after Oceans was wound up, its business was simply taken over by the first to third respondents. They seek orders restraining the continuation of that business by those respondents, compelling access and delivery of records, securing the relevant bank accounts, and placing the business back under the control of the liquidators.

[4]. The application was initially opposed by the first to seventh respondents. The fourth to seventh respondents subsequently withdrew their opposition. The only opposition persisted in is that of the first, second and third respondents.

[5]. The matter was argued as one of urgency. In my view it is urgent. More importantly, the application is not, in its essential character, an ordinary interdict brought to suppress competition. Nor, in my view, is it properly to be decided under section 34 of the Insolvency Act 24 of 1936. The decisive issue is section 341(2) of the Companies Act 61 of 1973. The business of Oceans, if disposed of after the commencement of the winding-up, was disposed of in contravention of that provision. Such a disposition is void.

The material facts

[6]. The facts which matter are mostly common cause, admitted by necessary implication, or not genuinely disputed.

[7]. Oceans conducted the business of a private school from, among others, the Randburg, Midrand and Thohoyandou premises identified in the

founding affidavit. It was registered with the Department of Education and allocated EMIS number 700400467.

[8]. Oceans was wound up by this Court on 26 August 2025. The winding-up application had been launched on 30 January 2025. The effective date of the winding-up was accordingly 30 January 2025.

[9]. The first to third respondents were all incorporated after the effective date of liquidation and after the final winding-up order. Oceans Thohoyandou was incorporated on 25 September 2025. Randburg and Midrand were incorporated on 3 November 2025.

[10]. Randburg conducts its school business from […] J[...] Avenue, Bordeaux North, Randburg. That is the premises from which Oceans had conducted its Randburg campus business. The evidence is that Randburg uses the physical assets located there, including office equipment, desks and chairs.

[11]. Midrand is said by the applicants to have taken the Oceans Midrand business and moved it to 4[...] M[...] Street, Vorna Valley, Midrand. The earlier Oceans premises at 7[...] R[...] Drive, Elite Business Park, Midrand, are now vacant. The evidence is that the assets formerly located there were removed and are being used by Midrand.

[12]. Oceans Thohoyandou operates from the same Thohoyandou premises from which Oceans had previously operated.

[13]. The documentary evidence is striking. A parent of a Grade 12 learner, Mr Paul Thilivhali, wrote to the liquidators on 16 January 2026 reporting that a new school called Randburg North had taken over Oceans. The communication records that the parent had been told that Oceans had merely been rebranded, that everything else remained the same, and that Randburg North was not registered with the Department of Education.

[14]. The WhatsApp message relating to Midrand is to the same effect. It refers to "Midrand North School Notification (Formerly Oceans Private School)" and invites parents and learners to register for the 2026 academic year.

[15]. The Oceans website remained active and displayed, in 2026, the Randburg, Midrand and Thohoyandou campuses. The evidence further shows a redirection to the North School website. The registration forms and terms and conditions used by the new entities are, in substance, the same as those of Oceans. The forms still bear the Oceans branding and refer to "Founded 2013".

[16]. At a section 417 and 418 enquiry held on 26 February 2026, Ms Dube, the erstwhile director of Oceans, was questioned. She was evasive on many matters. But the transcript records a material concession. When it was put that the businesses of the schools were "basically taken over by the new company", she answered: "Yes."

[17]. In addition, the evidence of Mr Cossadianos is that, when he attended at Midrand on 26 February 2026, he observed a functioning school with learners wearing Oceans uniforms. He was not allowed full access.

[18]. The first to third respondents do not place before this Court any sale agreement, lease, cession, asset schedule, learner transfer documentation, employment transfer documentation, licence, Department of Education registration, accreditation, proof of independent EMIS registration, source documentation for their learner base, or any document explaining how they came lawfully to acquire the business which Oceans had previously operated.

[19]. That omission is not peripheral. It is central. In a matter of this kind, where the applicants have put up objective facts demonstrating continuity of premises, staff, learners, website, branding, forms, assets and income stream, the respondents were required to engage with those facts

seriously and unambiguously. They did not.

The answering affidavit and the alleged dispute of fact

[20]. The answering affidavit is deposed to by Ms Rinae Phaswana. She is a director of Randburg and Midrand. She is not a director of Oceans Thohoyandou. The CIPC material shows Mr Mpande as the director of Oceans Thohoyandou. Ms Phaswana does not set out how facts concerning Oceans Thohoyandou fall within her personal knowledge. To that extent, the answering affidavit is hearsay.

[21]. The respondents' principal answer is that they are separate juristic persons, that their directors and shareholders are not the same as Oceans, and that former learners and employees of Oceans are entitled to continue being educated or employed. That may be so as far as it goes. But it does not answer the case.

[22]. The case is not that former learners may never attend another school, or that former employees may never be employed elsewhere. The case is that the business of Oceans, as a composite asset, was transferred after liquidation, without value, to the first to third respondents.

[23]. The respondents repeatedly assert that they are "legitimate schools". They do not explain how they may lawfully use the Oceans EMIS registration. They do not explain why Oceans' website and documents continued to be used. They do not explain the "rebranding" communications to parents. They do not explain how the learners, staff, records, physical assets and premises came to be used by them.

[24]. The respondents' denials are accordingly not of the kind contemplated in **Plascon-Evans**[i] as creating a real, genuine and bona fide dispute of fact. They are, to use the language of **Wightman t/a JW Construction v Headfour (Pty) Ltd and Another**[ii], not serious and unambiguous engagements with the facts said to be disputed.

[25]. A robust approach is required. That is especially so in insolvency proceedings where the estate is at risk of dissipation and where the facts are peculiarly within the knowledge of those who say that they have lawfully acquired or commenced the business.

[26]. The facts relied upon by the applicants are objective. The respondents' answer is largely adjectival. The Court is not required to close its eyes to the obvious because the respondents have used the word "deny".

[27]. I accordingly find that the first to third respondents have not raised a genuine dispute of fact which prevents final relief on the papers.

Urgency

[28]. The respondents submit that the matter is not urgent because the liquidators knew of the relevant facts by 26 February 2026 and only launched the application on 19 March 2026. They also submit that the section 417 and 418 enquiry provides substantial redress in due course. I disagree.

[29]. Urgency is not a mechanical calculation of the number of Tuesdays which have passed since a litigant first became concerned. It is a matter of degree, context and practical justice. The question is whether, if the applicants were compelled to proceed in the ordinary course, they would obtain substantial redress.

[30]. Here, the alleged wrong is ongoing. Every school day that passes is a day on which the business of Oceans is operated by persons who have not shown any lawful entitlement to do so. Every payment by a parent into the bank accounts of the first to third respondents is potentially a payment which ought to accrue to the insolvent estate. Every week that passes risks further dissipation of goodwill, records, assets and income.

[31]. The prejudice is not confined to creditors. Learners, including Grade 12

learners, may be receiving education from entities which have not shown any independent registration with the Department of Education. The liquidators have been authorised by the Master to trade the business of Oceans. The point of the relief is not to close the school doors to children. It is to restore control to the liquidators so that the education may continue lawfully under the registered entity and for the benefit of the concursus.

[32]. A section 417 or 418 enquiry is investigative. It is not a substitute for recovery proceedings. It cannot, by itself, restore possession of the business, compel the immediate cessation of unlawful trading, or secure funds being diverted from the insolvent estate.

[33]. The application was not brought on an hour's notice. The respondents filed answering papers and heads of argument. They were heard. The degree of departure from the ordinary rules was proportionate to the exigency.

[34]. The matter is accordingly enrolled and dealt with as one of urgency.

Section 341(2) of the Companies Act

[35]. Section 341(2) of the Companies Act 61 of 1973 provides:

"*Every disposition of its property (including rights of action) by any company being wound-up and unable to pay its debts made after the commencement of the winding-up, shall be void unless the Court otherwise orders.*"

[36]. Section 348 provides that a winding-up of a company by the Court is deemed to commence at the time of the presentation to the Court of the application for winding-up.

[37]. The winding-up order in respect of Oceans stands. It has not been rescinded, suspended or set aside. It is not open to the first to third

respondents, in these proceedings, to treat that order as if it does not exist. For present purposes, Oceans is a company being wound up, and the liquidators are entitled and obliged to recover its property.

[38]. The section has received authoritative consideration in the Supreme Court of Appeal. In **Pride Milling Co (Pty) Ltd v Bekker NO and Another**[iii], the SCA held that the predominant purpose of section 341(2) is to decree that all dispositions made by a company being wound up are void. The provision must be read with section 348. The effect is that a disposition after the presentation of the winding-up application is vulnerable at the moment it is made and becomes void when the winding-up order renders section 341(2) operative.

[39]. **Pride Milling** further confirms that once a provisional winding-up order is granted, a concursus creditorum is established. Thereafter the claim of each creditor must be dealt with as it existed at the time of the order, and nothing may be done to alter the rights of the general body of creditors.

[40]. In **Cooper NO and others v Blue Label Distribution (Pty) Ltd**, this Division again stressed that, after the concursus, a creditor cannot improve its position by receiving property of the company to the prejudice of the general body of creditors. A recipient who obtains a void disposition has no right to retain it.

[41]. The concept of "disposition" is wide. The business of a company is property. Its goodwill, name, website traffic, learner base, contractual relationships, operational records, assets, income stream and right to trade as a going concern are all components of value. A transfer or appropriation of that business by another juristic person is a disposition of property.

[42]. The respondents did not acquire a school business in a vacuum. The evidence demonstrates that the business which Oceans had conducted

continued, under newly incorporated entities, using the same essential components. That is a disposition of the property of Oceans.

[43]. The timing is decisive. The first to third respondents were incorporated after the commencement of the winding-up and after the final winding-up order. Any transfer to them of Oceans' business necessarily occurred after the commencement of winding-up. Indeed, on the facts, it occurred after the final order.

[44]. There is no suggestion that the Court has validated the disposition. There is no suggestion that the liquidators consented to it. There is no suggestion that value was paid to Oceans or to the liquidators. There is no sale agreement. There is no statutory or contractual basis upon which the transfer can stand.

[45]. The consequence is not that the disposition is voidable at the election of the liquidators. It is void. The respondents acquired no right to hold, use or exploit the business of Oceans as against the liquidators and the general body of creditors.

Why section 34 of the Insolvency Act is not the basis of the order

[46]. Some of the applicants' contentions were addressed ar section 34 of the Insolvency Act 24 of 1936. That section protects creditors against the clandestine transfer of a trader's business. It may well be that the facts of this matter would, in another properly pleaded case, raise concerns of that kind.

[47]. But the applicants have not, in my view, properly brought themselves within the purview of section 340 of the Companies Act, which is the provision that triggers the application to companies of the voidable disposition provisions in sections 26 to 34 of the Insolvency Act. In particular, the papers do not make section 34 the juridical foundation of the relief in the required way by alleging and evidencing all jurisdictional

facts necessary for the application of section 340 and the imported Insolvency Act machinery.

[48]. That is not fatal to the application. It merely identifies the correct route. Section 34 is not the reason the application succeeds. Section 341(2) is.

[49]. Oceans was already being wound up. Its business was property of the company. The disposition of that property after the commencement of winding-up is hit by section 341(2) of the Companies Act. The relief follows from that statutory voidness and from the liquidators' obligation to recover and preserve the property of the company for the concursus.

[50]. The case therefore does not depend upon proving all the incidents of a section 34 transfer. Nor does it depend upon treating the first to third respondents as merely unlawful competitors. It depends upon the statutory consequence of a post-commencement disposition by a company being wound up.

The respondents' defences

[51]. The respondents' first defence is urgency. I have dealt with it. It fails.

[52]. The second defence is that the applicants have not met the requirements for a final interdict. This defence misconceives the nature of the relief. Although some of the relief is framed in prohibitory terms, it is ancillary to the restoration and preservation of property which, by operation of section 341(2), was not lawfully disposed of. The liquidators seek to recover and control the business and assets of Oceans. The prohibitory relief prevents the continuation of the void disposition.

[53]. In any event, if the relief is analysed as interdictory, the requirements are satisfied. The applicants have a clear right as liquidators to take control of the property and business of Oceans. The continued operation of that business by the first to third respondents infringes that right. No adequate

alternative remedy exists because an enquiry cannot restore control, preserve the income stream or protect learners in the immediate term.

[54]. The third defence is an alleged dispute of fact. For the reasons already given, the respondents’ denials are not genuine. They do not explain the objective evidence of takeover. They do not provide the documents one would expect if the respondents had lawfully acquired or independently established the businesses.

[55]. The fourth defence is that former learners and employees should not be deprived of education or employment. This submission has emotional appeal but no legal answer to section 341(2). The order I propose does not close the schools. It places control in the hands of the liquidators, who have the Master’s authority to continue trading Oceans.

[56]. The fifth defence is that the respondents are separate juristic persons. That is true but irrelevant. A separate company may receive a void disposition. Its separate personality does not validate the transfer.

[57]. Finally, the suggestion that Ms Dube may in future seek to challenge the liquidation order does not assist the respondents. No rescission application is before me. No order setting aside, suspending or varying the winding-up order exists. The liquidation order stands and must be given effect.

Costs

[58]. The applicants seek punitive costs. Punitive costs are not granted merely because a party has lost, or because its argument is weak. Something more is required. In this matter that something more is present.

[59]. The first to third respondents persisted in opposition without providing the basic documents that would have been readily available had their version been true. Their attorneys sought an indulgence to file an answering

affidavit because documents had to be gathered. None of the material documents was then produced. No accreditation. No pre-existing independent EMIS registration. No asset acquisition agreement. No lease explaining lawful occupation of the relevant premises. No sale agreement. No learner transfer records. No employment transfer records. No bank source records. No explanation of the website redirection or “rebranding”.

[60]. Instead, the respondents advanced bare denials and accused the liquidators of harassment, malice and abuse. Those allegations were not supported by evidence. The allegation that the liquidators had “usurped” or “misappropriated” funds was made without proof. Such allegations should not be made lightly.

[61]. The opposition also ignored the statutory consequence of section 341(2). By persisting in the use of a business that belonged to a company in liquidation, without demonstrating any lawful basis for doing so, the respondents caused the insolvent estate to incur costs to recover what should have been returned.

[62]. The punitive costs order is therefore not granted because the matter concerns an insolvent company, nor because the Insolvency Act may have been implicated. It is granted because the first to third respondents opposed recovery of a post-liquidation disposition in circumstances where their opposition was devoid of the documentary foundation that honesty and seriousness required.

[63]. The appropriate order is attorney and client costs, including the costs of counsel, on scale C

[64]. Order

[65]. In the result, I make the following order:

1. The application is heard as one of urgency in terms of Rule 6(12), and any non-compliance with the Uniform Rules relating to time periods and forms of service is condoned.
2. It is declared that the post-commencement transfer, takeover, use or appropriation by the first, second and third respondents of the business, assets, goodwill, learner base, records, operational infrastructure, website traffic, income stream and accreditation of **Oceans Private School (Pty) Ltd (in liquidation)** constitutes a void disposition in terms of section 341(2) of the Companies Act 61 of 1973.
3. The first respondent is ordered immediately to cease and desist from conducting the business of an educational facility at the premises situated at […] J[...] Avenue, Bordeaux North, Randburg, Gauteng,
4. The second respondent is ordered immediately to cease and desist from conducting the business of an educational facility at the premises situated at 2[...] R[...] Drive, Halfway House, Midrand, or 4[...] M[...] Street, Vorna Valley, Midrand
5. The third respondent is ordered immediately to cease and desist from conducting the business of an educational facility at the premises situated at Corner V[...] and P[...] M[...] Road, Zwavhavhili, Lwamondo, Thohoyandou,
6. The second and third applicants are granted complete and unfettered access to the business of the first applicant being conducted at:
    a. [...] J[...] Avenue, Bordeaux North, Randburg, Gauteng;
    b. 2[...] R[...] Drive, Halfway House, Midrand and/or 4[...] M[...] Street, Vorna Valley, Midrand; and
    c. Corner V[...] and P[...] M[...] Road, Zwavhavhili, Lwamondo, Thohoyandou.
7. The fourth to seventh respondents are ordered forthwith to deliver to the second and third applicants all books and records of the business of the first applicant and of the first to third respondents in their possession or under their control, including but not limited to annual financial statements, accounting records, ledgers, cashbooks, journals, bank statements, tax returns, statements of assets and liabilities, fixed asset registers, learner enrolment registers and lease agreements.
8. The fourth to seventh respondents are interdicted and restrained from:
    a. entering the premises situated at [...] J[...] Avenue, Bordeaux North, Randburg, Gauteng;
    b. entering the premises situated at 4[...] M[...] Street, Vorna Valley, Midrand;

c. entering the premises situated at Corner V[...] and P[...] M[...] Road, Zwavhavhili, Lwamondo, Thohoyandou; and

d. interfering with the second and third applicants' administration, control and trading of the business of the first applicant, including by communicating with employees, learners and/or parents of learners of the first applicant otherwise than with the prior written consent of the second and third applicants.

9. The eighth respondent is directed, upon receipt of this order and written banking instructions from the second and third applicants, to pay all funds standing to the credit of the following accounts to the account nominated in writing by the second and third applicants:
    a. Randburg North School (Pty) Ltd, account number 6[...]4;
    b. Midrand North School (Pty) Ltd, account number 6[...];Oceans School, account number 6[...]2; and
    c. Oceans School, account number 6[...]3.
10. The first, second and third respondents are ordered, jointly and severally, the one paying the others to be absolved, to pay the costs of this application on the attorney and client scale, including the costs of counsel where employed, on scale C. as provide for in Uniform Rule 67A.
11. No costs order is made against the eighth and ninth respondents.

GB ROME
Acting Judge of the High Court
Gauteng Local Division, Johannesburg

Date of hearing: 5 May 2026
Date of judgment: 19 May 2026

Appearances:

For the applicants: **C Gibson**
Instructed by: **Senekal Simmonds Inc**

For the first to third respondents: **M S Sikhwari SC**
Instructed by: **Sikhwari Attorneys Inc**

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§[i] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634E – 635D.
[ii] Wightman t/a JW Construction v. Headfour (Pty) Ltd and Another 2008. (3) SA 371 (SCA)
[iii] Pride Milling Co (Pty) Ltd v Bekker NO and Another is 2022 (2) SA 410 (SCA at para 13