

SOUTH AFRICA / JUDGMENT

Hawker Air (Pty) Ltd (In Liquidation) v Carmel Trading Co Ltd and Another (6530/2008) [2008] ZAGPHC 64 (18 February 2008)

[2008] ZAGPHC 64

COURT

High Courts - Gauteng

BEFORE

C.P Rabie

CASE / FILE NUMBER

6530/2008

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IN THE HIGH COURT OF
SOUTH AFRICA
TRANSVAAL PROVINCIAL DIVISION
CASE NR: 6530/2008
DATE: 18/02/2008
UNREPORTABLE

In the matter between:

HAWKER
AIR SERVICES PTY LTD
(IN LIQUIDATION) Applicant
And
CARMEL TRADING CO LTD First
Respondent
THE
COMMISSIONER FOR THE
SOUTH AFRICAN REVENUE SERVICE Second
Respondent

JUDGMENT

CORAM: RABIE J

1. This is an urgent application which was brought during the course of an exceptionally busy roll. The matter is also one of such urgency and it is important that I make known the order of this court as soon as possible and this judgment shall therefore not be as comprehensive as would otherwise have been the case. There has, in any event, already been too much delay as a result of the circumstances.
2. The applicant in this matter is a company in liquidation and the founding affidavit was deposed to by a co-liquidator in the estate of the applicant.
3. The applicant launched an urgent application to this court by way of Notice of Motion dated 8 February 2008. The applicant moved for a provisional order with return date 26 February 2008, declaring that a partnership between the applicant and the first respondent was dissolved with effect from the date when the estate of the applicant was finally wound up, as well as for an order that a certain Mr Geldenhuys, an attorney of this court, be appointed as liquidator to wind up the partnership. The order prayed for further entailed, inter alia, that the liquidator be given the authority to take all steps which may be expedient to realise the partnership's assets or to have them realised, to collect the debts due to it, to pay its liabilities, to prepare a final account between the parties and to divide the assets of the partnership between the partners after payment of its liabilities and the costs of liquidation in terms of the final account. Further that the liquidator be specifically empowered to monitor, oversee and act on behalf of the partnership in respect of the tender process for the sale of the dissolved partnership's Falcon aircraft, which process was authorised in terms of a court order of this court and confirmed by the Supreme Court of Appeal. Further that the liquidator be empowered to approach the court on the original papers, supplemented if necessary, for the extension of his powers.
4. The applicant also prayed that the aforesaid relief should have immediate operation pending the return date of the rule nisi.
5. The order prayed for was granted on 8 February 2008 and the first respondent has re-enrolled the matter before this court for reconsideration in terms of Rule of Court 6(12)(c).
6. I shall very briefly refer to the salient features of the applicant's case as set out in the founding affidavit. The applicant was wound up on application by the second respondent, the South African Revenue Services. That application was opposed and also taken on appeal but the Supreme Court of Appeal eventually, during March 2006, upheld the appeal.
7. The applicant was a partner in the partnership by the name of Hawker Aviation Services Partnership, to which I shall refer as "the partnership". The other partner to this partnership is the first respondent. The partnership is the owner of the aforesaid Falcon aircraft. This aircraft seems to be the only valuable asset of the partnership and the applicant obviously has an interest in this aircraft.

8. Despite the dissolution of the partnership as a result of the applicant's liquidation, none of the partners has up to now taken active steps to liquidate the assets of the partnership. They are in any event not in agreement as to the way in which the nett proceeds of the partnership's assets should be distributed, nor about how the liquidation of assets should take place.
9. According to the applicant it has, in the circumstances, become necessary to appoint a the liquidator and furthermore that this be done on an urgent basis. It was on this ground that the main application was brought.
10. The applicant referred to the earlier disputes and court actions between and/or concerning some of the parties to the present application. I do not propose to deal therewith in detail and shall only refer to the salient features. One of these matters, which involved the Commissioner for the South African Revenue Service, the present second respondent, resulted in the Supreme Court of Appeal, on 29 November 2007, authorising the sale of the aforesaid aircraft by way of a tender process. According to the applicant the aircraft could have been worth more than R160 million but, as a result of the neglect thereof due to it having been grounded for the past five years on an airfield in France, it would cost approximately R50 million to repair the aircraft. The highest tender received thus far for the purchase of the aircraft, was the amount of approximately R1 00 million.
11. At this point it should be mentioned that in the aforesaid matter the Commissioner for the South African Revenue Service stated that the South African Revenue Service and a certain Mr David King were engaged in litigation about Mr King's tax liability. It was also contended that Mr King used a number of corporate entities to maintain a lavish lifestyle, without paying tax and that it was necessary to pierce the corporate veil. The Commissioned of Revenue Services ("the Commissioner") instituted action in which such relief was claimed and, in order to preserve the rights it has obtained, obtained a preservation and anti-dissipation order in relation to the aircraft on 3 September 2002.
12. However, on 5 September 2002 and in spite of the aforesaid order, the first respondent took the view that it became entitled to the aircraft. In a later judgment on 18 February 2003 the honourable Hartzenberg J extended the preservation and anti-dissipation order and ordered the first respondent to return the aircraft to South Africa. It was held, inter alia, that the sale of the interests in the aircraft to the first respondent was a "contrived transaction, in fraudem legis, to bypass the preservation order" and that the first respondent was but a tool of Mr King and under his direct control.
13. The order of the honourable Hartzenberg J was taken on appeal to the Supreme Court of Appeal. In a separate application for the implementation of the order to return the aircraft to South Africa pending the finalisation of the appeal, the court refused to grant such an order. Consequently, the aircraft had been on the airfield in France ever since.

14. Further litigation resulted as a result of these events but it is not necessary to refer thereto. One of the main difficulties appears to be the fact that the aircraft was and is deteriorating on the airfield in France to a degree that it would soon be basically worthless. This prompted the Commissioner to launch a new application which resulted in an order by the honourable Mr Justice Preller on 21 May 2007, authorising the Sheriff of this court to sell the aforesaid aircraft subject to the terms set out in that order. That order was taken on appeal and on 29 November 2007 the Supreme Court of Appeal dismissed the appeal.
15. In the judgment of the Supreme Court of Appeal reference was made to the allegations on behalf of the Commissioner that in the light of the history of the matter, the behaviour of the new partnership to leave the aircraft stranded and neglected in a foreign country, was an obvious and desperate attempt to prevent the courts of this country from eventually making an effective order in respect of this valuable asset. Furthermore that Mr King's apparent attitude is that he must at all costs prevent the aircraft from being brought under the control of this court in the hope that something may happen which will make the aircraft or its value available to him in a foreign country. The Commissioner concluded that, failing this, Mr King is "patently prepared to see the value of the Falcon lost rather than being utilised to pay" the Commissioner. According to the Supreme Court of appeal, these allegations have not been controverted.
16. The Supreme Court of Appeal referred to the matter of *Metlika Trading Ltd v Commissioner, SA Revenue Services 2005(3) SA 1 (SCA)* where the honourable Streicher JA said the following in para 44 of the judgment:

"An interdict at the instance of a creditor preventing his debtor, pending an action instituted or to be instituted by the creditor, from getting rid of his assets to defeat his creditors has for many years been recognized in our law [*Knox v D'Arcy Ltd v Jamieson 1996(4) SA 348 (A) at 372C-F*]. It is similar to the *Mareva* injunction in English law."
17. The Supreme Court of Appeal found that all the High Court was asked to do was to authorise the conversion into cash of a deteriorating asset, which was already the subject of a preservation order. It was emphasised that the first respondent in this case accepted in that matter that the Commissioner had established the requisites for a preservation order but opposed the case with reference to the jurisdiction of the court who granted the order. It was argued that the court did not have jurisdiction because of the doctrine of effectiveness. The Supreme Court of Appeal rejected that argument. The court found the first respondent's opposition to the sale of the aircraft as "conduct animo vicino nocendi, or 'Schadenfreude' ... or to use an old Dutch phrase, 'uyt enckeke spijt ende kregelheydt' (merely out of spite and obstreperousness)". Reference was also made to the Roman law principle of "malitiis non indulgendum esse" - there must be no indulgence to malice and found that the first respondent's objection lacked reality. All the other arguments of the first respondent were rejected and, as stated before, the appeal was dismissed. The result was that the order of the Hon Preller J is still operative at the present time.

18. It is necessary to briefly refer to the order of the Honourable Preller J. As stated, that order authorised the sheriff to sell the aircraft subject to the terms of that order. Generally speaking the sale was to be by way of inviting tenders. Paragraph 2.3 then provided as follows:

"The acceptance of the tender will be subject to a waiting period of seven days, during which the court may set aside the acceptance on application of an interested party, including the applicant and the respondents or any other person who can show a valid interest therein, but excluding a person whose interest is merely that she/he had submitted a tender".

Paragraph 2.4 of the order reads as follows:

"The court may, on good cause shown and on application to it sanction the acceptance of a different tender."

19. The balance of the terms of the order relates to notification and advertisement, some of the terms and conditions of the sale and other matters ancillary thereto. Paragraph 8 of the order should be referred to. It provides as follows:

"The nett proceeds of this are to be invested by the sheriff in an interest in bearing trust account in South Africa under the auspices of the applicant's attorney, Mahlangu Inc., pending the outcome of the main action, or pending such other order in respect thereof of as may be made by the court on notice to all interested parties."

20. In the present application the applicant submitted that it is evident from the aforesaid judgments of this court and the Supreme Court of Appeal, and the "irrational attitude" adopted by the first respondent in respect of the aircraft, that the first respondent is not bona fide and is merely assisting Mr King and/or his front companies to dissipate the aircraft asset in order to frustrate the Commissioner's claims.
21. The applicant then stated that it came to light during January and February 2008 that the first respondent intends to derail the sale process of the aircraft in France. This related, inter alia, to prospective purchasers being prevented to inspect the aircraft at the airfield in France. The applicant also referred to a letter received by its attorneys from the company in control of the airfield, Dassault Falcon Service ("Dassault"), informing the applicant that the first respondent has caused a letter to be written to them by French attorneys formally warning them that legal process would be instituted against them if they should co-operate with the sale process of the aircraft. According to the correspondence it was stated on behalf of the first respondent that the South African process was invalid and that the French company, Dassault, should refrain from taking part in the process. This resulted in Dassault adopting the attitude that a valid sale of the aircraft cannot take place without an order of a French court. The applicant submitted that this view by Dassault is wrong.

22. It was submitted by the applicant that by acting as it did, the first respondent was acting unilaterally on behalf of the dissolved partnership and that it had no authority to do so. It was further submitted by the applicant that in the light of the exceptionally good offer received for the aircraft, the first respondent was clearly deliberately acting to the detriment of the partnership.
23. It should be mentioned at this point that subsequent to the dismissal of the appeal by the Supreme Court of Appeal, the attorneys of the applicant wrote a number of letters to the attorneys of the first respondent asking them whether they would give their co-operation during the tender process to ensure that the best possible price be obtained for the aircraft and that the first respondent will not stand in the way of smooth delivery of the aircraft to the new purchaser.
24. The attorneys of the first respondent did not revert to these letters and in a letter dated 21 January 2008, the attorneys of the applicant stated, inter alia, the following in a letter addressed to the attorneys of the first respondent:

"4. We have indicated to you that, if the said undertaking is not forthcoming by noon, we will have to accept that your client will continue frustrating the due process of the tender;

5. In that case, as we have communicated to you telephonically, we will approach the High Court on an urgent basis to appoint a liquidator to take charge of the affairs and the assets of the partnership;

6. We have also requested you to indicate your client's preference regarding the identity of a liquidator to be appointed from the following list of prominent attorneys of Pretoria:

7. Likewise, if we do not receive any response from you regarding the identity of the liquidator, we will have to accept that your client does not have any meaningful input to make regarding the appointment of said liquidator."
25. The attorneys of the first respondent were requested to revert urgently. In a letter dated 21 January 2000 the attorneys of the first respondent responded to the aforesaid letter and telephone conversation, inter alia, as follows: It was denied that the first respondent was frustrating or interfering with the sale of the aircraft. It was stated that the first respondent is of the view that there are a number of factual errors in the judgment of the Supreme Court of Appeal and that its rights in that regard were reserved. It was further stated that the first respondent had a proprietary interest in the aircraft and that the first respondent had received advice from its French legal representatives to the effect that it will be necessary to obtain an exequatur decision from the French court before any foreign judgment can be enforced in France. It was stated that for that reason the tender notice as published was premature. In addition to being premature, it was stated that the notice disclosed a number of other "inequities and/or irregularities which demonstrate that the tender process is not above board". In this regard the following was stated as being the reasons for this stance:

"The fact that an attorney is appointed to decide on the "best tender" (not best price) with no guidelines other than his discretion on how to make a decision; the fact that the dates and procedures referred to in the notice can be changed on mere notice by Mahlangu attorneys."

26. It was further stated that

"it is therefore not unreasonable for Carmel to object and take whatever steps are lawfully open to it to protect its interests. The sale held in the manner envisaged may very well result in a loss for the partnership, and therefore a loss for its partners, being your client and Carmel. Our client denies that there are any grounds to appoint a liquidator on an urgent basis, or otherwise."

27. It was submitted on behalf of the applicant that the views expressed on behalf of the first respondent were wrong but even if they were correct, it could still be expected from the first respondent in terms of the law of partnership, to consent to the sale if that is in the interest of the partnership and that, in any event, it was not obligatory for the partnership to resist the sale or to take technical points to delay the procedure.
28. According to the applicant, when the tenders were opened, it was not contended by first respondent's attorney that the highest tender should not be accepted. He intimated that his client contends that a French court order should be obtained before the sale could be implemented. The attorney of the Sheriff later and in the presence of the first respondent's attorney, announced his choice of the successful tenderer as well as the second and third choice. The highest tender was the first choice.
29. According to the applicant it is necessary at this point to appoint a liquidator on an urgent basis who would be authorised to take charge and to act on behalf of the partnership in order that the partnership's interests can be objectively assessed, pursued, and that the true interests of the partnership can be made known when ever and to whom ever they may need to be done by someone who has the authority so to do. This, according to the applicant is especially necessary since it has become clear that the first respondent intends to litigate in France in order to prevent delivery of the aircraft to the successful tenderer. According to the applicant, a liquidator who can act on behalf of the partnership, as the owner of the aircraft, is the only person who can effectively protect the affairs of the erstwhile partnership and who could see to it that the remainder of the liquidation process of the partnership's assets and the due distribution of the nett proceeds can take place in the interest of the partners and creditors of the partnership. According to the applicant a liquidator should be appointed to deal with this situation as a result of the absence of positive co-operation from the first respondent. Apart from the above, and in respect of urgency, it was further submitted that the partnership would be liable for damages for breach of the contract should it delay performance in terms of the contract concluded on 5 February 2008.
30. According to the applicant it is necessary to appoint a liquidator who can investigate all the facts and the applicable law and who can properly act in the best interest of the partnership, especially with the view to the first respondent's threat to launch an application in South

Africa to suspend the tender process pending litigation in France. The liquidator would, for example, be able to, as a matter of urgency, investigate not only the facts of the matter but also the applicable law in France. This is necessary to be prepared not only for the actions which the first respondent had threatened with, but in respect of any other actions the first respondent might take or attempt to take and which would, according to the applicant, cause serious losses to the partnership. An independent liquidator would be able to present in the court with an informed and independent opinion should the first respondent carry out its threats.

31. The applicants submitted that there was no prejudice for the first respondent if the application is dismissed on the return day.
32. As stated before, the main application of the applicant was brought on an urgent basis on Friday at 8 February 2008. The application was served at the offices of the attorney of the first respondent at 09:50 on the morning of 8 February 2008. The application was set down for 14:00 on that same day and an interim order was made.
33. By way of notice dated 13 February 2008 the matter was set down before this court in terms of rule 6(12)(c) in order for this court to reconsider the order handed down on 8 February 2008. The notice was accompanied by an affidavit of the attorney of the first respondent. From this affidavit it appears, firstly, that the particular attorney acting on behalf of the first respondent was not in his office on that morning and that he was not contacted regarding the application that had been served. The reason, according to the attorney, was obviously because there was no need to do so since the notice of motion stated that the application will be made on "Friday 18 February 2008" and that there was consequently still 10 days to go. The attorney also stated that he did not receive the courtesy call that could be expected from his colleague acting on behalf of the plaintiff informing him about the application and that counsel who had acted for the first respondent up to that time, had also not been notified.
34. The attorney stated that he only became aware of the order on Tuesday 12 February when a copy of the order was served at his office.
35. It is clear that the notice of motion indicated a wrong date in the sense that it referred to 18 February instead of 8 February. That this is merely a typing error is clear since 18 February was not a Friday but 8 February was in fact a Friday. This may explain how the mistake arose but it does not change the fact that the application was moved and the order granted without proper notice to the first respondent.
36. The first respondent was consequently entitled to approach this court in terms of rule 6(12)(c) to reconsider the previous order in the light of those facts and in the light of the facts before it in the affidavit on behalf of the first respondent.
37. The first respondent firstly submitted that the order should be rescinded for a number of reasons. Before I deal with the relevant aspects mentioned on behalf of the first respondent, it should be indicated that when the matter was called before me, it was indicated by

counsel appearing on behalf of the respective parties that they have partly resolved the matter. They were in agreement that the first respondent's application under rule 6(12)(c) need not be adjudicated at this point but that the whole matter would be considered and adjudicated on the return date, 26 February 2008. They were also in agreement that the costs occasioned by the re-enrolment be reserved.

38. The parties were however in disagreement as to what should happen in the meantime. According to the first respondent the execution of the order of 8 February 2008, i.e., the appointment of the liquidator, should be suspended until the hearing of the application on the return day. According to the applicant and the second respondent, the first respondent's application should be postponed to the return day and that pending the finalisation of the application on the return day, there should be certain limitations imposed upon the powers of the appointed liquidator. The applicant and the second respondent consequently submitted that the appointment of the liquidator should stand with his full powers except that he: "shall not participate or take any actions to effect a delivery of the relevant aircraft (in France), and he shall give reasonable written notice to the parties of all steps that he might decide to take".
39. It was submitted in this regard on behalf of the applicant and the second respondent that nothing which it is envisaged that the liquidator would do, would be to the detriment of the first respondent and more particularly in the sense that it would curtail any of the first respondent's rights as set out in the order of the honourable Preller J.
40. On behalf of the first respondent, and in support of the contention that the execution of the order should be suspended pending the return day, it was, firstly, submitted that the first respondent has the right, in terms of paragraph 2.3 of Preller J's judgment to apply to a court to set aside the acceptance of any tender and that the consequence of the aforesaid order is that this right has been infringed. It was further stated that in terms of the order of Preller J the liquidator would have no say in the process and his appointment, especially on an urgent basis, is therefore unnecessary and a waste of costs.
41. As far as the threatened interference in France on behalf of the first respondent is concerned, it was submitted that these views were based on the opinion of French legal counsel.
42. During argument before this court it was, inter alia, further submitted by adv Wagener on behalf of the first respondent that the first respondent would be bringing an application to set aside the acceptance of the tender within the time limit set by the order of Preller J. He further submitted that the application of the applicant was designed to neutralise lawful actions to be taken or which could possibly be taken by the first respondent. He further submitted that it was not clear what the liquidator intended to do but that it appears that he would probably initiate litigation which would cause a delay rather than avoiding it. Lastly it was submitted that the appointment of Mr Geldenhuys also causes a problem in the sense that Mr Geldenhuys is not an expert in respect of aircrafts and aviation in general. It was

submitted that it was necessary that any liquidator, if one is to be appointed, should be an expert in these fields. It was submitted further that if Mr Geldenhuys is appointed, he would, merely as a result of his only appointment, have an advantage above any other liquidators which the first respondent might suggest should eventually be appointed.

43. I must in fairness emphasise that adv Wagener's submissions were not restricted to those referred to above but it is not necessary for present purposes to refer to his other submissions.
44. In my view, and having regard to all the circumstances of the case, the applicant has made out a prima facie case for the appointment of a liquidator. It is clear that the ex-partners of the partnership are at loggerheads in respect of almost every conceivable aspect relating to the dissolution of the partnership including the sale of the main partnership asset, i.e., the Falcon aircraft.
45. It further seems to me, on the papers before me, that the objections of the first respondent to the actual sale of the aircraft to the highest bidder, are based on technical issues rather than whether the sale itself and the price offered for the aircraft, is in the best interest of the partnership, its ex- partners and its creditors.
46. I am further satisfied that from the history of events, the more recent events in France and the contents of the correspondence between the respective parties, that the first respondent is not willing to abide by the process embarked upon by the Sheriff in terms of this court's order nor to accept the proposed sale to the highest bidder. It is clear that the first respondent intends to institute legal proceedings in this court and/or the French courts.
47. It would further the seem, especially from the correspondence attached to this application, that there are conflicting views regarding, inter alia, the facts of the matter, the history of events, the existing court orders, their content and their import.
48. With all this in mind, I am satisfied that an independent liquidator should be appointed, or rather remain in place, as a matter of urgency to protect the interests of the partnership as a whole and, in a sense, the body of creditors as a whole. It is of course possible for the applicant, as ex-partner of the partnership, to litigate pro-actively or in response to legal proceedings instituted by the first respondent as ex-partner. However, as indicated above, I regard it as in the interest of the partnership as a whole and the body of creditors as a whole, that an independent liquidator which has investigated and researched the relevant facts as well as the applicable legal principles and rules involved, and the contents of the different court orders and judgments, be appointed as soon as possible, (or remain in place at the present time). The appointment of such a liquidator would, inter alia, be able to assist both French and South African courts who might become involved in future litigation.
49. The appointment of the liquidator, even at this particular moment, would not frustrate or in any manner prejudice the first respondent from exercising its rights in terms of paragraph 2.3 or any of the other paragraphs of the order of Preller J. I also do not agree with the

argument that since the liquidator has, in terms of the order of Preller J, no direct say in the process, his appointment is not necessary and a waste of costs. I have already indicated that the need to appoint a liquidator has been shown to exist, and the fact that there is an existing process which has to be followed, does not detract from this fact.

50. The fact that the first respondent has acted or intends to act on the strength of the opinion of French legal counsel, is neither here nor there. The appointment of a liquidator, even at this stage and on an interim basis, does not affect the rights of the first respondent in any manner whatsoever. I accept the submissions on behalf of the applicant and the second respondent that the appointment of a liquidator on the aforesaid basis would, for the reasons referred to above, assist future courts in adjudicating whatever matters may be placed before them. It would not "neutralise" lawful actions of the first respondent and I cannot see how it would cause delays, as submitted on behalf of the first respondent.
51. Although the first respondent may have a right to oppose the appointment of Mr Geldenhuys on the basis that he may not be an expert in aircrafts and aviation, and on these aspects I express no opinion, it is not clear to me why the liquidator to be appointed should be an expert in these fields. Up to the present time it does not seem that the first respondent had opposed the tender process or the sale or the price which was accepted, on a basis which requires knowledge in aircrafts and aviation. Nothing was said about the state of the aircraft, the need and price of repairs or of similar issues which might conceivably require knowledge in aircrafts and aviation. The objections of the first respondent related mainly to legal principles and legal procedures. In any event, the basis upon which the applicant and the first respondent wish to have a liquidator in place at this point in time, is to assist with the smooth running and conclusion of the process of sale. It would seem that the main areas of concern rather relate to a knowledge of the facts and of legal principles and legal procedures.
52. Consequently, and in any event, if the first respondent eventually convinces a court that an expert in aircrafts and aviation and/or similar areas of expertise is required, it can hardly be said that the appointment at this time of Mr Geldenhuys would have given him an advantage and the proverbial "foot in the door".
53. I have stated before that as a result of the agreement reached between the parties, this court merely has to decide whether, pending the return date, the appointment of the liquidator should be suspended in toto, or whether the appointment should be subject to certain limitations attached to it.
54. In my view there is more than ample reason to regard the last option as much more beneficial to the interests of the partnership, the ex partners and the creditors of the partnership. I am furthermore satisfied that such a state of affairs would not cause any prejudice or any the real prejudice to the first respondent. To allay any fears of the first respondent that its rights in terms of paragraph 2.3 of the judgment of Preller J might be affected, I propose to make an order in that regard as well.

55. In the result the order of this court is the following:

1. The first respondent's application in terms of Rule of Court 6(12)(c) is postponed to the return date, 26 February 2008.
2. Pending the finalisation of the application on the return date the following limitations are imposed upon the powers of the appointed liquidator:
 - 2.1 he shall not participate or take any actions to effect a delivery of the relevant aircraft;
 - 2.2 he shall give reasonable written notice to the parties of all steps that he might decide to take.
3. The order in paragraph 2 above shall not curtail any rights the first respondent may have in terms of paragraph 2.3 of the order of the honourable Preller J dated 21 May 2007.
4. The costs occasioned by the re-enrolment are reserved.
5. It is recorded that the applicant tendered all costs that may be incurred by the liquidator, should his appointed not be confirmed on the return date.

C.P RABIE

JUDGE OF THE HIGH COURT

APPEARING FOR APPLICANT: ADV M.P. VAN DER MERWE

BRIEFED BY: COUZYN HERTZOG EN HORAK

0124605090

APPEARING FOR

FIRST RESPONDENT: ADV S. WAGENER

BRIEFED BY: PARRIS INC

012 3424272

SECOND RESPONDENT: ADV M. VAN DER MERWE SC

BRIEFED BY: MAHLANGU INC

DATE OF HEARING: 13 FEBRUARY 2008

DATE OF JUDGMENT: 18 FEBRUARY 2008

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Prepared on 11 October 2026 · Esheria