IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: 2024 - 098106

(1)	REPORTABLE: **No**
(2)	OF INTEREST TO OTHER JUDGES: **No**
(3)	REVISED: **Yes**

5 May 2026 ______ [redacted]

SIGNATURE

In the matter between:

DISPERSION CONSULTING CC Applicant

[Registration Number: 2003/083040/23]

and

DISCOVERY LIFE LTD First Respondent

MASTER OF THE HIGH COURT Second Respondent

ST ADENS INTERNATIONAL INSOLVENCY PRACTITIONERS Third Respondent

The judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by e-mail and uploading it to the electronic file of this matter on Caselines. The date and time of hand-down is deemed to be 17:00 on 5 May 2026.

JUDGMENT

J Vorster, AJ

[1] The applicant, Dispersion Consulting CC, seeks the rescission of a liquidation order granted by this Court on 6 December 2024. The deponent to the founding affidavit, Mr Dinesh Krithillal, is the sole member of the close corporation. The application is brought in terms of Uniform Rule 42(1)(a), alternatively under the Court's inherent jurisdiction, on the basis that the liquidation order was granted in the absence of the applicant and, it is alleged, in circumstances where the applicant had no knowledge of the proceedings.

[2] The applicant describes itself as an insurance broking business established in 2003, which has conducted business with a number of well-known financial institutions, including the first respondent, Discovery Life. It is alleged that, save for the present dispute, the company has no history of fraud or outstanding indebtedness. The underlying claim giving rise to the liquidation proceedings is said to originate from the conduct of a sub-broker, Mr Vishal Dunpath, who was engaged by the applicant pursuant to contractual arrangements involving Discovery Life. Mr Dunpath allegedly earned commission on policies which later lapsed, resulting in a debt to Discovery Life in the approximate amount of R165,000.00. It is alleged that this indebtedness arose from Mr Dunpath's conduct, and that he entered into a personal repayment arrangement with Discovery Life to settle the debt in instalments.

[3] A central feature of the applicant's case is that it was not properly notified of the liquidation proceedings. The deponent explains that service was effected at the applicant's *domicilium* address as reflected in CIPC records, which address belonged to a former accountant who is now deceased. It is stated that the

applicant's current accountant failed to update the registered address, and that this omission resulted in the applicant not receiving any court process. Although the applicant does not dispute the formal validity of service at the recorded address, it contends that, as a matter of fact, no notice of the proceedings came to its attention. The deponent further states that no statements or updates regarding the alleged indebtedness were communicated to him or to the company.

[4] The applicant alleges that it only became aware of the liquidation order after being contacted by the appointed liquidator. Upon receiving this communication, the deponent contacted the attorneys acting for Discovery Life and informed them that he had never received any notice of the proceedings and had not been afforded an opportunity to present the company's case. It is further alleged that the applicant was never informed that Mr Dunpath remained indebted in an amount of approximately R115,000.00, and that the existence and extent of any liability remain disputed.

[5] The applicant contends that the liquidation order was granted in its absence and without proper notice, and is therefore liable to be rescinded as having been erroneously granted within the meaning of Rule 42(1)(a). In the alternative, it is contended that the applicant was not in wilful default and that it has a *bona fide* defence to the claim, which it would have advanced had it been aware of the proceedings. The applicant disputes the alleged indebtedness and maintains that it was deprived of the opportunity to clarify or contest the basis of the claim in court.

[6] In addition to seeking rescission of the liquidation order, the applicant requests that all liquidation proceedings be stayed pending the determination of the rescission application. This part of the proposed relief appears to have become moot, as the rescission application serves before me.

[7] The first respondent opposes the rescission application on a combination of procedural objections and substantive defences. As a preliminary matter, it is

contended that the application is misconceived in law, in that rescission of a final liquidation order can only be pursued in terms of section 354 of the Companies Act, alternatively the common law, and not under Uniform Rule 42. It is further contended that the applicant has failed to allege any fraud, impropriety or exceptional circumstances warranting rescission, has not made provision for the costs of the liquidators, and has failed to join the appointed liquidators, who have a direct and substantial interest in the relief sought. In addition, the respondent submits that the prayer to stay liquidation proceedings is incompetent, as a rescission application does not suspend the operation of a final winding-up order.

[8] On the merits, the first respondent disputes the applicant's version of the underlying indebtedness and contends that the applicant is contractually liable to it. It is alleged that the applicant concluded a life intermediary agreement with the respondent and that its representative bound himself as surety and co-principal debtor. A default judgment was obtained as early as July 2016 against the applicant and its representative, and the indebtedness remains unpaid. Although a third party (Mr Dunpath) may have acknowledged liability and made payments, the respondent maintains that the applicant remains jointly and severally liable. The respondent further relies on admissions made by the applicant in correspondence during 2025, in which it acknowledged that it, and not the third party, is liable for the debt.

[9] The first respondent also disputes the applicant's contention that it lacked notice of the liquidation proceedings. It is alleged that the winding-up application, as well as the provisional order, were properly served at the applicant's registered address, and that the applicant does not dispute the validity of such service. The respondent contends that the applicant had knowledge of the proceedings at least by December 2024, yet failed to take appropriate steps. It is further alleged that the applicant has not made full and frank disclosure and has failed to place material facts before the Court. On this basis, the respondent maintains that the liquidation order was not erroneously granted and that the application for rescission falls to be dismissed with costs.

[10] Section 354(1) of the Companies Act, 61 of 1973 empowers a court, at any time after the commencement of a winding-up, to stay or set aside the proceedings upon proof that they ought to be stayed or set aside. The enquiry is not one involving a true discretion in the strict sense, but rather whether the facts placed before the court satisfy the statutory standard. The section contemplates that a winding-up may be set aside on two bases, namely that the order ought not to have been granted at all, or that subsequent events justify its setting aside.

[11] Where reliance is placed on the contention that the winding-up order ought not to have been granted, the *onus* on the applicant is a stringent one. The application is not a rehearing of the liquidation proceedings, nor an appeal in disguise. It is generally required of an applicant to demonstrate the existence of special or exceptional circumstances justifying the setting aside of the order, together with a satisfactory explanation for the failure to oppose the granting of the order or to appeal against it. Relevant considerations include any delay in bringing the application and the extent to which the winding-up has progressed.[1]

[12] This is such an application (i.e. an application suggesting that the liquidation order should not have been granted).

[13] Section 354 confers *locus standi*, in defined and limited terms, on a liquidator, creditor or member of the company in liquidation to apply for the setting aside of the winding-up proceedings.

[14] *In casu*, the applicant is the close corporation in liquidation, which is purportedly being represented by its sole member. In **Secretary for Customs and Excise v Millman NO**,[2] Botha, JA found:

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1 **Ward v Smit and Others" In Re Gurr v Zambia Airways Corp Ltd**1998 (3) SA 175 (SCA).

2 1975 (3) SA 544 (A) at 552H; For similar findings, see: **GCC Engineering (Pty) Ltd and Others v Maroos and Others** 2019 (2) SA 379 (SCA) at [21]; **Ex Parte Nell and Others NNO** 2014 (6) SA 545 (GP) at 551 [19] and [20].

> "*(u)pon the compulsory winding-up of a company its directors cease to function as such . . . and they are, therefore, deprived of their control on behalf of the company of the property of the company which is then deemed to be in the custody or control of the Master or liquidator'. As stated earlier the order placing the company under winding-up is still in place and has not been set aside. On the granting of the winding-up order, the directors of the company cease to function as directors and the property of the company falls under the control of the Master or the appointed liquidators. The directors of the company in liquidation have been stripped of their control and management of the company placed in winding-up by the court.*"

[15] Against the backdrop of the quoted judgment, it is perhaps not difficult to understand why section 354 confers *locus standi* on a limited class of persons. I therefore find that the applicant lacks *locus standi* to prosecute the rescission application in terms of section 354.

[16] This is, however, not the end of the enquiry. As recorded earlier in this judgment, the applicant relies on Uniform Rule 42 and contends that the liquidation order was erroneously sought and granted.

[17] Uniform Rule 42 provides for the rescission or variation of orders in limited and defined circumstances, and is directed at the correction of orders which are affected by procedural or patent error rather than the reconsideration of the merits. In terms of rule 42(1)(a), a court may rescind an order erroneously sought or erroneously granted in the absence of a party; under rule 42(1)(b), it may correct patent errors or omissions; and under rule 42(1)(c), it may rescind an order granted as a result of a mistake common to the parties. The rule finds application where, at the time the order was made, there existed a fact or procedural irregularity which, had it been brought to the attention of the court, would have precluded the granting of the order. It does not afford a mechanism to revisit the correctness of the judgment on the merits, nor to introduce new evidence or defences. An applicant invoking rule 42 is therefore not required to establish "good cause" in the traditional sense, but must demonstrate that the

order was erroneously granted within the meaning of the rule.[3]

[18] For a considerable period, there existed judicial uncertainty as to whether a company or close corporation could itself apply for the rescission of a liquidation order outside the ambit of section 354 of the Companies Act. In certain judgments, it was held that only those parties expressly identified in section 354 possessed the requisite *locus standi* to seek such relief.[4] In other judgments, it was held that the residual powers vesting in the board of directors were sufficient to enable them to act in the name of the liquidated company when seeking a rescission order.[5]

[19] The uncertainty was resolved by the Supreme Court of Appeal in **Dr WAA Gouws (Johannesburg) (Pty) Ltd v HR Computek (Pty) Ltd and Others**,[6] where the following findings were made:

> "*I observe that the language utilised in s 354(1) specifically identifies the role players. It does not require that we read in parties, including the company or directors thereof, to reflect the legislative intent or purpose in the provision. This provision does not expressly, explicitly or implicitly exclude a company in liquidation or a board of directors from bringing such an application. I conclude that the drafters of the 1973 Companies Act never envisioned the exclusion of the residual powers of the directors and company in the context of the common law. Section 354(1) does not take away the inherent right acquired in terms of common law for the company in liquidation for obvious reasons. The common law right provides the company with an opportunity to challenge its winding-up, where it should never have been placed in liquidation for a variety of reasons, including fraudulent conduct. The high court correctly recognised that there are two distinct legal frameworks that govern the rescission applications in this scenario.*"[7]

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3 **Lodhi 2 Properties Investments CC and Another v Bondev Developments (Pty) Ltd** 2007 (6) SA 87 (SCA) at [25] - [27].

4 **Venbor (Pty) Ltd v Vendaland Development Co (Pty) Ltd t/a Camp Store** 1989 (2) SA 619 (V) at 626B-C; **Impac Prop Cc v THF Construction CC** [2019] ZAGPJHC 497 paras [4] and [11].

5 **Storti v Nugent and Others** 2001 (3) SA 873 (W) at 807A-C; **WN Attorneys Incorporated v Victor N.O and Others** [2024] ZAGPPHC 74 at para [9].

6 (909/2023) [2025] ZASCA 103; 2025 (6) SA 89 (SCA) (15 July 2025).

7 Para. [17].

and

> "*The common law specifically gives the residual power to the company and the directors. The promulgation of s 354(1) was never intended to divest the company and the directors of their common law rights.*"[8]

[20] In light of these findings, it is apparent that the applicant has *locus standi* under the common law to seek the rescission of the final liquidation order, and may do so in terms of Rule 42 by relying on procedural errors.

[21] The only possible procedural error referenced in the founding affidavit concerns service of the liquidation application at an address described by the applicant as the applicant's "*domicilium address*" listed in the CIPC records. Although the applicant expressly admits in paragraph 3.5 of its founding affidavit that such service was proper, the deponent to the founding affidavit states that "*I was never served with court papers …*", and in paragraph 1.3 of the reply that the liquidation order was granted without "*my knowledge*".

[22] The deponent appears to perhaps disregard the applicant's separate juristic personality and instead focuses on his personal knowledge and the issue of service upon him. It is, moreover, no answer to attribute the failure to update the applicant's registered address to the erstwhile accountant, now deceased, when the responsibility for maintaining the close corporation's records rested squarely with its member, being the deponent.

[23] Section 25 of the Close Corporations Act provides as follows:

> "***25 Postal address and registered office***
> *(1) Every corporation shall have in the Republic a postal address and an office to which, subject to subsection (2), all communications and notices to the corporation may be addressed.*
> *(2) Any-*

8 Para. [19].

> *(a)* *notice, order, communication or other document which is in terms of this Act required or permitted to be served upon any corporation or member thereof, shall be deemed to have been served if it has been delivered at the registered office, or has been sent by registered post to the registered office or postal address, of the corporation; and*
>
> *(b)* *process which is required to be served upon any corporation or member thereof shall, subject to applicable provisions in respect of such service in any law, be served by so delivering or sending it.*"

[24] In terms of Uniform Rule 4(1)(a)(v), service on a company or close corporation is ordinarily effected by delivering the process to a responsible employee at its registered office or principal place of business. Where no such employee is present, service may be effected by affixing a copy of the process to the principal door of the registered office or place of business. Such service constitutes proper service in terms of the Rules.

[25] I accordingly find that service of the liquidation application at the respondent's registered address was proper.

[26] In respect of costs, the usual order will be made.

[27] The following order is made:

1. The application to rescind the liquidation order is dismissed.
2. The applicant, Dispersion Consulting CC, is ordered to pay the costs of the application, such costs to be taxed on scale C.

[redacted]

J VORSTER, AJ.

Acting Judge of the High Court

Date heard: 5 May 2026.

Judgment date: 5 May 2026.

<u>Appearances</u>:

<u>Applicant</u>:

No appearance.

<u>First Respondent:</u>

Counsel: JR Minnaar

Instructed by: Slade Shezi Attorneys