

SOUTH AFRICA / JUDGMENT

O'Grady and Another v Botha N.O and Others (3809/22) [2023] ZAMPMBHC 35 (19 June 2023) [2023] ZAMPMBHC 35

COURT

Mbombela High Court, Mpumalanga

BEFORE

Roelofse

CASE / FILE NUMBER

3809/22

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA,

MPUMALANGA

DIVISION (MAIN SEAT)

Case

Number: 3809/22

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES / NO

(3)

REVISED.

DATE:

19 June 2023

In

the matter between:

YVETTE
O'GRADY
First
Applicant
MICHAEL
JOSEPH O'GRADY Second
Applicant
and
DEON
MARIUS BOTHA N.O. First
Respondent
JOHAN
FRANCIOS ENGELBRECHT N.O. Second
Respondent
CHARLOTTE
PELSER N.O. Third
Respondent
(in
their capacities as the duly appointed joint
liquidators
of North Shore Trading 678 CC
(in
liquidation
TRIFERT
(PTY) LTD Fourth
Respondent
THE
MASTER OF THE HIGH COURT, PRETORIA Fifth
Respondent
This
judgment was handed down electronically by circulation to the
parties' legal representatives by email and release to
SAFLII.
The date and time for hand-down is deemed to be at 11h00 on 19 June
2023.

JUDGMENT

Roelofse AJ:

INTRODUCTION

- [1] North Shore Trading (Pty) Ltd ("North Shore") is in liquidation. The first to third respondents are North Shore's

joint liquidators (“the liquidators”). The fourth respondent is Trifert (Pty) Ltd (“Trifert”). Trifert was previously known as Argon Moosrivier (Pty) Ltd (“Argon”). Trifert is an alleged creditor in North Shore’s estate. The first applicant is North Shore’s sole member. The second applicant is an proven creditor in North Shore’s estate.[1]

[2] The liquidators accepted Trifert’s claim against North Shore’s estate. North Shore disputes that North Shore’s alleged indebtedness to Trifert and therefore approached court for an order setting aside the liquidators’ decision to accept/admit

Trifert’s claim in the amount of R 5 829 000-00 and for an order declaring that Trifert’s claim against North Shore in the aforesaid amount has prescribed.

[3] The applicant set out the nature and purpose of their application as follows:[2]

‘14 The purpose of this application is to review and set aside the decision of the liquidators to admit the claim of Argon [Trifert] in the sum of R 5,829,000.00 In terms of section 387 (4)[3] of the Companies Act 61 of 1973 (“the Old Companies Act”).

...

15 The applicants also seek an order declaring that the Argon [Trifert] claim has prescribed. To this end the applicants rely on section 387(4) of the Old Companies Act and read with, inter alia, section 21 of the Superior Courts Act 10 of 2013.’

DISCUSSION

[4] I consider the declaratory order that is sought that Trifert’s claim has prescribed first because if it is found that the Trifert claim has prescribed, the liquidators’ decision to accept or admit Trifert’s claim is of no consequence because Trifert’s claim is incapable of proof or enforcement against North Shore’s estate.

Prescription

[5] I commence under this heading with a short explanation of the concept of prescription and the scrutiny that it has withstood so that the context within which I came to my conclusion is perhaps better understood.

[6] A debtor is expected to purge his or her debt when it becomes due. A creditor has a recourse against a debtor who fails in this

obligation. However, a creditor’s right to take recourse is subject to a statutory time limitation. The Statute that imposes a time limitation upon the enforcement of a debt by a creditor is the Prescription Act 68 of 1969 (the “Prescription Act”). The Prescription Act lays down prescription periods depending upon the nature of the debt.[4] If a creditor misses the date of the prescription of the debt, the debt is extinguished and the creditor has no enforceable claim in respect of the prescribed debt. This seems unfair but time limitations for claims have survived Constitutional scrutiny. In *Road Accident Fund and Another v Mdeyide* 2011 (2) SA 26 (CC) at para. 15, it was held:

‘This Court has repeatedly emphasised the vital role time limits play in bringing certainty and stability to social and legal affairs and maintaining the quality of adjudication. Without prescription periods, legal disputes would have the potential to be drawn out for indefinite periods of time bringing about prolonged uncertainty to the parties to the dispute. The quality of adjudication by courts is likely to suffer as time passes, because evidence may have become lost, witnesses may no longer be available to testify, or their recollection of events may have faded. The quality of adjudication is central to the rule of law. For the law to be respected, decisions of courts must be given as soon as possible after the events giving rise to disputes and must follow from sound reasoning, based on the best available evidence.’

- [7] It is undisputed that Argon [now Trifert] sold and delivered goods to North Shore on credit in terms of a written credit agreement[5] and therefore a debtor of Trifert, albeit that the applicants dispute the amount of the debt.
- [8] The last invoice was issued by Argon [now Trifert] on 31 December 2017.[6] Argon’s statement, dated 30 April 2018, records invoices that were issued to North Shore and shows that the amount due to Argon amounted to R 5 687 173.48.
- [9] Clause 9.1 of the credit agreement provides that North Shore was obliged to pay Argon the purchase price of the goods delivered within 30 days of delivery. The last invoice that is recorded on the statement is dated 30 April 2018. Therefore, North Shore had to pay the last invoice on or about 30 May 2018. This North Shore did not do, hence Trifert’s guest to prove its claim against North Shore’s insolvent estate. North Shore disputes the amount of its liability to Trifert. It alleges that the last official and/or recorded delivery of products by Argon [now Trifert] occurred on or about 5 November 2015, alternatively 17 February 2017.
- [10] Trifert persists that North Shore is indebted to it on the basis that Argon’s [now Tifert’s] indebtedness was admitted by North Shore in its application for business rescue[7] where the first applicant stated that Argon [now Trifert] is amongst ... “a list of [North Shore’s] creditors and approximate amounts of liabilities to such creditors” .[8] Furthermore, the first applicant states in this application that she has admitted that Argon [Trifert] is a creditor of North Shore.[9]
- [11] In respect of the admission made by the first applicant over North Shore’s indebtedness, the first respondent only alleges that “This is not an admission of the Argon [Trifert] claim amount. The list of creditors simply records what claims the creditors alleged to be owing by North Shore. Nothing more should be read into this. This is clear from what is stated by me [the first applicant] in that paragraph – that is ‘a list of [North Shore’s] creditors and approximate amounts of liabilities to such creditors’”.

- [12] Notwithstanding North Shore alleging that the last product was delivered on 5 November 2015, alternatively 17 February 2017, I find that North Shore has admitted its indebtedness to Argon [Trifert] in the business rescue application. In the applicants' supplementary heads of argument, the date upon which the debt was allegedly acknowledged was on 22 October 2018.
- [13] Trifert submitted its claim for proof[10] at the first meeting of North Shore's creditors. The presiding officer rejected the claim because the claim form was not properly attested to.[11] Trifert thereafter presented to the liquidators a proper claim form.[12] It is the same claim as the defective claim. However, this time the claim form was properly attested to.
- [14] Trifert's claim is still in the process of being investigated by the liquidators and was not included in the First Liquidation and Distribution Account of North Shore that have been lodged by the liquidators. On that account Trifert's claim is still reflected as rejected.
- [15] The factual position is thus: Trifert is an admitted creditor in North Shore's estate (albeit that there is a dispute over the amount of the claim); North Shore has admitted an indebtedness to Trifert on 22 October 2018; Trifert's claim is still under investigation; Trifert's claim is not yet admitted for purposes of proof by the Master.
- [16] It is to the Prescription Act that I turn next.
- [17] In terms of section 10 of the Prescription Act, a debt prescribes after a certain period, depending upon the nature of the debt.[13]
- [18] In terms of section 11(d) of the Prescription Act, the prescription period of a debt of the kind in this matter is 3 years. A creditor in respect of a debt of the kind in this matter therefore has 3 years to claim its debt through appropriate proceedings for else the debt is extinguished.
- [19] Trifert's claim would have prescribed on or about November 2018, alternatively, February 2020, which is three years after North Shore's debt became due to Trifert in terms of the credit agreement, depending upon when the last product was found to be delivered to North Shore. Trifert therefore had 3 years from November 2018, alternatively February 2020, to claim its debt before it would prescribe.
- [20] However, the period of the running of prescription is interrupted if the debt is acknowledged by the debtor. Section 14 of the Act provides for this.[14] This means that the time for which prescription is running is interrupted (stopped) for the time being. The period for the running of prescription then begins afresh i.e., the 3-year period of prescription starts afresh.
- [21] The prescription of Trifert's claim was interrupted because North Shore acknowledged its liability to Trifert on 22 October

2018. The prescription of North Shore's debt therefore started to run a fresh from that date. If that date is taken, North Shore's debt prescribed in October 2021.
- [22] Even if it is accepted that North Shore has not admitted the entire debt (the amount of which is in dispute) it does not matter because acknowledgement of the debt ipso facto interrupts the running of prescription of the whole debt. See: *Lubbers & Canisius v Lazarus* 1907 TS 901 903 and *Eerste Nasionale Bank van Suidelike Afrika Bpk v Vermueulen* 1997 1 SA 498 (O) 503 GI.
- [23] In terms of section 13 of the Act[15], the completion of prescription delayed in certain circumstances. The completion of prescription is delayed when a claim against a company in liquidation is filed.[16] The delay in prescription therefore commences when a claim is filed. The claim is filed on the date upon which the presiding officer of either the first or second meeting of creditors admits the claim for the purposes of proof of the claim. See: *Betterbridge (Pty) Ltd v Masilo and Others* 2015 (2) SA 396 (GP), which was confirmed by the Supreme Court of Appeal in *Masilo N.O and Others v Betterbridge (Pty) Limited* (37/2015) [2016] ZASCA 73 (25 May 2016).
- [24] The liquidators are upon their own version still to file Trifert's claim for proof. In the premises, I find that the debt owed by North Shore to Trifert has prescribed. Therefore, the applicants are entitled to the declaratory order they seek in prayer 2 of their notice of motion.[17]

The liquidators' decision to admit Trifert's claim

- [25] I proceed to the applicants' first prayer in their notice of motion[18] despite the finding that Trifert's claim has prescribed in the event that I may be wrong in that regard. It is therefore important that I express my views on the effect of liquidators' decision to admit Trifert's claim. In this instance the applicants rely upon section 387(4) of the Companies Act 61 of 1973 ("the Old Companies Act").
- [26] The meaning of "Any person" in section 387(4) of the Old Companies Act was determined in *LL Mining Corporation Ltd v Namco (Pty) Ltd (in liquidation)* 2004 (3) SA 407 (C) at 414.
- 'A 'person aggrieved' in terms of s 387(4) has been canvassed in a number of cases thus. Of relevance is the judgment in *Attorney-General of Gambia v N'Jie* [1961] AC 617 ([1961] 2 All ER 504) at 634 (AC) and 511B (All ER), where Lord Denning said that the words 'include a person who has a genuine grievance because an order has been made which prejudicially affects his interests'. It has been held that the words include a person who has a genuine grievance because an order has been made which prejudicially affects his interests, it being simply a question of looking at the facts and

asking whether the person who is making the application has a genuine interest in maintaining it. (See the case cited in Blackman et al at 14 - 511.) In *Francis George Hill Family Trust v Southern African Reserve Bank and Others* 1992 (3) SA 91 (A) at 101F - G and 102C - D Hoexter JA said:

'With deference to Lord Denning [in the N'Jie case supra], it seems to me that his further statement that "a person aggrieved" would include a person who has a genuine grievance because an order has been made which prejudicially affects his interests may be rather too widely stated. . . . Leaving aside the significant statutory context in particular cases, the tenor of decided cases in South Africa points, I think, to the general conclusion that the words "person aggrieved" signifies someone whose legal rights have been infringed - a person harbouring a legal grievance.'

Blackman et al comment as follows on this position (at 14 - 511): F

'Clearly while . . . it is certain that a person is aggrieved when it can be seen that he will suffer or may well suffer financial loss, it is, on the other hand, certain that the words "person aggrieved" would never include "a busybody who is interfering in things which do not concern him"; nor a man who is disappointed of a benefit which he might have received if some other order had been made.'

[27] It is common cause that the liquidators had "accepted" Trifert's claim. However, whatever the liquidators' view of Trifert's claim was, it is only after a claim is proven at a creditor's meeting, that a liquidator's obligation to examine all available books and documents relating to the insolvent estate for the purpose of ascertaining whether the estate in fact owes the claimant the amount claimed arise.[19] It is only then that a liquidator has to consider a claim and either accept or reject same.

[28] In terms of section 45(3) of the Insolvency Act, a trustee may dispute a claim only after the claim has been proven as provided for in section 45(2) of the Insolvency Act.

[29] Only a person whose legal rights have been infringed may approach the court under section 387(4) of the Old Companies Act (See: *LL Mining Corporation Ltd v Namco (Pty) Ltd* (in liquidation) supra. Trifert's claim is yet to be proven. No right of the first applicant have been infringed and the second applicant may still participate in a further creditors' meeting of North Shore where Trifert's claim must still be proven. The mere fact that the liquidators have "accepted" Trifert's claim does not infringe upon any of the applicants' legal rights in respect of the Trifert claim.

[30] In the premises, the applicants are not interested persons as contemplated in section 387(4) of the Old Companies Act. They have therefore not met the jurisdictional requirement for approaching the court for relief under section 387(4) of the Old Companies Act.

[31] In the premises, prayer 1 of the notice of motion is unsustainable.

COSTS

[32] North Shore only succeeded in respect of prayer 2 of the notice of motion and not with prayer 1 too. The liquidators were successful in their defence of prayer 1 of the notice of motion. For this reason, I am of the view a proper cost order would be that each party pay their own costs.

[33] In the premises, I made the following order:

- (a) It is hereby declared that that the fourth respondent's claim against North Shore Trading 678 CC (in liquidation) in the sum of R 5,829,000.00 has prescribed.
- (b) Each party shall pay their own costs.

Roelofse AJ

Acting Judge of the High Court

DATE OF HEARING: 24 May 2023

DATE OF JUDGMENT: 19 June 2023

APPEARANCES

FOR THE APPLICANTS:

ME. L ACKER on instructions of Brooks & Braatvedt Inc.

FOR THE FIRST TO THIRD RESPONDENTS:

MS. U VAN NIEKERK on instructions of JI van Niekerk Inc. Attorneys

FOR THE FOURTH RESPONDENT

MR. J CILLIERS SC on instructions of Strydom and Bredenkamp Inc.

[1] According to the first applicant. The liquidators do not expressly deny that the second applicant is a proven creditor in North Shore's estate.

[2] Paras. 14 and 15 of the founding affidavit at pages 8 and 9 of the record.

[3] Section 387(4) of the Companies Act 61 of 1973 reads: '(4) Any person aggrieved by any act or decision of the liquidator may apply to the Court after notice to the liquidator and thereupon the Court may make such order as it thinks just.'

[3] Section 387(4) of the Companies Act 61 of 1973 reads:

'(4) Any person aggrieved by any act or decision of the liquidator may apply to the Court after notice to the liquidator and thereupon the Court may make such order as it thinks just.'

[4] 11. Periods of prescription of debts.—The periods of prescription of debts shall be the following: (a) thirty years in respect of— (i) any debt secured by mortgage bond; (ii) any judgment debt; (iii) any debt in respect of any taxation imposed or levied by or under any law; (iv) any debt owed to the State in respect of any share of the profits, royalties or any

similar consideration payable in respect of the right to mine minerals or other substances; (b) fifteen years in respect of any debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State to the debtor, unless a longer period applies in respect of the debt in question in terms of paragraph (a); (c) six years in respect of a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract, unless a longer period applies in respect of the debt in question in terms of paragraph (a) or (b); (d) save where an Act of Parliament provides otherwise, three years in respect of any other debt.

[4] 11. Periods of prescription of debts.—The periods of prescription of debts shall be the following:

(a) thirty years in respect of—

(i) any debt secured by mortgage bond;

(ii) any judgment debt;

(iii) any debt in respect of any taxation imposed or levied by or under any law;

(iv) any debt owed to the State in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances;

(b) fifteen years in respect of any debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State to the debtor, unless a longer period applies in respect of the debt in question in terms of paragraph (a);

(c) six years in respect of a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract, unless a longer period applies in respect of the debt in question in terms of paragraph (a) or (b);

(d) save where an Act of Parliament provides otherwise, three years in respect of any other debt.

[5] Annexure “FA4” to the founding affidavit at page 38 of the record.

[6] As appears from the Argon’s statement of account at page 114 of the record.

[7] Wherein Trifert intervened and was successful with its counter application for a creditors’ winding-up.

[8] Para 79 of the founding affidavit in this application at record page 27.

[9] Para 80 of the founding affidavit in this application at record page 27.

[10] In terms of the provisions of section 44 of the Insolvency Act 24 of 1936, the relevant part of which reads: ‘44. Proof of liquidated claims against estate (1) Any person or the representative of any person who has a liquidated claim against an insolvent estate, the cause of which arose before the sequestration of that estate, may, at any time before the final

distribution of that estate in terms of section 113, but subject to the provisions of section 104, prove that claim in the manner hereinafter provided: Provided that no claim shall be proved against an estate after the expiration of a period of three months as from the conclusion of the second meeting of creditors of the estate, except with leave of the Court or the Master, and on payment of such sum to cover the cost or any part thereof, occasioned by the late proof of the claim, as the Court or Master may direct. (2) ... (3) A claim made against an insolvent estate shall be proved at a meeting of the creditors of that estate to the satisfaction of the officer presiding at that meeting, who shall admit or reject the claim: Provided that the rejection of a claim shall not debar the claimant from proving that claim at a subsequent meeting of creditors or from establishing his claim by an action at law, but subject to the provisions of section 75; and provided further that if a creditor has 24 or more hours before the time advertised for the commencement of a meeting of creditors submitted to the officer who is to preside at that meeting the affidavit and other documents mentioned in subsection (4), he shall be deemed to have tendered proof of his claim at that meeting.

[10] In terms of the provisions of section 44 of the Insolvency Act 24 of 1936, the relevant part of which reads:

‘44. Proof of liquidated claims against estate

- (1) Any person or the representative of any person who has a liquidated claim against an insolvent estate, the cause of which arose before the sequestration of that estate, may, at any time before the final distribution of that estate in terms of section 113, but subject to the provisions of section 104, prove that claim in the manner hereinafter provided: Provided that no claim shall be proved against an estate after the expiration of a period of three months as from the conclusion of the second meeting of creditors of the estate, except with leave of the Court or the Master, and on payment of such sum to cover the cost or any part thereof, occasioned by the late proof of the claim, as the Court or Master may direct.
- (2) ...
- (3) A claim made against an insolvent estate shall be proved at a meeting of the creditors of that estate to the satisfaction of the officer presiding at that meeting, who shall admit or reject the claim: Provided that the rejection of a claim shall not debar the claimant from proving that claim at a subsequent meeting of creditors or from establishing his claim by an action at law, but subject to the provisions of section 75; and provided further that if a creditor has 24 or more hours before the time advertised for the commencement of a meeting of creditors submitted to the officer who is to preside at that meeting the affidavit and other documents mentioned in subsection (4), he shall be deemed to have tendered proof of his claim at that meeting.

[11] This is evident from annexure “DM4” to the answering affidavit.

[12] Attached to the answering affidavit as annexure “DM5”.

- [13] 10. Extinction of debts by prescription.—(1) Subject to the provisions of this Chapter and of Chapter IV, a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant law applies in respect of the prescription of such debt. (2) By the prescription of a principal debt a subsidiary debt which arose from such principal debt shall also be extinguished by prescription. (3) Notwithstanding the provisions of subsections (1) and (2), payment by the debtor of a debt after it has been extinguished by prescription in terms of either of the said subsections, shall be regarded as payment of a debt.
- [13] 10. Extinction of debts by prescription.—(1) Subject to the provisions of this Chapter and of Chapter IV, a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant law applies in respect of the prescription of such debt.
- (2) By the prescription of a principal debt a subsidiary debt which arose from such principal debt shall also be extinguished by prescription.
- (3) Notwithstanding the provisions of subsections (1) and (2), payment by the debtor of a debt after it has been extinguished by prescription in terms of either of the said subsections, shall be regarded as payment of a debt.
- [14]
14. Interruption of prescription by acknowledgement of liability.—(1) The running of prescription shall be interrupted by an express or tacit acknowledgement of liability by the debtor. (2) If the running of prescription is interrupted as contemplated in subsection (1), prescription shall commence to run afresh from the day on which the interruption takes place or, if at the time of the interruption or at any time thereafter the parties postpone the due date of the debt, from the date upon which the debt again becomes due.
- [14]
14. Interruption of prescription by acknowledgement of liability.—(1) The running of prescription shall be interrupted by an express or tacit acknowledgement of liability by the debtor.
- (2) If the running of prescription is interrupted as contemplated in subsection (1), prescription shall commence to run afresh from the day on which the interruption takes place or, if at the time of the interruption or at any time thereafter the parties postpone the due date of the debt, from the date upon which the debt again becomes due.
- [15] Completion of prescription delayed in certain circumstances.—(1) If— (a) the creditor is a minor or is a person with a mental or intellectual disability, disorder or incapacity, or is affected by any other factor that the court deems appropriate with regard to any offence referred to in section 12 (4), or is a person under curatorship or is prevented by superior force including any law or any order of court from interrupting the running of prescription as contemplated in section 15 (1); or (b) the debtor is outside the Republic; or (c) the creditor and debtor are married to each other; or (d) the creditor and debtor are partners and the

debt is a debt which arose out of the partnership relationship; or (e) the creditor is a juristic person and the debtor is a member of the governing body of such juristic person; or (f) the debt is the object of a dispute subjected to arbitration; or (f) the debt is the object of a claim filed against the estate of a debtor who is deceased or against the insolvent estate of the debtor or against a company in liquidation or against an applicant under the Agricultural Credit Act, 1966 (Act No. 28 of 1966); or (g) the creditor or the debtor is deceased and an executor of the estate in question has not yet been appointed; and (h) the relevant period of prescription would, but for the provisions of this subsection, be completed before or on, or within one year after, the day on which the relevant impediment referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h) has ceased to exist, the period of prescription shall not be completed before a year has elapsed after the day referred to in paragraph (i). (2) A debt which arises from a contract and which would, but for the provisions of this subsection, become prescribed before a reciprocal debt which arises from the same contract becomes prescribed, shall not become prescribed before the reciprocal debt becomes prescribed.

[15] Completion of prescription delayed in certain circumstances.—(1) If—

- (a) the creditor is a minor or is a person with a mental or intellectual disability, disorder or incapacity, or is affected by any other factor that the court deems appropriate with regard to any offence referred to in section 12 (4), or is a person under curatorship or is prevented by superior force including any law or any order of court from interrupting the running of prescription as contemplated in section 15 (1); or
- (b) the debtor is outside the Republic; or
- (c) the creditor and debtor are married to each other; or
- (d) the creditor and debtor are partners and the debt is a debt which arose out of the partnership relationship; or
- (e) the creditor is a juristic person and the debtor is a member of the governing body of such juristic person; or
- (f) the debt is the object of a dispute subjected to arbitration; or
- (f) the debt is the object of a claim filed against the estate of a debtor who is deceased or against the insolvent estate of the debtor or against a company in liquidation or against an applicant under the Agricultural Credit Act, 1966 (Act No. 28 of 1966); or
- (g) the creditor or the debtor is deceased and an executor of the estate in question has not yet been appointed; and

- (h) the relevant period of prescription would, but for the provisions of this subsection, be completed before or on, or within one year after, the day on which the relevant impediment referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h) has ceased to exist, the period of prescription shall not be completed before a year has elapsed after the day referred to in paragraph (i).
- (2) A debt which arises from a contract and which would, but for the provisions of this subsection, become prescribed before a reciprocal debt which arises from the same contract becomes prescribed, shall not become prescribed before the reciprocal debt becomes prescribed.

[16] Sub-section 13(1)(g).

[17] Which reads: 'Declaring that the fourth respondent's [Trifert]'s claim against North Shore Trading 678 CC (in liquidation) in the sum of R 5,829,000.00 has prescribed.'

[18] Which reads: 'Setting aside the decision of the first to third respondents accepting/admitting the fourth respondent's claim in the sum

of R 5,829,000.00.'

[18] Which reads:

'Setting aside the decision of the first to third respondents accepting/admitting the fourth respondent's claim in the sum

of R 5,829,000.00.'

[19] In terms of section 42(2) of the Insolvency Act 24 of 1936 read with section 366(1)(a) of Act 61 of 1973, which provides: '366. Claims and proof of claims.—(1) In the winding-up of a company by the Court and by a creditors' voluntary winding-up— (a) the claims against the company shall be proved at a meeting of creditors mutatis mutandis in accordance with the provisions relating to the proof of claims against an insolvent estate under the law relating to insolvency;'

[19] In terms of section 42(2) of the Insolvency Act 24 of 1936 read with section 366(1)(a) of Act 61 of 1973, which provides:

'366. Claims and proof of claims.—(1) In the winding-up of a company by the Court and by a creditors' voluntary winding-up—

- (a) the claims against the company shall be proved at a meeting of creditors mutatis mutandis in accordance with the provisions relating to the proof of claims against an insolvent estate under the law relating to insolvency;'

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Prepared on 13 October 2026 · Esheria