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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case number: **2026-107440**

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

5 June 2026

SIGNATURE

In the matter between:

GJ CLOETE CC T/A BRIDGECAP

Applicant

and

**GCDP GROUP (PTY) LTD (IN VOLUNTARY
LIQUIDATION)**

First Respondent

**COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION**

Second Respondent

MASTER OF THE HIGH COURT, PRETORIA

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 15:00 on 5 June 2026.

Summary: Companies Act 61 of 1973—sections 346(1)(e), 347(4) and 353—creditors' voluntary winding-up—Rule 7 challenge to authority— distinction between residual standing to challenge a court-ordered winding-up and authority to oppose conversion of existing voluntary winding-up—former director not authorised to instruct attorneys absent sanction under section 353(2)(a)—voluntary winding-up converted to winding-up by court—costs of unauthorised opposition payable personally by former director.

ORDER

- [1] The authority of Oosthuizen Caine Incorporated to act on behalf of the first respondent is not established.
- [2] The voluntary winding-up of the first respondent, GCDP Group (Pty) Ltd, registration number 2022/629126/07, is converted into a winding-up by the court in terms of section 346(1)(e), read with section 347(4), of the Companies Act 61 of 1973.
- [3] The effective date of the first respondent's winding-up remains 7 May 2026.
- [4] Ms Carla Cato shall personally pay the applicant's costs of the application other than those costs that would have been incurred in an unopposed urgent application, such costs to include the costs of counsel on scale B.
- [5] The remaining costs of the application shall be costs in the administration of the first respondent's estate.

JUDGMENT

J L MÝBURGH AJ

- [1] This is an urgent application for the conversion of the voluntary winding-up of the first respondent, GCDP Group (Pty) Ltd, into a winding-up by the court.
- [2] The applicant relies on section 346(1)(e), read with section 347(4), of the Companies Act.¹ The first respondent is already in voluntary winding-up. The applicant contends that it is a creditor of the first respondent and that the circumstances in which the first respondent was placed in voluntary winding-up justify the intervention of the court.
- [3] A threshold issue arises. After the first respondent delivered a notice of intention to oppose, the applicant delivered a notice in terms of rule 7 of the Uniform Rules of Court challenging the authority of Oosthuizen Caine Incorporated to act on behalf of the first respondent.
- [4] The response to the rule 7 notice was a power of attorney and a special power of attorney executed by Ms Carla Cato, the former sole director of the first respondent. During argument, counsel who appeared for the first respondent, Mr Berlowitz, further produced the special resolution in terms of which the first respondent had been placed in voluntary winding-up.
- [5] Counsel who appeared for the applicant, Mr Lötter, contends that the response does not establish authority. He argued that, because the first respondent had already been placed in creditors' voluntary winding-up, Ms Cato no longer had the power to authorise attorneys to oppose this application on behalf of the first respondent.

¹ 61 of 1973 ("the 1973 Companies Act").

[6] The first respondent disagrees. It contends that Ms Cato retained residual powers to act for the first respondent, at least until the appointment of a liquidator.

[7] The rule 7 issue must be decided first. If Oosthuizen Caine Incorporated was not authorised to act for the first respondent, then the notice of opposition and answering affidavit delivered on behalf of the first respondent were not authorised. In that event, the answering affidavit must be disregarded. The conditional replying affidavit delivered in response to it would also then not require consideration.

Urgency

[8] I was satisfied at the hearing that the matter was urgent.

[9] The application concerns the conversion of an existing voluntary winding-up into a winding-up by the court. The founding affidavit alleges that the first respondent obtained bridging finance from the applicant in relation to three property transactions, that the transactions were presented to the applicant as transfers by the first respondent to named purchasers, that Ms Cato represented that the first respondent owned the properties, and that deeds searches suggested that the properties were not registered in the first respondent's name, that demands for payment and information went unanswered and that the first respondent was then placed in voluntary liquidation without prior notice to the applicant. Those facts justified urgent consideration.

[10] I accordingly enrolled the matter as urgent. I permitted both parties to address me fully on the rule 7 issue and, in the event that the rule 7 issue were decided against the applicant, on the merits of the conversion application.

The rule 7 issue

General

[11] The rule 7 issue is not a technical skirmish. It concerns the authority of the

attorneys who purported to place the first respondent before the court as an opposing party.

- [12] The response to the rule 7 notice was a power of attorney and special power of attorney signed by Ms Cato. During argument, the special resolution placing the first respondent in voluntary winding-up was also produced. That special resolution records that the first respondent was placed in creditors' voluntary winding-up under sections 349 and 351 of the 1973 Companies Act. These documents were delivered as part of the first respondent's response to the rule 7 notice and were uploaded to CaseLines. They are not disputed, and the special resolution and its registration are matters of record at the CIPC.
- [13] The question is therefore narrow: did Ms Cato, as former director of a company already in creditors' voluntary winding-up, have authority to instruct attorneys to oppose this application on behalf of the company?
- [14] There are two parts to that enquiry. The first concerns the effect of section 353 of the 1973 Companies Act. If section 353(2)(a) terminated Ms Cato's powers as director from the commencement of the creditors' voluntary winding-up, then a power of attorney signed by her could not establish authority unless her powers had been continued in the manner required by that section.
- [15] The second concerns the residual authority argument. The first respondent submitted that, despite section 353(2), Ms Cato retained residual authority to instruct attorneys to oppose this application. That requires consideration of the cases dealing with residual powers of directors in liquidation, and whether that doctrine applies to a creditors' voluntary winding-up governed by section 353.
- [16] For the reasons that follow, I conclude that section 353(2)(a) deprived Ms Cato of authority to act for the first respondent from 7 May 2026, and that the residual authority cases do not assist the first respondent. The residual authority cases recognise a limited power to challenge a winding-up order, or

the process by which such an order was obtained or maintained. They do not recognise a general survival of directors' powers. Nor do they confer on a former director of a company already in creditors' voluntary winding-up an unsanctioned power to oppose a creditor's application to convert that voluntary winding-up into a winding-up by the court.

Section 353

[17] Section 353 of the 1973 Companies Act provides:

- "(1) A company which is being wound up voluntarily shall, notwithstanding anything contained in its articles, remain a corporate body and retain all its powers as such, but shall from the commencement of the winding-up cease to carry on its business except in so far as may be required for the beneficial winding-up thereof.
- (2) As from the commencement of a voluntary winding-up all the powers of the directors of the company concerned shall cease except in so far as their continuance is sanctioned -
- (a) by the liquidator or the creditors in a creditors' voluntary winding-up; or
 - (b) by the liquidator or the company in general meeting in a members' voluntary winding-up."

[18] Section 352(1) of the 1973 Companies Act provides that a voluntary winding-up commences at the time of the registration in terms of section 200 of the special resolution authorising the winding-up. The CIPC confirmation letter handed up by Mr Berlowitz records that the special resolution for the voluntary liquidation of the first respondent was registered on 7 May 2026. The voluntary winding-up of the first respondent therefore commenced on 7 May 2026.

[19] The consequences flow from section 353. The first respondent remained a corporate body and retained its powers, but it could no longer carry on business except in so far as may be required for its beneficial winding-up. The fact that the company retained its powers does not mean that those powers remained exercisable by its former directors. Section 353(2) deals with that

question. As from 7 May 2026, all the powers of the directors ceased, except in so far as their continuance was sanctioned by the liquidator or the creditors.

- [20] The meaning of section 353 must be determined by considering its text, context and purpose.
- [21] The text is clear. Section 353(1) preserves the company's corporate existence and its powers notwithstanding the commencement of voluntary winding-up. Section 353(2) then deals separately with the powers of the directors. It provides that, from the commencement of a voluntary winding-up, all the powers of the directors cease, except to the extent that their continuance is sanctioned in the manner prescribed.
- [22] The context is equally important. Section 353 forms part of the statutory scheme governing voluntary winding-up. It operates once the voluntary winding-up has commenced under section 352(1). It preserves the company's corporate existence, but confines the company's business to what is required for its beneficial winding-up. It then separates the company's continued corporate capacity from the authority of its directors. The company remains in existence and retains its powers; the directors do not retain authority to exercise those powers unless their continuance is sanctioned in the manner prescribed.
- [23] The section also distinguishes between a creditors' voluntary winding-up and a members' voluntary winding-up. That distinction is not incidental. In a creditors' voluntary winding-up, the continuance of directors' powers must be sanctioned by the liquidator or the creditors. In a members' voluntary winding-up, it must be sanctioned by the liquidator or the company in general meeting. The statutory source of sanction therefore corresponds with the nature of the winding-up and with the body whose interests are primarily engaged.
- [24] This case concerns a creditors' voluntary winding-up. No liquidator had sanctioned the continued exercise of Ms Cato's powers. Nor had the creditors done so.

- [25] The purpose of section 353(2) is to remove control of a company in voluntary winding-up from its directors unless the persons or bodies identified in the section sanction the continuation of their powers. In a creditors' voluntary winding-up, those persons are the liquidator or the creditors. The first respondent's argument would undermine that purpose. It would permit a director whose powers have ceased to litigate in the name of the company against a creditor, without first obtaining the sanction of the liquidator or the creditors from whom section 353(2)(a) requires the authority to come. The argument is circular. It would allow the director to exercise the very power which the statute says has ceased, and to exercise it against one of the class of persons whose sanction is required before that power may be exercised at all.
- [26] The absence of an appointed liquidator does not revive the directors' powers. Section 353(2)(a) does not provide that directors retain interim powers until a liquidator is appointed. It provides that their powers cease from the commencement of the voluntary winding-up, except in so far as their continuance is sanctioned by the liquidator or the creditors. After commencement, therefore, the directors have no powers unless and until powers are given back to them, and then only to the extent sanctioned by the liquidator or the creditors.
- [27] Nor does that interpretation render the company rudderless before a liquidator is appointed. Section 353(1) preserves the company's corporate existence and its powers. Section 353(2)(a) determines who may authorise the former directors to exercise those powers during a creditors' voluntary winding-up. If something is required for the beneficial winding-up of the company before a liquidator is appointed, the creditors may sanction the continuation of the directors' powers for that purpose. What section 353(2)(a) does not permit is a director acting without such sanction and then justifying that conduct by relying on the company's continued corporate existence under section 353(1).
- [28] It follows that the power of attorney signed by Ms Cato is not sufficient. It

assumes the very authority that had to be established.

The residual authority argument

- [29] Mr Berlowitz submitted that, despite the wording of section 353(2), Ms Cato retained residual authority to instruct attorneys to oppose this application on behalf of the first respondent. The argument was founded on cases dealing with the residual authority of directors of companies in liquidation.²
- [30] Those cases must be understood in their historical and statutory setting. They do not establish a general proposition that directors of a company in any form of liquidation may litigate in the name of the company whenever they consider it appropriate. They recognise a narrower exception, developed in England and expressly adopted in our law in the context of compulsory winding-up.
- [31] The doctrine entered South African law, at least in this reported form, through *O'Connell Manthe & Partners Inc v Vryheid Minerale (Edms) Bpk*.³ The case concerned a company which had been placed under a provisional winding-up order. The company, acting through its managing director and pursuant to a board resolution passed after the provisional order, sought to anticipate the return day and discharge the rule. The point taken was that, because the company had been provisionally liquidated, the directors could not authorise those steps on behalf of the company.
- [32] The court accepted the general principle that, on compulsory winding-up, the directors are divested of their powers and the board becomes *functus officio*.⁴ It then considered whether that principle should apply without qualification where the company seeks to challenge the very order, or the confirmation of the very order, by which those powers were displaced.

² *O'Connell Manthe & Partners Inc v Vryheid Minerale (Edms) Bpk* 1979 (1) SA 553 (T); *Storti v Nugent* 2001 (3) SA 783 (W); *Praetor v Aqua Earth Consulting CC* (162/2016) [2017] ZAWCHC 8; and *Dr WAA Gouws (Johannesburg) v HR Computek (Pty) Ltd* 2025 (6) SA 89 (SCA).

³ Above n 2.

⁴ *O'Connell Manthe* above n 2 at 555H-556B, referring to *Attorney-General v Blumenthal* 1961 (4) SA 313 (T).

- [33] The court tested the consequence of an unqualified application of the general rule. Would it mean that, where a provisional order had been granted on short notice or without the company having appeared, the company could not, acting through its directors and directed by its members, oppose confirmation of the rule? The court considered that result startling and unjust. It would leave the decision whether to oppose confirmation to a provisional liquidator who might not yet have been appointed or who, if appointed, might not yet have obtained instructions from creditors. It would also deprive the members, acting through the directors, of any practical influence over whether the company should resist final liquidation.
- [34] It was to avoid that result that the court turned to English authority. The court referred to *In re Diamond Fuel Co*,⁵ where the accepted argument was that the company must have the right to be heard to say that the winding-up order is wrong, and that the functions of the directors are suspended only *sub modo*, that is, provided the order can be maintained.
- [35] The reasoning in *In re Diamond Fuel Co* is important for another reason. The argument accepted by the court expressly distinguished voluntary winding-up from compulsory winding-up. It was submitted that, in the case of voluntary winding-up, the statute provided that the powers of directors ceased, but that there was no similar enactment in the case of a compulsory order. The English foundation of the residual-power doctrine therefore did not ignore voluntary winding-up. It distinguished it.
- [36] The court also referred to *Re Union Accident Insurance Co Ltd*,⁶ where it was accepted that, notwithstanding the appointment of a provisional liquidator, the board retains some residual powers, including the power to instruct solicitors and counsel to oppose the winding-up petition and, if a winding-up order is made, to appeal against that order.

⁵ *O'Connell Manthe* above n 2 at 556F-H, referring to *In re Diamond Fuel Co* (1879) 13 Ch D 400.

⁶ *O'Connell Manthe* above n 2 at 557C-E, referring to *Re Union Accident Insurance Co Ltd* [1972] 1 All ER 1105.

- [37] The rationale for the residual power is narrow. It is not that directors retain general authority to conduct litigation for a company in liquidation. It is that, where a court order has displaced the directors' powers, the company must have a practical means, through its directors, to challenge the very order or process by which those powers were displaced. Without such a power, the order under challenge would itself disable the company from challenging it.
- [38] That explains why the residual power has been recognised in matters concerning opposition to a winding-up application, opposition to confirmation of a provisional order, anticipation of the return day, appeals against winding-up orders and rescission of winding-up orders. In each instance, the power is tied to the validity, confirmation, appeal or rescission of the compulsory winding-up order itself.
- [39] The same distinction appears in the earlier South African cases. In *R v Allsopp*,⁷ the court observed that, in a voluntary winding-up, the statute expressly provided that the powers of directors ceased unless their continuance was authorised in the prescribed manner, whereas no similar provision existed for compulsory winding-up. *Attorney-General v Blumenthal*⁸ explained that cases in which a director, after winding-up, could apply for relief on behalf of the company, including an appeal against the winding-up order, concern locus standi and are not authority for the proposition that directors continue to hold office or retain general authority after winding-up. *Volkscas Bpk v Darrenwood Electrical*⁹ illustrates the practical consequence: a former director who purported to endorse cheques after liquidation had no authority to do so.
- [40] Those cases are important because they show that the residual-power doctrine is not a survival of ordinary directorial authority. It is, at most, a

⁷ 1949 (2) SA 469 (T).

⁸ 1961 (4) SA 313 (T).

⁹ 1973 (2) SA 386 (T).

limited standing to take steps in the name of the company where the company seeks to challenge the order or process by which it was placed in liquidation.

[41] This case is different. The first respondent was not placed in liquidation by an order of court. It does not seek, through its directors, to say that a court order should not have been granted, should not be confirmed, should be rescinded or should be set aside on appeal. The first respondent voluntarily entered liquidation. Its directors' powers ceased because the company's own special resolution was registered and because section 353(2) attaches that consequence to a voluntary winding-up.

[42] That difference goes to the rationale of the residual power, and not merely to its setting. The residual power is, in substance, a power of resistance. It exists so that a company may contend that it should not be in liquidation at all - so that, through its directors, it may oppose a winding-up application, oppose confirmation of a provisional order, appeal against a winding-up order or apply for its rescission. It is a means of conducting a fight about the company's status.

[43] Ms Cato seeks to do none of these things. She does not seek to take the first respondent out of liquidation. On her own case the first respondent placed itself in liquidation and remains in liquidation. What she resists is not the fact of the liquidation but its form - the conversion of a voluntary winding-up into a winding-up by the court. To invoke a power that exists to resist liquidation, in order to defend the very liquidation that the company chose, and to do so against a creditor, is to turn the residual power against the purpose for which it was recognised.

[44] That is precisely the distinction drawn in *Corigrain Trading SA v Resora (Pty) Ltd*.¹⁰ Goldstein J held that the residual-power cases did not assist a respondent which "has not resisted liquidation, but has, on the contrary,

¹⁰ *Corigrain Trading SA v Resora (Pty) Ltd* 2004 (2) SA 348 (W).

voluntarily wound itself up, divesting the directors of their control of the company", and that once it had done so the directors could not thereafter act for it. The same is true here.

[45] *O'Connell Manthe* itself recognises the statutory distinction. The court observed that section 353 provides for cessation of directors' powers upon voluntary liquidation, but that there is no similar provision relating to winding-up by the court. The absence of such a provision in relation to court winding-up was significant to the court's recognition of residual powers in the compulsory winding-up context.¹¹

[46] That distinction is important, but it must not be overstated. *O'Connell Manthe* was not a voluntary winding-up case and did not finally decide whether any residual power can ever survive in the context of a voluntary winding-up. It is nevertheless authority for the nature and rationale of the residual power in a winding-up by the court. It also shows that the residual power developed in a statutory setting in which there was no provision equivalent to section 353(2).

[47] I have also considered whether the recent judgment of the Supreme Court of Appeal in *Dr WAA Gouws*¹² requires a different conclusion. *Dr WAA Gouws* is the most recent and authoritative decision in this line. It followed and affirmed *Storti v Nugent*¹³ and *Praetor v Aqua Earth Consulting CC*,¹⁴ the decisions by which the residual power was extended from opposition and appeal to the rescission of a winding-up order. Because the reasoning of those decisions is subsumed in *Dr WAA Gouws*, I address them through that judgment.

[48] In *Dr WAA Gouws*, the court held that a company finally wound up by the court may, through its directors and without the liquidators' co-operation, apply to rescind or set aside the winding-up order. The court reasoned that section

¹¹ *O'Connell Manthe* above n 2 at 557H-558B.

¹² *Dr WAA Gouws (Johannesburg) (Pty) Ltd v HR Computek (Pty) Ltd* 2025 (6) SA 89 (SCA).

¹³ Above n 2.

¹⁴ Above n 2.

354(1) did not expressly, explicitly or implicitly exclude the common-law residual power of the company and its directors to challenge the winding-up order.

[49] That reasoning does not determine the present case. *Dr WAA Gouws* concerned a company wound up by order of court. The residual power was invoked to challenge the very order by which the company had been placed in liquidation. Section 354(1), with which the Supreme Court of Appeal was concerned, identifies persons who may apply for a stay or setting aside of winding-up proceedings. It does not provide that all powers of directors cease.

[50] Section 353 is different. It deals specifically with voluntary winding-up. It provides that, from the commencement of a voluntary winding-up, all powers of the directors cease except in so far as their continuance is sanctioned in the prescribed manner. In a creditors' voluntary winding-up, that sanction must come from the liquidator or the creditors.

[51] Nor is this application an attempt by the first respondent to resist being placed in liquidation at all. The first respondent voluntarily entered liquidation. The conversion application seeks to alter the statutory character of an existing liquidation. The event that displaced Ms Cato's powers was not a court order sought to be challenged in these proceedings. It was the registration of the company's own special resolution and the statutory consequence attached to it by section 353(2)(a).

[52] I therefore do not read the residual-power cases, including *Dr WAA Gouws*, as conferring on a former director of a company in creditors' voluntary winding-up an unsanctioned power to oppose a creditor's application to convert that voluntary winding-up into a winding-up by the court. To hold otherwise would permit the former director to exercise, against a creditor, the very power which section 353(2)(a) says may continue only if sanctioned by the liquidator or the creditors.

[53] Mr Berlowitz was unable to refer me to any judgment holding that the directors

of a company in creditors' voluntary winding-up retain residual powers to instruct attorneys to oppose a creditor's application to convert the voluntary winding-up into a winding-up by the court. I was also unable to find such a case.

[54] Mr Lötter referred me to *Corigrain*.¹⁵ It is not decisive of the present issue. The application in that case was dismissed because the applicant had ceased to be a creditor and therefore lacked standing under section 346(1)(e). The discussion of the director's authority arose thereafter in the context of costs. It is nevertheless instructive because it concerned the same practical situation: a director of a company in voluntary winding-up had purported to oppose a conversion application in the company's name, and the court treated that opposition as unauthorised.

[55] In *Corigrain*, the applicant sought to convert a voluntary winding-up under sections 349 and 351 into a winding-up by the court under section 346(1)(e). The respondent company had been placed in voluntary winding-up. An answering affidavit was delivered by a director who purported to oppose the application on behalf of the company. The court held that the voluntary winding-up had divested the directors of control of the company. The purported opposition by the company through the director was therefore unauthorised.

[56] That is precisely the difficulty in this matter. The response to the rule 7 notice establishes only that Ms Cato purported to authorise the attorneys to act for the first respondent. It does not establish that she had authority to do so. Section 353(2)(a) required sanction by the liquidator or the creditors. There was none.

[57] The first respondent's reliance on the compulsory winding-up authorities therefore fails. Those cases preserve a limited power to challenge the order

¹⁵ *Corigrain Trading SA v Resora (Pty) Ltd* 2004 (2) SA 348 (W).

or process by which the directors' powers were displaced. They do not create a residual power in a creditors' voluntary winding-up to oppose a creditor's conversion application without the sanction required by section 353(2)(a).

[58] Ms Cato therefore had no authority to instruct attorneys to oppose the conversion application on behalf of the first respondent. The power of attorney signed by her did not cure that defect. A person who lacks authority to act for the company cannot confer that authority on attorneys.

The consequence of the rule 7 finding

[59] For the above reasons, I am not satisfied that Oosthuizen Caine Incorporated was authorised to act on behalf of the first respondent.

[60] It follows that the notice of intention to oppose and the answering affidavit purportedly delivered on behalf of the first respondent were not authorised. The answering affidavit must accordingly be disregarded. It is therefore also unnecessary to consider the conditional replying affidavit which was delivered in response to that purported answering affidavit. The conversion application must therefore be determined on the founding affidavit alone.

[61] The costs consequences of the unauthorised opposition are dealt with below.

The conversion application

The statutory framework

[62] I turn to the conversion application. Because the answering affidavit is disregarded, the application must be determined on the founding affidavit alone.

[63] Section 346(1)(e) provides that, in the case of a company being wound up voluntarily, an application to court for the winding-up of the company may be made by the Master or by any creditor or member of that company.

[64] The applicant applies as a creditor. Section 346(1)(e) is therefore the source of its standing. It must establish that it is a creditor of the first respondent and

that the first respondent is being wound up voluntarily.

[65] The second requirement is not in dispute on the admissible evidence. The CIPC search handed up during argument records that the first respondent was placed in voluntary liquidation on 7 May 2026. This was confirmed by the CIPC search result that was attached to the founding affidavit. The remaining question on standing is whether the applicant has established that it is a creditor.

[66] Section 347(1) confers a wide discretion. The court may grant or dismiss an application under section 346, adjourn the hearing conditionally or unconditionally, or make any interim order or any other order it considers just.

[67] Section 347(4)(a) deals specifically with an application brought under section 346(1)(e). It permits the court, in the winding-up order or by subsequent order, to confirm all or any of the proceedings in the voluntary winding-up.

[68] The issues are therefore whether the applicant has established its standing as creditor; whether the facts establish a ground for winding-up by the court; and whether the discretion should be exercised in favour of converting the existing voluntary winding-up into a winding-up by the court.

The applicant's standing as creditor

[69] The applicant conducts a bridging finance business. It advances funds in relation to property transfers where a seller requires funds before registration and repayment is to occur from the proceeds of the sale.

[70] The founding affidavit establishes three advances.

[71] The first concerned Erf 1[...] Yeoville. On or about 30 January 2026, Ms Cato, who was associated with Brian Alberts & Manoko Inc, approached the applicant. She informed the applicant that the first respondent, a client of the firm, was selling the Yeoville property.

- [72] The applicant was told that the first respondent had sold the Yeoville property to Imat Rental Services (Pty) Ltd for R 1 150 000. The applicant agreed to advance R 200 000. The first respondent signed an acknowledgment of debt on 2 February 2026. It also passed a resolution authorising the borrowing and authorising Ms Cato to sign the documents on its behalf.
- [73] The second concerned Erf 5[...] Fontainebleau. The applicant was told that the first respondent had sold that property for R 1 900 000. The applicant agreed to advance R 189 429.26. The first respondent signed an acknowledgment of debt on 30 January 2026 and passed a similar resolution authorising the borrowing and the signature of the documents by Ms Cato.
- [74] The applicant paid the first two advances into the trust account of Brian Alberts & Manoko Inc on 2 February 2026.
- [75] The third concerned Erf 5[...] Kensington. On or about 16 April 2026, Ms Cato again approached the applicant. She informed the applicant that the first respondent was selling the Kensington property for R 1 580 000. The applicant agreed to advance R 135 680.33. The first respondent signed an acknowledgment of debt on 16 April 2026 and passed a similar authorising resolution.
- [76] The applicant paid the third amount on 17 April 2026.
- [77] Each acknowledgment of debt recorded the first respondent's indebtedness to the applicant. Each provided that the total debt would be repaid on registration of transfer, but no later than 100 days from signature.
- [78] Clause (b)5 of the terms attached as annexure A to the acknowledgments of debt is important. It provides that the total debt becomes immediately due and payable in the event of the liquidation of the debtor.
- [79] Once the first respondent entered voluntary liquidation, the full amount owing

to the applicant became immediately due and payable.

[80] The applicant advanced a total of R 525 109.59. The amount has not been repaid. On the admissible evidence, the applicant has established that it is a creditor of the first respondent in that amount.

The relevant chronology

[81] The chronology is important to the exercise of the court's discretion.

[82] The first two advances were made on 2 February 2026. By late April and early May 2026 they were approaching the 100-day repayment period. The third advance was made on 17 April 2026.

[83] After the third advance, communication and updates regarding the transfers stopped. The founding affidavit states that Ms Cato failed to respond to queries and that calls to her personal number and to Brian Alberts & Manoko Inc went unanswered.

[84] On 24 April 2026, the applicant spoke to Ms Shamyrra Moonsamy, who was employed by Brian Alberts & Manoko Inc. She informed the applicant that the firm was in the process of closing its doors and that the conveyancing matters in which the applicant had advanced funds would be allocated to other attorneys.

[85] That caused the applicant to investigate the transactions. The investigation revealed that Ms Cato had signed the letters of undertaking provided by Brian Alberts & Manoko Inc, that she was the sole director of the first respondent, and that she had signed all three acknowledgments of debt on behalf of the first respondent.

[86] The investigation also revealed that none of the three properties was registered in the name of the first respondent. The historical deeds records reflected that the first respondent had never been the owner of the properties and that the properties were registered to unrelated third parties. I treat those

searches as relevant to the need for investigation. I do not treat them as a final determination of ownership or of any alleged fraud.

[87] The applicant also obtained a national deeds search which suggests that the first respondent did not have immovable property registered in its name in South Africa. The search did not, however, include all deeds offices. I therefore attach limited weight to it.

[88] On 28 April 2026, the applicant's attorneys addressed letters of demand to the first respondent and to Brian Alberts & Manoko Inc. The letters demanded payment and information. No response was received.

[89] Between 28 April 2026 and 5 May 2026, further attempts were made to contact the director of Brian Alberts & Manoko Inc and Ms Cato.

[90] On 5 May 2026, the applicant's attorney spoke to Mr Ernest Malan, a director of Brian Alberts & Manoko Inc. The founding affidavit records that Mr Malan verbally confirmed that Ms Cato had misappropriated trust funds of the firm. It also records that Mr Malan stated that funds had flowed from the firm's trust account to Ms Cato's personal account and to accounts of related entities.

[91] I do not make final findings of misappropriation, theft or fraud. Those issues are not before me for final determination. They are relevant only because the founding affidavit discloses circumstances requiring investigation.

[92] On 11 May 2026, a search at the Companies and Intellectual Property Commission revealed that the first respondent had been placed in voluntary liquidation on 7 May 2026. The applicant had not been given prior notice that the first respondent intended to enter voluntary liquidation.

Inability to pay debts

[93] The applicant relies, among other grounds, on section 344(f), read with section 345(1)(c), of the Companies Act.

- [94] Section 344(f) provides that a company may be wound up by the court if it is unable to pay its debts as described in section 345. Section 345(1)(c) provides that a company shall be deemed unable to pay its debts if it is proved to the satisfaction of the court that the company is unable to pay its debts.
- [95] The court must be satisfied of inability to pay at the time it makes the order. The question is whether, on the admissible facts, the company is unable to pay its debts when the court is asked to exercise the winding-up power.
- [96] The applicant's debt is due and payable. The acknowledgments of debt provided for repayment on registration of transfer or, at the latest, within 100 days from signature. In any event, clause (b)5 accelerated the debt upon the liquidation of the debtor.
- [97] The first respondent has not paid the applicant. The demands for payment and information were not answered. Ms Cato and the firm involved in the transactions could not be contacted. The matters set out in the chronology - the way the transactions were presented, the alleged representation of ownership, and the deeds searches - are relevant only as part of the broader picture of non-payment, unanswered demands and circumstances requiring investigation. I do not treat them as findings of fraud.
- [98] Shortly after the applicant's demands, and after communication had stopped, the first respondent was placed in creditors' voluntary winding-up without prior notice to the applicant.
- [99] I do not treat the voluntary winding-up, standing alone, as an irrebuttable deeming provision under section 345. A company may be wound up voluntarily for different reasons. But this was a creditors' voluntary winding-up. That is a significant fact. It is consistent with an inability to pay debts and with the company's affairs having reached a point at which the creditors, rather than the directors, should control the winding-up process.

[100] When the voluntary winding-up is considered with the unpaid and accelerated debt, the unanswered demands, the deeds searches referred to above, the cessation of communication and the timing of the liquidation, I am satisfied that the first respondent is unable to pay its debts within the meaning of section 344(f), read with section 345(1)(c).

Just and equitable

[101] I am also satisfied that it is just and equitable that the first respondent be wound up by the court under section 344(h).

[102] It is unnecessary to make final findings of fraud, theft or misappropriation. It is enough that the founding affidavit discloses a company that, through its sole director, signed acknowledgments of debt and resolutions in respect of transactions presented to the applicant as transfers by the first respondent to named purchasers; that obtained or procured bridging finance on that footing; that failed to repay the applicant; that failed to respond to demands; and that then entered voluntary liquidation without prior notice to the applicant. The applicant alleges that Ms Cato represented that the first respondent owned those properties, and deeds searches suggest that the properties were not registered in the first respondent's name.

[103] Those facts call for investigation. They also call for a liquidation process that is transparent, creditor-facing and subject to the statutory machinery available in a winding-up by the court.

[104] Mr Lötter submitted that the continuation of the voluntary winding-up will not afford sufficient protection to creditors because an enquiry under section 417 of the Companies Act cannot be held in a voluntary winding-up. I do not agree with that submission. Section 417 itself applies to a winding-up by the court. But, as the Supreme Court of Appeal explained in *Michelin Tyre Co (South Africa) (Pty) Ltd v Janse van Rensburg*,¹⁶ there are at least two ways of

¹⁶ *Michelin Tyre Co (South Africa) (Pty) Ltd v Janse van Rensburg* 2002 (5) SA 239 (SCA) at para 4.

procuring a section 417 enquiry even in a voluntary winding-up: the voluntary winding-up may be converted into a winding-up by the court under section 346(1)(e), or leave may be obtained under section 388 to convene such an enquiry. The point, therefore, is not that an enquiry is impossible in a voluntary winding-up. It is that conversion provides the direct statutory machinery of a winding-up by the court without requiring a further application under section 388.

[105] A similar qualification applies to the submission that the incumbent liquidators, absent conversion, will not be able to invoke the provisions of the Insolvency Act,¹⁷ in particular sections 26 to 32, to claim back dispositions for the benefit of creditors. Section 339 of the 1973 Companies Act provides for the application of the law of insolvency, in so far as it is applicable, in the winding-up of a company unable to pay its debts. The difficulty in a voluntary winding-up is therefore not necessarily that those provisions can never be invoked. It is that their invocation may require the liquidator first to take an additional step to bring the liquidation within the necessary statutory framework.

[106] In this matter, I have found that the first respondent is unable to pay its debts. Conversion will therefore place the winding-up directly within the machinery of a winding-up by the court. It will avoid the need for further procedural steps before the liquidator can pursue a section 417 enquiry or, where appropriate, rely on the insolvency-law remedies made applicable by section 339. Whether an enquiry or recovery proceedings will ultimately benefit creditors is not for present determination. It is sufficient that the founding facts disclose circumstances requiring investigation and possible recovery steps.

Should the voluntary winding-up be converted?

[107] The first respondent is already in voluntary winding-up. The order sought will not create a liquidation. It will convert the statutory character of an existing liquidation.

¹⁷ 24 of 1936.

[108] Section 347(1) gives the court a wide discretion to grant or dismiss the application or to make any order it considers just. Section 347(4)(a) permits the court, where the application is brought under section 346(1)(e), to confirm all or any of the proceedings in the voluntary winding-up.

[109] In this matter, I am satisfied that the discretion should be exercised in favour of conversion.

[110] The decisive considerations are these. The applicant is a creditor. Its debt is due and unpaid. The first respondent is unable to pay its debts. The transactions were presented as transfers by the first respondent to named purchasers, with the alleged representation of ownership and the deeds searches already described. The applicant's demands for payment and information were not answered. Communication stopped. The law firm involved in the transactions was said to be closing its doors. The first respondent was then placed in voluntary liquidation without prior notice to the applicant.

[111] Those facts justify conversion. The body of creditors is entitled to a process that permits proper investigation into the first respondent's trade, dealings and affairs. The circumstances in which the first respondent obtained the bridging finance, the way in which the transactions were presented to the applicant, the allegation that ownership was represented, and the deeds searches suggesting that the properties were not registered in the first respondent's name, the failure to repay, the cessation of communication and the timing of the voluntary liquidation all support the need for a winding-up by the court.

[112] I am therefore satisfied that the voluntary winding-up of the first respondent should be converted into a winding-up by the court.

Effective date and confirmation of prior proceedings

[113] The applicant seeks an order that the effective date of the first respondent's winding-up remains 7 May 2026.

[114] Section 347(4)(a) of the 1973 Companies Act permits the court, where an application is presented under section 346(1)(e), to make a winding-up order and, in that order or by subsequent order, to confirm all or any of the proceedings in the voluntary winding-up. The provision therefore empowers the court, where appropriate, to preserve the legal consequences of the voluntary winding-up notwithstanding its conversion into a winding-up by the court.

[115] That power is significant in the present context because of section 348. 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 the winding-up. Were section 347(4)(a) not available, the conversion of the voluntary winding-up into a winding-up by the court might be taken to commence only upon the presentation of this application, thereby displacing the date on which the voluntary winding-up began. Section 347(4)(a) is the mechanism that avoids that result. By empowering the court, on an application under section 346(1)(e), to confirm all or any of the proceedings in the voluntary winding-up, it permits the court to preserve the commencement date fixed by section 352(1) notwithstanding the conversion. The declaration sought is therefore not in conflict with section 348. It is the very kind of preservation that section 347(4)(a) contemplates.

[116] Section 352(1) provides that a voluntary winding-up commences at the time of the registration, in terms of section 200, of the special resolution authorising the winding-up. The CIPC search handed up during argument records that the special resolution for the voluntary liquidation of the first respondent was registered on 7 May 2026. The applicant seeks only a declaration that the effective date of the liquidation is 7 May 2026. That relief is consistent with sections 347(4)(a) and 352(1).

Costs

- [117] The applicant is entitled to its costs.
- [118] The application had to be brought urgently. The costs that the applicant would have incurred in an unopposed urgent conversion application should be costs in the administration of the first respondent's estate.
- [119] The additional costs caused by the unauthorised opposition stand on a different footing. The opposition was not authorised by the company acting through any person or body entitled to act for it. It was caused by Ms Cato, who purported to exercise powers which had ceased upon the commencement of the creditors' voluntary winding-up.
- [120] Mr Berlowitz submitted that, even if Ms Cato was not authorised to instruct attorneys to oppose the application on behalf of the first respondent, she should not personally be ordered to pay the costs. The submission was that she was compelled to deliver an answering affidavit to defend herself against what were described as character assassination, harassing and vexatious allegations in the founding affidavit.
- [121] The difficulty with that submission is that it does not reflect what occurred. The answering affidavit was not delivered by Ms Cato in her personal capacity. She did not apply for leave to intervene. She did not deliver an affidavit confined to the protection of her own reputation or interests. The answering affidavit was delivered as the first respondent's answering affidavit and its purpose was to defeat the conversion application.
- [122] That is apparent from the affidavit itself. It raised points in limine. It disputed urgency. It disputed the applicant's standing. It raised non-joinder. It disputed the merits. It sought the dismissal of the application with punitive costs. It was therefore an affidavit delivered in the name of the first respondent to oppose the relief sought against the first respondent.
- [123] Ms Cato was entitled, if so advised, to seek to protect her personal interests

by taking appropriate steps in her own name. She was not entitled to do so by causing the first respondent to oppose the application when her powers as director had ceased and no sanction under section 353(2)(a) had been obtained.

[124] The position is therefore the same in principle as in *Corigrain*. The person who caused the unauthorised opposition must bear the costs occasioned by it. The general body of creditors should not be burdened with the costs of an opposition which the company never authorised.

[125] Ms Cato must therefore pay the applicant's costs occasioned by the unauthorised opposition, being all costs other than those costs which the applicant would have incurred in an unopposed urgent application. Those costs include the costs of counsel on scale B.

Order

I make the following order:

- [1] The authority of Oosthuizen Caine Incorporated to act on behalf of the first respondent is not established.
- [2] The voluntary winding-up of the first respondent, GCDP Group (Pty) Ltd, registration number 2022/629126/07, is converted into a winding-up by the court in terms of section 346(1)(e), read with section 347(4), of the Companies Act 61 of 1973.
- [3] The effective date of the first respondent's winding-up remains 7 May 2026.
- [4] Ms Carla Cato shall personally pay the applicant's costs of the application other than those costs that would have been incurred in an unopposed urgent application, such costs to include the costs of counsel on scale B.
- [5] The remaining costs of the application shall be costs in the administration of the first respondent's estate.

J L MÿBURGH AJ
Acting Judge of the High Court

Date heard: 20 May 2026.

Judgment date: 5 June 2026.

Appearance:

For the Applicant:

Counsel: Lötter G F J

Instructed by: Van der Merwe & Associates
Incorporated

For the First Respondent:

Counsel: Berlowitz J K

Instructed by: Oosthuizen Caine
Incorporated