

IN THE HIGH COURT OF SOUTH AFRICA
KWA-ZULU NATAL DIVISION, DURBAN

CASE NUMBER: 2026-031780

In the matter between:

GERHARD CONRAD ALBERTYN N.O. First Applicant

TREVOR JOHN MURGATROYD N.O. Second Applicant

PETRUS FRANCOIS VAN DEN STEEN N.O. Third Applicant

and

TONGAAT HULETT LIMITED
(IN BUSINESS RESCUE) First Respondent

THE AFFECTED PERSONS Further Respondents

and

ABRINA 9422 (PTY) LIMITED Intervening Party

**APPLICANTS' REPLYING AFFIDAVIT TO RGS' PRELIMINARY ANSWERING
AFFIDAVIT AND ANSWERING AFFIDAVIT TO RGS' COUNTER APPLICATION**

I, the undersigned,

GERHARD CONRAD ALBERTYN

do hereby make oath and state that: -

- 1 I am the deponent to the founding affidavit in support of the application instituted by the business rescue practitioners of Tongaat Hulett Limited (in business rescue)

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(defined below as THL) for its provisional liquidation. My particulars appear from what is stated in my founding affidavit.

- 2 I am one of three jointly appointed business rescue practitioners of THL. I am authorised to depose to this affidavit in my capacity as such.
- 3 I attach marked "**THL1**" and "**THL2**," confirmatory affidavits deposed to by Mr Trevor John Murgatroyd ("**Mr Murgatroyd**") and Mr Petrus Francois van den Steen ("**Mr Van den Steen**") in which they confirm the allegations made herein insofar as they relate to the BRPs.
- 4 The matters I traverse in this affidavit are, to the best of my knowledge, both true and correct. They are also within my personal knowledge - except where it is apparent from the context that they are not.
- 5 For the purposes of this affidavit, I refer to the following terms, as defined below -
 - 5.1 "**Adopted Plan**" means the Business Rescue Plan of THL as approved and adopted by an overwhelming majority of creditors at the Section 151 Meeting on 11 January 2024;
 - 5.2 "**Alternate Plan**" means the sale of assets to Vision as contemplated in, *inter alia*, clause 6.1.7.1 of the Adopted Plan;

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- 5.3 **"this application"** is a reference to the liquidation application instituted by the BRPs under the above case number on 12 February 2026;
- 5.4 **"the BRPs"** is a collective reference to the joint business rescue practitioners of THL, being Mr Murgatroyd, Mr Van den Steen and me;
- 5.5 **"Companies Act"** means the Companies Act 71 of 2008 (as amended);
- 5.6 **"Counter Application Notice"** is a reference to the document titled "NOTICE OF MOTION RGS'S COUNTER APPLICATION" dated 24 February 2026;
- 5.7 **"debt-to-equity conversion"** means the implementation of the primary Plan by a debt-for-equity swap by Vision subscribing for new shares in THL that would result in Vision collectively owning 97.3% of the total issued share capital of THL. The consideration for such subscription would have been approximately R4.1bn based on balances outstanding at the time of the Section 151 Meeting which will be discharged by a reduction in the Lender Group Claims against THL (those purchased by Vision) to approximately R3.6bn;
- 5.8 **"founding affidavit"** means the founding affidavit in this application, to which I am the deponent;

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- 5.9 **"Lender Group"** means the erstwhile group of lenders to THL, all of whom were Secured Creditors, including The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division), Absa Bank Limited, FirstRand Bank Limited (acting through its Rand Merchant Bank division), Investec Bank Limited (acting through its Investment Banking Division, Corporate Solutions), Investec Bank Limited (acting through its Corporate and Institutional Banking division), The Land and Agricultural Development Bank of South Africa, Sanlam Life Insurance Limited (acting through its Sanlam Specialised Finance Markets division), Sanlam Investment Management Proprietary Limited (acting on behalf of its third party clients), Sanlam Life Insurance Limited (acting through its Sanlam Investment Management division), Sanlam Specialised Finance Proprietary Limited, Momentum Metropolitan Life Limited, Nedbank Limited, and Ashburton Fund Managers Proprietary Limited (acting on behalf of its clients);
- 5.10 **"Lender Group Claims"** or **"the Claims"** means the claims and security previously held by the Lender Group against THL, which were ceded to Vision, pursuant to a transfer certificate dated 3 November 2023, and after it (Vision) discharged its payment obligations owed to the Lender Group in full in May 2025;
- 5.11 **"Rajahussen"** is a reference to Momade Aquil Rajahussen, the Chairman of RGS who deposed to RGS's Answering Affidavit and RGS's Founding Affidavit;

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- 5.12 **"RGS"** is a reference to RGS Holdings (Proprietary) Limited, which is a creditor in the business rescue of THL;
- 5.13 **"RGS's Answering Affidavit"** is a reference to the affidavit deposed to by Rajahussen on 24 February 2026 in response to the founding affidavit in this application;
- 5.14 **"RGS's Counter Application"** means the application instituted by RGS on 24 February 2024;
- 5.15 **"RGS's Founding Affidavit"** is a reference to the affidavit deposed to by Rajahussen on 24 February 2026 in support of RGS's Counter Application;
- 5.16 **"RGS's Withdrawn Plan"** is a reference to the business rescue plan proposed by RGS vis-a-vis the business rescue of THL that was withdrawn by it on 9 January 2024;
- 5.17 **"the Section 151 Meeting"** means the Section 151 Meeting of creditors convened by the BRPs on 10 and 11 January 2024 for the purposes of section 151 of the Companies Act;
- 5.18 **"Vision"** is a collective reference to Vision Investments 115 (Proprietary) Limited, Terris Agripro (Mauritius), Remoggo (Mauritius) PCC, Guma Agri

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And Food Security Ltd (Mauritius) And Almoiz Na Holdings Limited (United Arab Emirates);

5.19 "**Vision's Proposed Plan**" is a reference to the business rescue plan proposed by Vision for consideration by THL's creditors in December 2023 and which was amended in January 2024 prior to the section 151 Meeting of creditors on 10 and 11 January 2024; and

5.20 "**Werksmans**" is a reference to Werksmans Attorneys Inc who are the BRPs attorneys of record in these proceedings and who have been the attorneys of record for THL upon the company having been placed in business rescue.

6 This affidavit has been prepared under severe time pressure in consequence of, *inter alia*, RGS's deliberately dilatory conduct in opposing this application. Its motive for doing so is transparent - it has sought to prejudice the BRPs in their ability to deal comprehensively with RGS's Answering Affidavit and (despite its protestations to the contrary) to derail the hearing of this application on Friday, 27 February 2026. RGS's Answering Affidavit was delivered out of time. The assertions contained in paragraph 6 of RGS's Answering Affidavit are accordingly denied.

7 I have read RGS's Answering Affidavit and RGS's Founding Affidavit and I respond thereto as set out in this affidavit.

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8 In this affidavit, I have endeavoured to answer the main themes that permeate RGS's Answering Affidavit as comprehensively as possible within the limited time available to me. It has not been possible to deal with every allegation and submission contained in RGS's Answering Affidavit and I reserve the BRPs right to supplement this affidavit in due course, should it become necessary to do so.

9 The content of this affidavit should be regarded as the BRP's preliminary -

9.1 replying affidavit to RGS's Answering Affidavit; and

9.2 answering affidavit in response to RGS's Founding Affidavit.

10 Against the background of what is set out in paragraphs 6 to 8 above, any allegation and/or assertion contained in RGS's Answering Affidavit and RGS's Founding Affidavit that is inconsistent with the content of this affidavit and/or the founding affidavit and which has not been specifically addressed by me in this affidavit and/or in the founding affidavit, is denied.

THE RELIEF SOUGHT IN THIS APPLICATION (paragraphs 4 to 25, 115 to 159 and 340 to 366 of RGS's Answering Affidavit)

11 RGS in their obsessive quest to gain control of Tongaat and despite having had an opportunity to present and then subsequently withdrawing their proposed business rescue plan, have failed to produce an iota of evidence of the existence of funds in South Africa to enable it to possibly do so, has delivered an affidavit which has entirely -

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- 11.1 failed to take cognisance of the peremptory obligations of the BRPs as provided for in section 141(2) of the Companies Act; and
- 11.2 failed to address the factual and commercial insolvency of THL. THL desperately requires the immediate injection of funds to enable it to continue trading.
- 12 Rather, RGS has abused this application as a platform in a last-ditch attempt (after seven other previous attempts, over a two year period and on substantially the same grounds, all failed) to somehow obtain an order placing it in control of THL.
- 13 The relevant allegations pertaining to this application for provisional liquidation on the grounds clearly stated in my founding affidavit have not been addressed whether substantively or at all.
- 14 Rather RGS has engaged in yet another vitriolic rant regarding *inter alia* the adoption of the Plan and the conduct of Vision mirroring its approach in a series of failed applications and which, for the purpose of this application are entirely irrelevant.
- 15 The BRPs, who are the only individuals with visibility into the affairs of THL, reaffirm what is stated in their founding affidavit, namely that :

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- 15.1 the Plan as adopted can no longer be implemented given the various facts outlined in my founding affidavit and in the absence of, at a minimum, the critical conditions being fulfilled and the Vision sale agreements reinstated;
- 15.2 Tongaat is commercially insolvent and does not have sufficient funds to enable it to make payment of its debts in the foreseeable future; and
- 15.3 Tongaat is factually insolvent in that its liabilities exceed its assets.
- 16 None of the above is properly addressed by RGS.
- 17 The only grounds upon which RGS contends that Tongaat's financial issues can be resolved by it, is based on a Term Sheet and the possible grant of a facility subject to a due diligence and an expansive list of conditions precedent. I address this more fully below.
- 18 Accordingly, the BRPs reaffirm what has been stated in our founding affidavit. The BRPs have reached the considered and inescapable conclusion that there is no reasonable prospect of the rescue of THL. We accordingly deny each and every allegation advanced by RGS to the contrary. For all of the reasons set out in the founding affidavit and in this affidavit we deny the content of paragraphs 33 to 44 of RGS's Answering Affidavit.
- 19 As at the date of deposing to this affidavit, no party has produced any facts which alter our conclusion, as aforesaid.

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THE VISION PLAN AND THE BUSINESS RESCUE OF THL IS IMPOSSIBLE IN THE ABSENCE OF SIGNIFICANT FUNDING AND A REINSTATEMENT OF THE SALE OF BUSINESS AGREEMENT (paragraphs 26, 27 340 to 362 of RGS's Answering Affidavit and RGS's Founding Affidavit)

20 As appears from the BRPs founding affidavit, this is an application for THL's provisional liquidation that has been instituted by the BRPs pursuant to their statutory obligations in section 141(2) of the Companies Act. The factual matrix that triggered this application in relation to THL's business rescue appears at paragraph 15 of the founding affidavit.

21 Section 141(2) of the Companies Act provides, inter alia, that -

"141(2) If, at any time during business rescue proceedings, the practitioner concludes that -

*(a) there is no reasonable prospect for the company to be rescued, the practitioner **must** -*

(i) so inform the court, the company, and all affected persons in the prescribed manner; and

(ii) apply to the court for an order discontinuing the business rescue proceedings and placing the company into liquidation;" [my emphasis]

22 As appears from the bold underlined word "**must**" in the above extract, section 141(2) of the Companies Act is peremptory. The wording of that section is clear - from the moment that business rescue practitioners conclude that a company cannot be rescued the Order sought in these proceedings must be applied for. RGS's self-serving (and factually incorrect) conclusions that in fact THL remains capable of rescue are irrelevant to an adjudication of this application.

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23 It has been made clear by the BRPs that in the absence of desperately needed funding, Tongaat is not capable of being rescued. Tongaat is commercially and factually insolvent and it will not be able to make payment of its debts in the foreseeable future. On any construction this is a valid basis for the liquidation of Tongaat and merits the exercise of the Court's narrow discretion when considering this application.

24 In summary -

24.1 since the commencement of THL's business rescue, the BRPs have exercised management control of the company in substitution for its board and its pre-existing management (section 140(1)(a) of the Companies Act); and

24.2 the BRPs have spent three years tirelessly working with THL's management to rescue THL in accordance with their statutorily imposed duties as prescribed by the Companies Act. The BRPs have taken all possible steps to ensure the implementation of the business rescue plan adopted by an overwhelming majority of THL's creditors on 11 January 2024 in terms of the provisions of section 151 of the Act.

25 There is no other party that is better placed than the BRPs to inform this Court of Tongaat's financial position and the status of the implementation of the Plan.

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- 26 For the reasons set out in the founding affidavit, the BRPs have concluded that THL is no longer capable of being rescued and that they are statutorily obligated to inform this Honourable Court of that fact and to institute this application.
- 27 RGS, on the other hand, has delivered an answering affidavit (exceeding 365 paragraphs) that (i) is littered with misrepresentations of the true facts, repetition and irrelevant matter; (ii) is entirely devoid of substance; and (iii) contains allegations of and concerning THL's business and financial affairs in circumstances where it does not have the requisite knowledge of such affairs or information to enable it to advance such allegations which, as is demonstrated below, are factually untenable.
- 28 The destructive force that is RGS is nothing more than an embittered, disgruntled and self-created unsuccessful proposer of a business rescue plan who again approaches this Court with unclean hands in the vain and belated hope that it will, after years of failed attempts to do so, now gain control over THL.
- 29 RGS has delivered the answering affidavit and a counter application under the guise of a creditor but is clear from a plain reading of the answering affidavit, which fails to address the substance of the liquidation application, that RGS has opposed the liquidation application in furtherance of its own commercial interests.
- 30 RGS's opposition to this application, and more importantly its counter application is but a further step in a series of failed applications which were instituted *in*

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terrorem by, or at the instance of, RGS to subvert the very business rescue process it now contends must not be terminated.

31 We, the BRPs, deny that the documents that form the subject matter of RGS's counter application are relevant to an adjudication of this application. In any event, RGS's claim that it is entitled to these documents *qua* creditor is already the subject matter of an application for leave to appeal to the Supreme Court of Appeal. Therefore, the relief sought (again) by RGS in RGS's Counter Application is *lis pendens*. I deal with RGS's improper and abusive conduct in pursuing the same relief *vis-à-vis* these documents below.

32 RGS has, not unexpectedly, concealed the true history and extent of its spectacularly unsuccessful litigious endeavours from this Honourable Court. The BRPs address this further below. We, the BRPs, deny that RGS's intentions have ever been to *salvage the rescue ... of THL* as it alleges in paragraph 7 of the RGS affidavit.

HISTORIC ACCOUNT OF RGS'S CAMPAIGN TO FRUSTRATE THE SUCCESSFUL RESCUE OF THL AND RGS'S CONDONATION APPLICATION FOR THE LATE FILING OF ITS ANSWERING AFFIDAVIT IN THIS APPLICATION (paragraphs 233 to 316 of RGS's Answering Affidavit)

33 In RGS's Answering Affidavit, Rajahussen sets out a selective account of events that have transpired since late 2023 when RGS and Vision were competing against each other in relation to proposed business rescue plans that were submitted by each of them proposing the business rescue of THL.

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34 I submit that RGS has burdened this Court with pages of matter irrelevant to this application in an attempt to distract this Honourable Court's attention from the reality that its case in these proceedings is stillborn.

35 RGS's account of such events is distorted, selective and factually incorrect. But more importantly, these events are irrelevant to an adjudication of this application in the light of the purpose of this application as traversed in the founding affidavit and in paragraph 20 above. The majority (if not all) of RGS's complaints in this regard have already formed the basis of heavily contested adversarial proceedings -

35.1 instituted in this division, where this Honourable Court has already ruled against RGS;

35.2 that have not been prosecuted by RGS; and/or

35.3 that form the subject matter of a pending application for leave to appeal.

36 RGS' conduct constitutes a classic collateral attack and amounts to an abuse of process. Most, if not all of the RGS assertions and/or allegations raised, are *res judicata* having been raised, answered and addressed in previous court proceedings. RGS's failure to engage with or refute those prior answers, and its election to simply repeat the same assertions, confirms that this is nothing more than an attempt to relitigate settled issues for the purpose of creating a

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sensationalist and misleading narrative in order to distract the attention of this Honourable Court.

37 I submit that RGS has opposed these proceedings for purposes of, *inter alia*, circumventing Orders already granted by this Honourable Court and/or prosecuting pending proceedings that are before this Honourable Court and the Supreme Court of Appeal. That conduct is a clear abuse of the process of this Honourable Court.

38 In the light of RGS being a creditor in the business rescue of THL, the need for relief sought in paragraph 1.1 of the Counter Application Notice is not understood. However, for at least the reasons set out below, I submit that the remaining relief sought by RGS in paragraph 1.2 of should be dismissed by this Honourable Court with an order directing RGS to pay the BRP and THL's costs on the C scale including the costs of two counsel, where two counsel have been employed.

RGS'S DISHONEST CONDUCT THAT RESULTED IN ITS PROPOSED BUSINESS RESCUE PLAN BEING WITHDRAWN BEFORE IT WAS PUT TO CREDITORS FOR CONSIDERATION (paragraphs 317 to 339 of RGS's Answering Affidavit)

39 A substantial portion of RGS's Answering Affidavit is dedicated to the circumstances under which the Adopted Plan was adopted, why Vision was allegedly favoured as a Proposer and why the Adopted Plan is unlawful.

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- 40 These disingenuous allegations and false narrative presented by RGS in relation to the circumstances giving rise to the adoption of the Adopted Plan, merits further elaboration.
- 41 Both RGS and Vision were negotiating directly with the Lender Group with the objective of acquiring the Lender Group claims and security, and of securing the Lender Group's support for a vote in favour of their respective proposed business rescue plans.
- 42 RGS proposed a business rescue plan for consideration, alongside Vision's Proposed Plan, at the Section 151 Meeting on 10 and 11 January 2024. Both business rescue plans contemplated the acquisition of the Lender Group claims and security.
- 43 RGS withdrew its proposed plan (ie the RGS withdrawn proposal) the day before the Section 151 Meeting, purportedly because it considered the BRPs to have acted unlawfully and partially toward Vision. No mention is made of the fact that the Lender Group chose not to sell their claims and security to RGS, but instead chose to sell the claims and security to Vision. As a result of this situation, the RGS proposed plan would not be approved.
- 44 It is common cause that the Vision Proposed Plan was then the only plan in front of the creditors for consideration, which was then considered by creditors at the Section 151 Meeting and approved by an overwhelming majority of creditors present and voting at the Section 151 Meeting.

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- 45 The circumstances leading to RGS's withdrawal of its proposed plan in January 2024 demonstrate why this Court ought not to accept RGS's version of events. It has behaved fraudulently and comes to this Court with unclean hands. RGS has concealed, rather than honestly disclosing, the circumstances surrounding RGS Withdrawn Plan.
- 46 During or about December 2023, and in the period leading up to the Section 151 Meeting, it came to light that the Lender Group had received a letter, purportedly from ABSA Mozambique ("**the fake letter**") and purporting to confirm that RGS was in possession of sufficient funds to meet its financial obligations towards the Lender Group to acquire their claims and security in the event that RGS's proposed business rescue plan was approved and adopted by creditors at the Section 151 Meeting.
- 47 During late December 2023, or early January 2024, the BRPs were advised by the Lender Group that the fake letter had not been authored or issued by ABSA Mozambique (despite being on an ABSA Mozambique letterhead). The fake letter could only have emanated from RGS – and, indeed, it later confirmed that it did. It is thus the BRPs' understanding that RGS had provided the Lender Group with a fraudulent letter. RGS' account of the letter tallies with that belief.
- 48 Not long after the information referred to above came to light (and on 9 January 2024, one day prior to the Section 151 Meeting), RGS knowing that the Lender Group would not sell their claims and security to RGS, RGS withdrew its proposed

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business rescue plan. In doing so, it cast unfounded aspersions at the BRPs, questioning our honesty, independence and suggesting that we were biased against RGS. This was self-evidently an attempt to deflect attention away from the fraud perpetrated by the submission of the fake letter to the Lender Group.

49 In fact, RGS did not have access to sufficient funds to enable it to implement its proposal. RGS could never have succeeded in implementing its proposed plan, even if it had been approved and adopted by creditors

50 Because its proposal had to be withdrawn, RGS has now belatedly unashamedly sought to contrive a situation where the Adopted Plan fails or is set aside and its revived offer which is clearly incapable of implementation is tabled as an alternative business rescue plan for adoption. It is acting out of naked self-interest – and not in the interests of Affected Persons, as it has repeatedly tried to claim.

51 RGS has previously sought to explain how the fake letter came about by alleging as follows -

51.1 a junior manager of RGS who had been instructed to make the deposit into an ABSA Mozambique account had reservations about doing so given the interest that would be forgone if the funds were moved to the ABSA Mozambique account;

51.2 that junior manager, without the knowledge of RGS senior management, took it upon himself to arrange for an ABSA Mozambique official to be provided with evidence of the funds held by RGS in its BCM and BIM

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accounts and to issue the ABSA Mozambique letter on that basis alone (i.e. in the knowledge that RGS held the funds but in the absence of the funds being deposited with ABSA Mozambique); and

51.3 senior management of RGS only became aware of the issue for the first time when the genuineness of the Absa Bank Mozambique Letter was called into question by ABSA South Africa on or about 15 December 2023.

52 The explanation proffered by RGS in relation to the fake letter is not supported by any evidence at all – be it contemporaneous documentation or a confirmatory affidavit from the relevant "*junior manager*". It, in any event, does not assist RGS for at least the following reasons -

52.1 it is irrelevant who, within RGS, was responsible for the fraud which, it is common cause, was perpetrated. The fact remains that a letter purporting to demonstrate proof of funds, and emanating from RGS, was submitted to the Lender Group, which letter was fabricated. Having regard to the quantum and importance and indeed prominence of the letter it is inconceivable that senior members of RGS were unaware of it and its illegitimate status;

52.2 the consequences which inexorably flow from this unlawful conduct is not mitigated by the belated explanation provided by RGS, nor does it restore RGS's damaged credibility. The BRPs can hardly be criticised for treating any future proof of funds from RGS with circumspection; and

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52.3 following the events described above, RGS did not produce *bona fide* evidence of funds; instead RGS withdrew their proposed business rescue plan, alleging (without any foundation) bias on the part of the BRPs as the reason for the withdrawal and failed to state the true reason, which would obviously be embarrassing.

53 RGS is directly responsible for the fact that it could not and did not present its proposal to creditors at the section 151 Meeting and had to and/or chose to withdraw it. As a consequence, it lost the opportunity to present a rival plan to creditors, and the Adopted Plan has been adopted.

54 The BRPs' concerns regarding RGS's credibility and its ability to implement any business rescue plan extend beyond the fraudulent proof of funding letter. There is a broader and deeply troubling pattern of conduct which, taken together, raises serious questions as to whether RGS is capable of banking in South Africa at all and, by extension, whether any proposal it advances can ever be regarded as credible or capable of implementation.

55 The BRPs are furthermore aware of serious allegations made against Mr Rajahussen in a money laundering scheme in proceedings before both a United States Federal Court and the London Court of International Arbitration.

56 In terms of the Financial Intelligence Centre Act 38 of 2001 ("FICA"), South African financial institutions are obliged to conduct comprehensive customer due diligence, including screening prospective clients against adverse media,

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sanctions lists and databases of politically exposed persons ("PEPs"), before establishing or maintaining a banking relationship. Any entity whose profile includes the matters set out above would, in the BRPs' assessment, present a risk profile that South African banks would be obliged to treat with extreme caution and would, in all likelihood, either decline to onboard or would de-risk.

(ii) The previous proceedings (paragraphs 233 to 316 of RGS's Answering Affidavit)

57 RGS has, whether directly or by proxy, brought no less than seven applications for the same relief. In this regard, -

57.1 it brought three applications in *its own name*, the first of which was instituted at the beginning of November 2024. Part A of that application was dismissed for lack of urgency. RGS's second urgent application resulted in an order that is currently subject to an application instituted by Vision for leave to appeal to the Supreme Court of Appeal ("**Vision's leave to appeal application**") and has consequently been suspended; and

57.2 there are three other applications that it caused to be instituted (with RGS as the 'puppet master'). The first of these applications was brought to Court on an urgent basis in January 2024 and was similarly struck off the roll for lack of urgency.

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58 By way of overview, RGS has, *in its own* name, instituted -

58.1 an urgent application in the KwaZulu Natal High Court, Durban Division on 6 November 2024 under case number D13702/2024 ("**RGS's first urgent application**"). A copy of the notice of motion is attached as "**THL3**" -

58.1.1 Part A of this application sought to compel the BRPs and Vision to publish certain information sought again in this application, as well as to interdict the implementation of the Adopted Plan. It was struck on 18 February 2025 by His Lordship, Mr Justice ME Nkosi for lack of urgency and because RGS did not make out a case for interdictory relief; and

58.1.2 Part B of RGS's first urgent application sought to set aside the Adopted Plan. Part B of RGS's first urgent application is pending adjudication. Despite the fact that pleadings in Part B of RGS's first urgent application closed during or about the end of May 2025, RGS has taken no steps to set that application down for hearing;

58.2 a further urgent application in the KwaZulu Natal High Court, Durban Division dated 29 May 2025 under case number 2025-079452 ("**RGS's second urgent application**"), in which RGS sought an order directing Vision to disclose a number of documents also sought in the current proceedings. A copy of the notice of motion in that application is attached as "**THL4**". This is the application that it refers to in paragraph 18 of the RGS's Answering

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Affidavit as the "**Disclosure Application**". Since no relief was sought against the BRPs, we did not oppose that application. The order granted by Acting Justice Zwane on 4 July 2025 is currently suspended because it forms the subject matter of an application for leave to appeal to the Supreme Court of Appeal that is pending; and

58.3 a third application in the KwaZulu Natal High Court, Durban Division under case number 2025-136677 ("**RGS's third urgent application**") which had as its objective the same relief as the relief sought in the first RGS urgent application and the second RGS urgent application but this time under the guise of Section 140(3)(a) of the Companies Act. The application was struck off the roll for lack of urgency by Sipunzi, AJ and has not yet been called for hearing on the ordinary motion roll. A copy of the Notice of Motion is attached marked "**THL5**".

59 I refer to RGS's first urgent application, RGS's second urgent application and RGS's third application collectively "**the RGS prior applications**".

60 Even before the RGS prior applications, proceedings had been instituted against, *inter alios*, the BRPs on materially similar grounds -

60.1 Mohini Singari Naidoo t/a Powertrans Sales & Services ("**Powertrans**"), a minor creditor of THL, in the KwaZulu Natal High Court, Durban Division brought an application ("**the first Powertrans application**") under case number D1103/2024 on 25 January 2024. Powertrans sought, in Part A of

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that application, to interdict the BRPs from implementing the Adopted Plan and, in Part B, to set it aside. A copy of the notice of motion in the first Powertrans application is attached as "THL6".

60.2 The RGS intervention application in the first Powertrans application was served on 1 February 2024, in which intervention application it adopted and supported the assertions in the founding affidavit which had been delivered by Powertrans. A copy of its notice of motion and founding affidavit in support of its intervention sought is attached as "THL7". RGS's affidavit in those proceedings raised unfounded complaints in relation to the lawfulness of the BRP's conduct, which it re-visits in these proceedings. I detail below the striking similarities between RGS's complaints in the first Powertrans application, and the complaints raised by RGS in this application.

60.3 Part A of the first Powertrans application was struck off the roll on 6 February 2024 for want of urgency by this Honourable Court. Powertrans thereafter withdrew Part B of the first Powertrans application.

60.4 Rather than electing to proceed at that stage with its own challenge to the validity and lawfulness of the Adopted Plan, RGS abandoned its intervention application.

60.5 Powertrans later brought a second application in the KwaZulu Natal High Court, Durban Division under case number D3902/2024 on 5 April 2024, in which it sought orders declaring the Adopted Plan unlawful and setting it

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aside, and directing the BRPs to comply with our duties under the Companies Act ("**the second Powertrans application**"). A copy of the notice of motion in that application is attached as "**THL8**". That application has not been progressed by Powertrans, even though pleadings closed in July 2024.

60.6 Mr Muhammad Faiz Turk and Mr Muhammad Shakeel Turk (collectively "**the applicants in the JHB application**") brought an application in the Gauteng High Court, Johannesburg Division on 25 April 2025 under case number 058067/2025 ("**the JHB application**"). They sought, inter alia, a declaratory order to the effect that -

60.6.1 the Adopted Plan alters the rights of shareholders as contemplated in terms of the provisions of section 152(3)(c) of the Companies Act; and

60.6.2 the Adopted Plan has not been finally adopted and thus has not been lawfully adopted because -

60.6.2.1 the BRPs have not convened a meeting of THL's shareholders to propose and vote on the adoption of the Adopted Plan as required in terms of the provisions of section 152(3)(c) of the Companies Act; and

60.6.2.2 THL's shareholders have not voted on the adoption of the Adopted Plan.

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60.6.3 any steps by the BRPs to give effect to the Adopted Plan post its purported adoption by creditors are accordingly invalid, *void ab initio* and fall to be set aside, including the conclusion and implementation of the following agreements -

60.6.3.1 the business sale agreement concluded between Vision on or about 14 December 2024;

60.6.3.2 the business sale agreement concluded between Vision and the Lender Group on or about 21 December 2024;

60.6.3.3 the business sale agreement concluded between Vision and the Lender Group on or about 18 January 2025; and

60.6.3.4 the business sale agreement concluded between Vision and the Lender Group on or about 10 February 2025.

60.7 The applicants in the JHB application also sought a final interdict interdicting -

60.7.1 the BRP's from taking any steps to give effect to the Adopted Plan; and

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60.7.2 amongst others, the BRPs from taking any steps to give effect to any agreements concluded between THL and any of the other respondents in the JHB application.

60.8 A copy of the Notice of Motion in the JHB application is attached marked "THL9."

The previous proceedings were brought by RGS's proxies

61 The THL respondents submit that RGS is the *éminence grise* of the applications identified in paragraph 60 (ie the RGS prior applications), and that Powertrans and the applicants in the JHB application have been acting as its proxies.

62 Powertrans were represented by DMI Attorneys in the first Powertrans urgent application and the second Powertrans application. DMI Attorneys were also RGS's legal representatives in RGS's first urgent application. DMI Attorneys could only act for both Powertrans and RGS in pursuing materially the same relief, if those parties' interests and objectives were aligned, and they had waived any potential conflict of interest that might arise. That necessarily implies that Powertrans and RGS were (at least indirectly) in communication with one another and acting in concert.

63 The BRPs recorded their suspicions in that regard in the answering papers in that application and called on Powertrans to state under oath in its replying papers

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whether it had been encouraged, persuaded and/or induced by a third party to launch such application and, if so, on what basis. Powertrans declined to do so.

64 Significantly, and unsurprisingly, the evening prior to the hearing of Part A of the first Powertrans application, RGS delivered an intervention application supporting the relief sought by Powertrans. I have dealt with this, and the subsequent striking of Part A in the first Powertrans application, above.

65 In their answering affidavit in the subsequent second Powertrans application, the BRPs noted the fact that Powertrans' costs in launching both the first urgent Powertrans application and the second Powertrans application, coupled with the costs awarded against Powertrans pursuant to the dismissal of the first Powertrans urgent application, must far exceed the amount of Powertrans' claim against THL. Accordingly, the THL respondents repeated their reasonable belief that another party, namely RGS, was behind the litigation, and again challenged Powertrans to disclose whether it has been encouraged, persuaded and/or induced by a third party to bring its application and if so, on what basis.

66 In its replying affidavit, Powertrans admitted that it was procuring funding and support for the litigation from a third party but declined to identify them. It responded to the BRP's challenge as follows -

"33. ... *They are not entitled to know about Powertrans' instructions to its attorneys, the timing and content of legal advice given, the decisions and input regarding the presentation of the case, the contents of draft affidavits, the litigation strategy **and/or the terms on which other interested persons are assisting with the funding of this litigation.***

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35. ***I have stated all along that there are many other affected persons who are aggrieved and share Powertrans' complaints. The fact that other similarly aggrieved and interested persons are assisting Powertrans does not affect Powertrans right to bring this application. Even in private disputes, persons may cooperate and join resources because they share a common interest, albeit that they are not all cited as parties. I submit that in this business rescue, there is no reason why aggrieved parties should not cooperate and support Powertrans.*** (emphasis added)

67 The BRPs then delivered a notice in terms of Rule 35(12) dated 7 August 2024 ("**the 35(12) notice**") in terms of which they required Powertrans to produce for inspection "*the terms on which other interested persons are assisting them with the funding of this litigation*", as referred to in paragraph 33 of the Powertrans replying affidavit dated 26 July 2024.

68 In response to the 35 (12) notice, Powertrans stated that it could not produce the document(s) sought because they "*do not exist*".

69 The inescapable inference is that RGS was, at all times, behind the first Powertrans application, and drove, funded, and supported it in the hope of procuring the outcome desired. It undoubtedly did so to shield itself from the consequences of its unlawful conduct, as detailed above, recognising that its prospect of obtaining any relief in its own name would likely be fatally undermined by its self-admitted fraud.

70 As at the date of deposing to this affidavit, and despite the fact that all affidavits in the second Powertrans application had been filed by 26 July 2024, Powertrans has not sought to procure a date for the hearing of the second Powertrans application. This is undoubtedly in consequence of the fact that, for reasons

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which are concealed by RGS, RGS has now resolved to rather pursue a setting aside of the Adopted Plan in its own name and there is consequently no need or purpose of progressing the Powertrans litigation in parallel.

- 71 The applicants in the JHB application only commenced their adversarial engagements with the BRPs , and later brought their application, when it became clear that the second Powertrans application would not secure the outcome that RGS wished to achieve. The timing of that application, as well as the failure to progress it, also suggest that the applicants in the JHB application pursue it at RGS's behest and on its behalf.
- 72 It is submitted that the facts demonstrate an overwhelming probability that RGS is the 'eminence grise' *vis-à-vis* those applications and has used Powertrans and the applicants in the JHB application as stalking horses to promote RGS's own agenda. RGS has wilfully concealed the role it has played in the first Powertrans application, the second Powertrans application and the JHB application and yet accuses the BRPs of a lack of transparency, which accusation has been demonstrated to be both factually and legally untenable.
- 73 The aforesaid proceedings are undoubtedly vexatious and unequivocally demonstrate RGS's misuse and abuse of the Court's processes. They also demonstrate that the present opposition to this application and its counter application is an egregious abuse of process.

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74 RGS is not entitled to harass the parties by re-litigating matters already before the Court. It is both surprising and disappointing that RGS's legal representatives, in the circumstances, have sanctioned its opposition to this application for the provisional liquidation of THL.

RGS'S OFFERS AND ITS INABILITY TO OBTAIN FINANCING TO FUND A BUSINESS RESCUE PLAN (paragraphs 84 to 94 of RGS's Answering Affidavit)

75 RGS's allegations pertaining to its funding abilities relying on an Intra-African Investment Financing Facility Term Sheet, purportedly issued by African Export-Import Bank, incorporating a lengthy list of conditions precedent are not indicative of funds available to RGS to invest in THL to provide the much needed urgent funding required. The Afrexim Term Sheet is not a binding offer and does not provide proof of funding.

76 Notwithstanding that the Plan had, to RGS's knowledge, been adopted and was extant (and was thus binding on THL, its creditors (including RGS) and every holder of its securities), RGS submitted an offer to the BRPs on 8 July 2024 ("**the First RGS Offer**"). RGS claimed to do so on the basis that it understood that the Plan "*may not be capable of implementation on their current terms*". Nowhere in the First RGS Offer did RGS allege that, in their view, the Plan was *de facto* not capable of implementation.

77 In response, Werksmans on behalf of the BRPs stated that -

"3.1 as you point out in the Subject Email, **each of the BR Plans** (as defined in the Subject Email) **has been adopted**;

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- 3.2 ***the BRPs are duty-bound to implement each of the BR Plans as approved and adopted;***
- 3.3 ***your beliefs and/or understandings as to the capability of the BR Plans to be implemented on their current terms are noted. In the absence of concrete motivation and incontrovertible proof by you, as to the basis for such beliefs and/or understandings, the BRPs cannot rely on, nor take account of same. There is a process presently under way for the implementation of the BR Plans, which is progressing in the manner anticipated;***
- 3.4 ***your interest in acquiring a controlling interest in THL is noted. You will appreciate that unless and until there is an absolute unsurmountable impediment to the implementation of the adopted BR Plans, your interest cannot be advanced by the BRPs nor are the BRPs in a position to engage with you in relation to same.*** (emphasis added)

78 The RGS First Offer was not rejected. Rather, the BRPs indicated that until the Plan is objectively incapable of implementation, other offers could not be tabled for consideration by creditors in terms of section 151 of the Companies Act. The BRPs expressed no opinion as to whether the RGS First Offer was acceptable or not.

79 RGS made a second offer to the BRPs on 18 September 2024. It is attached to RGS's Answering Affidavit as an annexure to "MAR3" – although RGS has omitted to attach the annexures to that letter (being the letters RGS has received from Afrexim Bank and EMOSE regarding potential funding). Similarly, the Second Offer was not rejected, but it could not be entertained whilst the Vision Plan remained capable of implementation.

80 Accordingly, in the absence of proof of funds in South Africa immediately and readily available to be invested in THL to enable it to meet its significant and

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numerous financial commitments and/or obligations exceeding billions of rands, RGS cannot reasonably expect this Honourable Court to accept a mere Term Sheet as being indicative of a genuine ability to fund THL in the immediate future.

RGS'S INCORRECT AND SELF-SERVING ASSESSMENT OF THL'S (IN)SOLVENCY

- 81 I reiterate what is stated in paragraphs 15 to 17 above.
- 82 RGS has been selective of the references to that which is stated in the founding affidavit to suit its narrative.
- 83 RGS has no visibility into the financial affairs of THL. RGS disregards the fact that THL is factually insolvent and inexplicably, in the absence of any supporting evidence whatsoever, it denies its commercial insolvency.
- 84 RGS has entirely missed the meaning and purport of the obligations imposed upon business rescue practitioners. The legislation does not require practitioners to terminate a business rescue when a plan fails but when they, in their informed and considered view, are of the opinion that the company can no longer be rescued.
- 85 THL's forecast gross funding requirements for its critical monthly expenses for March 2026 total approximately of R1.5 billion. These expenses include but are not limited to:

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- 85.1 cane payments of approximately R456 million;
- 85.2 operating expenses of approximately R338 million;
- 85.3 essential off-crop maintenance capital expenditure of approximately R86 million;
- 85.4 levies payable to SASA of approximately R133 million;
- 85.5 salaries of approximately R135 million; and
- 85.6 export costs of approximately R110 million.

86 Following the delivery of this application, there has been operational disruption which has adversely affected THL's working capital cycle. Certain suppliers have required accelerated or upfront payment, resulting in cash outflows being brought forward. While underlying demand for sugar remains, the timing of anticipated sales inflows has become less predictable. Customers have adopted a more cautious approach in allocating volumes, particularly in tender and allocation processes. In some instances, volumes may be redirected to alternative suppliers or realised later than originally forecast, further elongating the cash conversion cycle.

87 Moreover, the current trading situation of THL is as follows :

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- 87.1 THL is presently selling white refined and brown sugar that has already been produced. In effect, THL is currently selling its existing stock on hand;
- 87.2 THL's refinery has recently restarted operations to produce refined white and speciality sugars with the objective of increasing the security value of raw sugar that would otherwise only be saleable in lower-priced export markets. Accordingly all employees at the refinery are presently working;
- 87.3 THL's Voermol business continues to produce animal feeds utilising byproducts of the sugar milling process, including molasses and pith. This activity is directed at enhancing the realisable value of inventory forming part of the secured asset base; and
- 87.4 in the absence of immediate funding, THL will not be able complete the ongoing off-crop maintenance programmes at its operations. If these maintenance works are not completed, the mills cannot be reassembled and recommissioned in time for the 2026/2027 season. Consequently, THL will not be able to commence the crushing of sugarcane as planned by mid-April 2026.
- 88 If THL is not in a position to commence crushing sugarcane by mid-April 2026, this will have a significant adverse impact on approximately 23 000 cane growers who supply the mills, and the sugar industry as a whole. Any delay in the start of the milling operations will negatively affect the cane quality and may reduce the ability to crush the full volume of grower cane before the end of the season.

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89 If THL is unable to commence milling for the 2026/27 season at all, it will be the death knell for the company and the impact on the sugar industry in South Africa will be immeasurable. An inability to commence milling at the start of the season would likely result in a significant shortage of refined white sugar in the domestic market, necessitating increased imports, to the detriment of local industry participants and consumers.

90 The incontrovertible fact is that the BRPs cannot continue to implement the Plan. THL's immediate funding requirements will not be met by the IDC, Vision or any other party for that matter and accordingly for at least these reasons, the company can no longer be rescued. No one can and will provide the desperately required funding in the immediate future.

91 The wholly unsubstantiated allegations by RGS in this regard and contrary to what is stated above are denied in their entirety.

RGS'S COUNTER APPLICATION

92 For the avoidance of any doubt, the BRPs have not (and do not) consent to this application being instituted by RGS whether in terms of section 133(1)(a) of the Companies and we oppose the relief sought by RGS as it appears in paragraph 2 of the Counter Application Notice.

(i) **RGS's reliance on section 141(3) of the Act is incompetent and legally impermissible (paragraphs 26 and 340 to 351 of RGS's Answering Affidavit)**

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93 Section 141(3) of the Companies Act provides that -

"141(3) A court to which an application has been made in terms of subsection (2)(a)(ii) may make the order applied for, or any order that the court considers appropriate in the circumstances"

94 Section 141(3) of the Companies Act is an *empowering provision*. In other words, as RGS correctly points out, that section provides this Honourable Court with a wide discretion to make an order other than an order contemplated in section 141(2)(a)(ii) of the Companies Act that it considers appropriate when a business rescue practitioner complies with his / her / their statutory obligations as contemplated in section 141(2)(a)(i) of the Companies Act.

95 Nothing contained in section 141(3) of the Companies Act permits relief to be sought by any person/s regardless of their status (ie an Affected Person or otherwise).

96 I submit that it is both incompetent and legally impermissible for RGS to rely on section 141(3) of the Companies Act, as motivated for in paragraph 26 (and its sub paragraphs) of its affidavit, in support of the relief sought by it in paragraphs 3 and 4 of the Notice of Counter Application. I respectfully submit that there is no basis for this Honourable Court to grant RGS the leave sought in paragraph 2 of the Counter Application Notice in terms of section 133(1)(b) of the Companies Act.

97 The "Agents" forming the subject matter of the Agency Agreement have no Assets in their own name. This is stated in the business rescue plan of Tongaat

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Hulett Sugar South Africa (Proprietary) Limited and Voermol (Proprietary) Limited. These Agency Agreements have no bearing whatsoever on the relief sought in this matter and are therefore irrelevant to an adjudication of these proceedings.

98 The relief sought in paragraph 6 of the Counter Application Notice is not understood. Vision is a creditor in the business rescue of THL and is therefore an Affected Person. In consequence, Vision is already a party to these proceedings.

99 As appears from what is set out above, THL and the BRPs did not oppose the relief sought by RGS in RGS's second urgent application (ie the Disclosure Application) because no relief was sought against any one or more of us. Whilst we do not accept that RGS is entitled to the relief sought in paragraphs 7 and 8 of RGS's Counter Application Notice, the BRPs do not oppose such relief. Since this relief is sought against Vision, I do not deal with paragraphs 356 to 362 of RGS's Answering Affidavit in any further detail.

(ii) Allegations regarding Visions' alleged egregious conduct

100 The BRPs cannot and do not speak for Vision. In the event that this Honourable Court grants the relief sought in paragraph 6 of the Counter Application Notice, Vision will presumably deal with the allegations in paragraphs 46 to 83 of RGS's Answering Affidavit.

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101 Without detracting from paragraph 100 above -

101.1 none of the allegations or assertions contained in these paragraphs of and concerning Vision's alleged conduct and/or the implementation of the Vision Plan to date have anything to do with the relief that has been sought in this application. RGS is attempting to use these proceedings to impermissibly and inappropriately perpetuate its failed campaign as set out above; and

101.2 a number of aspersions are cast on the BRPs, *inter alia*, impugning the manner in which we have discharged our duties and conducted THL's business rescue. Those allegations are unfounded and false. We reserve the right to address those allegations in due course and if it becomes necessary to do so.

102 The above said, the allegations in paragraphs 46 to 83 of RGS's Answering Affidavit are entirely irrelevant to the adjudication of this application and I submit that this Honourable Court is not required to consider irrelevant matter which does not assist it in adjudicating a matter.

THE SHORT TERM PROPOSAL ADVANCED BY RGS (paragraphs 84 to 94 of RGS's Answering Affidavit)

103 RGS advances a proposal without being able to meet the immediate funding requirements of THL. It states that its proposal is capable of implementation in "*the short term*" in circumstances where it is likely -

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103.1 "unbankable" in South Africa;

103.2 unable to discharge FICA/KYC requirements particularly in circumstances where it has conceded that a fraud was perpetrated in its name and criminal charges are pending; and

103.3 where there is no evidence to show that RGS is capable of executing a transaction of the size and complexity required;

104 RGS relies on nothing more than a term sheet provided by Afrexim Bank which term sheet does not provide confirmation of a facility granted or funds advanced and/or available to RGS. Rather, the term sheet contains an exhaustive list of conditions precedent which will undoubtedly take an extensive period of time to fulfil - it begs the question as to what THL, with its urgent liquidity requirements, is supposed to do while RGS attempts to satisfy the conditions precedent even if there is the remote possibility that it can do so, which is not admitted.

105 RGS states that Afrexim Bank requires an extensive due diligence to be done and which on its own version will not be complete by April 2026. In fact, it is likely that such a due diligence may take weeks and in the interim THL will have no funding.

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106 The requirements and extensive and onerous conditions set out in the term sheet from Afrexim Bank which require fulfilment prior to the advance of any funds to RGS, reveals the absurdity of RGS's proposal.

107 In any event, this Honourable Court is not enjoined to sanction or approve any business proposal advanced by RGS because that would deprive the general body of creditors of their right to vote on a business rescue plan and, in turn, circumvent the provisions of section 151 of the Companies Act.

THE COURT'S DISCRETION IN LIQUIDATION PROCEEDINGS (paragraphs 95 to 107 of RGS's Answering Affidavit)

108 Substantively there are two issues: -

108.1 the BRPs' inability to continue to implement the Plan thereby resulting in their determination that there is no longer a reasonable prospect of rescuing THL compelling the BRPs to act in accordance with the provisions of section 141(2) of the Act; and

108.2 the factual and commercial insolvency of THL.

109 None of the above has been seriously challenged. Accordingly, *prima facie*, the balance of probabilities on the affidavits delivered by the BRPs (and RGS) favours the granting of the relief sought by the BRPs.

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110 As Applicants, the BRPs have *prima facie* established the requisites for the granting of a provisional liquidation order based on what is stated above and in my founding affidavit. Absent any special circumstances, the Court should exercise its narrow discretion in favour of the granting of the order sought by the BRP's.

111 RGS has failed to provide grounds, save for its professed public concerns, that justify the exercise by this Court of its discretion not to grant a provisional winding-up order.

112 Furthermore, this application does not entitle Vision, RGS and the IDC to utilise the process to resolve their various issues relating to the Plan, the debts incurred as a result thereof and/or the exercise of their rights in respect of the various security granted to them.

113 THL is hopelessly factually and commercially insolvent and neither of the above parties can genuinely deny this fact.

114 Whilst the BRPs are acutely aware of the impact that the granting of a provisional liquidation order will have on the Kwazulu-Natal Province, the employees of THL and the greater public, this does not permit THL to continue to trade in insolvent circumstances and it cannot, in fact, do so without the funding which it has been requesting from the IDC and Vision in accordance with the Plan for months.

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115 RGS offers no competent or viable solution relating to funding and its professed humanitarian concerns in the face of what has become its apparent motive do not assist in its argument as to why the Court should refuse the granting of a provisional liquidation order.

116 The professed desire of RGS, Vision and the IDC to save the business of THL is not met with the same enthusiasm or willingness (and in the case of RGS, an ability) to actually advance funds thereby enabling the continued trading of THL.

RGS'S ACCOUNT OF THE "FACTUAL BACKGROUND" (paragraphs 161 to 316 of RGS's Answering Affidavit)

117 There is not a single allegation or assertion advanced in paragraphs 161 to 222 that is even remotely relevant to an adjudication of this application.

118 I do not intend to burden this affidavit or the urgent court by responding in detail to the allegations contained in these paragraphs in circumstances where they all relate to the Debt-to-Equity Conversion and other historic matters, which are no longer of any relevance (given, among others, the failure of the THL shareholder resolutions voted on at the SGM of 8 August 2024).

119 The position set out in paragraph 118 above should not, in any way, be construed as an acceptance as to the correctness of these paragraphs, or as a waiver of the BRP's rights to supplement these papers in due course. The BRP's have dealt with all of the matters raised in the previous proceedings and stand by their answers in previous affidavits. In the paragraphs that follow, I provide a

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summarised account of the events traversed by RGS in paragraphs 161 to 222 of RGS's Answering Affidavit. The contents of paragraphs 233 to 316 of RGS's Answering Affidavit have been dealt with by me above.

120 These paragraphs contain pages and pages of irrelevant matter which support the BRP's averments that RGS's applications and its opposition to this application constitutes an abuse of process of this above Honourable Court, warranting a punitive cost award in favour of the BRPs.

121 RGS's complaints that the Plan does not meet the requirements of section 150(2) are equally unfounded. The Plan (including the Alternate Plan) complies with section 150 of the Companies Act. The details relating to the compliance were set out in great detail in earlier papers and RGS has not even taken the effort to respond to these, nor bring those facts to the attention of this Honourable Court, because they know their assertions are wrong.

122 RGS has glibly ignored what is stated in the final bullet point of section 6.1.7 of the Plan (the "**Relevant Section**") which states that -

- *"to the fullest extent possible Vision Parties and the BRPs will seek to structure the implementation of this Business Rescue Plan such that all stakeholders, other than Shareholders and the JSE as a result of the delisting/liquidation of THL, will be in substantially the same position as they would have been had the originally contemplated Vision Transactions been implemented."*

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123 The Relevant Section contemplates that the content of the Plan will apply *mutatis mutandis* to the Alternate Plan wherever appropriate (ie to the fullest extent possible), the outcome being that all creditors and employees would be in the same position as they were had the debt-to-equity exchange taken place. The only exception would be the shareholders, who knowingly rejected the debt-to-equity conversion, not being entitled to any recovery, but to retain their shareholding in THL.

124 The Relevant Section sets out that the Alternate Plan will have the following features -

124.1 an acquisition by the Vision Parties (or their nominee) of THL's assets and businesses as going concerns;

124.2 payment for such assets will be affected by way of set-off against the secured claims then held by the Vision Parties. Should Vision not be the outright owner of such claims, the Lender Group would ensure that sufficient of the claims are delivered to be set off against the purchase price, just as in the Conversion scenario;

124.3 appropriate arrangements will be made for payment of the IDC post-commencement financing facility;

124.4 unsecured creditors and secured creditors will otherwise be treated as contemplated in the debt-to-equity conversion (ie the main Plan);

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124.5 such acquisition will be subject to the usual regulatory and other approvals required in each jurisdiction;

124.6 in view of the sale, THL will no longer have any assets and will be delisted and liquidated as its shares will have a nil value; and

124.7 the Vision Parties and the BRPs will attempt to structure the implementation of the Plan so that all stakeholders, other than shareholders and the JSE, will be in substantially the same position as they would have been had the originally contemplated Vision transactions been implemented.

125 I accordingly dispute that the Alternate Plan does not constitute a self-standing alternative business rescue plan that is capable of implementation in its current form.

126 It remains unclear what further detail of the Alternate Plan is required over and above what is contained in the Relevant Section - RGS has not identified this further detail.

127 In amplification of the above, yet again, despite it being outlined in prior papers -

127.1 for the purposes of Part A - Background -

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- 127.1.1 material assets and security remain exactly the same whether in the context of a debt-to-equity conversion (ie the Plan) or a business sale (ie the Alternate Plan). This is dealt with in the Plan at paragraph 5.3.6 at page 58 and Annexure E of the Vision Plan in full compliance with section 150(2)(a)(i);
- 127.1.2 the complete list of creditors of the company and their ranking and proof of claims remains exactly the same whether in the context of a debt-to-equity conversion (ie the Plan) or a business sale (ie the Alternate Plan). This appears in the Plan and is dealt with in paragraph 5.3.7 at page 63, table 2 at page 64 and Annexure A of the Vision Plan in full compliance with section 150(2)(a)(ii);
- 127.1.3 the probable dividend that would be received by creditors in the event of a liquidation remains exactly the same whether in the context of a debt-to-equity conversion or a business sale. In the context of a sale of assets there is no distribution to shareholders and that fact is apparent from the last bullet point of 6.1.7.1 of the Plan. In addition, the probable dividend is dealt with in paragraph 5.3.9 at page 69 and Table 3 at page 70 of the Vision Plan in compliance with section 150(2)(a)(iii) of the Companies Act;
- 127.1.4 a complete list of the holders of the company's issued securities remains exactly the same whether in the context of a debt-to-equity conversion or a business sale. The most up to date list of holders of

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issued securities (shareholders) was dealt with in paragraph 5.3.10 at page 73 and Annexure H to the Vision Plan, in full compliance with section 150(2)(a)(iv);

127.1.5 the agreement relating to practitioners' remuneration remains exactly the same whether in the context of a debt-to-equity conversion or a business sale. The agreement concerning the business rescue practitioners' remuneration is traversed in paragraph 5.3.11 at page 73 and Annexure I to the Vision Plan, in full compliance with section 150(2)(a)(v); and

127.1.6 the statement as to a proposal made informally by a creditor of the company remains exactly the same whether in the context of a debt-to-equity conversion or a business sale. Such statement is contained in paragraph 5.3.13 at page 75 of the Vision Plan in compliance with section 150(2)(a)(vi);

127.2 for the purposes of Part B - Proposals -

127.2.1 the nature and duration of the moratorium remains exactly the same whether in the context of a debt-to-equity conversion or a business sale. This is dealt with in, *inter alia*, paragraph 8 at page 112 of the Vision Plan in compliance with section 150(2)(b)(i);

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127.2.2 the extent to which the company is to be released from payment of debt and the extent to which debt is to be converted to equity in the company. has been detailed in 6.1.7.1 of the Plan. Payment for the assets relating to the Alternate Plan will be effected by way of a set off against the Secured Claims. The payment to concurrent creditors of R75 million will take place in accordance with the Plan and so will the SASA Escrow amount of approximately R526 million. Any remaining claims against THL will become unenforceable in accordance with the Plan;

127.2.3 the ongoing role of the company and the treatment of existing agreements is dealt with as follows: Under the debt-to-equity conversion the contracts will remain with THL. Paragraph 6.1.7.1 of the Plan records that the assets and businesses of THL will be sold as going concerns and furthermore that all stakeholders, other than shareholders and the JSE, will be in substantially the same position as they would have been in had the debt-to-equity conversion occurred. The natural implication is that THL's contracts, will, to the greatest extent possible, be transferred to the relevant Vision entity, as will all other relationships with counterparties. The records in this regard accordingly comply with section 150(2)(b)(iii);

127.2.4 the property of the company that is available to pay creditors' claims remains exactly the same whether in the context of a debt-to-equity conversion or a business sale. This is dealt with in paragraph 6.3.3 at

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page 102 and Annexures C and E of the Plan in accordance with section 150(2)(b)(iv);

127.2.5 the order of preference in which the proceeds of property will be applied to pay creditors remains the same, save that there will be no conversion of debt-to-equity and instead debt will be applied against the purchase price payable in respect of the sale of the businesses and assets of THL. This issue has been addressed in the first bullet point of paragraph 6.1.7.1 in compliance with section 150(2)(b)(v);

127.2.6 the benefits of adopting the Plan are the same whether in the context of a debt-to-equity conversion or a business sale (ie the Alternate Plan), which is dealt with in, *inter alia*, paragraphs 6.1.2.1 and 6.1.2.2 at page 80, third bullet and in paragraph 6.1.3.1 at page 81, paragraph 9 at page 113 of the Vision Plan in compliance with section 150(2)(b)(vi). However, the difference is that THL would be delisted and thereafter deregistered, which is clearly stated in the Plan notwithstanding RGS's contentions that affected persons were never advised of this fact. These differences are recorded in 6.1.7.1 of the Plan; and

127.2.7 the Plan describes the effect on shareholders in both a conversion and an asset sale. Under the conversion, shareholders would retain 2,7% of the shares in THL, whereas under an asset sale shareholders retain 100% in THL, but THL will be delisted and thereafter deregistered in the case of the Alternate Plan. There will accordingly be no value for

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shareholders. This issue is addressed in the penultimate bullet point of paragraph 6.1.7.1 of the Plan, which addresses section 150(2)(b)(vii);

127.3 for the purposes of Part C - Assumptions and Conditions -

127.3.1 a statement of the conditions that must be satisfied for the Plan to come into operation and be implemented remain the same whether in the context of a debt-to-equity conversion or a business sale. Conditionality is expressly dealt with in paragraphs 6.3.7 at page 110 and paragraph 11 at page 123 of the Vision Plan. Specifically in relation to the Alternate Plan, paragraph 6.1.7.1 of the Plan records that the sale of the assets and the businesses will be subject to requisite regulatory and other approvals common for transactions of this nature in each jurisdiction. Section 150(2)(c)(i) does not require the BRPs to attach documentary evidence supporting every fact contained in a proposed business rescue plan, nor does the Companies Act require the full terms and conditions of agreements of that nature to be particularised in the plan. The fact that agreements of this nature exist is all that is required to be contained in a proposed business rescue plan. In addition, paragraph 13 of the Plan deals with the requirements for substantial implementation. Accordingly, the Plan complies with section 150(c)(i);

127.3.2 the effect on employees remains substantially the same whether in the context of a debt-to-equity conversion or a business sale. This is dealt with in, *inter alia*, paragraph 5.3.5.13 at page 55, paragraph 6.2 at page

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97, paragraphs 6.3.8 and 6.3.9 at page 111, and in paragraph 9.3.3 at page 114 of the Plan in compliance with section 150(2)(c)(ii). Additionally, because the sale of the South African business of THL is that of a going concern, section 197 of the Labour Relations Act applies, and employees will be seamlessly transferred to the relevant Vision entity. In relation to the other jurisdictions in which THL operates, the requisite change of control will occur by way of a sale of shares and consequently the employees in those jurisdictions will continue to be employed by the THL entities currently employing them. This point is addressed in various bullet points of paragraph 6.1.7.1 of the Plan and, in particular, the ultimate bullet point of that paragraph;

127.3.3 the circumstances in which the Plan will end remain the same whether in the context of a debt-to-equity conversion or a business sale. This is covered in paragraph 12 at page 124 and paragraph 9 at page 125 of the Vision Plan as required by section 150(2)(c)(iii);

127.3.4 a projected balance sheet for the company and a statement of income and expenses for the ensuing three years is not catered for in the context of a business sale because it is stated in the Plan that the assets would be sold and as a result of the company becoming a dormant shell, the company will be delisted and liquidated. As a result, forecasts will be meaningless as there will be no turnover and there will be no assets in the shell of THL. It would be counterintuitive to provide a balance sheet and statement of the nature contemplated by

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section 150(2)(c)(iv)(aa) and 150(2)(c)(iv)(bb) because the shell of THL will cease to conduct business, which the Plan states; and

127.4 the BRPs' certificates in terms of section 150(4) appear at page 140 of the Plan, which plan was published in accordance with the various extensions of the dates to publish the Plan as approved by the holders of the creditors' voting interests in accordance with section 150(5)(b).

128 Having regard to what is set out in paragraph 123 and its subparagraphs above, RGS's complaints that the alternate Plan does not comply with section 150 of the Companies Act are meretricious and designed to cause an unnecessary distraction from RGS's abuse of process.

129 In any event, a failure to comply with section 150(2)(a) to 150(2)(c) does not have the consequence that a business rescue plan falls to be set aside. Section 150(2) clearly states that "*a business rescue plan must contain all the information reasonably required to facilitate affected persons in deciding whether or not to accept or reject the plan...*".

130 In short, then—

130.1 an overwhelming majority of THL's creditors present at the Section 151 Meeting and holding in aggregate 98.51% of the voting rights in THL's business rescue, present and voting, were satisfied that the Plan (which

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included the Alternate Plan) contained sufficient information so as to enable them to consider and vote in favour of the adoption and approval of the Plan;

130.2 RGS voted against the Plan without ever suggesting that the Plan did not contain sufficient information to enable it to decide whether to vote in favour of or against the Plan. Having voted on the Plan and having failed to challenge it at the appropriate time, it is legally impermissible for RGS to institute proceedings at this late stage to contend that the Vision Plan should not have been adopted and is unlawful. RGS has **no right**, whether *prima facie* or at all, to do so. RGS has waived its entitlement to rely on this right; and

130.3 in terms of section 152(4) of the Companies Act, the Plan was adopted and approved by (substantially more than) the requisite number of creditors and became final and binding on all creditors and *all affected persons*.

131 For all of the reasons set out above, the BRPs dispute that RGS has made out any case for contending that the Plan, or the Alternative Plan, as adopted is unlawful.

132 RGS also does not disclose to this Honourable Court that its authorised representatives were present at the Section 151 Meeting and voted against the adoption of the Adopted Plan. As previously stated, the overwhelming majority of creditors voted in favour of the Adopted Plan at the Section 151 Meeting and have not since taken issue with it (other than by RGS's puppet, Powertrans).

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Moreover, RGS did not seek to interdict the vote on the Vision Plan, or raise the issues it now raises.

133 At the Section 151 Meeting, Mr Murgatroyd explained that business rescue is a process and the alternative of not having the Adopted Plan approved was dire. The approval of the Adopted Plan was, in his considered view, far better than the alternative and he therefore remained of the view, at the time, that there was a reasonable prospect of rescue.

134 Mr Rob Bessinger ("**Mr Bessinger**") of Vision explained (in relation to the Debt-to-equity Conversion) that Vision would acquire the Claims and Security and then convert a substantial portion of the debt to equity. Mr Bessinger advised that the key objective was to bring THL back to solvency. He acknowledged that there would be residual debt but nevertheless expressed the view that a position of solvency could be reached.

135 It is correct that paragraph 2.3 of the Adopted Plan provides that -

"2.3 *The key feature of this Business Rescue Plan, pursuant to its Adoption and implementation, is the acquisition by the Vision Parties of the substantial Lender Group Claims (as noted above) and the subsequent conversion by the Vision Parties of a material portion of such Claims into new equity in THL ("**the Vision Transactions**") ..."*

136 But RGS clearly did not understand paragraph 2.3 of the Adopted Plan (or wilfully misconstrues it). There was never an intention for a conversion of all of the Claims and Security into new equity in THL. Paragraph 2.3 clearly states that the

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conversion would be in respect of a material portion of the Claims and Security (i.e. that in excess of R3,6 billion).

137 The substantial non-refundable deposit paid by Vision to the Lender Group was sufficient to vest Vision with sufficient debt to enable the conversion to take place.

138 On that basis, the debt-to-equity transaction, which was capable of implementation, would have resulted in the debt reducing to R3,6 billion and the balance converted into equity notwithstanding the fact that the outstanding balance of the purchase price had not yet been settled. Creditors were advised at the Section 151 Meeting that the BRPs were in possession of a letter from the Lender Group confirming this, despite what RGS states. In any event the Adopted Plan always contemplated a conversion of a portion of the debt, leaving debt of R3,6 billion.

139 The payment of a substantial non-refundable deposit provided the BRPs with greater comfort that Vision was committed to the transaction, and could meet its payment obligations under it, than a bank letter confirming availability of funds could (which as it turns out in the instance of RGS, was fraudulent).

140 RGS emphasises, what it describes as, "*an important aspect of RGS' case upfront*" by asserting what it describes as '*a major irregularity*' regarding the *implementation of the Adopted Plan*". That irregularity is identified as being that despite the letter from Standard Bank confirming that Vision had "*sufficient cash*", and that cash having been paid on the dates referred to above, which were

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sufficient to enable Vision to discharge its obligations to the Lender Group, the delay in implementing the Adopted Plan, and effecting payment, supports the inference that Vision did not possess such funds.

141 This non-sequitur, which is belied by the incontrovertible fact that payment has been made, ignores the reasons for such delay which have been fully explained in affidavits delivered by the BRP's in other proceedings.

142 The Standard Bank Letter (referred to in paragraph 56 of the founding affidavit) is clear and unequivocal in its terms, recording, in relevant part -

- "• *Vision holds a Standard Bank Account;*
- *the account has sufficient cash for Vision to execute the contemplated transaction as per the amended Vision Business Rescue Plan dated 20 December 2023;*
- *the account has sufficient cash to meet the proposed payment to unsecured creditors of R75,000,000 as per the amended Vision business rescue plan dated 20 December 2023."*

143 RGS fails to articulate why an unequivocal and unconditional recordal by one of South Africa's pre-eminent financial institutions, is insufficient to satisfy it as to the veracity of the recordal therein. The Standard Bank letter was never withdrawn nor was its content amended. The BRPs made no misrepresentations in relation to it.

144 The fact that the Lender Group chose to amend the wording (as is the right of any creditor to propose amendments of the business rescue plan to be voted on at the Section 151 Meeting) of the Vision proposal does not invalidate the Adopted

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Plan or gainsay the BRPs previous statements in relation to it. The amendments made to the Vision proposal during the course of the Section 151 Meeting were to clarify that a substantial deposit had already been paid and the balance of the purchase price for the sale of the claims would need to be paid by a later date. The Lender Group would have known the position despite the Standard Bank Letter. They were, moreover, disclosed to and known by Affected Persons following the process.

145 It was reasonable for the Lender Group to receive the non-refundable deposit before agreeing to vote in favour of the Vision Proposal. The payment of a substantial non-refundable deposit also provided the BRPs with greater comfort that Vision was committed to the transaction, and could meet its payment obligations under it. The payment of funds clearly evidences a greater appetite for the transaction than the mere provision of a bank letter confirming availability of funds.

146 It is denied that the BRPs were in any way delinquent in relying on or representing the status of Vision's funding at the Section 151 Meeting. The allegations of RGS to the contrary are entirely without merit.

147 RGS's complaint is that the BRPs ought to have taken steps against Vision, or to have ceased implementation of the Adopted Plan, when Vision failed to provide the documents called for in the letters of 8 and 16 October 2024. But it provides only a partial account of the engagements between the BRPs and Vision on the one hand, and the Lender Group on the other.

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148 On 8 October 2024, Werksmans addressed a letter to Stein Scop (Vision's legal representatives) in which the THL respondents (THL and the BRP's) ("**the THL respondents**") called on Vision to furnish -

148.1 a copy of each executed Transfer Certificate which regulates the transfer of the indebtedness owing by THL and the associated security to Vision (including the document which the THL respondents understand is termed 'Transfer Certificate 3');

148.2 proof of "*the amount*" paid by Vision to the Lender Group;

148.3 proof that the Lender Group has transferred all of its Claims and Security to Vision;

148.4 the terms of the contractual arrangements (including, but not limited to the Acquisition Agreement) between the Lender Group and Vision;

148.5 precise details of the amounts payable by Vision to the Lender Group and what the payment terms are;

148.6 details regarding the transfer of the Lender Group's Claims and Security to Vision, including full details of the Claims and Security transferred by the Lender Group to Vision to date;

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148.7 proof of the payments that have been made by Vision to the Lender Group to (at the very least) demonstrate that Vision is currently not in default of the Acquisition Agreement; and

148.8 a factually accurate response to the content of the DMI letter sent to Werksmans dated 5 September 2024 to be able to provide RGS (and a Court) comfort that that the transactions will be implemented and all amounts due to the Lender Group will be paid in full by Vision.

149 A copy of Werksmans' letter addressed to Stein Scop dated 8 October 2024 is attached to RGS's Answering Affidavit as MAR20.

150 On 14 October 2024, Stein Scop addressed a letter to Werksmans (attached to RGS's Answering Affidavit as MAR22), in which they *inter alia*, -

150.1.1 reflected on the history of RGS as an unsuccessful bidder and repeated what they asserted to be the common cause facts relating to the fake letter, and stated that they were surprised that the BRPs were willing to entertain requests from RGS in the light of that history;

150.1.2 stated their position that Affected Persons are not entitled to the information and documentation of the nature sought by RGS; and

150.1.3 declined to provide the information and documentation sought.

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151 On 16 October 2024, Werksmans addressed a further letter to Stein Scop MAR24 to make clear the BRPs' statutory duties, and repeated their call to Vision to demonstrate, to the THL respondents' satisfaction, that -

151.1 the transactions forming the subject matter of the transfer certificate (ie the debt sale) are on track;

151.2 Vision is in a position to timeously discharge their payment obligations to the Lender Group; and

151.3 there is no impediment to the Sale of Asset Transaction in the context of the sale of debt transaction.

152 The BRPs were engaging with the Lender Group in parallel. On 8 October 2024, the BRPs requested that the Lender Group furnish us with -

152.1 a copy of each executed Transfer Certificate which relates to the transfer of the Claims and Security by the Lender Group to Vision (including the document which the BRPs understand is termed 'Transfer Certificate 3');

152.2 proof of "*the amount*" paid by Vision to the Lender Group;

152.3 proof that the Lender Group has transferred all of the Claims and Security to Vision;

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- 152.4 the terms of the contractual arrangements (including, but not limited to the Acquisition Agreement) between the Lender Group and Vision;
- 152.5 precise details of the amounts payable by Vision to the Lender Group and the payment terms;
- 152.6 details regarding the transfer of the Claims and Security to Vision, including full details of the Claims and Security transferred by the Lender Group to Vision to date;
- 152.7 proof of the payments that have been made by Vision to the Lender Group to (at the very least) demonstrate that Vision is currently not in default of the Acquisition Agreement; and
- 152.8 a factually accurate response to the content of the DMI letter that would give RGS (and a Court) comfort that the transactions will be implemented and all amounts due to the Lender Group will be paid in full by Vision.

153 A copy of Werksmans' letter addressed to ENSAfrica (the Lender Group's legal representatives) dated 8 October 2024 is attached to RGS's Answering Affidavit as MAR19.

154 On 10 October 2024, Mr Venashan Seerangam ("**Mr Seerangam**"), acting as agent of the Lender Group, replied to Werksmans' letter ("**Mr Seerangam's email**") and advised that the Lender Group was unable to disclose the transfer

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certificate or any of the content thereof without the consent of Vision due to the confidentiality undertakings contained in the transfer certificate. The Lender Group also recommended that Vision be approached to obtain their consent to the disclosure of the transfer certificate.

155 On the same day, Werksmans responded to Mr Seerangam and requested that the Lender Group reconsider its position in light of its contractual obligations to THL in terms of the Common Terms Agreement.

156 A copy of this email exchange between Mr Seerangam and Werksmans on 10 October 2024 is attached to RGS's Answering Affidavit marked MAR21.

157 On 16 October 2024, Werksmans addressed additional correspondence to ENSAfrica for the attention of the Lender Group (Annexure MAR28 to RGS's Answering Affidavit), in which the THL respondents -

157.1 recorded that the BRPs are enjoined to implement creditors' wishes and carry the Asset Sale Transaction into effect and, whilst discharging their statutory duties and responsibilities, (which the BRPs have and continue to do to date), to take all appropriate steps to facilitate implementation of the Asset Sale Transaction;

157.2 noted that the position adopted by the Lender Group in Mr Seerangam's email had placed the THL respondents in a position where they are incapable of responding substantively to DMI's letter;

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157.3 called upon the Lender Group to demonstrate, to the BRPs' satisfaction, that -

157.3.1 the transactions forming the subject matter of the transfer certificate (ie the debt sale) are on track;

157.3.2 the Lender Group was confident that Vision will timeously discharge their payment obligations to the Lender Group; and

157.3.3 there is no impediment to the Sale of Asset Transaction in the context of the sale of debt transaction.

158 In response to the THL respondents' request, the Facility Agent for the Lender Group addressed a letter in which it advised the THL respondents, *inter alia*, that -

158.1 the Asset Sale Transaction should be capable of implementation irrespective of whether the secured Claims are owned by the Lender Group or Vision. The status of the implementation of the transfer certificate (a reference to the Acquisition Agreement) concluded between Vision and the Lender Group is therefore not determinant of whether the Adopted Plan is capable of implementation; and

158.2 the Lender Group confirmed in a letter dated 24 July 2024 that the portion of the Claims and Security that was required to implement the Debt-to-equity

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Conversion would be made available to Vision for the purposes of the Debt-to-equity Conversion; and

158.3 in the same way that the Debt-to-equity Conversion was capable of implementation, notwithstanding that the Lender Group still held the secured Claims, the Asset Sale Transaction was also capable of implementation.

159 A copy of the Facility Agent's letter dated 22 October 2024 is attached to RGS's Answering Affidavit as MAR25.

160 In short, the Lender Group confirmed that there is no impediment to the implementation of the Sale of Asset Transaction. For at least this reason, the contents of paragraphs 234 to 239 of RGS's Answering Affidavit are denied.

161 Those exchanges make plain that the BRPs sought the documents called for therein to provide additional comfort and satisfy ourselves that implementation of the Adopted Plan remained possible and to stave off the urgent proceedings that RGS was then threatening (and subsequently brought).

162 In any event, Vision and the Lender Group furnished us with information and documentation to the BRP's satisfaction. RGS subsequently brought the RGS first urgent application, in which it sought both to compel Vision to produce the documents at issue and to interdict the BRPs from continuing to implement the Adopted Plan. This Court declined to grant either head of relief. The BRPs

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consequently remained duty bound to implement the Adopted Plan. It would have been a breach for us to decline to do so.

163 Contrary to RGS's claims, the BRPs have, based on the documentation and evidence furnished, continually enquired into and satisfied ourselves as to the status of the Acquisition and the implementation of the Adopted Plan. We satisfied ourselves that Vision has discharged its payment obligations owed to the Lender Group in full, which in turn was confirmed by the Lender Group, the selling party. The mere *ipse dixit* of RGS does not demonstrate the contrary.

164 I have demonstrated that the conclusions that the BRPs drew were supported by the documentation and evidence furnished to us and can be accepted, without qualification.

165 The BRPs are not party to the transaction(s) between Vision and its financier(s). The terms upon which Vision may have borrowed from a bank and settled the acquisition price is a matter between the parties to that transaction.

166 I note however that -

166.1 at no time have any of the assets of THL been offered as security for the payment to the Lender Group. The assets serve as security for the Claims and Security and for the IDC PCF;

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166.2 at no time have the BRPs made company assets available to a prospective acquiror for purposes of raising funds; and

166.3 Vision confirmed, under oath, in proceedings before this Court that it has not used THL's assets as security for its funding.

167 RGS has put up no basis for gainsaying or disputing these positive averments.

168 RGS most unfairly contends, in paragraph 248 of RGS's Answering Affidavit, that the BRPs have been negligent in failing to verify the authenticity of Vision's proof of payment. The complaint is bizarre because, as paragraphs 211 to 214 of the founding affidavit disclose, RGS records that it has itself confirmed with Standard Bank's employee that the proof of payment is authentic.

169 The confusion and contradiction is compounded by paragraph 8 of RGS's Answering Affidavit (the content of which is disputed) in which the following indecipherable assertion is made -

"8. While the aforesaid irregularity regarding Vision's funding, and the hitherto unexplained circumstances regarding the 'incorrect' proof of funds submitted by it, are relevant to RGS's case, RGS's case is not predicated on the questions that remain regarding whether Vision has fully and lawfully discharged its payment obligations relating to the Adopted Plan."

170 It accordingly appears to be common cause, and RGS accepts as a fact, that *"Vision has fully and lawfully discharged its payment obligations relating to the Adopted Plan"*.

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171 The BRPs were satisfied that Vision has indeed effected payment to the Lender Group. Vision has previously stated under oath that it had paid the Lender Group in full. The Lender Group and their attorneys have also confirmed that Vision has discharged its obligations to them and has transferred the Claims and Security. Since it is fanciful to suggest that the entire Lender Group (comprising approximately 13 different financial institutions) would have permitted such transfer in the absence of being paid, the BRPs were justifiably satisfied that the Acquisition had been duly completed. Just because RGS admitted to providing a fraudulent letter does not mean everyone else did the same.

172 Inexplicably and despite the absence of any evidence to the contrary, RGS maintained its intransigent, unreasonable and inexplicable stance by suggesting, without more, that these unequivocal records, which were foundational to the application then in issue, could not be accepted without "proof". In addition to Vision's own attorneys stating -

"Vision have made payment of the purchase consideration due to the Lender Group. In the circumstances the transaction between Vision and the Lender Group has been finalised",

(which confirmation was received on 9 May 2025), on 21 May 2025, the Lender Group's attorneys recorded , *inter alia*, the following -

"The Lender Group hereby confirms that [Vision] has fully discharged all of its payment obligations vis-à-vis the purchase consideration due by it to the Lender Group relating to the transfer of the claims and the security of the Lender Group (in respect of THL) and (its subsidiaries) ("THL Group Claims and Security").

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We are further instructed to confirm that the THL Group Claims and Security were unconditionally and irrevocably transferred to Vision on 9 May 2025."

173 RGS can never contend that *"that the Lender Group's above response was untruthful"*. Doing so would call into question the integrity of many of South Africa's pre-eminent financial institutions, who are all members of the Lender Group, without any basis for doing so whatsoever.

174 This clear and unequivocal recordal given by ENS on behalf of the Lender Group (being South Africa's pre-eminent lenders) is nevertheless not sufficient to satisfy RGS. It advances the untenable proposition that the payment obligations referenced in the abovementioned extract are obligations discharged in a manner inconsistent with the express provisions of the Adopted Plan. In amplification, they allege that the terms *"payment obligations"* and *"discharged"* are -

174.1 capable of connoting something other than actual cash payment; and

174.2 consistent with Vision having leveraged THL's assets in order to obtain *"last minute loan finance to discharge its payment obligations to the Lender Group"*.

175 These allegations are not just untenable – they are absurd in the extreme and baselessly suggest complicity and dishonesty on the part of the members of the Lender Group who are well aware of the express provisions of the Adopted Plan and would not tolerate any variation which would be capable of undermining the validity of the transaction which has now been carried into effect. More

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importantly, there is no conceivable way that the Lender Group would have unconditionally and irrevocably transferred the Claims and Security which they held absent a complete and proper discharge of Vision's payment obligations.

176 Nevertheless, not content with the proof of payment provided by Vision ("the POP"), RGS engaged in an *ad nauseam* attack on the documentation by conducting a self-serving forensic analysis. RGS went so far as to even suggest the proof of payment provided by the Lender Group was in fact a fake. They have persisted with this stance despite the fact that a representative of Standard Bank was contacted and confirmed that -

"The document sent by yourself (a reference to RGS' attorney) to me (a reference to Mr Moodley of Standard Bank) with the proof of payment is indeed valid and was created by myself."

177 With respect, Mr Rajahussen, RGS's chairman, should be embarrassed deposing to any affidavit that contains assertions of the nature set out above. The Lender Group, who, on RGS's own version, was the largest creditor in the business rescue of THL, stated under oath that they have received payment in full for any and all security and claims that they had against THL. They would never have made a statement of this nature, which would strip them of any ability to recover amounts due, owing, and payable to them, unless it was true. For RGS to claim otherwise defies logic and smacks of desperation.

178 The THL respondents dispute that the BRPs ought to have taken any further steps to verify payment by Vision, or that we have in any way breached our fiduciary duties.

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URGENCY AND ABUSE OF PROCESS (paragraphs 126 to 159 of RGS's Answering Affidavit)

179 Despite what is stated in paragraphs 126 to 159 of RGS's Answering Affidavit of and concerning the fact that the matter is not urgent, when this application was called for hearing on 27 February 2026, counsel for RGS made the following submissions in relation to the issue of urgency -

179.1 in the context of agreeing a timetable for the exchange of further affidavits -

"And my lord, given the urgency of this matter, which is one thing that RGS does agree with the BRPs on, I would like the opportunity to address your lordship on the dates and the timing of the matter. Because we don't think that it's going to be possible for the matter to be postponed in a manner that isn't subject to very strict filing dates and exchanges of papers, given the impending insolvency of the company";

179.2 in the context of counsel for Abrina having requested much later dates for the exchange of affidavits -

"To postpone this matter for anything in the region of three weeks to allow simply for answering affidavits to be filed will result in the, in the insolvency of this company beyond repair, beyond rescue. So, so I need to, I need to put that before the court."

180 RGS has now unequivocally conceded this matter is urgent. In the circumstances there is no need to deal with RGS's assertions *vis-à-vis* urgency and/or abuse of process in paragraphs 126 to 159 of RGS's Answering Affidavit. In relation to the latter, because urgency and abuse of process (in this context) are mutually exclusive, it would be completely contradictory and inappropriate for RGS to

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persist in their stance that the BRPs conduct constitutes an abuse of process having conceded that this application and RGS's Counter Application is urgent and that the parties must be held to a strict time table given the commercial and factual insolvent position in which THL finds itself.

COSTS (paragraphs 363 to 366 of RGS's Answering Affidavit)

181 For the reasons set out in this affidavit of and concerning RGS's abuse of the process of this Honourable Court by delivering papers well in excess of 400 pages that are irrelevant to the relief sought in these proceedings and not actually having provided any cogent reason why the BRPs have been unjustified in seeking the relief they have, it will be argued at the hearing of this application that RGS be directed to pay all of the BRPs costs that relate to RGS's opposition to this application and RGS's Counter Application and RGS's Condonation Application on the C Scale as between Attorney and Client including the cost of two senior counsel where two senior counsel have been employed.



GERHARD CONRAD ALBERTYN N.O.

I certify that this affidavit was signed and sworn to before me at SANDTON on 4th MARCH 2026 by **GERHARD CONRAD ALBERTYN** who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath,

considered this oath to be binding on his conscience and uttered the following words
- 'I swear that the contents of this affidavit are both true and correct, so help me God.'



COMMISSIONER OF OATHS

GEORGE CHRISTODOULOU
2nd FLOOR SALA HOUSE, 12 FREDMAN DRIVE
SANDTON, JOHANNESBURG
COMMISSIONER OF OATHS EX OFFICIO
PRACTISING ATTORNEY R.S.A

Name
Address
Capacity

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"THL1"

IN THE HIGH COURT OF SOUTH AFRICA
KWA-ZULU NATAL DIVISION, DURBAN

CASE NUMBER: 2026-031780

In the matter between:

PETRUS FRANCOIS VAN DEN STEEN N.O. First Applicant

TREVOR JOHN MURGATROYD N.O. Second Applicant

GERHARD CONRAD ALBERTYN N.O. Third Applicant

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) First Respondent

THE AFFECTED PERSONS Further Respondents

and

ABRINA 9422 (PTY) LIMITED Intervening Party

CONFIRMATORY AFFIDAVIT - TREVOR JOHN MURGATROYD

I, the undersigned,

TREVOR JOHN MURGATROYD

do hereby make oath and state that -

- 1 I am a senior business rescue practitioner and a director of Metis Strategic Advisors (Proprietary) Limited which conducts business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.

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2 The matters I traverse in this affidavit are both true and correct. They are also within my personal knowledge - except where it is apparent from the context that they are not.

3 I have read the -

3.1 replying affidavit ("the replying affidavit") deposed to by GERHARD CONRAD ALBERTYN ("Albertyn") in response to the answering affidavit delivered by RGS HOLDINGS (PROPRIETARY) LIMITED ("RGS") in the above matter on 24 February 2026; and

3.2 answering affidavit ("the answering affidavit") deposed to by Albertyn in response to the founding affidavit delivered by RGS in RGS's counter application instituted under the above case number also on 24 February 2026.

4 I hereby confirm the truth and correctness of the contents of the replying affidavit and the answering affidavit insofar as the contents thereof relate to me and the applicants.

TREVOR JOHN MURGATROYD

I certify that this affidavit was signed and sworn to before me at _____ on ____ MARCH 2026 by **TREVOR JOHN MURGATROYD** who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words - *'I swear that the contents of this affidavit are both true and correct, so help me God.'*

COMMISSIONER OF OATHS

Name
Address
Capacity

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Protokol No: 216/26

"THL1"

IN THE HIGH COURT OF SOUTH AFRICA
KWA-ZULU NATAL DIVISION, DURBAN

CASE NUMBER: 2026 - 031780

In the matter between:

PETRUS FRANCOIS VAN DEN STEEN N.O.

First Applicant

TREVOR JOHN MURGATROYD N.O.

Second Applicant

GERHARD CONRAD ALBERTYN N.O.

Third Applicant

and

TONGAAT HULETT LIMITED
(IN BUSINESS RESCUE)

First Respondent

THE AFFECTED PERSONS

Further Respondents

and

ABRINA 9422 (PTY) LIMITED

Intervening Party

CONFIRMATORY AFFIDAVIT - TREVOR JOHN MURGATROYD

I, the undersigned,

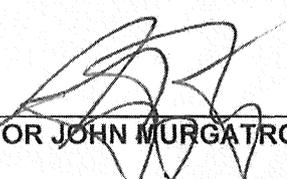
TREVOR JOHN MURGATROYD

do hereby make oath and state that -

- 1 I am a senior business rescue practitioner and a director of Metis Strategic Advisors (Proprietary) Limited which conducts business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.

MG 

- 2 The matters I traverse in this affidavit are both true and correct. They are also within my personal knowledge - except where it is apparent from the context that they are not.
- 3 I have read the -
- 3.1 replying affidavit ("the replying affidavit") deposed to by GERHARD CONRAD ALBERTYN ("Albertyn") in response to the answering affidavit delivered by RGS HOLDINGS (PROPRIETARY) LIMITED ("RGS") in the above matter on 24 February 2026; and
- 3.2 answering affidavit ("the answering affidavit") deposed to by Albertyn in response to the founding affidavit delivered by RGS in RGS's counter application instituted under the above case number also on 24 February 2026.
- 4 I hereby confirm the truth and correctness of the contents of the replying affidavit and the answering affidavit insofar as the contents thereof relate to me and the applicants.

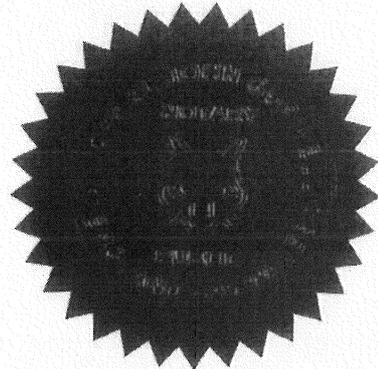

TREVOR JOHN MURGATROYD

I certify that this affidavit was signed and sworn to before me at Bristol, UK on 4th MARCH 2026 by TREVOR JOHN MURGATROYD who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words - *'I swear that the contents of this affidavit are both true and correct, so help me God.'*


NOTARY PUBLIC

Name MICHAEL GUPWELL
Address NOTARY PUBLIC
Capacity PRUDENTIAL BUILDINGS
11/19 WINE STREET
BRISTOL
BS1 2PH
TEL: 01179292811

This 4th March 2026



"THL2"

IN THE HIGH COURT OF SOUTH AFRICA
KWA-ZULU NATAL DIVISION, DURBAN

CASE NUMBER: 2026-031780

In the matter between:

PETRUS FRANCOIS VAN DEN STEEN N.O.	First Applicant
TREVOR JOHN MURGATROYD N.O.	Second Applicant
GERHARD CONRAD ALBERTYN N.O.	Third Applicant

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Respondent
--	------------------

THE AFFECTED PERSONS	Further Respondents
----------------------	---------------------

and

ABRINA 9422 (PTY) LIMITED	Intervening Party
---------------------------	-------------------

CONFIRMATORY AFFIDAVIT - PETRUS FRANCOIS VAN DEN STEEN

I, the undersigned,

PETRUS FRANCOIS VAN DEN STEEN

do hereby make oath and state that -

- 1 I am a senior business rescue practitioner and a director of Metis Strategic Advisors (Proprietary) Limited which conducts business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.

G.C
GeA

2 The matters I traverse in this affidavit are both true and correct. They are also within my personal knowledge - except where it is apparent from the context that they are not.

3 I have read the -

3.1 replying affidavit ("the replying affidavit") deposed to by GERHARD CONRAD ALBERTYN ("Albertyn") in response to the answering affidavit delivered by RGS HOLDINGS (PROPRIETARY) LIMITED ("RGS") in the above matter on 24 February 2026; and

3.2 answering affidavit ("the answering affidavit") deposed to by Albertyn in response to the founding affidavit delivered by RGS in RGS's counter application instituted under the above case number also on 24 February 2026.

4 I hereby confirm the truth and correctness of the contents of the replying affidavit and the answering affidavit insofar as the contents thereof relate to me and the applicants.

PETRUS FRANCOIS VAN DEN STEEN

I certify that this affidavit was signed and sworn to before me at _____ on ___ MARCH 2026 by **PETRUS FRANCOIS VAN DEN STEEN** who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words - *'I swear that the contents of this affidavit are both true and correct, so help me God.'*

COMMISSIONER OF OATHS

Name
Address
Capacity

GC
GeA

"THL2"

IN THE HIGH COURT OF SOUTH AFRICA
KWA-ZULU NATAL DIVISION, DURBAN

CASE NUMBER: 2026-031780

In the matter between:

PETRUS FRANCOIS VAN DEN STEEN N.O.	First Applicant
TREVOR JOHN MURGATROYD N.O.	Second Applicant
GERHARD CONRAD ALBERTYN N.O.	Third Applicant

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Respondent
--	------------------

THE AFFECTED PERSONS	Further Respondents
----------------------	---------------------

and

ABRINA 9422 (PTY) LIMITED	Intervening Party
---------------------------	-------------------

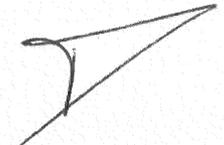
CONFIRMATORY AFFIDAVIT - PETRUS FRANCOIS VAN DEN STEEN

I, the undersigned,

PETRUS FRANCOIS VAN DEN STEEN

do hereby make oath and state that -

- 1 I am a senior business rescue practitioner and a director of Metis Strategic Advisors (Proprietary) Limited which conducts business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.

ed.


2 The matters I traverse in this affidavit are both true and correct. They are also within my personal knowledge - except where it is apparent from the context that they are not.

3 I have read the -

3.1 replying affidavit ("the replying affidavit") deposed to by GERHARD CONRAD ALBERTYN ("Albertyn") in response to the answering affidavit delivered by RGS HOLDINGS (PROPRIETARY) LIMITED ("RGS") in the above matter on 24 February 2026; and

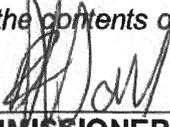
3.2 answering affidavit ("the answering affidavit") deposed to by Albertyn in response to the founding affidavit delivered by RGS in RGS's counter application instituted under the above case number also on 24 February 2026.

4 I hereby confirm the truth and correctness of the contents of the replying affidavit and the answering affidavit insofar as the contents thereof relate to me and the applicants.



PETRUS FRANCOIS VAN DEN STEEN

I certify that this affidavit was signed and sworn to before me at Noordhoek on 4 MARCH 2026 by **PETRUS FRANCOIS VAN DEN STEEN** who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words - '*I swear that the contents of this affidavit are both true and correct, so help me God.*'



COMMISSIONER OF OATHS

Name

Address

Capacity

REBECCA FRANCES DAVIS
COMMISSIONER OF OATHS
PRACTISING ATTORNEY RSA
C & A FRIEDLANDER Inc.
15 CARLTON CLOSE, LONGBEACH
BUSINESS VILLAGE, NOORDHOEK

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

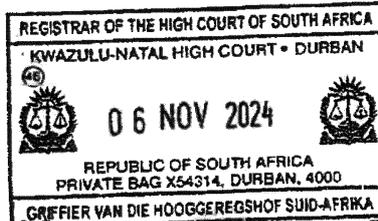
Case number: ^D13702/24

In the matter between:

RGS GROUP HOLDINGS LIMITED Applicant

and

TONGAAT HULETT LIMITED First Respondent
(IN BUSINESS RESCUE)



TREVOR JOHN MURGATROYD N.O. Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O. Third Respondent

GERHARD CONRAD ALBERTYN N.O. Fourth Respondent

VISION INVESTMENTS 155 (PTY) LTD Fifth Respondent

TERRIS AGRIPRO (MAURITIUS) Sixth Respondent

REMOGGO (MAURITIUS) PCC Seventh Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS) Eighth Respondent

ALMOIZ NA HOLDINGS LIMITED (UNITED ARAB EMIRATES) Ninth Respondent

THE LENDER GROUP OF TONGAAT HULETT LIMITED Tenth Respondent

MOHINI SINGARI NAIDOO t/a POWERTRANS SALES AND SERVICE Eleventh Respondent

THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE Twelfth Respondent

NOTICE OF MOTION

G.C
G.A

PART A

TAKE NOTICE THAT application will be made on behalf of the abovementioned applicant on **THURSDAY, 28 NOVEMBER 2024** at 09h30 or so soon thereafter as counsel may be heard for an order in the following terms:

1. That the applicant's non-compliance with the Uniform Rules of Court relating to service, time periods and forms be condoned, and the applicant be permitted to bring this application as a matter of urgency in terms of Rule 6 (12).
2. To the extent necessary, that the applicant be granted leave to bring this application against the first respondent in terms of section 133(1)(b) of the Companies Act 71 of 2008 (*"the Companies Act"*).
3. That pending the final determination of the relief sought under Part B, the first to ninth respondents be interdicted from proceeding with or in any way progressing or implementing the so-called Vision Asset Transaction in terms of which all the first respondent's assets will be transferred to the fifth respondent, or any other entity nominated by the Vision Parties, following which the first respondent will be delisted and liquidated.
4. That the second to fourth respondents (*"the BRPs"*) be directed to publish the following information on the first respondent's business rescue website within 7 business days:
 - 4.1. A statement providing all the information contemplated in sections 150(2)(c), 150(3), and 150(4) of the Companies Act 71 of 2008 in relation to the Vision Asset Transaction;

- 4.2. A comprehensive description of all the agreements and transactions that have been concluded / are intended to be concluded in terms of the Vision Asset Transaction, including all the main steps in those transactions;
 - 4.3. A statement confirming whether or not the Industrial Development Corporation of South Africa, in its capacity as a post commencement finance creditor of the first respondent, has consented to the Vision Asset Transaction.
5. That the fifth to ninth respondents (*"the Vision Parties"*) be directed to provide the following information to the BRPs for publication on the first respondent's business rescue website within 7 business days:
- 5.1. Copies of all the versions, i.e. the current version as well as all past versions, of the acquisition agreement concluded between the Vision Parties and the Lender Group in terms of which the Vision Parties were / are to acquire the Lender Group's claims and security in the business rescue of the first respondent (*"the Acquisition Agreement"*);
 - 5.2. Proof of all payment(s) made by the Vision Parties to the Lender Group in terms of the Acquisition Agreement including the amount(s) of such payments;
 - 5.3. Proof that the Lender Group has transferred all its claims and security in the THL business rescue to the Vision Parties, alternatively proof of the nature and extent of such claims and security as have been transferred;

- 5.4. Confirmation under oath that they have not concluded and will not in future conclude any agreement(s) with the Lender Group in terms of which, whether directly or indirectly, any of the first respondent's assets (including any such assets which are intended to be transferred under the Vision Asset Transaction) will be sold upon or after the conclusion of the first respondent's business rescue in order to apply the proceeds of such sale(s) to settle any amount(s) due:
- 5.4.1. by the Vision Parties to the Lender Group, whether under the Acquisition Agreement or otherwise;
- 5.4.2. to any other creditor(s) of the first respondent.
6. That the applicant be granted leave to supplement its founding affidavit prior to the hearing on Part B.
7. That the costs of Part A be paid by the first to ninth respondents, in addition to any party opposing the relief sought in Part A, on scale C including the costs of two counsel where so employed.
8. Further and/or alternative relief.

PART B

TAKE NOTICE THAT application will be made on behalf of the abovementioned applicant, on papers duly supplemented, and on an expedited date to be arranged with the Judge President and/or the Senior Civil Judge for an order in the following terms:

1. That the business rescue plan adopted in relation to the first respondent on 11 January 2024 be set aside.
2. That the costs of Part B be paid by the first to ninth respondents, in addition to any party opposing the relief sought in Part A, on scale C including the costs of two counsel where so employed.
3. Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **MOMADE AQUIL RAJAHUSSEN** shall be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed the offices of the undersigned attorneys as the place at which it will accept notice and service of all process filed in these proceedings.

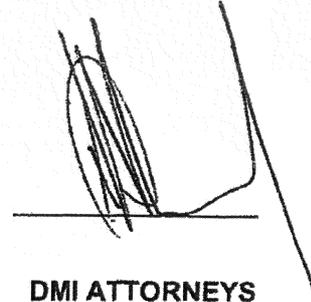
TAKE NOTICE FURTHER that the applicant agrees to accept service of all process filed in these proceedings by email at devin@dmiatt.co.za and shelin@dmiatt.co.za .

TAKE NOTICE FURTHER that any party who intends to oppose this application must:

- (i) notify the applicant's attorneys in writing by **no later than 17h00 on Wednesday, 13 November 2024;**
- (ii) deliver their answering affidavits, if any, by **no later than 17h00 on Friday, 22 November 2024.**

KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.

DATED at DURBAN on this 6TH day of NOVEMBER 2024.

**DMI ATTORNEYS**

Applicant's Attorneys

1st Floor

94 Florida Road

Morningside

Tel: 031 301 8623

Ref: Mr D Moodley/DM/RGS

Email: devin@dmiaatt.co.zashelin@dmiaatt.co.zashreya@dmiaatt.co.za

Cell: Devin – 083 459 3311

Shelin – 082 888 9979

Shreya - 063 364 9079

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
Durban, KwaZulu-Natal

AND TO: WERKSMANS ATTORNEYS
Attorneys for the First to Fourth Respondents
11th Floor, The Central
96 Rivonia Road
Sandton
Tel: 011 535 8248
Email: dandropoulos@werksmans.com / TBoswell@werksmans.com /
DHertz@werksmans.com / sgast@werksmans.com

AND TO: STEIN SCOP ATTORNEYS INC.
Attorneys for the Fifth to Ninth Respondents
2nd Floor, Capital Hill
6 Benmore Road, Morningside
Sandton
Tel: 011 380 8081

C.C
GRA

Mobile: 072 587 6361

Email: bradley@steinscop.com / alexandra@steinscop.com /
brookeb@steinscop.com

AND TO: EDWARD NATHAN SONNENBERGS INC.

Attorneys for the Tenth Respondent

Tower 1, The MARC

129 Rivonia Road

Sandton

Tel: 011 269 7600

Email: slederman@ensafrica.com / alombard@ensafrica.com /
goertel@ensafrica.com / jobasson@ensafrica.com

AND TO: POWERTRANS SALES AND SERVICES

14 – 16 Blue Street

Isithebe

KwaZulu-Natal

Email: info@powertrans.co.za

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

Case number:

In the matter between:

RGS GROUP HOLDINGS LIMITED

Applicant

and

VISION INVESTMENTS 155 (PTY) LTD

First Respondent

TERRIS AGRIPRO (MAURITIUS)

Second Respondent

REMOGGO (MAURITIUS) PCC

Third Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

Fourth Respondent

**ALMOIZ NA HOLDINGS LIMITED (UNITED ARAB
EMIRATES)**

Fifth Respondent

TONGAAT HULETT LIMITED

Sixth Respondent

(IN BUSINESS RESCUE)

TREVOR JOHN MURGATROYD N.O.

Seventh Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Eighth Respondent

GERHARD CONRAD ALBERTYN N.O.

Ninth Respondent

THE LENDER GROUP OF TONGAAT HULETT LIMITED

Tenth Respondent

**THE INDUSTRIAL DEVELOPMENT CORPORATION OF
SOUTH AFRICA**

Eleventh Respondent

**THE AFFECTED PERSONS IN THE SIXTH
RESPONDENT'S BUSINESS RESCUE**

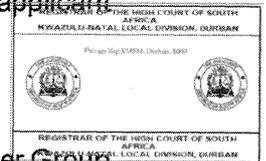
Twelfth Respondent

NOTICE OF MOTION

G.C
G.C.A

BE PLEASED TO TAKE NOTICE THAT application will be made on behalf of the abovementioned applicant on **WEDNESDAY, 11 JUNE 2025** at 09h30 or so soon thereafter as counsel may be heard for an order in the following terms:

1. That the applicant's non-compliance with the Uniform Rules of Court relating to service, time periods and forms be condoned, and the applicant be permitted to bring this application as a matter of urgency in terms of Rule 6 (12).
2. That the first to fifth respondents ("**Vision**") be directed to provide the applicant with the following within 5 business days:



- 2.1. Proof of the payment of R1.51 billion made by Vision to the Lender Group on 11 January 2024;
- 2.2. Proof of the payment of circa R2 billion made by Vision to the Lender Group on 9 May 2025;
- 2.3. A copy of the agreement concluded between Vision and the Lender Group in terms of which Vision has acquired all of the Lender Group's claims and security against Tongaat Hulett Limited ("**THL**");
- 2.4. Copies of all previous versions of the agreement referred to in the preceding paragraph;
- 2.5. Proof that all of the Lender Group's claims and security against THL have been transferred to Vision;
- 2.6. A written statement confirming whether or not:

G.C
G.A

2.6.1. any of THL's assets, or any rights in relation thereto, were proffered by Vision to its funders, whether as security, collateral, pledge, guarantee or any similar mechanism, in order to raise the funds necessary to acquire the Lender Group's claims and security;

2.6.2. any of Vision's financial obligations owed to the Lender Group or any of Vision's financial obligations relating to the implementation of the business rescue plan will be satisfied in whole or in part, whether in the first instance or in the event of a default of payment by Vision, from the proceeds of:



2.6.2.1. financing raised by selling THL assets or putting such assets up as collateral; or

2.6.2.2. any facility granted in favour of THL by the Lender Group, the Industrial Development Corporation of South Africa, or any other funder.

3. That the costs of this application be paid by the first to fifth respondents, together with any party opposing the relief sought herein, jointly and severally the one paying the other to be absolved on scale C.
4. Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **MOMADE AQUIL RAJAHUSSEN** shall be used in support of this application.

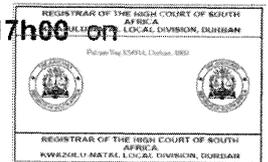
C.C
G.A

TAKE NOTICE FURTHER that the applicant has appointed the offices of the undersigned attorneys as the place at which it will accept notice and service of all process filed in these proceedings.

TAKE NOTICE FURTHER that the applicant agrees to accept service of all process filed in these proceedings by email at admin@boblaw.co.za.

TAKE NOTICE FURTHER that any party who intends to oppose this application must:

- (i) notify the applicant's attorneys in writing by **no later than 17h00 on Monday, 2 June 2025;**
- (ii) deliver their answering affidavits, if any, by **no later than 17h00 on Friday, 6 June 2025;**
- (iii) Provided that the above filing deadlines are complied with, the applicant will filed its replying affidavit on Monday, 9 June 2025.



KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.

DATED at DURBAN on this 29th day of MAY 2025.

BOBAT & ASSOCIATES

331 St Thomas Road

Musgrave

DURBAN

KwaZulu Natal

Tel: 031 201 0060

Email: admin@boblaw.co.za

[Ref: RGS/THL]

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT

Durban

AND TO: THE FIRST TO FIFTH RESPONDENTS

Care of: Stein Scop Attorneys Incorporated

Attorneys for the First to Fifth Respondents

2nd Floor, Capital Hill

6 Benmore Road, Morningside

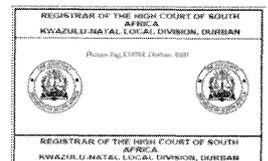
Sandton

Tel: 011 380 8081

Service by email to: bradley@steinscop.com, glenn@steinscop.com,

alexanda@steinscop.com, brookeb@steinscop.com,

casper@steinscop.com, keagan@steinscop.com



AND TO: THE SIXTH TO NINTH RESPONDENTS

Care of: Werksmans Attorneys

Attorneys for the Sixth to Ninth Respodnents

11th Floor The Central

96 Rivonia Road

Sandton

Tel: 011 535 8248

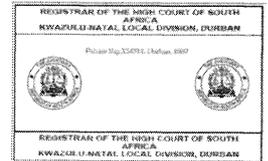
C.K

GeA

Service by email to: dandropoulos@werksmans.com,
tboswell@werksmans.com, dhertz@werksmans.com,
sgast@werksmans.com

AND TO: THE TENTH RESPONDENT

Care of: ENSafrica
Attorneys for the Tenth Respondent
Towe 1 The Marc
129 Rivonia Road
Sandton
Tel: 011 269 7600



Service by email to: slederman@ensafrica.com,
alombard@ensafrica.com, goertel@ensafrica.com,
jobasson@ensafrica.com

AND TO: THE ELEVENTH RESPONDENT

Care of: Faskens
Attorneys for the Eleventh Respondent
Inanda Greens Business Park
54 Wierda Road West
Sandton
Tel: 011 586 6000
Service by email to: hlaher@fasken.com

G.C
GCA

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

Case number:

In the matter between:

RGS GROUP HOLDINGS LIMITED

Applicant

and

TONGAAT HULETT LIMITED

First Respondent

(IN BUSINESS RESCUE)

TREVOR JOHN MURGATROYD N.O.

Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Third Respondent

GERHARD CONRAD ALBERTYN N.O.

Fourth Respondent

VISION INVESTMENTS 155 (PTY) LTD

Fifth Respondent

TERRIS AGRIPRO (MAURITIUS)

Sixth Respondent

REMOGGO (MAURITIUS) PCC

Seventh Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

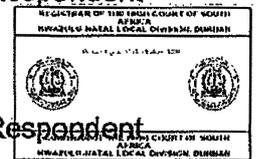
Eighth Respondent

**ALMOIZ NA HOLDINGS LIMITED (UNITED ARAB
EMIRATES)**

Ninth Respondent

**THE AFFECTED PERSONS IN THE FIRST
RESPONDENT'S BUSINESS RESCUE**

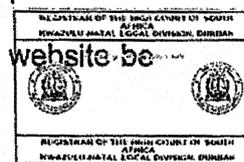
Tenth Respondent



NOTICE OF MOTION

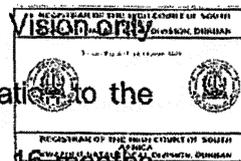
BE PLEASED TO TAKE NOTICE THAT application will be made on behalf of the abovementioned applicant on **WEDNESDAY, 3 SEPTEMBER 2025** at 09h30 or so soon thereafter as counsel may be heard for an order in the following terms:

1. That the applicant's non-compliance with the Uniform Rules of Court relating to service, time periods and forms be condoned, and the applicant be permitted to bring this application as a matter of urgency in terms of Rule 6(12);
 - 1.1. In particular, that service on the tenth respondent by way of publication of this application on the first respondent's business rescue website be condoned.
2. That the applicant be permitted to proceed with this application in terms of section 133(1)(b) of the Companies Act 71 of 2008 ("**the Act**").
3. That the second to fourth respondents ("**BRPs**") be directed in terms of section 140(3)(a) of the Act:
 - 3.1. To submit a report to this Court, either in the form of one joint affidavit or three separate affidavits, by no later than ten (10) business days from the issue of this order ("**the Report**");
 - 3.2. To publish the Report on the first respondent's business rescue website on the same date as it is filed with Court;
 - 3.3. To include in the Report details and relevant substantiating documentation pertaining to the BRPs' knowledge of and investigations concerning the fifth to ninth respondents' ("**Vision**") funding arrangements in relation to (i) Vision's acquisition of the claims and



security previously held by the Lender Group, and (ii) the implementation of the other transactions contemplated in the business rescue plan in the first respondent's business rescue, having specific regard to:

- 3.3.1. The fact that while the BRPs presented to creditors, at the creditors meeting on 10 January 2024, a letter from Standard Bank dated 21 December 2023 which confirmed that Vision had "sufficient cash" to execute the transactions contemplated in the business rescue plan ("**the Standard Bank Letter**"), **Vision only** completed its payment to the Lender Group in relation to the acquisition of the latter's claims and security some ~~16 months~~ later on 9 May 2025;
- 3.3.2. The authenticity of the Standard Bank proof of payment in the amount of R1 510 000 000 dated 11 January 2024 and provided to the BRPs by Vision on 24 July 2025;
- 3.3.3. The fact that Vision has provided no proof of payment in relation to the payment it alleges to have made to the Lender Group in the amount of R1 730 000 000 on 9 May 2025;
- 3.3.4. The fact that Vision has refused to provide the BRPs with a copy of the agreement it concluded with the Lender Group pursuant to which Vision acquired the Lender Group's claims and security against the first respondent ("**the Acquisition Agreement**"), despite the BRPs having demanded a copy in terms of the Common Terms Agreement, and despite the Lender Group



agreement(s) that may have been concluded are not otherwise contrary to the terms of the business rescue plan or the provisions of the Act.

- 3.4. Not to take any further steps in implementing the business rescue plan relating to the first respondent's business rescue pending the submission of the Report and the Court's consideration thereof at a hearing to be enrolled by the BRPs as an interlocutory application under the abovementioned case number on the date falling six (6) court days after the Report has been submitted, and at which hearing the Court either issue further directions, dismiss this application, or grant any other order that may be sought by any affected person by way of interlocutory notice of motion filed under the abovementioned case number pursuant to the submission of the Report.



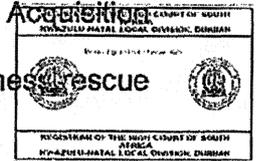
4. *In the alternative to prayer 3 above, and only in the event of this Court finding that relief under section 140(3)(a) of the Act cannot be granted, RGS seeks an order in the following terms:*

- 4.1. That the BRPs be directed to procure the following from Vision and/or the Lender Group and then to publish same on the first respondent's business rescue website immediately:

4.1.1. Verified proof of the payment of R1 510 000 000 made by Vision to the Lender Group on 11 January 2024;

4.1.2. Verified proof of the payment of R1 730 000 000 made by Vision to the Lender Group on 9 May 2025;

- 4.1.3. A copy of the Acquisition Agreement;
- 4.1.4. Copies of all previous versions of the Acquisition Agreement;
- 4.1.5. Proof that all the Lender Group's claims and security against the first respondent have been transferred to Vision unconditionally;
- 4.1.6. Confirmation as to whether Vision obtained new financing, in lieu of the cash contemplated in the Standard Bank Letter, in order to make payment to the Lender Group in terms of the Acquisition Agreement and fund the implementation of the business rescue plan;



- 4.1.7. Should Vision have obtained new financing as contemplated in the preceding paragraph, written confirmation that the BRPs are satisfied that the terms of such financing and any other agreement(s) that may have been concluded (i) do not grant Vision's funders or any other parties any rights that are exercisable over or in relation to the first respondent's assets either presently or after the conclusion of the business rescue process, and (ii) are not otherwise contrary to the terms of the business rescue plan or the provisions of the Act.

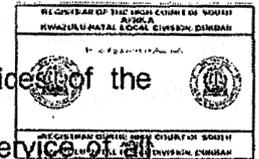
- 4.2. That the BRPs be interdicted and restrained from taking any further steps in implementing the business rescue plan adopted in the business rescue of the first respondent on 11 January 2024 until they have complied with the order contemplated in paragraph 4.1 above.

CC
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5. That the costs of this application be paid by the first to fourth respondents, together with any party opposing the relief sought herein, jointly and severally the one paying the other to be absolved on scale C.
6. Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **MOMADE AQUIL RAJAHUSSEN**, and the confirmatory affidavit of **IMRAN BOBAT**, shall be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed the offices of the undersigned attorneys as the place at which it will accept notice and service of all process filed in these proceedings.



TAKE NOTICE FURTHER that the applicant agrees to accept service of all process filed in these proceedings by email at admin@boblaw.co.za.

TAKE NOTICE FURTHER that any party who intends to oppose this application must:

- (i) notify the applicant's attorneys in writing by no later than **17h00 on Monday, 18 August 2025;**
- (ii) deliver their answering affidavits, if any, by no later than **17h00 on Tuesday, 26 August 2025;**
- (iii) Provided that the above filing deadlines are complied with, the applicant will file its replying affidavit by no later than **17h00 on Friday, 29 August 2025.**

KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.

DATED at DURBAN on this 12th day of AUGUST 2025.



BOBAT & ASSOCIATES

Per: Imran Bobat

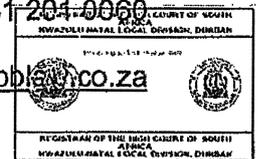
331 St Thomas Road

Musgrave

DURBAN

Tel: 031 204 0000

Email: admin@bobat.co.za



**TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
DURBAN**

AND TO: THE FIRST TO FOURTH RESPONDENTS

Care of: Werksmans Attorneys

Attorneys for the Sixth to Ninth Respondents

11th Floor The Central

96 Rivonia Road

Sandton

Tel: 011 535 8248

*Service by email to: dandropoulos@werksmans.com,
tboswell@werksmans.com, dhertz@werksmans.com,
sgast@werksmans.com*

AND TO: THE FIFTH TO NINTH RESPONDENTS

Care of: Stein Scop Attorneys Incorporated

G.C
G.A

Attorneys for the Fifth to Ninth Respondents

2nd Floor, Capital Hill

6 Benmore Road, Morningside

Sandton

Tel: 011 380 8081

Service by email to: bradley@steinscop.com, glenn@steinscop.com,
alexanda@steinscop.com, brookeb@steinscop.com,
casper@steinscop.com, keagan@steinscop.com



G.C
GPA

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

Case number: D1103/2024

In the matter between:

MOHINI SINGARI NAIDOO

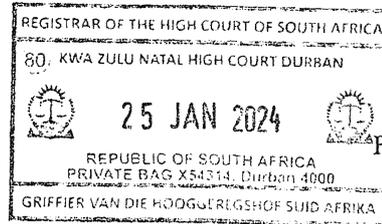
Applicant

t/a **POWERTRANS SALES AND SERVICES**

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

TERRIS AGRIPRO (MAURITIUS)

Fifth Respondent

REMOGGO (MAURITIUS) PCC

Sixth Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

Seventh Respondent

ALMOIZ NA HOLDINGS LIMITED

Eighth Respondent

**THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S
BUSINESS RESCUE**

Ninth Respondent

NOTICE OF MOTION

0002

PART A

TAKE NOTICE THAT the aforesaid applicant intends making application on **Friday, 2 February 2024 at 09h30** or so soon thereafter as counsel may be heard for an order in the following terms:

1. That the applicant's non-compliance with the Uniform Rules of Court relating to service, time periods and forms be condoned, and that the applicant be permitted to bring this application as a matter of urgency in terms of Rule 6(12).
2. To the extent necessary, granting the applicant leave to bring this application against the First Respondent in terms of section 133(1)(b) of the Companies Act 71 of 2008 ("*the Companies Act*").
3. That the First to Fourth Respondents be interdicted from implementing / taking any further steps relating to the implementation of the business rescue plan adopted in relation to the First Respondent at the meeting of creditors held on 11 January 2024 pending the final determination of the relief sought in Part B of this notice of motion.
4. That the costs of Part A, including the costs of two counsel, be paid by the First to Fourth Respondents as well as any other party who opposes Part A jointly and severally, the one paying the other to be absolved.
5. Further and/or alternative relief.

PART B

TAKE NOTICE THAT the aforesaid applicant intends making application to this Honourable Court on an expedited date to be arranged with the Registrar and/or the Honourable Judge President, on papers duly supplemented if necessary, for an order in the following terms:

1. That the business rescue plan adopted in relation to the First Respondent at the meeting of creditors held on 11 January 2024 be declared unlawful.
2. That the business rescue plan adopted in relation to the First Respondent at the meeting of creditors held on 11 January 2024 be set aside.

3. That the costs of Part B, including the costs of two counsel, be paid by the First to Fourth Respondents as well as any other party who opposes Part B jointly and severally, the one paying the other to be absolved.
4. Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the accompanying affidavit of MOHINI SINGARI NAIDOO shall be used in support of this application.

TAKE NOTICE FURTHER THAT the applicant has appointed the offices of the undersigned attorneys as the place at which she will accept notice and service of all process filed in these proceedings.

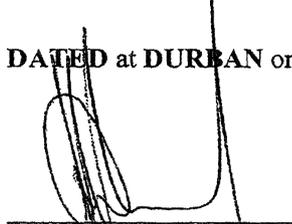
TAKE NOTICE FURTHER THAT the applicant agrees to accept service of all process filed in these proceedings by email at : devin@dmiaatt.co.za & shelin@dmiaatt.co.za & shreya@dmiaatt.co.za

TAKE NOTICE FURTHER THAT any party who intends to oppose this application must:

- (a) notify the applicant's attorneys in writing by no later than 17h00 on Monday, 29 January 2024;
- (b) deliver their answering affidavits, if any, by no later than 17h00 on Wednesday, 31 January 2024;
- (c) should the above timeframes be observed, the applicant will file its replying affidavit by 17h00 on Thursday, 1 February 2024.

KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.

DATED at DURBAN on this 26th day of JANUARY 2024.



DMI ATTORNEYS

1ST FLOOR

94 FLORIDA ROAD

MORNINGSIDE

DURBAN

TEL: 031 – 301 8623

REF: D MOODLEY

EMAIL: devin@dmiatt.co.za

shelin@dmiatt.co.za

shreya@dmiatt.co.za

CELL: DEVIN MOODLEY – 083 – 459 3311

SHELIN GATHIRAM – 082 – 888 9979

" 010-3112
THL 7 "

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

Case number: D1103/2024

In the application of:

RGS GROUP HOLDINGS LIMITED

Intervening Party

In re the matter between:

MOHINI SINGARI NAIDOO

Applicant

t/a POWERTRANS SALES AND SERVICES

and

TONGAAT HULETT LIMITED

First Respondent

(IN BUSINESS RESCUE)

TREVOR JOHN MURGATROYD N.O.

Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Third Respondent

GERHARD CONRAD ALBERTYN N.O.

Fourth Respondent

TERRIS AGRIPRO (MAURITIUS)

Fifth Respondent

REMOGGO (MAURITIUS) PCC

Sixth Respondent

**GUMA AGRI AND FOOD SECURITY LTD
(MAURITIUS)**

Seventh Respondent

ALMOIZ NA HOLDINGS LIMITED

Eighth Respondent

**THE AFFECTED PERSONS IN THE FIRST
RESPONDENT'S BUSINESS RESCUE**

Nineth Respondent

**NOTICE OF MOTION
RGS APPLICATION TO INTEREVENE**

G.C
010-3112
G.A

BE PLEASED TO TAKE NOTICE THAT application will be made on behalf of RGS Group Holdings Limited ("RGS") on **Friday, 2 February 2024** at 09h30 or so soon thereafter as counsel may be heard for an order in the following terms:

1. Dispensing with the forms and service provided for in terms of the rules and directing that this application be heard on an urgent basis in terms of Uniform Rule 6(12).
2. Granting RGS leave to intervene as an applicant in the application launched by Mohini Singari Naidoo t/a Powertrans Sales and Services under the abovementioned case number ("**the Powertrans Application**").
3. Granting the relief sought in terms of Part A of the Powertrans Application with costs including the costs of two counsel.
4. Granting RGS leave to file a supplementary affidavit in relation to Part B of the Powertrans Application in due course.
5. Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the affidavit of **MOMADE AQUIL RAJAHUSSEN**, annexed hereto, will be used in support of this application.

TAKE NOTICE FURTHER THAT RGS, the intervening applicant has appointed **WHITE AND CASE INC. C/O WARRICK DE WET REDMAN ATTOTRNEYS** as its attorneys of record, at which address it will accept service of all notices and process filed in these proceedings. The applicant consents to service by email at the following addresses:

Darryl.bernstein@whitecase.com;

Viren.raja@whitecase.com;

Cameron.jeffrey@whitecase.com; and

wd2@wdattorneys.co.za

KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.

DATED AT **UMHLANGA** ON THIS 1st DAY OF **FEBRUARY 2024**

REGISTRAR



WHITE AND CASE INC.

Attorneys for RGS – Intervening Applicant

Katherine Towers, First Floor,

1 Park Lane, Wierda Valley,

Sandton, Johannesburg, 2196

Tel:+27 (0) 11 311 4000

Email: Darryl.Bernstein@whitecase.com

Viren.Raja@whitecase.com;

Cameron.Jeffrey@whitecase.com

Ref: D Bernstein/V Raja/C Jeffrey

C/O WARRICK DE WET REDMAN ATTOTRNEYS

Suite 14 Corporate Park,

11 Sinembe Crescent, Umhlanga, South Africa

Tel: 031 201 8820

Email: wd2@wdattorneys.co.za

TO : THE REGISTRAR OF THE ABOVE HONOURABLE COURT, DURBAN

AND TO: DMI ATTORNEYS

Attorneys for the Applicant

1st Floor

94 Florida Road, Morningside

Durban

Tel: 031 301 8623

Ref: D. Moddley

Emai: devin@dmiaatt.co.za

shelin@dmiaatt.co.za

shreya@smiaatt.co.za

Service by email

AND TO: WERKSMANS ATTORNEYS

Attorneys for the First to Fourth Respondents

11th Floor, The Central

96 Rivonia Road

Sandton

Tel: 011 535 8248

Email: DAndropoulos@werksmans.com

TBoswell@werksmans.com

DHertz@werksmans.com

sgast@werksmans.com

Ref: Mr D Andropoulos / Mr T Boswell / Mr D Hertz / Ms S Gast

C/O EVH INC ATTORNEYS

Unit 4, Holwood Crescent, Holwood Park

La Lucia Ridge, Umhlanga, 4319

Tel: 031 492 7971

Email: erik@evhinc.co.za

Ref: W2409/0005

Service by email

AND TO: STEIN SCOP ATTORNEYS INC.

Attorneys for Fifth to Sixth Respondents

Second Floor, Capital Hill 6 Benmore Road,

Morningside, Sandton

Tel: (011) 380 8081

Mobile: 072 587 6361

Email: bradleyasteinscop.com;

alexandra@steinscop.com

brookeb@steinscop.com

Ref: TER2/0004/B Sc

C/O GOODRICKES ATTORNEYS

1 Nollsworth Park, Nollsworth Crescent, La Lucia Ridge

Tel: 031 301 6211

Email: legal2@goodrickes.co.za

casper@stein.scop.com

Service by email

AND TO: GARLICKE AND BOUSFIELD INCORPORATED

Attorney for the Eight Respondent

7 Torsvale Crescent

La Lucia Ridge Office Estate

010-3117

6

Tel: 031 570 5408

Email: howard.stephenson@gb.co.za

Ref: H Stephenson

Service by email

010-3117

G.C. Get

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

Case number: D3902/2024

In the matter between:

MOHINI SINGARI NAIDOO

Applicant

t/a **POWERTRANS SALES AND SERVICE**

and

TONGAAT HULETT LIMITED

First Respondent

(IN BUSINESS RESCUE)

TREVOR JOHN MURGATROYD N.O.

Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Third Respondent

GERHARD CONRAD ALBERTYN N.O.

Fourth Respondent

TERRIS AGRIPRO (MAURITIUS)

Fifth Respondent

REMOGGO (MAURITIUS) PCC

Sixth Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

Seventh Respondent

ALMOIZ NA HOLDINGS LIMITED

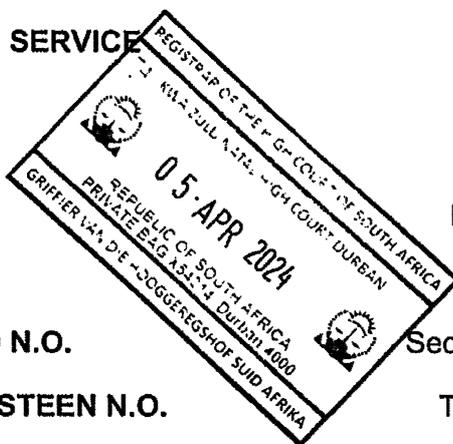
Eighth Respondent

VISION INVESTMENTS 155 (PTY) LTD

Ninth Respondent

**THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S
BUSINESS RESCUE**

Tenth Respondent



NOTICE OF MOTION

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BE PLEASED TO TAKE NOTICE THAT the aforesaid applicant intends making application to this Honourable Court on the 04 day of June 2024 at 09:30am or so soon thereafter as the matter may be heard for an order in the following terms:

1. To the extent necessary, granting the applicant leave to bring this application against the First Respondent in terms of section 133(1)(b) of the Companies Act 71 of 2008.
2. Declaring the business rescue plan adopted in relation to the First Respondent at the meeting of creditors held on 11 January 2024 to be unlawful and setting it aside.
3. Directing the First to Fourth Respondents to comply, in the manner contemplated in section 7(k), with their duties and the procedures which are set out in sections 140(1)(d), 141(1) & (2)(a), 145(1)(a) and 150 to 152 of the Companies Act 71 of 2008.
4. That the costs of this application, including the costs of two counsel, be paid by the First to Fourth Respondents as well as any other party who enters notice to oppose jointly and severally, the one paying the other to be absolved.
5. Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the accompanying affidavit of **MOHINI SINGARI NAIDOO**, and confirmatory affidavits of Raven Naidoo and Ricky Naidoo, shall be used in support of this application.

TAKE NOTICE FURTHER THAT the applicant has appointed the offices of the undersigned attorneys as the place at which it will accept notice and service of all process filed in these proceedings.

TAKE NOTICE FURTHER THAT the applicant agrees to accept service of all process filed in these proceedings by email at devin@dmiaatt.co.za, shelin@dmiaatt.co.za, and shreya@dmiaatt.co.za .

TAKE NOTICE FURTHER THAT any party who intends to oppose this application is required to:

- (a) Notify the applicant's attorneys, at the abovementioned email addresses, and the Registrar of this Honourable Court of its intention to oppose by delivering a written notice to that effect within **10 days of service**.

- (b) File its answering affidavit, if any, **15 days thereafter**.

KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.

DATED at DURBAN on this 5th day of APRIL 2024.



DMI ATTORNEYS
Applicant's Attorneys
1ST FLOOR
94 FLORIDA ROAD

MORNINGSIDE

DURBAN

TEL: 031 – 301 8623

REF: D MOODLEY

EMAIL: devin@dmiaatt.co.za

shelin@dmiaatt.co.za

shreya@dmiaatt.co.za

CELL: DEVIN MOODLEY – 083 459 3311

TO : **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**

Durban, KwaZulu Natal

AND TO: **WERKSMANS ATTORNEYS**

Attorneys for the First to Fourth Respondents

11th Floor, The Central

96 Rivonia Road

Sandton

Tel: 011 535 8248

Email: dandropoulos@werksmans.com / TBoswell@werksmans.com /
DHertz@werksmans.com / sgast@werksmans.com

Ref: Mr D Andropoulos / Mr T Boswell / Mr D Hertz / Ms S Gast

c/o EVH INC ATTORNEYS

Unit 4, Holwood Crescent, Holwood Park

La Lucia Ridge, Umhlanga, 4319

Tel: 031 492 7971

Email: erik@evhinc.co.za

Ref: W2409/0005

AND TO: **STEIN SCOP ATTORNEYS INC.**

Attorneys for Fifth to Ninth Respondents

Second Floor, Capital Hill

6 Benmore Road, Morningside, Sandton

Tel: (011) 380 8081

Mobile: 072 587 6361

Email: bradley@steinscop.com;
brookeb@steinscop.com

alexandra@steinscop.com;

Ref: TER2/0004/B Scop

c/o GOODRICKES ATTORNEYS

1 Nollsworth Park, Nollsworth Crescent, La Lucia Ridge

Tel: 031 301 6211

Email address: legal2@goodrickes.co.za

casper@steinscop.com;

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: _____

In the matter between:

MUHAMMAD FAIZ TURK

FIRST APPLICANT

MUHAMMAD SHAKEEL TURK

SECOND 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

VISION INVESTMENTS 155 (PTY) LTD

FIFTH RESPONDENT

TERRIS AGRIPRO (MAURITIUS)

SIXTH RESPONDENT

REMOGGO (MAURITIUS) PCC

SEVENTH RESPONDENT

**GUMA AGRI AND FOOD SECURITY LIMITED
(MAURITIUS)**

EIGHTH RESPONDENT

ALMOIZ NA HOLDING LTD

NINTH RESPONDENT

VISION SUGAR HOLDINGS (MAURITIUS)
LIMITED T/A BALL FOUNDRY HOLDINGS
LIMITED (MAURITIUS)

TENTH RESPONDENT

VISION SUGAR SOUTH AFRICA (PTY) LTD

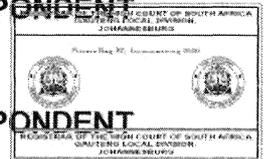
ELEVENTH RESPONDENT

NGWENYAMA 62 (PTY) LTD

TWELFTH RESPONDENT

KENI 62 (PTY) LTD

THIRTEENTH RESPONDENT



ALMOIZ SA INDUSTRIES (PTY) LTD

FOURTEENTH RESPONDENT

TOKWE ONE (PTY) LTD

FIFTEENTH RESPONDENT

TOKWE TWO (PTY) LTD

SIXTEENTH RESPONDENT

TOKWE THREE (PTY) LTD

SEVENTEEN RESPONDENT

TERRIS SUGAR SOUTH AFRICA (PTY) LTD

EIGHTEENTH RESPONDENT

ABSA BANK LIMITED

NINETEENTH RESPONDENT

THE STANDARD BANK OF SOUTH AFRICA
LIMITED

TWENTEETH RESPONDENT

FIRSTRAND BANK LIMITED

TWENTY FIRST RESPONDENT

INVESTEC BANK LIMITED

TWENTY SECOND RESPONDENT

NEDBANK LIMITED

TWENTY THIRD RESPONDENT

THE LAND AND AGRICULTURAL
DEVELOPMENT BANK OF SOUTH
AFRICA

TWENTY FOURTH RESPONDENT



SANLAM LIFE INSURANCE LIMITED

TWENTY FIFTH RESPONDENT

SANLAM INVESTMENT MANAGEMENT
(PTY) LTD

TWENTY SIXTH RESPONDENT

SANLAM SPECIALISED FINANCE
(PTY) LTD

TWENTY SEVENTH RESPONDENT

MOMENTUM METROPOLITAN LIFE
LIMITED

TWENTY EIGHTH RESPONDENT

ASHBURTON FUND MANAGERS (PTY)
LTD

TWENTY NINTH RESPONDENT

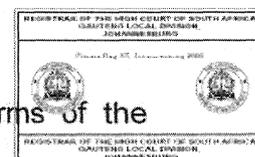
THE AFFECTED PERSONS OF TONGAAT
HULETT'S BUSINESS RESCUE

THIRTIETH RESPONDENT

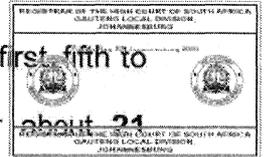
NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the applicants will make application to the above Honourable Court on a date to be determined by the Registrar for an order in the following terms:

1. The applicants are granted leave to bring this application in terms of the provisions section 133(1)(b) of the Companies Act.
2. A declaratory order be granted to the effect that:
 - 2.1. The business rescue plan adopted at a meeting of the creditors held on **11 January 2024** (the "Plan") alters the rights of shareholders as contemplated in terms of the provisions of section 152(3)(c) of the Companies Act 71 of 2008 (the "**Companies Act**").
 - 2.2. The Plan has not been finally adopted and thus has not been lawfully adopted as the second to fourth respondents have not:
 - 2.2.1. convened a meeting of the first respondent's shareholders to propose and vote on the adoption of the Plan as required in terms of the provisions of section 152(3)(c) of the Companies Act; and
 - 2.2.2. the first respondent's shareholders have not voted on the adoption of the Plan.



- 2.3. Any steps by the second to fourth respondents to give effect to the Plan post its purported adoption by creditors are accordingly invalid, void *ab initio* and fall to be set aside, including the conclusion and implementation of following agreements:
- 2.3.1. the business sale agreement concluded between the first, fifth to ninth and eleventh to eighteenth respondents on or about **14 December 2024**;
- 2.3.2. the business sale agreement concluded between the first, fifth to tenth and twelfth to eighteenth respondents on or about **21 December 2024**;
- 2.3.3. the business sale agreement concluded between the first, fifth to tenth and twelfth to eighteenth respondents on or about **18 January 2025**; and
- 2.3.4. the business sale agreement concluded between the first, fifth to tenth and twelfth to eighteenth respondents on or about **10 February 2025**.
3. A final interdict be granted, interdicting:
- 3.1. the first to fourth respondents from taking any steps to give effect to the Plan;
- 3.2. the first to eighteenth respondents from taking any steps to give effect to any agreements concluded between the first respondent and any of the fifth to eighteenth respondents.



4. To the extent that this application is opposed by any of the respondents, such respondents pay the applicants' costs of this application on the appropriate scale.
5. Further and/or alternative relief.

TAKE NOTICE FURTHER that the founding affidavit of **MUHAMMAD FAIZ TURK** annexed hereto will be used in support of this application.

TAKE NOTICE FURTHER THAT the applicants have appointed the address of their attorneys set out hereunder as the address at which they will accept notice and service of all process in these proceedings.



TAKE NOTICE FURTHER THAT should the respondents wish to oppose this application, they are required to:

1. notify the applicants' attorneys in writing of same with **10 (ten) days** of service of this Application;
2. appoint in such notice of opposition an address referred to in Rule 6(5)(d)(i) at which the respondents shall accept service of any notices and pleadings in these proceedings;
3. deliver their answering affidavit (if any) within **15 (fifteen) days** of such notice of intention to oppose this application.

DATED at JOHANNESBURG on this the 25th day of April 2025.

ANDRE PIENAAR AND ASSOCIATES (APA AFRICA)
 Attorneys for the applicants

Units 11 & 12,
116 Oxford & Glenhove,
Houghton Estate,
Johannesburg,
2198

Tel: (010) 443 7829

Email: andre.Pienaar@apaa.co.za

Email: justin.blume@apaa.co.za

Email: David.kochukov@apaa.co.za

Ref: AP/DK/JB/C314-F0001



**TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
JOHANNESBURG**

**Via
CourtOnline**

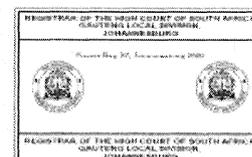
AND TO: WERKSMANS ATTORNEYS
Attorneys for the first to fifth respondents
The Central, 96 Rivonia Rd,
Dennehof, Sandton, 2196
Email: sgast@werksmans.com
Email: TBoswell@werksmans.com
Email: lwebber@werksmans.com
Email: dandropoulos@werksmans.com

**By Email
and Sheriff**

AND TO: STEIN SCOP ATTORNEYS
Attorneys for the sixth to eighteenth respondents
Second Floor, Capital Hill, 6 Benmore Road,
Morningside, Sandton, Gauteng, 2057, South Africa
Email: alexandra@steinscop.com
Email: bradley@steinscop.com
Email: Casper@steinscop.com

***By Email
and Sheriff***

**AND TO: EDWARD NATHAN SONNENBERG
INCORPORATED**
Attorneys for the nineteenth to twenty ninth
respondents
The MARC, Tower 1
129 Rivonia Road
Sandton, Johannesburg
2196
Email: goertel@ensafrica.com
Email: slederman@ensafrica.com
Email: alombard@ensafrica.com
Email: jobasson@ensafrica.com



***By Email
and Sheriff***

**AND TO: THE AFFECTED PERSONS OF
TONGAAT HULLET LIMITED
(IN BUSINESS RESCUE)**

***Circulated by the
Business Rescue
Practitioners of the
Tongaat Hullet (In
Business Rescue)***