



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

JUDGMENT

Reportable

Case no: 2025-064578

In the matter between:

HARALD MANFRED SEICK N.O.

First Applicant

MATTHEW LAMONT WALTON N.O.

Second Applicant

(co-trustees of Seick Property Trust)

HARALD MANFRED SEICK

Third Applicant

And

PROUD HERITAGE PROPERTIES 60 (Pty) Ltd

First Respondent

Farm 1[...], Portion 2, D[...] U[...] Street, Paarl,

Western Cape Province

JOANNE GLADYS LEFSON

Second Respondent

Coram: BARENDSE J

Heard: 21 April 2026 and 11 August 2026

Delivered: 19 AUGUST 2026

Summary: Company-Winding Up-Just and Equitable to do – Breakdown in relationship between shareholders - Court’s discretion under s81 (1) (d) (iii) of Companies Act 71 of 2008-Motion proceedings-R6(7) of Uniform Rules-Whether separate supplementary counter application legally competent.

ORDER

Application to strike out

1. paragraph 7 of the second-respondent’s answering affidavit in the applicant’s rule 30 application is struck out;
2. the second respondent shall pay the costs of the applicants’ application to strike-out, with counsel’s fees to be taxed on Scale C.

Rule 30 application

3. the second respondent’s supplementary counter application dated 21 May 2026 is set aside as an irregular step;
4. the second respondent shall pay both the costs of the applicants’ rule 30 application and rule 30 notice dated 2 June 2026, on the attorney and own client scale;

Application for leave and condonation

5. the second respondent's application for leave and condonation dated 11 June 2026 is dismissed;
6. the second respondent shall pay the applicants' costs of the application for leave and condonation on the attorney and own client scale;

Provisional liquidation of first respondent

7. the first respondent is placed under provisional liquidation;
8. a *rule nisi* is issued calling upon all interested persons to show cause, if any, to this Court on **13 October 2026**, at 10h00, or as soon thereafter as this matter may be heard:
 - 8.1. why the first respondent should not be placed under final liquidation and;
 - 8.2. why the costs of this application (including the costs of 21 April 2026) should not be costs in the liquidation;
9. service of this order shall be effected:
 - 9.1. by the sheriff at the registered office of the first respondent at Farm 1[...], Portion 2, D[...] U[...] Street, Paarl, Western Cape Province;
 - 9.2. by one publication in each of the Cape Times and Die Burger newspapers;
 - 9.3. on the first respondent's employees in accordance with section 346A of the Companies Act, 61 of 1973 ("the Act");
 - 9.4. on any trade union/s with which the first respondent's employees may be affiliated in accordance with section 346A of the Act;
 - 9.5. on the South African Revenue Service; and

- 9.6. by prepaid registered post on all known creditors of the first respondent whose claims are in excess of R5,000.00.

JUDGMENT

BARENDSE J

Introduction

[1] The following quotation from William Shakespeare in *Romeo and Juliet (Act II Scene 2)* reminds us of how profoundly love and romance can impact the decisions of persons in a romantic relationship: ‘*My bounty is as boundless as the sea, My love as deep; the more I give to thee, The more I have, for both are infinite.*’ Even when relationships do not transition into marriage or life partnership, decisions taken during its existence can often haunt the parties post termination thereof.

[2] This liquidation application has its genesis in a romantic relationship between Third Applicant and Second Respondent that spanned across ten years, from *circa* 2014 to 2024. The romantic relationship gave rise to a business relationship and in this process the First Respondent company, Proud Heritage Properties 60 (Pty) Ltd (‘Proud Heritage’ or ‘the company’) was established.

Factual setting

[3] The issued shares in the company were held 50% by Second Respondent and 50% by the Seick Property Trust (‘the trust’). First and

Second Applicants are the duly appointed trustees of the trust. Second Applicant is also the legal representative of the trust. Second Respondent ('Ms Lefson') was the only director of the company since its inception until February 2025 when Third Applicant ('Mr Seick') became the other director.

[4] Proud Heritage was formed for the purpose of acquiring an immovable property, Erf 1[...] at Franschoek ('The Franschoek Farm' or 'the Farm'). The Farm was sub-divided into Portions one and two. Portion one was improved significantly by the upgrading of its hospitality accommodation facilities into upmarket accommodation through a villa and three cottages. A vineyard was also developed on this property. The property is the only asset of the company.

[5] Portion two has been improved by the construction of the barn which is the only permanent structure on it. That upgrading includes the construction of an upmarket upstairs apartment in the barn ('the Barn Apartment'). Portion 2 has been used by Second Respondent to carry on a variety of projects, mostly animal-related, certain of which are conducted in the name of two non-profit trusts, the Farm Sanctuary SA Trust, and the Oscar's Arc Trust. On Portion two there is also a container, and a prefabricated removable accommodation pod called 'the Cube'.

[6] After Proud Heritage was acquired in 2014, a memorandum of incorporation ("MoI") was adopted for the company. In the Founding Affidavit ('FA') the Applicants drew attention to the following provisions contained in the MoI:

1. Article 23 entitles shareholders, at the request of the board of directors, to lend money to Proud Heritage; however, no shareholder is compelled to lend, or continue lending, to Proud Heritage, whether on loan account or otherwise;
2. In terms of article 25.1.2 Proud Heritage is entitled to repay shareholder loan accounts only with the approval of a special Board resolution, namely a resolution adopted with the support of at least 75% of the directors;
3. In terms of article 28.4, Proud Heritage may make a distribution to shareholders only with the approval of an ordinary Board resolution, namely a resolution supported by 55% of the directors.
4. In terms of article 29.2 every shareholder is entitled to appoint any qualified person of its choice as director; And to remove and replace that director from time to time, in its absolute discretion;
5. In terms of article 33.2.6 every director will be entitled to exercise that number of votes which is equal to the number of ordinary shares of the company held by the shareholder who appointed the director;
6. In terms of article 29.5, if there are two or more directors on the board of Proud Heritage, the board must elect one of the directors as the chairperson;
7. In terms of article 33.2.10, the chairperson (if one has been elected) does not have a casting or deciding vote in the case of a tied or deadlocked vote at a board meeting.

[7] A Shareholders Agreement ('SHA') was concluded between Proud Heritage, the trust and Second Respondent on 17 March 2021. The Applicants drew attention to the provision in clause 15 thereof. This

provides that notwithstanding anything to the contrary contained therein, any party is entitled, in its absolute discretion, to apply to court for an order for the winding up of the company on the basis that such winding up is just and equitable.

[8] Ms Lefson, in her Answering Affidavit ('AA') submitted that the SHA was intended to protect her in a universal partnership between her and Mr Seick for her lifetime. She also brought a counter application for enforcement of her rights under the SHA. She referred extensively to the provisions of the SHA and the following provisions are in summary recorded:

1. Clause 2.1 that records that she lent and advanced monies to the company, on loan account ('the Lefson account') the amount of which was to be quantified and recorded in the financial statements by the auditors;
2. Clause 2.2 that identifies the Lefson account as a special account that is to be repaid in full before any part of any other loan account owed to another shareholder is paid or dividends declared by the company;
3. The parties must cause the company to repay the whole of the Lefson account as soon as the financial position of the company permits but on condition that the company satisfies the solvency and liquidity test referred to in s4 of the Companies Act of 2008;
4. If the company has not repaid the Lefson account in full by 31 December 2022, the Seick Trust must lend and advance money to the company to enable it to do so and to satisfy the solvency and liquidity test at that point;

5. Clause 2.3.2 that affords Ms Lefson a right over Mr Seick's loan account for as long as she is alive and capable of managing her own affairs;
6. That for as long as Ms Lefson owns her shares and Mr Seick's loan account remains unpaid, to preclude any sale, cession, assignment transfer or other disposal of, pledge or other encumbrance thereof without her written consent;
7. Clause 3 thereof that provides that Mr Seick's loans to the company would be long term loans with no fixed date for repayment;
8. Clause 4 thereof that forbids the sale of the Farm property for as long as Ms Lefson is alive and capable of managing her own affairs without her written consent;
9. Clause 9 thereof that entitles Ms Lefson to let the three cottages on the Farm property out and to retain the net revenue so generated.

[9] Ms Lefson submits that her loan account in the company amounts to R4, 608, 913.02 and that no part thereof has been repaid to her. Mr Seick alleges that he advanced long term loans to Proud Heritage to the tune of R70,000,000.00 through payment for the improvement to the Farm and payment of the company's operational costs. According to him, the company never traded profitably.

[10] The Applicants launched these liquidation proceedings during 2025 seeking the liquidation of the company on the basis that: (1) it is unable to pay its debts; (2) that such an order is just and equitable. Ms Lefson is opposing this relief and filed a counter application in which she is seeking enforcement of her rights under the SHA.

[11] During 2024 Ms Lefson ended the romantic relationship with Mr Seick. What followed was a turbulent cycle of events which culminated into much correspondence between the legal representatives of the parties and triggered various proceedings in the magistrate's court and in this court. It is not necessary to summarise all such events in this judgment.

[12] As mentioned earlier, Ms Lefson was initially the only director of Proud Heritage. During February 2025 the Seick Trust exercised its right under article 29.2 of the MoI and Mr Seick was appointed as a director with Ms Lefson. Prior thereto, and on 22 January 2025 Mr Seick through his attorneys, demanded from Ms Lefson the return of property, alleged to be owned by the company. This included a Porsche vehicle and the repayment of company monies allegedly misappropriated by her. It was alleged that Ms Lefson paid over R1million out of company funds for furniture for her apartment in Clifton. It was also alleged that she used company funds to pay for the use and occupation of the container on Portion 2 of the Farm.

[13] Ms Lefson's attorneys replied by recording her umbrage at the allegations made by Mr Seick, labelled his conduct as harassment, intimidation and an abuse. Mr Seick was called upon to desist from direct contact with Ms Lefson and was directed to only communicate with her through her attorneys. He was notified that failing to heed the demands made, a Protection Order would be obtained against him.

[14] Around the middle of February 2025 Ms Lefson obtained an Interim Protection Order in terms of the Domestic Violence Act¹ against Mr Seick. A Final Protection Order was obtained on 9 April 2025. Mr Seick did not oppose these proceedings as his attorneys informed Ms Lefson's attorneys that the Interim Protection Order was not valid as it was never served on Mr Seick. This notwithstanding, a Final Protection Order was sought and obtained. This prohibited Mr Seick from communicating with Ms Lefson.

[15] According to Mr Seick, Proud Heritage did not have sufficient funds to pay salaries to employees during April 2025. Mr Seick asked his assistant, Ms Waschnik to communicate by email a request to Ms Lefson to deposit funds into the company's account. This was met with a reply by Ms Lefson's attorneys that Proud Heritage's inability to pay staff salaries due to lack of funds constitutes financial abuse by Mr Seick in violation of the Protection Order. This Mr Seick regarded as the use of the Protection Order to extort payments from him that he was not obliged to make.

[16] The Protection Order also featured in incidents between Ms Lefson and some of the employees of Proud Heritage. According to Mr Seick the general manager of the hospitality business, Ms Michelle Cronje suspended an employee, one Ms Fortuin with the intention of holding a disciplinary hearing. When Ms Cronje informed Mr Seick and Ms Lefson of this, the latter regarded this as a breach of the Protection Order and she cancelled Ms Fortuin's suspension. A thread of emails exchanged between Ms Cronje and Ms Lefson was attached as 'FA13' in confirmation.

¹ Act 116 of 1998

[17] The Applicants further averred that the complete breakdown, (and therefore deadlock) in the relationship between the two directors and shareholders of Proud Heritage resulted into an inability by its auditors, Accuity, to finalise its Annual Financial Statements (AFS'). The auditors indicated that the most recent signed AFS' were those for the year ending February 2022. They further informed Mr Walton in an email dated 23 April 2025 that the AFS' for the year ending February 2023 were sent to Ms Lefson for approval but that she did not respond thereto. In the same email Accuity indicated that due to a dispute regarding the treatment of certain income and allocation of loan account transactions they were unable to sign off on any audited AFS'.

[18] In her AA Ms Lefson took issue with the value of Mr Seick's loan account in Proud Heritage. This she stated, varied from R55, 201, 411.00 and R67, 262, 994.00 between 2022 and 2025. She regarded the dispute over the value of the loan account as the main reason why the AFS' for the financial years 2023, 2024 and 2025 could not be signed off.

[19] According to Ms Lefson the company is solvent. Importantly, in her AA she admits that after the romantic relationship ended, the tone and atmosphere between her and Mr Seick became contentious and acrimonious.² This she ascribed to a deadlock designed to intimidate and force her hand and as a stratagem for the winding-up application.

[20] During 2023 a property in Clifton was purchased for Ms Lefson. By agreement an application was made by her in the name of Proud Heritage for

² Record p005-37 para 48

a loan of R28,500,000.00 secured by a mortgage bond over the Farm property. The arrangement was that Ms Lefson would contribute R3,000,000.00 to the purchase price. This she did through her loan account in Proud Heritage. She also sold a property owned by another company of hers and contributed a further R13,000,000.00 towards the Clifton property. The balance of R12,500,000.00 was to be an interest free loan by Mr Seick to her. Ms Lefson takes issue with the fact that the interest effect of this loan is apparently charged to Proud Heritage. She complains that the interest on the Investec loan is being charged as an expense to Proud Heritage while she was promised an interest free loan by Mr Seick. The expense charged to Proud Heritage is to her prejudice as a 50% shareholder of Proud Heritage. This she submits, is indicative of ‘dirty hands’ on the part of Mr Seick.

[21] Yet another dispute raised in the papers relates to the purchase of *Roche Bobois* furniture by Ms Lefson for her Clifton property. Ms Lefson averred in her AA that during August 2022 the trust lent and advanced R300,000 to her as an interest free loan to purchase the furniture. According to her she then purchased the furniture and paid for it herself, not using the loan. She attached a purported tax invoice as ‘AA19’ to back this up.³ This document however relates to something other than furniture. On the other hand, the Replying Affidavit (“RA”) has as annexure ‘RA4’ an invoice which confirms that the furniture was purchased by Proud Heritage for R919, 565.00. In a letter of demand dated 22 January 2025 Mr Walton demanded from Ms Lefson repayment of the amount of R1,000,000.00. The furniture was apparently returned to the Franschoek property during May 2025 in such a poor condition that it had to be ‘written off’.

³ Record p006-120

[22] During May 2025 there was another incident when a member of the South African Police Service attended at the Franschoek farm to interview company employees in search for evidence of economic abuse of Ms Lefson by Mr Seick. It appears that this criminal investigation came to nought.

[23] During June 2025, and after these proceedings were instituted, Ms Lefson appointed her new romantic partner, Mr Douglas Stevenson as a director of Proud Heritage in her stead. Subsequent thereto ongoing disputes resulted into at least three applications in the High Court. It is not for purposes of this judgment necessary to go into the details of those proceedings.

[24] Following the appointment of Mr Stevenson as director and the events that ensued thereafter, the Applicants made application in terms of Rule 6(5)(e) for the filing of a further affidavit to address those events. When the matter was on the roll for hearing on 21 April 2026, Second Respondent applied for a postponement. This Court granted the Applicants' Rule 6(5)(e) application and a postponement to allow Ms Lefson to answer to the further affidavit.

[25] This affidavit dealt with *inter alia* the appointment of Mr Stevenson as director of the company, the three High Court applications that were instituted since the commencement of these proceedings and a subdivision application for the Franschoek Farm at the behest of Mr Stevenson. One of the court applications concerned an eviction resulting from Ms Lefson's decision to take occupation of one of the luxury villas on the Farm. Prior to

the institution of the court application Mr Walton as proxy for Mr Seick requested an urgent meeting with Mt Stevenson to address this development. The request was refused on the basis of Mr Stevenson's reply that him and Walton '*were both conflicted*', making a meeting impossible. This was because Mr Stevenson acted for Ms Lefson and Mr Walton acted for Mr Seick. In his email reply dated 28 August 2025 Mr Stevenson also mentioned that '*This is not about a company, it is about the breakdown of a universal partnership and it should be managed like this towards a settlement.*'⁴

[26] I have mentioned earlier that Ms Lefson instituted a counter application at the time when she filed her AA. After the matter was postponed on 21 April 2026, she filed a Supplementary Counter Application, then followed by an application for leave and for condonation. In response, Applicants filed an Application in terms of Rule 30 (and 6(11)) and an Application to Strike-Out. I shall return to this later.

Applicants' case

[27] The Applicants seek an order for the winding up of the company on the basis that:

1. The company's business cannot be conducted to the advantage of its shareholders as a result of the deadlock and falls to be wound up in terms of s81(1)(d)(i)(aa) and or (bb) of the Companies Act, 71 of 2008 ("the 2008 Companies Act");
2. It would be just and equitable to do so in terms of s81(1)(c) (ii) or s81(1)(d)(iii) of the 2008 Companies Act or s344 of Act 61 of

⁴ Record p 013-32.

1973(“the 1973 Companies Act”), depending on whether the court finds that the company is solvent or insolvent;

3. It is unable to pay its debts as contemplated in ss344(f) read with s345(1)(c) of the 1973 Companies Act.

Applicants submit that the company is unable to repay the loans of more than R69million that Mr Seick made to it, which loans were called up during 2025.

[28] Applicants further submit that a deadlock developed between Mr Seick and Ms Lefson as directors and between the co-shareholders being the trust and Ms Lefson. They submit that a deadlock equally exists between Mr Seick and Mr Stevenson who replaced Ms Lefson as director. On behalf of the Applicants it was also submitted that a counter application for the enforcement of private shareholder relief is no defence to a liquidation application.

[29] Applicants acknowledge that clause 2.2 of the SHA obliges the Seick Property Trust to lend Proud Heritage funds to repay Ms Lefson’s loan account, but only if her loan account has a credit balance. While Ms Lefson claims a value of around R4.6million for her loan account, Applicants say that on her own version, she used the loan account to fund her R3,000,000 contribution towards the purchase price of her Clifton property. In addition, Applicants claim that Ms Lefson owes Proud Heritage money that exceeds any remaining balance of her loan account. She also has in her possession a Porsche motor vehicle worth more than R2million which she refuses to return and which Proud Heritage pays for.

[30] Applicants further contend that clause 2.2 of the SHA provides that if Ms Lefson loan account was not repaid in full by 31 December 2022, Mr Seick would be obliged to lend the company sufficient funds to repay her loan account and, at the time of repayment, satisfy the solvency test as envisaged in s4 of the 2008 Companies Act. This test entails an assessment of whether a company will be able to pay its debts as they fall due for a period of 12 months after the test is performed. This Mr Seick says he did, by keeping the company afloat until 30 December 2023 by injecting millions of Rands.

[31] While conceding that the MoI cannot trump the provisions of the SHA, Applicants rely on the former that provides that no shareholder is obliged to make loans to the company.

[32] Applicants deny that a universal partnership ever came into existence between Ms Lefson and Mr Seick. In the RA it was specifically stated that they never cohabited, never had a common household and that each carried their own living expenses.

Second Respondent's case

[33] In her papers Ms Lefson made repeated reference to the existence of a universal partnership. This she says, is why the SHA extended various rights and protections to her. She seeks to enforce these rights.

[34] While not denying the company's indebtedness to Mr Seick or that he funded the company over the years, she disputes the amount of his loan account. She also disputes that the loan account constitutes a debt that is currently payable.

[35] Ms Lefson submits that the company's profit and loss account (as at 28 February 2026) reflects a nett loss of R1,430.000. This she says, must be reworked to remove the effect of the Investec loan interest and legal expenses. This exercise she says, yields a profit of around R1.1million for the year ending 28 February 2026. She admits that this will be the first year that the company on a 'normalised basis' has produced a positive trading result.

[36] She accordingly submits that the company is not commercially insolvent and that the drastic consequences of a liquidation are not justified.

[37] Ms Lefson denies that the directors are deadlocked and allege that any governance issues were caused by Mr Seick. Further, she submits that less drastic alternative remedies are available such as a buy-out of one shareholder, relief under s163 of the 2008 Companies Act or the regulation of the parties' conduct. Needless to say, any such measures will necessarily require a functional level of co-operation between her and Mr Seick.

Reasoning and findings

[38] At the hearing of these proceedings this Court was called upon to rule on the following:

1. The Second Respondent's application for leave to file a Supplementary Counter-Application;
2. The Rule 30 and Strike Out applications filed by Applicants;
3. The liquidation (main) application.

[39] It is apposite to first deal with the proceedings under 1 and 2 above. In a Supplementary Counter Application, filed around 21 May 2026 the Second Respondent is asking for a number of company resolutions adopted by Mr Seick and or Walton (as proxy for Mr Seick) to the exclusion of Mr Stevenson be set aside and that the LPC (Legal Practice Council) or the CEO of the IRBA (Independent Regulatory Board) be directed to appoint an independent third-party director to the board of directors of Proud Heritage.

[40] In addition to having filed the aforesaid application, Second Respondent is seeking leave to do so, and to the extent necessary, condonation. The Applicants filed a R30 application in response to the above.

[41] Rule 6(7) of the Uniform Rules allows a party in motion proceeding to file a counterclaim. The crisp issue is whether the said Rule contemplates more than one counter claim in the same proceedings by the same party. This is so, in the backdrop of Second Respondent already having filed a counter application in these proceedings.

[42] Both parties made extensive submissions on this issue. Second Respondent referred the Court to a judgment in *Paulsen and Another v JP Markets SA (Pty) Ltd and Another*⁵ (“*Paulsen*”) where, in action proceedings a defendant was granted leave to file a counterclaim after it had filed a plea, instead of simultaneously with the plea as required. *Paulsen* is therefore clearly distinguishable.

⁵ [2025] ZAWCHC 428

[43] Applicants argued that the text of R6(7) is clear. It makes provision for ‘a’ counter application, denoting one and no more. To this, the Second Respondent countered that under s 6(b) of the Interpretation Act⁶ ‘*words in the singular number include the plural and words in the plural include the singular*’. The Interpretation Act also provides that its provisions apply to ‘*...the interpretation of all laws, by-laws, rules, regulations or orders made under the authority of such law, unless there is something in the language or context of the law...repugnant to such provisions or unless the contrary intention appears therein.*’⁷

[44] I agree with the Applicants that I am not empowered to read provisions into R6(7) that are not there. The correct procedural step that the Second Respondent should have followed, was to apply for leave to amend the counter application under Rule 28. This was not done and it is not permissible for this Court to condone the adoption of a procedure that is not competent in law.

[45] The Court also accepts the submission on behalf of Applicants that to allow a party to do what the rules do not allow, would lead to an ‘*intolerable level of legal uncertainty*’ as stated in *Potgieter*.⁸

[46] To allow this step, will be to allow these proceedings to be dragged out impermissibly and to create bad precedent.

[47] The Second Respondent’s Notice of Motion dated 21 May 2026 is accordingly set aside in terms of Rule 30 as an irregular step.

⁶ Act 33 of 1957

⁷ s1 of the Interpretation Act *supra*.

⁸ *Potgieter v Potgieter* NO 2012 (1) SA 637 (SCA)

[48] Having found that the application to introduce a Supplementary Counter Application is an irregular step, it is not necessary to deal with the relief sought in the application for leave/condonation pertaining thereto.

[49] Applicants applied for the striking out of paragraph 7 of Second Respondent's AA in the Rule 30 proceedings. In this paragraph she stated that her condonation application is a full answer to the Rule 30 Application and she asked that the FA in the condonation application be read as if incorporated into her AA. The Applicants protested that this is not permissible and relied on the following passage in *Minister of Land Affairs & Agriculture v D&F Wevell Trust*⁹: 'It is not proper for a party in motion proceedings to base an argument on passages in documents which have been annexed to the papers when the conclusions sought to be drawn from such passages have not been canvassed in the affidavits. The reason is manifest - the other party may well be prejudiced because evidence may have been available to it to refute the new case on the facts. The position is worse where the arguments are advanced for the first time on appeal. In motion proceedings, the affidavits constitute both the pleadings and the evidence: *Transnet Ltd v Rubenstein*, and the issues and averments in support of the parties' cases should appear clearly therefrom. A party cannot be expected to trawl through lengthy annexures to the opponent's affidavit and to speculate on the possible relevance of facts therein contained. Trial by ambush cannot be permitted.'

[50] The Second Respondent was obliged to specifically answer to the allegations made by Applicants in the R30 application. I agree that it was impermissible for her to refer the other parties and the Court to her condonation application for such an answer. In the circumstances the application to strike out is granted.

⁹ 2008 (2) SA 184 (SCA) para [43]

[51] This brings me to the liquidation application. At the outset it is mentioned that not all the details of dissent and strife between Ms Seick and Ms Lefson which appeared from the prolix papers filed on behalf of Ms Lefson were included in the summary of the factual setting. What the details thereof demonstrate is an irretrievable breakdown in the relationship between Mr Seick and Ms Lefson. This permeated all the spheres of their personal and business relationships. In paragraph 51 of her AA Ms Lefson submitted that no deadlock existed in that Mr Seick can communicate with her through her attorneys or that Mr Walton could meet with her. This amounts to an admission of deadlock. The history shows that matters did not improve since Mr Stevenson replaced Ms Lefson as director of the company.

[52] One of the submissions on behalf of Ms Lefson was that a material dispute of fact was raised in the papers, rendering the matter incapable of determination on motion. I disagree. The disputes and fallouts between the two shareholders and the two directors prior to and after Seick's appointment as director, do no more than illuminate the strife and hostility between them.

[53] Things did not improve after Mr Stevenson was appointed to replace Ms Lefson as a director. This is hardly surprising given his status as Ms Lefson's new boyfriend.

[54] The erstwhile romantic relationship between Mr Seick and Ms Lefson was without a doubt the substratum of Proud Heritage. This also explains the provisions contained in the SHA.

[55] Ms Lefson does not deny that the company is indebted to Mr Seick. What she disputes is the extent of the indebtedness and that the debt has fallen due. In the report prepared by Mr Stevenson¹⁰ he used a value of R66million for Mr Seick's loan account. If a liquidation order is granted, it will in any event be incumbent on the liquidator/s to quantify the loan account.

[56] If Mr Seick is entitled to call up the amount owing to him, as he has done, the company will not be able to pay its debts as envisaged in s344 of the 1973 Companies Act. If he is under no obligation to continue financing the company, it will be unable to meet its operational expenses as they fall due. Further, the last audited AFS' reflect accumulated losses of over R16m.

[57] However, this Court does not have to make findings regarding whether Proud Heritage is commercially insolvent. The Applicants are also placing reliance upon s 81(1)(d)(iii) of the 2008 Companies Act. This provision empowers a court to order the winding-up of a solvent company on the basis that it is just and equitable to do so.

[58] The discretion granted in s81 (and its predecessors under the 1926 and 1973 Companies Acts) is a wide one but it has to be judicially exercised. It is trite law that where a deadlock has arisen in relation to the management of the affairs of a company, it is just and equitable to order the winding up thereof.

¹⁰ Record p18-96

[59] In *Moosa N.O. v Mavjee Bhawan (Pty) Ltd and Another*¹¹ a case decided under the 1926 Companies Act the court, with reference to *Yenidje Tobacco Co.*,¹² an English case, said the following: ‘*The other principle derived from the Yenidje Tobacco Co. case, usually called the deadlock principle, is founded on the analogy of partnership and is strictly confined to those small domestic companies in which because of some arrangement, express, tacit or implied, there exists between the members in regard to the company’s affairs, a particular personal relationship of confidence and trust similar to that existing between partners in a partnership business. Usually that relationship is such that it requires the members to act reasonably and honestly toward one another and with friendly co-operation in running the company’s affairs. If by conduct which is either wrongful or not contemplated by the arrangement, one or more of the members destroys that relationship, the other member or members are entitled to claim that it is just and equitable that the company should be wound up in the same way as, if they were partners, they could claim dissolution of the partnership.*’ (emphasis added).

[60] In the above case it was the constant quarrelling, disputes and animosity between the two members which irretrievably destroyed the personal relationship of confidence and co-operation that their arrangement contemplated would prevail between them. A winding up order was deemed to be just and equitable.

[61] In *Thunder Cats v Nkonjane Economic Prospecting*¹³ it was confirmed that the discretion under s 344 of the 1973 Companies Act and s81(1)(d)(iii) of the 2008 Companies Act is a wide one. The company, although solvent, was liquidated because a breakdown in the relationship between the

¹¹ 1967 (3) SA 131 TPD at p137

¹² (1916) 2 Ch. 426 (Court of Appeal)

¹³ 2014 (5) SA 1 (SCA)

shareholders resulted into deadlock. At paragraph [20] of this judgment the court quoted the following from *Ebrahimi v Westbourne Galleries Ltd*¹⁴ ‘*The just and equitable provision does not ...entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable consideration: considerations that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable to insist on legal rights, or to exercise them in a particular way*’.

[62] The Second Respondent’s counter application seeks to enforce her rights under the SHA in circumstances where by reason of deadlock, it is just and equitable to wind up the company. The counter application cannot therefore stand. The provisions of a SHA cannot trump the provisions of statute and the powers so conferred upon a court.

[63] The Second Respondent also suggested that Mr Seick has ‘dirty hands’ and is precluded from seeking the relief that he is seeking. What we have seen is that acrimony followed the termination of the romantic relationship. There is no evidence that assists this court in assessing the reasons for the breakup. The protestations by both Ms Lefson and Mr Seicke relate to events post the said breakup. What we do know is that it is Ms Lefson who terminated the romantic relationship and by so doing removing the substratum of Proud Heritage.

[64] In *Thundercats* it was stated that if the breakdown in the relationship resulted from the applicant’s misconduct, he/she cannot insist on the

¹⁴ [1973] AC 360 (HL) ([1972] 2 All ER 492) at 379 B-380 B

liquidation of the company. The court added that lack of clean hands is not an absolute bar and a party's fault should not necessarily deter a court from winding-up.

[65] The Court is accordingly satisfied that the winding-up of Proud Heritage is just and equitable as envisaged in s81(1)(d)(iii) of the 2008 Companies Act.

[66] This brings me to the question of costs. The Applicants argued for punitive costs in relation to the application to strike-out, the Rule 30 application and the application for leave and condonation.

[67] In exercising my discretion as to costs, I am not satisfied that the Second Respondent's conduct in relation to the strike-out application warrants a punitive cost order. The same cannot be said for the 'supplementary counter application' which triggered the R30 application and the application for leave and condonation. The supplementary counter application was completely irregular and in the Courts view, aimed at delaying and frustrating the liquidation application. As such, it constitutes an abuse of process. A punitive costs order in relation thereto is justified.

Order

[68] In the result the following order is made:

Application to strike out

1. paragraph 7 of the second-respondent's answering affidavit in the applicant's rule 30 application is struck out;

2. the second respondent shall pay the costs of the applicants' application to strike-out, with counsel's fees to be taxed on Scale C.

Rule 30 application

3. the second respondent's supplementary counter application dated 21 May 2026 is set aside as an irregular step;
4. the second respondent shall pay both the costs the applicants' rule 30 application and rule 30 notice dated 2 June 2026, on the attorney and own client scale;

Application for leave and condonation

5. the second respondent's application for leave and condonation dated 11 June 2026 is dismissed;
6. the second respondent shall pay the applicants' costs of the application for leave and condonation on the attorney and own client scale;

Provisional liquidation of first respondent

7. the first respondent is placed under provisional liquidation;
8. a *rule nisi* is issued calling upon all interested persons to show cause, if any, to this Court on **13 October 2026**, at 10h00, or as soon thereafter as this matter may be heard:
 - 8.1 why the first respondent should not be placed under final liquidation and;
 - 8.2 why the costs of this application (including the costs of 21 April 2026) should not be costs in the liquidation;
9. service of this order shall be effected:

- 9.1 by the sheriff at the registered office of the first respondent at Farm 1[...], Portion 2, D[...] U[...] Street, Paarl, Western Cape Province;
- 9.2 by one publication in each of the Cape Times and Die Burger newspapers;
- 9.3 on the first respondent's employees in accordance with section 346A of the Companies Act, 61 of 1973 ("the Act");
- 9.4 on any trade union/s with which the first respondent's employees may be affiliated in accordance with section 346A of the Act;
- 9.5 on the South African Revenue Service; and
- 9.6 by prepaid registered post on all known creditors of the first respondent whose claims are in excess of R5,000.00.

R BARENDSE
JUDGE OF THE HIGH COURT

Appearances

For the Applicant : RJ Howie
Instructed by Matthew Walton Attorneys

For the 2nd Respondent : J Berlowtitz and M van der Berg
Instructed by Aarons Attorneys