

**IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU-NATAL DIVISION, DURBAN)**

CASE NUMBER: 13739/2023

In the application of:

RGS GROUP HOLDINGS LIMITED

Intervening Party

In re the matter between:

SOUTH AFRICAN SUGAR ASSOCIATION

Applicant

and

**TONGAAT HULETT LIMITED (IN BUSINESS
RESCUE)**

First Respondent

TREVOR JOHN MURGATROYD N.O.

Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Third Respondent

GERHARD CONRAD ALBERTYN N.O.

Fourth Respondent

RCL FOODS SUGAR & MILLING (PTY) LTD

Fifth Respondent

ILLOVO SUGAR (SOUTH AFRICA) (PTY) LTD

Sixth Respondent

**SOUTH AFRICAN SUGAR MILLERS'
ASSOCIATION NPC**

Seventh Respondent

UCL COMPANY (PTY) LTD

Eighth Respondent

**NOTICE OF MOTION
RGS APPLICATION TO INTERVENE**

BE PLEASED TO TAKE NOTICE THAT the abovementioned intervening party, RGS Group Holdings Limited ("**RGS**"), intends to bring an application at the hearing of the urgent application brought by the South African Sugar Association ("**SASA**") under the above case number and set down for hearing on Thursday, 7 December 2023, for an order in the following terms:

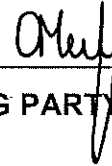
1. To the extent necessary, condoning RGS's non-compliance with the Uniform Rules of Court relating to service, time periods and forms.
2. Granting RGS leave to intervene in the urgent application brought by SASA under the above case number set down for hearing on Thursday, 7 December 2023.
3. Dismissing the application brought by SASA under the above case number, *alternatively*, refusing to issue a rule nisi operating as an interim interdict.
4. Directing that SASA pay RGS's costs in this intervention application on the scale as between attorney and client.
5. Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the accompanying affidavit of **SHASHIKANT MANGALI** will be used in support of this application.

TAKE NOTICE FURTHER that RGS has appointed the offices of the undersigned attorneys as the place at which it will accept notice and service of all process in these proceedings. RGS agrees to electronic service by email to (i) greg@efglaw.co.za, (ii) cpillay@berklaw.co.za , and (iii) cmeyfarth@berklaw.co.za .

KINDLY PLACE THE MATTER ON THE ROLL ACCORDINGLY.

DATED at DURBAN on this 6th day of DECEMBER 2023



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C/O NEERAJ GHAZI ATTORNEYS

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TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
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AND TO: GARLICKE & BOUSFIELD NCORPORATED

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AND TO: ILLOVO SUGAR (SOUTH AFRICA) (PTY) LTD

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Ref: Andre Liebenberg

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**SOUTH AFRICAN SUGAR MILLERS'
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**SUPPORTING AFFIDAVIT
RGS APPLICATION TO INTERVENE**

B.P.



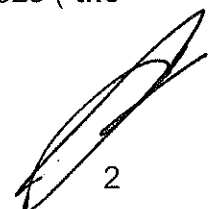
I, the undersigned,

SHASHIKANT MANGALI

do hereby make oath and say that:

1. I am an adult male employed by the intervening party (“RGS”) as its head of strategic investment and development. RGS’s Durban operations are conducted from offices located at 21 Aurora Drive, Umhlanga Ridge.
2. I am duly authorised to (i) institute this intervention application, (ii) oppose the relief that SASA seeks in its urgent application, and (iii) depose to this affidavit on RGS’s behalf.
3. The facts to which I testify below are to the best of my belief both true and correct. They fall within my personal knowledge or are apparent from documentation under my control by virtue of my aforesaid position, save where the context indicates the contrary.
4. Where I make submissions of a legal nature I do so on the advice of RGS’s legal representatives, which advice I accept.
5. On Tuesday, 5 December 2023, SASA filed an urgent application under the above case number (“**the SASA application**”) in terms of which it seeks *inter alia* a rule nisi operating as an interim interdict prohibiting the business rescue practitioners of the first respondent (“**THL**”) – i.e. the second to fourth respondents (“**the BRPs**”) – from proceeding with a meeting as contemplated in section 151 of the Companies Act 71 of 2008 which is scheduled to take place on Friday, 8 December 2023 (“**the Meeting**”).

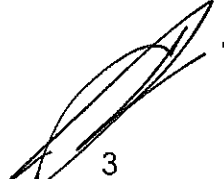
B.P



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6. The aforesaid interim interdict contemplated in the SASA application is sought pending the return date of the rule nisi when SASA intends to seek a final order declaring that the business rescue plans published by the BRPs in the THL business rescue on 29 November 2023 are unlawful.
7. In bringing its urgent application, SASA failed to cite RGS as a respondent and did not serve a copy of its urgent application on RGS. This despite the fact that RGS is not only a creditor of THL but has also made an offer to acquire THL out of business rescue, which offer is contained in a business rescue plan published by the BRPs on 29 November 2023 and is intended to be tabled for adoption at the Meeting ("**the RGS Plan**").
8. RGS first had sight of SASA's application at approximately 16h54 on Tuesday, 5 December 2023.
9. RGS has a material interest in the outcome of the SASA application and I submit that it is clearly entitled to intervene therein.
10. Also on Tuesday, 5 December 2023, the fifth respondent in the SASA application ("**RCL**") filed an urgent application in this Court under case number D13763/2023 seeking relief that is in substance the same as the relief sought in the SASA application ("**the RCL Application**").
11. RCL cited RGS as a respondent to its application and I have deposed to an answering affidavit in the RCL Application in terms of which RGS opposes the granting of an interim interdict prohibiting the Meeting from proceeding pending a final determination by this Court in due course of the relief sought by RCL to the effect that the business rescue plans be declared unlawful and be set aside.

B. P.


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12. Given the extreme and unjustifiable urgency with which both the SASA and the RCL applications have been brought it has been impossible for RGS to respond comprehensively to either application, let alone both.
13. However, since the SASA application seeks relief that is substantively the same as the relief sought by RCL, the allegations contained in the answering affidavit to which I deposed in the RCL application – which sets out the grounds on which RGS opposes the granting of an interim interdict – apply with equal force in the context of the SASA application.
14. I therefore humbly request this Court, in the extraordinary circumstances and extreme urgency with which the SASA application has been brought, to consider the contents of RGS's answering affidavit in the RCL application as simultaneously constituting RGS's answering affidavit in the SASA application.
15. It is, however, necessary to draw this Court's attention to the fact that the BRPs have since April 2023 been honouring THL's obligations under the Industry Agreement (as referred to in paragraph 7 of the founding affidavit), i.e. they have been making payment to SASA in terms thereof since April 2023 as is evident from paragraph 50 of the Vahed Judgment.
16. The SASA application is therefore premised only on an historical debt owed to it by THL. I refer the Court in this regard to paragraphs 42 – 50 of the Vahed Judgment, a copy of which is annexed as "FA1" to RCL's founding affidavit in in the RCL application.
17. SASA will only be paid the aforesaid historical debt owed by THL subsequent to the approval and implementation of a business rescue plan.

B-P



18. Paradoxically therefore, the effect of the interdictory relief which SASA seeks would be to delay such payment exponentially for the many months if not years it will take for the final relief which it seeks in terms of the SASA Application to be finally determined (which would include the final determination of any appeals flowing from the granting of final relief).
19. It is therefore submitted that the grounds for urgency alleged by SASA in this application are misleading to the extent that they do not pertinently draw this Court's attention to the aforesaid.
20. It is submitted that this aspect alone is dispositive of the SASA application and warrants the dismissal of the application with a punitive costs order.
21. On this basis I submit that RGS has made out a case for the relief set out in the notice of motion in this intervention application.



SHASHIKANT MANGALI

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at DURBAN on this the **6th** day of **DECEMBER 2023**, the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended by Government Notice No. 1648 of 17 August 1977, as amended having been complied with.



COMMISSIONER OF OATHS

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PRACTISING ATTORNEY RSA**