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

CASE NO: **2026-031780**

In the matter between:

**Gerhard Conrad Albertyn NO ,Trevor
John Murgatroyd NO ,Petrus Francois
Van Den Steen NO**

Plaintiff / Applicant / Appellant

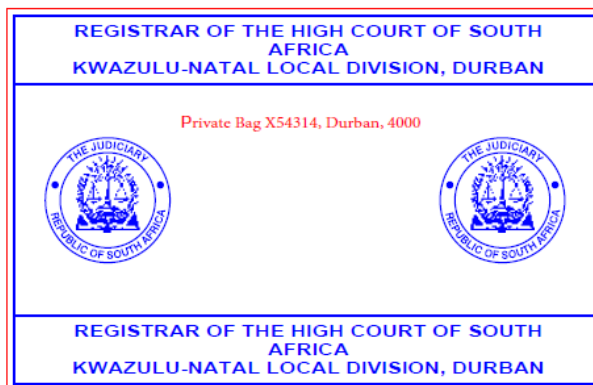
and

**Tongaat Hulett Limited,The Affected
Persons**

Defendant / Respondent

Supplementary Affidavit

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ELECTRONICALLY SIGNED
BY:

**Registrar of The High Court,
KwaZulu-Natal, Durban.**

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

CASE NO.: 2026-031780

In the matter between: -

Gerhard Conrad Albertyn N.O.

Trevor John Murgatroyd N.O.

Petrus Francois Van Den Steen N.O.

Applicant



and

Tongaat Hulett Limited The Affected Persons

Respondent

and

ABRINA 9422 (PTY) LIMITED

Intervening Party

SUPPLEMENTARY AFFIDAVIT

I the undersigned,

ADHARSH KADARNATH MAHARAJ,

do hereby make oath and state,

1.

The facts and statements deposed to herein are within my own personal knowledge and belief unless stated otherwise and are both true and correct.

2.



I am a director of the Intervening Party. I have been duly authorized by the Intervening Party to depose to this affidavit on its behalf.

3.

PURPOSE AND BACKGROUND OF THIS AFFIDAVIT

- 3.1 Abrina has maintained from the outset that the Applicants have approached this Court on a manufactured, contrived, and premature basis.
- 3.2 The purpose of this affidavit is to demonstrate how the conduct of the Applicants and Vision, at the hearing confirms Abrina's initial stance: that this liquidation application is not a *bona fide* statutory invocation of Section 141(2) of the Companies Act 71 of 2008 ("*the Act*"), but is instead being deployed as a tactical weapon to hold THL hostage while extracting further concessions and funding from the Industrial Development Corporation of South Africa Limited ("*the IDC*").

3.3 Before delving into the factual merits and operational updates that follow, it is imperative that I set the record straight as to Abrina's definitive, unalterable litigation stance. At the hearing of this application in April 2026, Abrina's position regarding this liquidation application had been misconstrued.

3.3.1 It has come to Abrina's attention that a number of parties, as well as a few media outlets, have fundamentally misconstrued Abrina's opposition to the Applicants' requested adjournment as an implicit acceptance of, or concession to, the liquidation of Tongaat Hulett Limited ("*THL*"). That conclusion is categorically incorrect. Opposing a highly strategic, unprincipled postponement of an urgent application and opposing the liquidation of the respective company are not mutually exclusive events. Abrina's position was and still is that *THL* not be liquidated and remain in business rescue.



3.3.2 Abrina has from the outset opposed the liquidation application of *THL*. The destruction and winding-up of *THL* is not the desire of the growers, the workers, or the affected stakeholders, it was, and remains, the prerogative of the Applicants. Yet, the Applicants have somehow managed to completely twist the narrative. They have performatively framed themselves as the aspiring saviours trying to avoid a liquidation that *they themselves launched*, whilst those who sought immediate accountability were somehow framed as ones that were conceding to the liquidation application. Abrina's opposition to the adjournment was an insistence that the Applicants' manufactured and abusive liquidation application be heard and dismissed by this Honourable Court with the finality it deserves, rather than being left to linger over the agricultural industry as a tactical weapon of coercion which will be elaborated on hereinbelow.

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CONTRIVED LIQUIDATION

- 4.1 Abrina reiterates its position that this liquidation application is contrived. The Applicants have historically engaged in a dual-track strategy: issuing optimistic, business-as-usual updates to the public and growers, whilst simultaneously finalizing liquidation papers behind closed doors to use as commercial leverage.
- 4.2 This liquidation application was launched by the BRPs under the guise of an absolute emergency, asserting that Tongaat Hulett Limited ("*THL*") had reached a fatal financial precipice with zero prospects of rescue due to a sudden R600 million funding shortfall.
- 4.3 However, the true motive behind the application has now been unmasked by the events at the hearing. The BRPs have successfully weaponized the threat of a catastrophic liquidation to strong-arm and exploit the IDC into advancing further Post-Commencement Finance ("*PCF*").
- 4.4 Their conduct reveals a pattern of opportunism: reassuring stakeholders of positive prospects in notices while privately preparing liquidation papers to use as leverage. This will be elaborated on herein below.



5.

THE APRIL HEARING

- 5.1 On 16 April 2026, the urgent application launched by the BRPs to terminate business rescue and wind up Tongaat Hulett Limited ("*THL*") was set down for hearing before the Honourable Judge Rithy Singh.
- 5.2 Despite having filed thousands of pages of record on an expedited, hyper-urgent basis, wherein the Applicants repeatedly swore under oath that *THL*'s cash-flow runway had ended, that business rescue had definitively failed, and that liquidation was an immediate statutory necessity under Section 141(2), the Applicants executed an extraordinary and sudden reversal.
- 5.3 Counsel for the Applicants, together with counsel for the Vision parties, actively led an application to for adjournment of the winding-up application brought by the Applicants.
- 5.3.1 It is submitted that the Vision parties had not filed any notice before this Honourable Court with respect to the liquidation application and it is therefore unknown as to why the Vision parties were given as much airtime, or any airtime at all before this Honourable Court. The counsel for Vision (Mr Blou) had committed a major *faux pas* by accusing the counsel for the Turks (Mr Aldsworth) of making requests before this Honourable Court without a notice of motion when they themselves were making submissions before the Court without joining the fray.
- 5.4 The ostensible justification provided to the Court by the Applicants for this sudden pause was that a temporary funding window or "lifeline" had opened via negotiations with the Industrial Development Corporation ("*the IDC*"), providing an interim Post-Commencement Finance ("*PCF*") accommodation.
- 5.5 Armed with this interim funding commitment, the BRPs repositioned themselves before the Court. Instead of moving for the immediate liquidation



order they had declared was inescapable, they presented themselves as facilitators of an ongoing rescue attempt, requesting that the matter be postponed to a future date in June 2026 to evaluate whether a structural rescue could still be salvaged.

- 5.6 Crucially, however, the Applicants steadfastly refused to withdraw or tender the costs of the main liquidation application. Instead, they demanded, and were granted, an order keeping the liquidation application alive, lingering over the company as an unresolved threat while they continue to operate on state-backed interim funding.

6.



The Applicants Approbation and Reprobation

- 6.1 I attach hereto the transcripts of the hearing on 16 April 2026 marked Annexure "AM1".
- 6.2 The BRPs *dominus litis* launched these proceedings on the explicitly sworn premise that there is *no reasonable prospect of rescuing the company*, thereby triggering a peremptory statutory obligation under Section 141(2)(a)(ii) to wind up THL.
- 6.3 At page 69 and page 80 of the court transcript, Mr Subel (counsel for the Applicants), before the Court had stated that the business rescue plan had not failed.

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6.3.1 At paragraphs 34 and 35 of the Applicants' heads of argument, the Applicants state that THL is commercially insolvent, it cannot pay its debts when due, that it is reliant on loan funding to operate, and that it has not been buoyant for years.

6.3.2 At paragraph 36.1 of the Applicants' heads of argument, the Applicants state that the business rescue plan has failed.

6.3.3 At paragraph 13 of the Applicant's consolidated Replying Affidavit it is stated:

"13. *On an objective assessment of the facts in the founding affidavit it is clear that there is no reasonable prospect of rescuing THL because –*

13.1 the Adopted Plan has failed"



6.4 The Applicants had "successfully" approbated and reprobated, twisting the narrative at every junction in order to suit their outcome and staging themselves as the "heroes" of a rescue mechanism by requesting that the clock be stopped. They have engineered a crisis, utilized it to extract funding, froze the litigation without resolving the core underlying dispute and now seek to proceed with their liquidation application.

6.5 By seeking an adjournment rather than a withdrawal, the BRPs have left THL in an unacceptable commercial and judicial vacuum. The company remains crippled by the overhang of a pending winding-up application.

6.6 This state of perpetual limbo severely prejudices independent sugarcane growers, workers, and affected stakeholders. It destroys commercial confidence. If the Applicants genuinely believe that an interim PCF injection restores a pathway to rescue, even a temporary one, the statutory foundation for their Section 141(2) application crumbles, and the application must be dismissed or withdrawn. Keeping the application alive as a lingering threat is a clear abuse of the process of this Honourable Court.

7.

Duplicitous Conduct by the Applicants

- 7.1 On 21 May 2026, correspondence was addressed to the Applicants' legal representatives by K. Maharaj Incorporated, acting on behalf of Abrina. This correspondence formally placed on record the concerns of sugarcane growers regarding the exposure to potential claims of reckless trading under Section 22 of the Act and the threat of voidable dispositions should a liquidation order subsequently ensue. Consequently, a formal demand was made for all revenue to be placed into a designated trust account to safeguard cane growers, alongside an indication that stakeholders would seek an order for formal judicial oversight and the replacement of the current BRPs. A copy of this letter is annexed hereto marked **"AM2"**.
- 7.2 The Applicants responded through their attorneys, Werksmans Inc., on 22 May 2026. A copy of this letter is annexed hereto marked **"AM3"**. Far from alleviating these industry risks or offering transparent safeguards, the Applicants aggressively brushed aside these concerns as "self-serving". Crucially, the Applicants explicitly confirmed that they have delivered a supplementary affidavit reinforcing their unilateral decision to pursue immediate provisional liquidation as envisaged under Section 132(2)(a)(ii) read with Section 141(2) of the Companies Act.
- 7.3 On the exact same day, 22 May 2026, THL issued an official operational status update to growers, signed by its Group CEO, Gavin Dalgleish. A copy of this communication is annexed hereto marked **"AM4"**. In that notice, THL celebrates the successful commencement of the 2026 milling season, confirming that the Felixton and Maidstone mills started up on 20 May 2026 and that the Amatikulu mill is scheduled for start-up on 28 May 2026. The CEO assures growers that THL is actively managing liquidity within a controlled framework to prioritize safe and stable operations across the value chain, and projects that the business's cash-flow position will actively improve as milling activities progress.
- 7.4 On 25 May 2026, Abrina's attorneys addressed a decisive response to the Applicants' attorneys, exposing the irreconcilable duplicity of these dual positions. A copy of this letter is annexed hereto marked **"AM5"**.



- 7.5 As articulated in Annexure **"AM5"**, when the Applicants' formal legal position is juxtaposed against THL's operational position (via the Group CEO) on the same day, the core contradiction of their strategy is laid bare:
- 7.5.1 The Legal Narrative: The Applicants are actively asking this High Court to urgently dismantle the company via a provisional liquidation order on the basis that it is a definitive statutory failure beyond rescue.
- 7.5.2 The Operational Narrative: The company is presenting an optimistic facade of "operational readiness," "stability across the value chain," and "liquidity discipline" to independent growers (affected parties).
- 7.6 Abrina submits that this duplicitous conduct constitutes an active, dangerous misrepresentation. The BRPs have deliberately concealed the impending liquidation proceedings from the independent growers in their 22 May 2026 operational circular. This omission was calculated solely to induce vulnerable small-scale and commercial growers to harvest their crops, incur massive transport and input liabilities, and deliver their cane to THL's mills.
- 7.8 This is a raw, predatory mechanism to force growers to fuel THL's milling operations and artificially inflate THL's asset facade, while the BRPs fully know that independent growers hold zero preferential creditor status and face the imminent threat of non-payment and/or the loss of cane the moment a provisional liquidation order is granted in June.
- 7.9 A party seeking the extraordinary, equitable, and discretionary remedy of a winding-up order from the High Court must approach with absolute candour and clean hands. The BRPs' documented duplicity, lack of transparency, and active exploitation of independent agricultural growers completely disqualifies them from receiving the benefit of such judicial discretion. Consequently, these actions not only cast serious doubt upon their *bona fides* as BRPs, but actively justify their removal.
- 7.10 It is submitted that the Applicants approach this Honourable Court on the narrative that there is no reasonable prospects of rescue due to an absence of funding, an absence of a committed funder and a failed business rescue plan.



7.10.1 It is further submitted that the Applicants fail to disclose to this Honourable Court, and in fact purport the exact opposite, that they have received offers from multiple potential buyers for THL.

7.10.2 It is unknown as to why these offers were rejected, however, it must be stated that the Applicants have chained the survival and destiny of THL exclusively to Vision, treating them as the only permissible saviour of THL.

7.10.3 This favouritism is alarming when considered against the precedent set out by Vision during the business rescue proceedings as well as the legal proceedings.

7.10.4 It is common cause, and conceded by the Applicants under oath, that the business rescue plan proposed by Vision and adopted on 11 January 2024 has completely failed.

7.10.5 The Vision parties have consistently failed to perform in terms of the Adopted Plan, have lacked the independent liquidity required to execute the transactions, and have demonstrated conclusively to this Honourable Court, to the IDC, and to all affected stakeholders that they are entirely incapable of acting in accordance with the adopted plan which clearly indicates a breach.

7.10.6 The only action that Vision has taken towards the adopted plan is allegedly acquiring the lender group claim effectively allowing Vision to maintain a stranglehold over THL which has been accepted and perpetuated by the Applicants.

8.

I will now address the Applicants' Supplementary Affidavit *ad seriatum*.

9.



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Ad Paragraph 1-7

The content of these paragraphs are noted.

10.

Ad Paragraph 8

The content of this paragraph is denied.

10.1 The Applicants have failed and refused to furnish this Honourable Court as well as the affected parties with any objective proof regarding the financial position of THL. The Applicants' have refused to comply with the rule 35 notices and therefore cannot claim to arrive to any objective conclusion based on their submissions.



10.2 The Applicants take a stance of being "statutorily imposed" regarding the institution of this liquidation application, yet are somehow of the belief that they are devoid of any obligations that require them to approach the Court with candour and clean hands by providing evidence as well as pursuing all avenues prior to pursuing a winding-up order.

11.

Ad Paragraph 9 and 12

The content of these paragraphs are noted.

12.

Ad Paragraph 13

The content of this paragraph is denied.

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12.1 The Applicants allege that the funding was desperately needed in order to enable the continued operation of THL whilst a potential solution is found, however by their own submissions this is demonstrably false and will be demonstrated herein below.

13.

Ad Paragraph 14

The content of this paragraph is noted, however it must be stated that the Applicants had agreed to PCF 11 in its entirety and cannot now approach this Honourable Court with their grievances in terms of the agreement that they sought. If the Applicant was not happy with the provisions set out in PCF 11 they ought not to have accepted them.



14.

Ad Paragraph 15

I reiterate, these are provisions which the Applicants had agreed to upon acceptance of PCF 11.

15.

Ad Paragraph 16

The content of this paragraph is noted. It must be stated that the Applicant had knowledge of the IDC's internal policies and regulations yet still accepted the provisions set out in PCF 11. The Applicants ought to have accounted for these issues. Instead the Applicants accepted PCF 11 which they now allege could not be utilized effectively which they ought to have known, and now have furthered the debt of THL.

16.

Ad Paragraph 17

I cannot confirm nor deny the content of this paragraph, however if the funding has indeed not been approved the appropriate question would be, how has THL managed to operate (and rather well according to Annexure "AM4") without the funding to date?

16.1 At paragraph 13 the Applicant states that funding was desperately required in order for THL to operate whilst a potential solution was found.

16.2 Now the Applicant alleges that the funding has not been approved, yet THL has opened a number of their mills and has been operating rather optimistically according to Annexure "AM4".



16.3 It is further submitted that this liquidation application was brought upon the premise that the funding available could only sustain THL till the end of March 2026, as stated by the Applicants in their consolidated Replying Affidavit, yet here we are in May 2026, going into June 2026, where THL reports optimistic viewpoints regarding the operation of THL and the Applicants not having access to further funding (as per their version of events) yet THL still remains operational. Therefore I implore this Honourable Court to consider if indeed this liquidation application is in fact *bona fide*, or if it is contrived and being used as a mechanism to manipulate and strongarm parties for further funding.

16.4 This further emphasises the ever changing narrative of the Applicants.

17.

Ad Paragraph 18

The content of this paragraph is denied.

17.1 None of these concerns were communicated in Annexure "AM4".

17.2 This further demonstrates the duplicitous conduct by the Applicants. They have displayed optimism and hope from THL to the growers in an attempt to manipulate the growers into sending their cane to THL(knowing full well that growers will not be able to receive any monies should THL be liquidated) all whilst having the belief that THL ought to be placed into provisional liquidation come 17th and 18th June 2026.

18.

Ad Paragraphs 19-22

I can neither confirm nor deny the content of these paragraphs however I once again reiterate that the Applicants were well aware of all the conditions, provisions and restrictions of PCF 11 before accepting them.



19.

Ad Paragraph 23

The content of this paragraph is denied and has been explained hereinabove.

20.

Ad Paragraph 24

The content of this paragraph is denied.

20.1 The Applicants seem to have contrived this position as they refuse to consider any *bona fide* offers by any other party since they are of the view that Vision can be the only "saviour" of THL.

21.

Ad Paragraph 25

The content of this paragraph is noted. The outcome of the postponement is unsurprising as it is clear that the Applicants have no intention of pursuing any proposal that deviates from the adopted plan, the adopted plan being one that has failed on their own version of events. Therefore it is of no surprise that pursuing the implementation of a failed plan would result in further failure.

22.

Ad Paragraph 26

The content of this paragraph is noted, however, it must be stated this this lays the groundwork for the Applicants to further strongarm the IDC into even more funding.

23.

Ad Paragraph 27.1

The content of this paragraph can neither be confirmed nor denied.

23.1 If indeed this is true, I reiterate, how has THL been operating and why has THL communicated the contrary to the growers in Annexure "AM4"?

24.

Ad Paragraph 27.2

The content of this paragraph is denied.

24.1 If a party bound to the adopted plan has failed to act in terms of the adopted plan, it constitutes a breach. The Applicants have, from the outset, always had remedies available to them that are not liquidation.

25.

Ad Paragraph 27.3

The content of this paragraph is noted. The Applicants refuse to provide a reason for rejecting or refusing other viable proposals.



26.

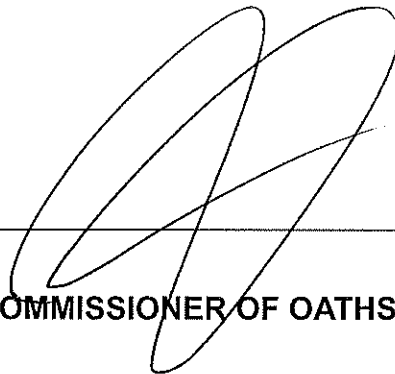
Ad Paragraph 28

The content of this paragraph is denied.

26.1 The Applicants have refused to provide this Honourable Court as well as affected parties any substantial evidence regarding the financial position of THL. It is inappropriate that the Applicants seek an order based entirely on their word.

DEPONENT

I CERTIFY THAT the Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to before me at Umhlanga on this 27th day of May 2026, the provisions of Regulations contained in Government Notice R1258 dated July 1972 as amended, having been duly complied with.



COMMISSIONER OF OATHS



FULL NAME : **ALESHIA RAMNANAN**
CAPACITY : **COMMISSIONER OF OATHS**
PRACTISING ATTORNEY
Unit 3c, Level 1, Glass House Office Park,
309 Umhlanga Rocks Drive
ADDRESS :

A.R

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

CASE NO: 2025/031780
DATE: 16-04-2026

In the matter between

G C ALBERTYN & ANOTHER

APPLICANTS

and

TONGAAT HULETT LTD
(IN BUSINESS RESCUE) & OTHERS

RESPONDENTS



BEFORE THE HONOURABLE JUDGE SINGH

| | | |
|--------------------------------|---|-------------------------|
| <u>ON BEHALF OF APPLICANTS</u> | : | MR SUBEL / MR SHAPIRO |
| <u>ON BEHALF OF IDC</u> | : | MR D FINE / MR T SERATO |
| <u>ON BEHALF OF RGS</u> | : | MR KOTZÉ |
| <u>ON BEHALF OF VISION</u> | : | MR J BLOU / MR RAMOGALE |
| <u>ON BEHALF OF SACGA</u> | : | MR VAN ROOYEN |
| <u>ON BEHALF OF MINISTER</u> | : | MR M CHAUKE |
| <u>ON BEHALF OF ABRINA</u> | : | MS D DHEODUTH |
| <u>ON BEHALF OF TURKS</u> | : | MR D ALDSWORTH |

303 Anton Lembede Street
5th Floor, Durban Club Place
Durban 4051

A.k

PROCEEDINGS ON 16 APRIL 2026**[Transcriber's note: Proceedings commence as follows]:**PARTIES: [Speaking in background].REGISTRAR: M'Lady, I call case number 2025-031780, G C Albertyn and others *versus* Tongaat Hulett and others.MR SUBEL: May it please Your Ladyship. I appear for the applicants together with my learned friend, Mr Shapiro.SINGH J: Yes, thank you, Mr Subel.MR FINE: May it please Your Ladyship. I appear for IDC with my learned friend, Mr Serato.SINGH J: Thank you.UNIDENTIFIED SPEAKER: You want to go ...[indistinct – voice fades]?MR KOTZÉ: May it please you, M'Lady. I appear on behalf of RGS.SINGH J: Yes, thank you.MR BLOU: May it please you, M'Lady. I appear for what is being termed the Vision respondents. There is another counsel representing Vision in respect of other matters, Mr Ramogale.SINGH J: Yes, thank you. Who appears for the other aspect of Vision?MR VAN ROOYEN: May it please, M'Lady. I appear for the South African Cane Growers Association ...[intervention]SINGH J: Yes.

MR VAN ROOYEN: Van Rooyen, R.

SINGH J: Yes, thank you, Mr Van Rooyen.

MR HUGH[?]: [Indistinct].

SINGH J: Before we go there, ...[intervention]

MR HUGH: Should I proceed ...[intervention]?

SINGH J: There is a counsel before – behind you
...[intervention]

MR HUGH: Ja.

SINGH J: Please, may he ...[intervention]?

MR HUGH: [Indistinct].

MR CHAUKE: May it please Your Ladyship. I appear for the
Minister of the Department of Trade, Industry and
Competition.

SINGH J: Yes, thank you.

MS DHEODUTH: M'Lady, I appear on behalf of Abrina 9422
(Pty) Limited, intervening party.

SINGH J: Thank you, Mrs Dheoduth.

MR ALDSWORTH: M'Lady, I appear for the intervening
shareholders in corporate ...[indistinct – voice fades].

SINGH J: Yes, thank you. And you, sir, are?

MR HUGH: Mr Hugh.

SINGH J: Can you spell that for me?

MR HUGH: Hugh [spelt]. South African Liberation
Movement.



SINGH J: Yes, thank you. Mr Subel – sorry, sir, you may be seated.

MR HUGH: [Indistinct].

MR SUBEL: Thank you, M'Lady. M'Lady, ...[intervention]

SINGH J: Yes, Mr Subel, what is the position?

MR SUBEL: Thank you. We firstly thank you for the opportunity to affording the parties to try and reach some arrangement where the immediate urgency would perhaps be taken care of. As between the Business Rescue Practitioners, BRPs, the IDC and the Vision parties, we understand that there is an arrangement in place ...[intervention]

SINGH J: Yes.

MR SUBEL: As we, during the course of the stand down, certain agreements were concluded. The BRPs, as you would be aware, certainly are dependent upon funding flowing into the company to continue with the ...[indistinct] day-to-day operations.

SINGH J: Yes.

MR SUBEL: The case that made out was that it is a dire position currently and that is what led to be here, application of a Section 141. So the - what we have been handed is ...[indistinct] agreement, which I understand from the IDC and the Vision parties that they are happy that I hand to Your Ladyship.



SINGH J: Are those the series of agreements similar to the ones put up in the IDC's supplementary affidavit?

MR SUBEL: Yes. So, yes, it is ...[indistinct] draft of the PCF agreement ...[indistinct].

SINGH J: Yes.

MR SUBEL: It has got some refinements, but it is pretty ...[indistinct] the same. There is an addendum to the amended and restated agreement, and then there is certain correspondence to deal with certain conditions.

SINGH J: Yes.

MR SUBEL: ...[Indistinct] in substance what the agreements provide for is immediate ...[indistinct] funding PCF, which will take care of the immediate crisis. It is contemplated, and the terms of that further advance have been agreed between those parties, the IDC, Vision parties and the BRPs, and that will enable the BRPs to continue with the day-to-day operations currently. But what is envisaged is that that would last, I do not believe [?], for more than the end of June, and in which event we would be seeking, what we will be seeking from Your Ladyship today is that the hearing be postponed, that the application for the discontinuation and termination of the business rescue, and the winding up, and we believe from the current applicants, RGS Holdings, they will be resisting that, they are going to want to urge Your Ladyship ...[intervention]



SINGH J: Sorry, Mr Subel, do I understand that you want to persist with the ...[intervention]

MR SUBEL: So the application ...[intervention]

SINGH J: ... liquidation application?

MR SUBEL: We won't persist with it today.

SINGH J: Yes.

MR SUBEL: What we are seeking is, what this does is it gives a breather as it were, it gives an opportunity to see whether or not a rescue will be possible ...[intervention]

SINGH J: Yes.

MR SUBEL: And that gives the parties until the end of June, in order to see whether or not that can be resolved. So as Your Ladyship knows, under the plan that was approved and adopted, there were two scenarios. The first scenario was a swap of debt to equity. That failed. It was voted down by the creditors, which led to the second scenario, and I do not want to talk on behalf of the Vision parties, but as far as we understand, the second scenario then was sales of assets ...[intervention]

SINGH J: Yes.

MR SUBEL: And, sorry, there is a bit of feedback on ...[indistinct – voice fades]. And that failed, as we understand it, the BRPs, that that failed. What this does, it gives an opportunity that before the end of June, the parties can see whether or not they can achieve a rescue. So the application,



the report back as Your Ladyship is aware, the BRPs are statutorily obliged to report to this Court ...[intervention]

SINGH J: Yes.

MR SUBEL: ... on the position which is what this application is about, and ultimately for the Court ...[indistinct] to make an appropriate order, and the application is about, as currently, understand, to terminate the business rescue and to wind up the company, there being no alternative to that. What this does is it ...[indistinct] the agreement or moratorium [?] until the end of June.



So what we would be seeking is a postponement of the application for the purpose of continuing at least for an interim period, but we would seek to arrange with Your Ladyship a date for an adjournment of the hearing in order to accommodate whether there is a further need to continue with the application or whatever may be achieved before the end of June ...[indistinct – voice fades].

SINGH J: Yes.

MR SUBEL: That is where we find ourselves ...[intervention]

SINGH J: Yes.

MR SUBEL: So it does take immediate urgency needed, as I say, it should about two-and-a-half plus months, that this money will be available to be used, but that is where we find ourselves. What we - I do not know what the attitude is of

certain of the respondents, and Your Ladyship will no doubt hear, but what we do know is that RGS ...[intervention]

SINGH J: Yes.

MR SUBEL: ... are resisting any postponement. As we understand the position, they want to argue their counter application to have the application before Your Ladyship ...[indistinct] today, dismissed. In other words, they want the application to terminate the business rescue and the liquidation dismissed. We would – I will address Her

Ladyship in due course, when appropriate, on this It is a rather curious position where they wanted really to revert to the *status quo* where there is no money, there is no rescue and there is no winding up, but yet they want to try and urge that Your Ladyship must today deal with the matter, and therefore they would resist the postponement. But no doubt, we will hear from RGS' counsel ...[intervention]

SINGH J: Yes, and so long have the parties arranged any draft order, crafted any draft order to cater for the future conduct of the matter?

MR SUBEL: The only order that we have receipted[?], that we need to arrange it with Your Ladyship, is an adjournment of the main application until the date ...[intervention]

MR SHAPIRO[?]: And costs reserved.

MR SUBEL: And the costs reserved. That is all. But we will, once we resolve that, we will prepare a draft order.



SINGH J: Yes, and naturally I will have to give direction. There may well be a need for the filing of further affidavits, because there would be a change in the circumstances from today ...[intervention]

MR SUBEL: Today. Yes.

SINGH J: ... until ...[intervention]

MR SUBEL: When we come ...[indistinct].

SINGH J: ... when the matter next serves before me.

MR SUBEL: Of course.

SINGH J: Yes.

MR SUBEL: So we will ...[indistinct – voice fades].

SINGH J: Yes, ...[intervention]

MR SUBEL: M'Lady, would you wish to receive the agreement ...[intervention]

UNIDENTIFIED SPEAKER: We can upload it, if she wants it ...[intervention]

MR SUBEL: We have a copy ...[intervention]

UNIDENTIFIED SPEAKER: We can upload it ...[intervention]

SINGH J: Sorry, do you have something to say?

UNIDENTIFIED SPEAKER: No, I am sorry, we can ...[indistinct – voice fades].

MR SUBEL: What I am told is it can be uploaded of the ...[indistinct].

SINGH J: But I would appreciate a copy, please. Thank you.

MR SUBEL: We will have it available.



UNIDENTIFIED SPEAKER: Okay, thank you.

SINGH J: Thank you.

UNIDENTIFIED SPEAKER: Before I address Your Ladyship, perhaps we could hear from the various counsel as to where their positions are.

SINGH J: Yes, but I also need to hear our litigant in person.

UNIDENTIFIED SPEAKER: Yes. Mr Hugh, I understand, wants to address you.

SINGH J: Yes. Yes, so before I hear from any of the counsel. Sorry, ...[intervention]



PARTIES: [Speaking in background].

SINGH J: He seems to have left. Well, he will reappear.

MR BLOU: He will reappear.

SINGH J: Okay, ...[intervention]

MR BLOU: Yes. M'Lady, ...[intervention]

SINGH J: May I hear then from ...[intervention]?

MR BLOU: Well, we have kind of agreed on the order, subject to you, that Vision should address you, the Vision parties. So, M'Lady, I can confirm ...[intervention]

SINGH J: So, sorry, will you be addressing ...[intervention]

MR BLOU: I will be Vision ...[intervention]

SINGH J: ... on behalf of both ...[intervention]?

MR BLOU: Of both Vision ...[intervention]

SINGH J: Yes.

MR BLOU: Double Vision.

SINGH J: Yes. Double Vision ...[intervention]

MR BLOU: Yes.

SINGH J: Thank you. It helps.

MR BLOU: Unless Mr Ramogale can always add something that I have missed ...[intervention]

SINGH J: Yes.

MR BLOU: I am not taking away from him ...[intervention]

SINGH J: Yes.

MR BLOU: But ...[intervention]

SINGH J: Thank you, Mr Blou.

MR BLOU: ... our position is the following, M'Lady, as you are aware of the dynamic, just so we can get it on the record, what this postponement does is, as Mr Subel indicated, it gives the company an immediate lifeline until June. And as Your Ladyship has picked up from the papers immediately, the burning question ultimately is going to be what happens between now and June, is the companies able to get over the reasons that the, leaving aside the correctness of, is the practitioner going to be able to satisfy themselves and you by June that the company has now an alternative rescue possibility, call it a plan, whatever, given that the original plan on any version ...[intervention]

SINGH J: The original plan on any version was stillborn ...[intervention]

MR BLOU: Has not come to fruition, yes.



SINGH J: Yes.

MR BLOU: And so the, well, not stillborn, that is a different question. That is what RGS have to say, ...[intervention]

SINGH J: Yes.

MR BLOU: But that is a separate point ...[intervention]

SINGH J: Yes.

MR BLOU: That is a separate point. The point is it is not, it is not implemented, it is not capable of substantial implementation. That would be the test to get it out of business rescue.



SINGH J: Yes.

MR BLOU: And so I would just like to place a couple of things on record for Vision, is firstly, so that the Court will have to appreciate, as you say, there are obviously going to be dialogue between the same three parties, and maybe anyone else who has an interest, about what can be agreed to be put before creditors, one way or another, for an alternative rescue, and that will have to be told to the Court by way of affidavits before June.

SINGH J: Yes.

MR BLOU: And so that is why this is an interim position, but it does not represent any party having given a final commitment to anything, neither Vision nor the IDC. Vision just wants to report, M'Lady, that although it has consented and a consent is a consent, it remains concerned on the basis

of what is said in the affidavits, that despite these many months, there is not yet a proposal that includes the IDC or anybody else that provides a long-term rescue.

It, in accordance with the governance and corporate governance, accepts that June, at least liquidation can be averted until June, but it is very concerned that the IDC have effectively advanced money at a very high interest rate. It has added to the debt of the company, and none of this is going to be to anyone's benefit, unless the parties engage in order to actually come to an alternative type of rescue.



Whether the first one was stillborn or not, we can have a separate debate ...[intervention]

SINGH J: Yes.

MR BLOU: But unless this Court can be given a viable plan going forward, I do not think we can keep on three-monthly [?] instalments of PCF while the debt rises. Vision has to release security, and there is no – there has got to be an end in sight, and we are just putting all parties on notice that Vision's attitude is to accept the postponement, to accept that the PCF is coming in, but it is not a lasting solution.

SINGH J: Well, I understand ...[intervention]

MR BLOU: And ...[intervention]

SINGH J: ... it is an interim, as you submitted ...[intervention]

MR BLOU: Yes.

SINGH J: So ...[intervention]

MR BLOU: Yes, ...[intervention]

SINGH J: Yes.

MR BLOU: That is where we are ...[intervention]

SINGH J: Yes, thank you, Mr Blou.

MR BLOU: But we support, on that basis, we support the matter being postponed to June to see whether or not an alternative can be put up.

SINGH J: Yes. I believe that what should happen is no, sorry, Mr Blou, I am not addressing this to you ...[intervention]



MR BLOU: I am sorry. Yes, certainly.

SINGH J: Whichever counsel agrees with the position and aligns themselves to what has been submitted by Mr Subel and to a large extent by the Vision parties, I would like to hear from them. So maybe I should hear from Mr Fine so long.

MR FINE[?]: Sorry, I am just, if you could just bear with me a moment, I just ...[intervention]

SINGH J: Yes.

MR FINE: If I could just hear what my learned junior ...[intervention]

SINGH J: Yes, certainly you may.

MR FINE: Sorry, but I could suggest, M'Lady, perhaps RCS addresses you and then I can address you ...[indistinct – voice fades], if that is convenient.

UNIDENTIFIED SPEAKER: The other ...[indistinct – voice fades].

MR FINE: And the other ...[intervention]

SINGH J: Well, I am simply asking who is consenting to this order, ...[intervention]

MR FINE: Okay.

SINGH J: Because I understand RGS's position is different

MR FINE: Yes. We are consenting to the order ...[intervention]

SINGH J: Yes.

MR FINE: And I am just hearing from my learned friend that, and I just want to firm up [?] on that, I do not want to make any statement which is incorrect. They believe - we believe that the 200 million will last a little longer than the end of June, and if I may just take some finite instructions on that, M'Lady?

SINGH J: Yes, you may.

..[Mr Fine takes instructions].

MR FINE: Yes, I think in our papers originally, in the answering affidavit, we had said that the management forecast was sufficient to take it to October. That is not entirely, I think there is some dispute about that. We would



prefer a little longer, but two-and-a-half months, we think the 200 million will last longer. I would press for a little longer, in the circumstances, I think two-and-a-half months is going to be quite hectic, but there is obviously, we accept, M'Lady, as all the parties have, that there is a ...[indistinct] in relation to this issue and that the sooner it is resolved, the better. That is our attitude ...[indistinct – voice fades].

SINGH J: Yes, thank you. Thank you, Mr Fine.

Mr Van Rooyen?

MR VAN ROOYEN: M'Lady, from the Growers' perspective

our position has always been that we want the mills to open as soon as possible.

SINGH J: Yes.

MR VAN ROOYEN: And although this is a very short runway that has been given, it is a funded runway, and our stance has always been that with funding, we believe the mills will open and the Growers can start delivering 3.8 million tons of cane and ...[indistinct – voice fades]. So we do not oppose ...[intervention]

SINGH J: Yes.

MR VAN ROOYEN: ... the postponement of the matter.

SINGH J: Yes. Thank you, Mr Van Rooyen.

MR VAN ROOYEN: [Indistinct] we go along with our ...[indistinct – voice fades].

SINGH J: Yes. Thank you.



MR CHAUKE: May it please the Court, M'Lady.

SINGH J: Yes?

MR CHAUKE: Our position on the matter is the postponement would be a pragmatic approach to the situation, taking into account the position we take in our papers that the application actually ought not to be granted and the reasons we give therefor, but in the context of parties having had discussions and reached milestones that, you know, on any version, M'Lady, have been in a matter of weeks where over a few months they could not meet each other.



The postponement would be helpful and could achieve and that is meaningful to the parties, and that is the basis upon we support the postponement.

SINGH J: Yes. Yes, thank you.

MR CHAUKE: As the Court pleases.

SINGH J: Mr Aldsworth, what is your position?

MR ALDSWORTH: M'Lady, I think it would perhaps be better if I speak after Mr Kotzé. I think a lot of what I might have to say will overlap with what he has to say. I can properly address it in more detail ...[indistinct – voice fades].

SINGH J: Yes. Ms Dheoduth, I assume that you also take the same position as Mr Aldsworth, you would rather address the Court after RGS has addressed me?

MS DHEODUTH: Certainly, M'Lady.

SINGH J: Yes.

MS DHEODUTH: Just to place on record that the position of Abrina, M'Lady, is that we will be opposing effectively the relief that they are seeking, and we believe that effectively what they have now done is they have removed the substratum of the application itself. So to that extent, what should rightfully happen is the application should be withdrawn. And in the event that they form this opinion or the conclusion, in the future they can bring a fresh application.

M'Lady, the matter cannot be remedied by the ...[indistinct] of further affidavits, but I will address that with M'Lady after my learned friend addresses M'Lady.



SINGH J: Yes. Yes, Mr Kotzé?

MR KOTZÉ: May it please you, M'Lady. M'Lady, my learned friend, Mr Subel, submitted that RGS, in opposing the postponement, seeks to revert to a position where there is no money. That is, with respect, incorrect. On the contrary, the IDC's condition for the extension of the PCF and the increase in the quantum of the PCF has always been that the company remain in business rescue and be kept out of liquidation.

So there is nothing to my knowledge in the PCF agreement that has been circulated five minutes before this hearing commenced and which I have not had an opportunity to study, that makes the PCF conditional on the postponement of this liquidation application or on the liquidation application being kept alive.

So the provision of the PCF and the dismissal of the liquidation application are not mutually exclusive at all. Everything that the parties seek to achieve by further engagement can very well be achieved after this application has been dismissed.

It seems to me that the liquidation - sorry, that the postponement of the liquidation application is being sought as though it is there for the asking. There is no reason to postpone an application for the liquidation of the company, specifically not if brought under 141(3) of the Act, if the applicants in that application cannot demonstrate on the extraordinary urgency on which they brought the application that there are grounds for the relief they seek at the hearing of that application.



So quite plainly, the BRPs have not demonstrated a case for Your Ladyship to grant the provisional liquidation of Tongaat Hulett, and this is for the reasons that were set out in RGS's heads of argument prior to the extension of the PCF, but it is rendered completely beyond doubt now that an additional R200 million has become available, that there is absolutely no basis for the discretion or the decision that the BRPs have reached under Section 141(3) to say that no reasonable prospect exists to rescue the company.

M'Lady, the BRPs have no entitlement to keep, or Vision, or the IDC, have no entitlement to keep the liquidation

application and Tongaat Hulett in a state of suspended animation by postponing this urgent liquidation application for a period of a couple of months to see what happens.

And before I proceed to develop that argument, I would point out that keeping a liquidation application in limbo is not without consequence. In terms of Section 348 of the 1973 Act, the winding up of a company by Court is deemed to commence at the time of the presentation of the application for winding up, in this case, the 11th of February of this year.



Secondly, in terms of ...[inaudible – recording plays at slow speed] this arbitration in limbo and keeping the Vision ...[indistinct] on the BRPs and the IDCs ...[indistinct] and that the Minister is described as a perversion and abuse. Those two things together will mean that if Vision does not come right in its shakedown of the IDC for the full extent of its funding under the plan, and if liquidation then ensues, the effect of that will be that the company will be deemed to have been liquidated on the 11th of February, every disposition made, every share pledged, every asset sold will be void, and to unscramble that proverbial omelette will be a nightmare, and there is simply no reason to risk that eventuality.

They - the simple answer is that the BRPs can launch an application under 141 when they have a case to make out the relief they seek. As they sit here today, they cannot both

say under 141(3) that they no longer believe there to be no prospects of the company being rescued, but also they want to keep the foot in the door on that discretion and see what happens over the next couple of months, until the end of June, so that they can then just slide back in on the postponement and argue for liquidation.

M'Lady, regardless of whether the Court dismisses the liquidation application or whether it postpones it, I submit that the Vision plan must be set aside. The BRPs and the IDC agree with RGS that the plan has failed in its execution and that is after more than three years of rescue supervision.

As I understand, Vision concedes, if not that the Vision plan was stillborn, it does concede that the plan has now failed. And it is evident from the correspondence that Vision sent to the IDC, that is attached to the IDC supplementary affidavit as SA3, that Vision itself accepts that it will have to take whatever new proposal. It is, in that letter, they detail a sequence ...[intervention]

SINGH J: Which letter are you referring to now?

MR KOTZÉ: So it is Annexure SA3 to the supplementary affidavit filed by the IDC. I am afraid I do not have it on the record. I just have it as it was sent to me, because that is the affidavit that came in on Sunday or Monday ...[intervention]

SINGH J: Yes.

MR KOTZÉ: But in that ...[intervention]



SINGH J: Came in on Tuesday, to be precise.

MR KOTZÉ: Tuesday. So, M'Lady, in that letter Vision, so it is Annexure SA3 and it is a letter from Vision's attorneys to the BRP's attorneys ...[intervention]

SINGH J: Yes.

MR KOTZÉ: ... on the 8th of April, and in that letter Your Ladyship will see from, in paragraph 4 and all its subparagraphs, Vision details all of the attempts that is made to interact with the IDC and the fact that it has made more than one additional, so at paragraph 4.5.3 they refer to an initial proposal, then in paragraph 4.5.7 they refer to an alternative proposal, then they say that there were no responses. Then in paragraph 4.5.14, they say, "Our client has since made a further proposal to the BRPs on the 7th of April 2026".



But what they do concede here as well is that, and this is at paragraph 4.5.7 of that letter, that, "Our client also advanced an alternative proposal, including amendments, to the plan for voting by THL's creditors." Now that admission is an admission to the fact that the plan as it stands, is incapable of implementation without an amendment.

But, M'Lady, to move away from this and to move back into the realm of Section 141(3) and the BRP's motion to postpone, on the authority of Faber[?], which I have provided to Your Ladyship in my heads of argument ...[intervention]

SINGH J: Yes.

MR KOTZÉ: ... the Court held there unequivocally that a Court's discretion under Section 141(3) of the Act does not extend to a discretion to extend a plan that has failed in its execution, and that any such extension would be contrary to the scheme of the Act.

So what Your Ladyship has before the Court today is a company that has been in rescue for more than three years ...[intervention]

SINGH J: Yes.

MR KOTZÉ: ... a plan that was adopted on the 11th of January 2024, that everybody concedes has failed in its execution. But the effect of simply postponing this application is contrary to the authority in Faber[?] and it is contrary to the SCA authorities, that I will get to in a minute.

But, M'Lady, it goes much deeper than that, because the Minister has categorised correctly the plan and its implementation as an abuse and a perversion that cannot be allowed to continue. So the, and further to that, the BRPs say, in paragraphs 51 and 56 of their heads of argument, and I would actually like to take a minute to go there.

So in paragraph 51 of the BR ...[intervention]

SINGH J: Just let me get there, Mr Kotzé, please. [Pause].
Yes, you are referring me to paragraphs?

MR KOTZÉ: 51 of the BRP's heads of argument, M'Lady.



SINGH J: Yes.

MR KOTZÉ: So there they say in response to somebody, one of the opposing parties' suggestion that the plan can be amended, they, the BRP say:

“There is no reasonable basis to believe that any amended plan will address, ...”

And this is important, they say:

“It will not address the fundamental obstacles which have prevented implementation of the plan, namely the failure of Vision and the IDC to reach agreement on the terms of Vision funding and refinancing of PCF.”



So just to, just before I explain the import of what that means, if we turn over the page to paragraph 56, the BRPs also say there that:

“There is no reasonable basis to believe that a revised plan is capable of adoption or implementation in circumstances where the primary obstacle of the implementation is the failure of Vision and the IDC to reach agreement on funding terms and Vision has demonstrated an unwillingness to cooperate with further processes absent its own demands being met.”

Now we must, with respect, M'Lady, be very clear about what Vision is saying in response to this PCF. Granting R200 million in PCF does not at all address the fundamental obstacles to implementation that have been a scourge in THL's business rescue, because the fundamental obstacles are that Vision does not have funds to implement its own plan.

When Vision argues that what they require from the IDC is a viable long-term solution, that should be translated into plain English to mean Vision wants the IDC not only to pay for the full implementation of Vision's own plan, but also to give Vision the working capital it needs to conduct Vision Sugar, its brand new company, with all of Tongaat's assets as its own.

So where there is reference to a sustainable long-term solution from Vision, they are saying that Vision needs the IDC to cave to their demands, to fully fund them, to accept responsibility for the full refinancing of the PCF and to give Vision a working capital facility. All of these things are in addition to the guarantee that the IDC has already given Vision and extends to an exposure for the IDC in excess of R5 billion. That is what they mean when they say we need a workable solution.

SINGH J: Yes.



MR KOTZÉ: So with all due respect, the idea that this R200 million stopgap, which is a godsend in terms of trying to save Tongaat in the short term, it must not be understood to address any of the fundamental problems to implementation that the BRPs have always said have become intractable and which on Vision's own version, M'Lady, if I can, I do not need to take you there, but if I can refer Your Ladyship to the affidavit that Vision filed in response to the IDC supplementary affidavit, I mean they say ...[intervention]

SINGH J: Sorry, are you now referring to an affidavit filed by Vision in response to ...[intervention]

MR KOTZÉ: So Vision responded to the IDC's ...[intervention]

SINGH J: And when was that?

MR KOTZÉ: On the 14th of April, it seems.

SINGH J: That would have been yesterday. I have not seen that affidavit.

MR KOTZÉ: The day before yesterday. But M'Lady, Your Ladyship need not go there now. Your Ladyship can read it whenever it is put before the Court, but ...[intervention]

SINGH J: But you are referring to it, Mr Kotzé ...[intervention]

MR KOTZÉ: Yes.

SINGH J: Surely I need to have a look at it.

MR KOTZÉ: Ja.



PARTIES: [Speaking in background].

MR KOTZÉ: I think Your Ladyship has it.

PARTIES: [Speaking in background].

MR KOTZÉ: I do not have a hardcopy, otherwise I would have handed mine up to Your Ladyship ...[intervention]

SINGH J: I am getting there ...[intervention]

MR KOTZÉ: ... and I am using it from my laptop.

PARTIES: [Speaking in background].

MR KOTZÉ: Thanks, Gary[?].

PARTIES: [Speaking in background].

MR KOTZÉ: The attorney for the IDC is getting Your Ladyship a copy, which I will hand up in a second.

PARTIES: [Speaking in background].

SINGH J: Do we have a hardcopy, please? The system on case law is extremely slow.

MR KOTZÉ: Here is a hardcopy, M'Lady, thanks to the IDC's attorney.

SINGH J: Yes, thank you.

MR KOTZÉ: So if Your Ladyship could turn to paragraph 12.
[Pause – paging].

SINGH J: Yes?

MR KOTZÉ: So, perhaps we can just quickly canter through the affidavit. It starts by, under the first heading, the IDC's proposed 200 million PCF increase, at paragraph 4, where Vision says that, you know, the second:



“The BRPs have identified two critical issues that must be resolved to avert THL's liquidation. The first is securing the urgent funding required by THL to continue trading in business rescue. The BRPs quantified this requirement at R600 million.

The second is finalising the implementation of a viable plan.”

SINGH J: Why is there so much of shuffling in this court?

Please, I am trying to hear counsel. Yes? Sorry, Mr Kotzé.

MR KOTZÉ: Including the refinancing of the post commencement finance facility. Now, M'Lady, this, a lot of things in this case are said but not explained. This all goes back to the fact that Vision does not have money to implement its own plan. It needs, in order to close the business rescue proceedings, it needs the IDC to fund it in full.

And Your Ladyship will, in due course I am sure, read what Vision says in this affidavit, but what I wanted to show Your Ladyship was at paragraph 12, where Vision says that:

“The IDC states that it is amenable to engage without delay and states that it recognises the urgency in arriving at this



resolution. However, the IDC's conduct has not matched its assurances. Despite vision's repeated approaches, the IDC has not engaged constructively with Vision on THL's future prospects."

So what Vision does in this affidavit is it draws a distinction to the granting of the additional 200 million in PCF, and then it focuses on the future prospects, being the IDC's capitulation to Vision's demands for funding in excess of R5 billion.



They proceed then to say, a concern, this concern was set out in the letter from Stein Scop Attorneys to Werksmans on the 8th of April, a copy of which was attached to the IDC supplementary affidavit, and this is what I wanted to show Your Ladyship. The IDC states that it is amenable to "any viable restructuring", in inverted commas, but does not even mention the proposals made by Vision. It remains unclear to Vision whether the IDC is committed to a plan with Vision, underlined.

The upshot of all of this is that while there is agreement for R200 million, there is not one smidge, not one iota, not one millimetre of progress that has been made in addressing the fundamental obstacles to implementation that the BRPs themselves relied on expressly to motivate for a liquidation order being granted today.

My point is that liquidation is clearly unwarranted on the facts, but that the Section 141(3) application cannot just be pushed into a three-month loop, to use the BRPs words, of hope. The fact is that they have not made out a case for the relief they seek.

SINGH J: Yes.

MR KOTZÉ: M'Lady, it goes even further, because the BRPs have admitted that they were implementing unlawful conditions that were asserted by Vision, which ...[intervention]



SINGH J: Where do you get that from, Mr Kotzé?

MR KOTZÉ: The BRPs ...[intervention]

SINGH J: Why would they be admitting that they are implementing unlawful conditions?

MR KOTZÉ: M'Lady, it is in the founding affidavit. Can I take you to RGS's heads of argument, please? So the two conditions were that the IDC fund Vision fully, and the second is this broad ranging legislative and structural reform of the entire sugar industry. Those are the unlawful conditions.

So if I can refer Your Ladyship to paragraph 31 of my heads of argument?

SINGH J: Yes.

MR KOTZÉ: So at paragraph 31, I list the facts that are revealed by the IDC and by the BRPs in this application for the very first time. M'Lady, I can say that it is impossible to

conduct a thought exercise to explain the difference between this information that was provided and what affected persons knew at the time, what they knew contemporaneously, because nothing was disclosed transparently. And that is the point that the Minister for Trade and Industry makes in his supplementary heads of argument.

So when one reads these allegations, one must understand that they are being made for the first time in the context of this application and were not communicated at all to anybody. They were confined to the knowledge of the business rescue practitioners and/or the Vision and the IDC.



But M'Lady, can I take Your Ladyship to paragraph 31.7, ...[intervention]

SINGH J: Yes.

MR KOTZÉ: ... because that is really the one that I want to show Your Ladyship, paragraph 31.7 of my heads of argument. So the BRPs say in their replying affidavit that:

“Vision imposed conditions not contained in the adopted plan. In amplification, Vision demanded an in-principle reform to the sugar industry and its legislative framework. A requirement that was not contained in the plan was outside the control of the BRPs and as stated in the founding affidavit, caused nothing but

further complications and delays. Moreover, Vision required not a mere refinancing of the PCF facility, but a much larger IDC facility which contained an onerous debt to equity conversion and rightful features which were unacceptable to the IDC and which led to the breakdown of negotiations.”

Those are the same negotiations in consideration today, M’Lady. Then the BRPs conclude that:

“Vision’s imposition of conditions not contemplated by the adopted plan is conduct inconsistent with the binding terms of the plan that Vision itself proposed.”

This is why, M’Lady, at paragraph, in the following paragraphs I explain the import of that, but where this all lands is at paragraph 35 of my heads of argument where I refer to the authority of the Supreme Court of Appeal in *Vantage Goldfields*, and I refer to the judgment of the High Court in *Lembores*.

The authority in *Vantage Goldfields* is that even where a business rescue plan contains a provision purportedly permitting business rescue practitioners to make unilateral amendments to plans post-adoption, that is not



permitted, because the Court held, in terms of the Companies Act and Section 152(4) and all of the sections that say once the plan is adopted, it binds everybody. It binds the creditors, the employees, the shareholders and the BRPs.

And the SCA said that the practitioners can only implement the plan as adopted, strictly in terms of its own provisions, and the SCA endorsed the findings of the High Court below that were to the effect that a change of the funding of the plan goes into the heart of seeking to resuscitate a distressed company and that the ability and credibility of such a funder is everything which the creditors of the distressed company, including affected persons, would want to know and be sure of.



So what the BRPs say in their own founding affidavit here is that not only did Vision impose conditions extraneous to the plan, because the plan, Your Ladyship will recall, is not premised on any funding being obtained by Vision, not a single cent.

Your Ladyship can search the assumptions and conditions contained in the plan to no end. There is no disclosure that the implementation of the Vision plan is conditional on a single cent of financing being obtained by Vision.

Secondly, there is most definitely no condition in the plan that vision requires a wholesale reform of the national

sugar industry from a structural and legislative perspective. The B - on the BRPs, Your Ladyship need not take my word for it, the BRPs say to this Court in their founding affidavit that those conditions are not contemplated and extraneous to the plan.

So on the authority of *Vantage Goldfields*, it was unlawful for the BRPs to implement the plan according to those terms. But not only, M'Lady, did they proceed to implement, as Vision says in its answering affidavit, the counter application, the BRPs went out to bat for Vision. The BRPs write to the IDC, they say, we need the structural reform, we need all of this money for Vision, we need this financing. So they go, they say, yes, these conditions are extraneous to the plan, creditors did not know they existed, creditors did not vote on them, but let us go and try and enforce and apply them on Vision's BR.

SINGH J: Yes.

MR KOTZÉ: So M'Lady, to keep this application alive and to keep the plan alive would be to perpetuate that unlawfulness and to leave that unlawful conduct unchecked. And I would reemphasise the decision in *Lembores* where the Court held that for all of the protection that business rescue proceedings and business rescue plans enjoy, where a plan is unlawful, where it is not implemented according to its own terms, it



should be set aside. It should not enjoy any protections where it is not implemented lawfully.

M'Lady, so reaching the conclusion, and - sorry M'Lady, that is *Lembores* at paragraph 50. I am sorry, I do not have the reference to the joint bundle page number, but it is the judgment of *Lembores* at paragraph 50, and it is also *Lembores* at paragraphs 86 and 87. So ...[intervention]

SINGH J: Did you say 86 and 87?

MR KOTZÉ: Yes.

SINGH J: Yes.

MR KOTZÉ: Sorry, 86.6 and 86.7. So, M'Lady, I sympathise entirely with the inclination to adopt a pragmatic approach today, but the law cannot be ignored in relation to the manifest non-compliances that have been manifest in the plan and its implementation. M'Lady, I understand that the IDC is of the view that the postponement of this application and the continuation of the Vision plan will allow other parties, not only Vision, to make renewed proposals, but, M'Lady, that view is contrary, to the best of my understanding, to the established legal position that an adopted plan is binding on all parties for so long as it remains in place. And conveniently, the authority for that is also in *Vantage Goldfields*, where the Court cites the previous SCA decision in *Kransfontein*, as well as in *Lembores*, in the paragraphs I have already mentioned to Your Ladyship.



So, in other words, as long as there is a plan that has been adopted and it has not been set aside, ...[intervention]

SINGH J: Yes.

MR KOTZÉ: ... it applies to the exclusion of everything else. And as a matter of fact, as is evident from RGS's affidavit in this matter, every proposal that RGS has made to the BRP has been refused by the BRPs expressly on the basis ...[intervention]

SINGH J: Mr Kotzé, I must stop you there. I understood your purpose for addressing me is to address me as to why the application for liquidation should be dismissed and not postponed. You are now venturing into the realm of arguing the entire application. I have not made any ruling as to whether the application must be dismissed or postponed. The purpose of your address to me was whether or not the matter ought to be postponed.

MR KOTZÉ: M'Lady, as I understand it ...[intervention]

SINGH J: Because what you are now attempting to do is address me on the entire matter.

MR KOTZÉ: M'Lady, that is not my intention. It depends on what my learned friends seek in terms of this postponement. If postponing the liquidation application means that it is then confined to the Vision plan, then that is one scenario.



If I am told, which I have been led to believe, that what they seek by this postponement is a situation where any third party who wishes to submit a new business rescue plan may do so, that is a different position. So that needs to be confirmed.

But to the extent that I understand the law, as soon as Your Ladyship postpones this application, it means that the only plan that remains in place is the unlawful Vision plan. So to the best of my understanding of the law, it follows from that, that it would keep the Vision plan in place to the exclusion of any other possible proposal to try and save THL, and for that reason, to the best of my understanding, it is relevant to the question of postponement *versus* dismissal of liquidation today. And I mention it not, with all due respect, M'Lady, to try and sneak in argument on the merits. It is simply because the IDC, my understanding of the IDC's position is that they understand the postponement they seek will enable all people who want to come to the table with new proposals to do so, but my understanding of the law is to the contrary. So I think it is central to the question of postponement and I needed to ventilate that, M'Lady, but that was literally my last submission.

SINGH J: Yes. Thank you, Mr Kotzé.

MR KOTZÉ: As it pleases the Court.

SINGH J: Mr Aldsworth?



MR ALDSWORTH: Yes, M'Lady, just briefly, the intervening shareholders largely align themselves with the arguments made by ...[indistinct]. That being said, I do not necessarily have a preference whether the application should be dismissed or postponed, but there are some points that I want to highlight on that topic. And now firstly, as Mr Kotzé has said, the issuing of a liquidation application has quite significant consequences, and M'Lady, that is exactly the reason why the practise in this division is that you cannot adjourn liquidation applications *sine die*. So if the matter is to be adjourned, then perhaps consideration must be given to adjourning it to a specific date, to ensure that it cannot drag out ...[indistinct – voice fades].



M'Lady, we also need to consider the context in which the application was brought. This is not an application brought by a creditor alleging a debt and an inability to pay the debt. This is an application brought in terms of Section 141(2) of the Companies Act. And Section 141(3), in the context of such an application, gives the Court quite wide powers in respect of what orders it can make.

Now, the essence of the application, putting all else aside, is largely this, the company finds itself in a position, and the business rescue practitioners find themselves in a position where the company simply cannot finance its ongoing operations.

Now, the reason that we are given today for the need to postpone the matter is that this additional funding has become available, which will allow it to continue its operations for several months to come. But the question at a practical level, M'Lady, is this, what do the business rescue practitioners actually do for the next few months? They have the funding to continue the business rescue operation and to continue the business operations of THL. But what happens with regards to actually advancing the business rescue process to finality?



SINGH J: Yes?

MR ALDSWORTH: Everyone agrees that the adopted plan in place is incapable of implementation. It has effectively fallen by the wayside. Practically, it will not be ...[intervention]

SINGH J: Yes, thank you.

MR ALDSWORTH: ... as Mr Kotzé has said, regardless of whether it can or cannot be implemented, and obviously it cannot, the fact of the matter is that it remains the approved plan, until such time as it is set aside [?].

SINGH J: Yes, Mr Aldsworth?

MR ALDSWORTH: There has to be some direction given, M'Lady, for the sake of advancement[?] in the business rescue process to some point of finality. So, essentially, M'Lady, my submission is that if there is to be a postponement of the application, or if there is to be

a dismissal of the liquidation application, in either event, the Court, in my respectful submission, should issue further directions in addition to that order in accordance with its power under Section 141(3), which deals with how the business rescue process is to continue going forward. And first amongst those directions, M'Lady, I would think would be an order declaring the failure for the setting aside of the adopted plan. A direction to the business rescue practitioners should receive and consider alternative proposals for an alternative plan ...[intervention]



SINGH J: Yes?

MR ALDSWORTH: And to publish an alternative plan, an amended plan, or whatever terminology you want to apply to it, a further plan to be voted on by creditors, at a meeting of creditors in due course. Because absent that, M'Lady, absent any direction to that effect, the application is either adjourned or it is dismissed. Either way, the consequence is the same. The business rescue continues. The business rescue practitioners continue to trade the business. But how does the business rescue process advance to any degree of finality?

SINGH J: Yes?

MR ALDSWORTH: That is effectively our submission ...[indistinct – voice fades].

SINGH J: Yes, thank you, Mr Aldsworth. Mrs Dheoduth?

MS DHEODUTH: Thank you, M'Lady. M'Lady, just to place on record that we are not obviously involved in ...[indistinct] to the agreements which are concluded between the IDC, the Vision parties, and the ...[indistinct – voice fades].

SINGH J: Yes.

MS DHEODUTH: So effectively we are not subject to that. In fact, just, we were given an opportunity to look at it shortly before court actually commenced.

SINGH J: Yes.

MS DHEODUTH: The difficulty we have is, M'Lady, and M'Lady has regard to the document, M'Lady will see that it makes no sense to read the document, unless you are reading it ...[indistinct] the original document, where the amendments are effected.

So, insofar as that amendment is concerned, I cannot in any way make any meaningful submission to M'Lady, because we are not in possession of the ...[indistinct] amendments that ...[indistinct – voice fades].

SINGH J: Yes.

MS DHEODUTH: But to the extent that is, we, as far as we are concerned as Abrina, the position simply is this, M'Lady, the parties have complicated that unnecessarily. M'Lady, we are dealing with an application in terms of Section 141(2), and it is clear, and the BRP's draft application has clearly indicated that their hands are tied. They have to come to



court to bring this application and once they have reached the conclusion, the company can no longer be rescued.

Now, and on their heads they said they can ...[indistinct] nothing else, but for that relief [?], and in fact, they come to court and the matter is then in the hands of the Court to make a determination as to what happens with the company itself.

SINGH J: Yes.

MS DHEODUTH: Now, this application was brought in February, when apparently ...[indistinct] had arrived at the conclusion that the company could no longer be rescued. Now, M'Lady will see throughout the papers that much of the parties have said the company is capable of being rescued, and obviously Abrina is one of those parties that makes those submissions and supports that contention.

What has now happened is it seems that they have gone from a stance of having concluded that it cannot be rescued, they are now saying that it can be rescued, let us just see what happens in the next couple of months. Now, the difficulty with that, M'Lady, it means that they no longer hold the conclusion, which is the jurisdictional requirement of Section 141(2).

In other words, you come to court, and you ask the Court, based on that, to terminate or to discontinue the business rescue proceedings, based on the fact that you as



the BRP have come to a conclusion, after conducting your investigation, the company can no longer be rescued.

Now, M'Lady, as – have indicated, perhaps what the parties can then do is file further affidavits, but where is that going to take the matter, because as at February, they had apparently have reached the conclusion the company could not be rescued. Now after consultation with IBC and the Vision parties, they have now arrived, they have approbated their comments [?]. They have now arrived at the conclusion that it can be rescued. I am not seeking that relief today



Now, they have changed their mind effectively. Now, with respect, they cannot come on an adjourned date and say to M'Lady, as we sit before M'Lady, that, well, we seek to rely on our earlier conclusions which we made in February, to be the starting point of when we believe this company was not able to be saved.

Now, I am fully in line with my learned friend, RGS, who indicated the difficulty about the fact that the ...[indistinct] have already been established. And the effect of that must not be lost on M'Lady, the fact that that was established as and when the application was effectively presented to Court. That will affect any sort of transaction happening thereafter.

Now, with respect, the applicants or the BRPs cannot have their cake and eat it effectively. We have been taken

...[indistinct] papers, M'Lady would see throughout the papers, and I believe some of the other parties have also mentioned it in the papers, this is effectively just a short-term approach to force IBC to provide funding. And exactly what they have anticipated has happened at the doors of the court today, because facing the prospects of having an entity like Tongaat Hulett, which has been around for many, many, many years, and being supported by the community, provides ...[indistinct] to many people. The IDC has capitulated at the doors of the Court to provide this ...[indistinct – voice fades]



Now, bear in mind that M'Lady would have seen the papers ...[indistinct] the earlier requirements as to providing this further funding. And now they have effectively retracted on that in order to capitulate to public ...[intervention]

SINGH J: Well, should I penalise them for that?

MS DHEODUTH: Well, M'Lady, to the extent that maybe they are entitled to do so. The difficulty one now has is they have now arrived at ...[indistinct] that it can be saved. Now, the entitlement to rely on Section 141(2) at this stage ...[intervention]

SINGH J: Are you now arguing about the BRPs, not about IDC?

MS DHEODUTH: Well[?], ...[intervention]

SINGH J: Because IDC did not reach any conclusion ...[intervention]

MS DHEODUTH: M'Lady, I have got no difficulty with IDC making[?] any decision to provide funding. I have got no difficulty with that. I have got no difficulty with the fact that they had entered into this agreement. My difficulty is this application has been brought before M'Lady, was brought on an urgent basis. All the parties that, they have been brought here on an urgent basis, because they have reached the conclusion, as at February, that this company cannot be rescued. And that is what the application is premised on.

This matter is now adjourned to some date after June. They can no longer rely on a conclusion they have arrived at, at February, with respect. They cannot now try and supplement their papers to ...[indistinct] backwards to say ...[indistinct], I want you to rely on what I said on February, even though I gave it a further opportunity.

What we are simply saying is, M'Lady, it does not end for the BRPs. If they form a conclusion down the line that this company cannot be rescued, they must do it on a fresh set of papers. The basis upon which this application has been brought before M'Lady no longer exists, because by virtue of them having concluded that agreement and now deciding that they wish to adjourn the matter, not proceed to seek the termination of the business rescue process and seek liquidation, means that they now believe the company can be rescued. If that is the case, the application in terms of



Rule 141(2) now falls away. They are entitled to bring a fresh application. What we are saying is, M'Lady, the proper forum – sorry, the proper form to be taken is for them to withdraw the application and to pay the wasted costs occasioned by the application of any parties that were brought to court on an urgent basis.

M'Lady, that that is the only way that this matter can be properly dealt with. There is no purpose in adjourning it, because then if M'Lady adjourns the matter, the matter will come back before M'Lady. They will file for the affidavits but what are the purpose of those affidavits, is to talk about the events that came after they have already formed the conclusion the company is no longer able to be rescued in terms of Section 141(2), which is the jurisdictional requirement. We cannot put Humpty Dumpty together again, with respect.



The proper way the matter must be dealt with is that they must withdraw the application. M'Lady must dismiss the application with costs.

Well, M'Lady, the two hundred million that we are proposing, is effectively just working capital, for a couple of months. It is not going to change, with respect, their conclusion in any way.

The fact that they have agreed not to take that relief M'Lady, with respect, that means that they deem the company

is able of being rescued. There is no purpose for this application continuing. They must bring it afresh. That is effectively what the position ...[indistinct].

SINGH J: Yes. Thank you, Miss Dheoduth.

MR BLOU: M'Lady ...[intervention]

SINGH J: Yes Mr Blou?

MR BLOU: ... now Mr Subel and I were having jogging[?]

rights to who is going to speak first and last but I think must

I just speak for ...[indistinct] you cannot just speak for IDC

and they are the applicant, they should reply ...[indistinct]



SINGH J: Yes.

MR BLOU: M'Lady, having listened to what my learned friend have to say, might I just perhaps if I can, remind the Court of a couple of ...[indistinct] truths in this matter and for the provision – and I am going to do so in the manner M'Lady, where I – I must place on record, there are many things said by Mr Kotzé that we did not agree with and you said yourself, he is veering onto the merits. I am not going to try to respond to the merits.

SINGH J: No.

MR BLOU: We are dealing with ...[intervention]

SINGH J: No, I do not want you to.

MR BLOU: We are dealing with an application for a postponement.

SINGH J: Yes.

MR BLOU: Let us - and there are some legal issues that have just been conflated, or thrown in, which are just wrong and I am going to speak to ...[indistinct] as well. The structure of this company is such that there are two funders, or two parties, that have interest in seeing this company survive. When I say interest, direct skin in the game. There is the IDC, which has provided PCF funding, and there is Vision, which has acquired claims that puts it at the moment, *prima facie*, despite being in dispute, a secured creditor with 75% of the vote. So it can block and pass any plan. Those are the facts on the ground under scrutiny for present purposes.



Nothing can happen in this company unless Vision, the IDC, and the BRPs is on the same page and this is what has happened now.

Where we differ, M'Lady, between us and the BRPs and the IDC, is whether we are going to get to a true rescue by June.

What the smaller parties say, those who say they have been shunt[?] and I will deal with each of them and they have not been party to this, I do not see anyone else arriving here with a check book today to say, okay, we must dismiss the application, you have now got two hundred million in, we know that, let us not debate whether the plans failed, whether the counter-application should be heard, I will deal with that.

We know that plan is not being implemented. Assuming that Mr Kotzé is right, that maybe his client may or may not be able to put – ...[indistinct] plan. That is the purpose of his counter-application. The question is whether it has to be heard today. That is what we are discussing. We are not discussing ...[intervention]

SINGH J: That was what I wanted to be addressed on.

MR BLOU: Yes, and I am, so here is why it has to, why it does not have to be heard today. Despite the Turks, me just say what - the Turks are shareholders. The Turks are shareholders who voted against the provision. They do not even have an indirect interest in any plan. There is no prospect shareholders are going to get anything, I do not even know why they are here. To support RGS to say – that just – that just - it makes no difference to the Turks what happens here. Shareholders can never get anything. They voted the plan down.



For the Turks to say to the Court, without an application, ...[indistinct] a motion, that you must impose conditions on the parties, and how to do this and how to do that, that is why you have got a business rescue practitioner.

Let us deal with RGS.

SINGH J: It is not for this Court to exercise any oversight.

MR BLOU: Unless you are – unless you are obviously of the opinion that this company is incapable of rescue, in which

case you must liquidate but no one wants that. You cannot come and say the company is financially distressed, I want to bring my own plan and ...[indistinct] says it is terrible, it is all very terrible, we were not told, we accept it is financially distressed. Do not give them the further lifeline for three months, knowing that that is not the test. The test in 141(2) and Mr Subel will address you on it, you can only dismiss this application if there is no longer - if the company now has a reasonable prospect of being rescued.

Where is that plan? RGS says they have not been able to bring a plan. They have also failed about six or seven times trying to interdict the main plan. It is carrying on. Whether it carries on or not, he will get his day.

The RGS counter-application, if – can I take you to it? ...[Indistinct]. The RGS's counter-application, can I read it to you? It is 080-3. It is their notice of motion. Firstly, they say it is urgent, right? They say in paragraph 3. This is RGS.

SINGH J: Yes.

MR BLOU: This is before Mr Kotzé found out that it does not suit him not to argue today, but it suited him to argue this altogether before the two hundred million. Let us go to paragraph 3, at 080-3. That the - counter-application. That the application brought by the first to third respondents under the above case number for determination of the business rescue and the granting of ...[indistinct] be dismissed.



Now, that is the order that he is seeking today and he is trying to trying to impose on you that you have to give it today, and so is Abrina, for some reason, and so is the Turks. I am not quite sure. They are saying, well, maybe you can, but you have got to impose other conditions.

So he wants to bring this application. Now, let - can we just stop there? What is an[?] opposing liquidation application? Do you have to bring a counter-application to have it dismissed? No. You could have just filed an answering affidavit.



SINGH J: Ask for an outright dismissal [speaking simultaneously]

MR BLOU: Just – yes, so – so [speaking simultaneously]

SINGH J: [speaking simultaneously] by filing your answering affidavit.

MR BLOU: So file your answering affidavit. So ...[indistinct]. You do not have to – so why? Because it all hinges on the next set of ...[indistinct]. The ones that he started to argue, even though he said he was not, that the business rescue plan is declared unlawful and set aside. That is what RGS wants. The final relief, that they must produce agreements – well, this is the relief. Agreements, so they can inspect the agreements to check our security and our debt that the lender group had, that no one has ever contested except them, then look at that and decide whether they should formulate their

own plan once they get that relief and then this company cannot survive. There is a very simple question for Your Ladyship. Are you satisfied with the *bona fides* of the business rescue practitioner, ...[indistinct] the 75% claimant and the IDC, who all tell you, there is a prospect that we can get this company across the line and avoid the liquidation but we need until June to get it.

If June is not enough, that is a fight for another day. What you do not need to hear now is an application that says, dismiss - his prayer for setting aside, flows on a dismissal.



If you postpone the matter because the application dismissal, you do not grant the dismissal, you say that no, it should be postponed, when - his own prayer, he says he will argue the setting aside. Then there is no interim, their complaint is then, and the Turks' complaint, is that within the *interim*, no one else can propose a claim[?]. They can do what they like. Whether the practitioners are going to rebut it, that has been in existence for months.

Where is the urgent application brought by RGS when Your Lordship[?] considers the alternative plan[?]? The urgent ...[intervention]

SINGH J: With or without the winding up application having been brought to this court.

MR BLOU: Yes, yes, that is what started this. The commanders of the winding up application, the *dominus litis*

are the BRPs. They are telling the Court, I have got runway until June and I will let you know whether we can do anything with it, through RGS or someone else to rescue ...[indistinct]. No one wants this company to be wound up. That is what is unusual about this case.

But to dismiss the application, what you are really then saying to the practitioners, is even though you have told me on oath that there is no full plan, and even though you have told me on oath that you are prepared to accept, at least from the bar, you are prepared to accept interim funding, and you as the practitioner believe that that is enough to see whether the company can finally be rescued. That is perfect grounds for a postponement. There is nothing inconsistent with saying, I do not, I am accepting a runway for three months, but it is only for three months, and saying, but I do not yet have satisfaction that the company can be rescued.



But that is the test. What has been argued by my learned friend for RGS, and what he ...[indistinct] that, once you accept that you have got three months of runway, you accept that there is no longer a need for liquidation, it is a *non sequitur*. The testing of 141(2) is, does the practitioners now believe the company has a prospect of success? He is telling you, I cannot tell you. I have got a bit more time to trade. I will know by June, and that is all we are asking for. And the IDC, the party has been castigated here, so – so

shakedowns, and we are prepared to put in money. My learned friend is going beyond the affidavit. He does not how much money Vision has got. How much money Vision is prepared to put in. Whether or not Vision has imposed unlawful conditions or these things were surprises to it, are matters that are going to be dealt with in negotiations between the three parties that really count. And either we come to court with the revised plan, and then my learned friend will argue his counter application, and he will say the revised plan is invalid because the original plan is invalid.



You must jurisdictionally decide today whether there has been unlawful implementation of the plan, whether it is competent to revive this plan that has failed, if the other – it is not for you, with respect, today. Today is a simple question. The company is given a lifeline till June.

If in June there is another plan, Vision will be able to say it is unlawful, and you will make a decision. If in June there is no other plan, and the business rescue would say I have got no choice, I cannot come to a conclusion, I must proceed with whatever ...[indistinct]. To deprive the three main stakeholders of an opportunity, now that they are engaging, and you have seen there have been complaints in the affidavit, ...[indistinct] M'Lady, ...[intervention]

SINGH J: Yes.

MR BLOU: ... of the IDC not engaging, we are now engaging. The affidavit that my learned friend referred to says that we have certain obstacles. We would have preferred a clearer path forward, that is what I said to you this morning. We do not yet have it. But we want to give this company a chance to survive. Let us look at the contrary, which is what they want. They want the dismissal of their application.

So this Court must decide that contrary to the professional opinion of the business rescue practitioner who says it can wait until June, but I want to do something to try and save it, you can decide, no, no, you cannot have that. I am going to finally decide now that there is actually a reasonable prospect for rescue of the company, even though he is telling me he does not know. I am going to dismiss the application, then bring it again later in June, start the whole thing again. The company cannot survive that degree of uncertainty.

And the final point to be made is this thing about 348[?] invalidity. In every application for liquidation, 348 looms larger[?], and the longer it takes, there is a period of time, in other words, when - if the liquidation order is ultimately granted, then it antedates to when the application was brought and *prima facie* says that transactions between them are void. What they are not telling you, is that that can be validated by a court, and it is only when they are challenging



– ...[indistinct] if those transactions in the ordinary course of business, they get saved every time. It is not just that everything magically has to be repaid. That is something that the practitioners are aware could be a consequence. We are trying - that applies if there is a liquidation. But if there is a liquidation, M'Lady, the least of the problems in this case, are whether or not the transactions between the bringing of this application and the granting are void. The real problem is what happens to the community in the context of a liquidation ...[indistinct]. So, you have a discretion to grant a postponement.

SINGH J: Yes.

MR BLOU: There is nothing, it is not an ...[indistinct] judgment, I am not saying that they will, there is nothing in this case by June that is going to change from what ...[intervention]

SINGH J: Mr Blou, I will do what is just and equitable ...[intervention]

MR BLOU: Exactly.

SINGH J: ... because that much ...[intervention]

MR BLOU: That much [speaking simultaneously]

SINGH J: ... this Court has the power to do.

MR BLOU: And it seems to me that in drawing the balance, it must weigh heavily in favour[?] of the practitioner saying, I have now got runway till June, I have got Vision and the IDC



on board. ...[Indistinct] want to make clear something – correct something my learned friend [audio distortion], the agreement deals with its duration. I do not – we do not have to debate with you whether it is October or June. The agreement has its own runway, but it is June. 30th of June. The parties can extend it. The parties can do what they want, but in the interim we would ask you not to accede to the calls from the side, to dismiss the application, not to proceed to call from the side, to set aside the Vision plan, when that can be argued just as easily in June.



SINGH J: Yes.

MR BLOU: And we will ask you then to accede to the BRP's request for a postponement, with cost reserved. We are happy to have it to a particular date that is arranged with you.

SINGH J: Yes, thank you, Mr Blou. Mr Fine ...[intervention]

MR FINE: Yes.

SINGH J: ... ten minutes to go before the long adjournment.

MR FINE: Yes. I am going to wrap it up quickly.

SINGH J: Are you – yes. But I am not cutting you out, because I still have to hear after the long adjournment from Mr Subel.

MR FINE: We, from the IDC's perspective, you have seen our heads of argument in the main application. We have challenged them – we have challenged them on all scores in relation to bringing the application, and they have had the

bona fide to form a view but what we also did say, and we have said it in the correspondence, is that given time, we believe that an accord could be reached, and it is a misconception, with great respect, to suggest, and I am going to read you the correspondence, I only just a short, to take you through that. We are not married to Vision, we are not bound to – we are not bound to the Vision ...[indistinct] as has been repeatedly stated everywhere in our correspondence.

Obviously, it is recognised that Vision is an important plan. It has put up a prayer and it has got claims but the IDC have made it patently clear that they will engage with anyone who is prepared to come to the rescue of this company.

It is a substantial player in this business rescue plan. It has advanced an amount of two comma four billion. It has taken over the burden of the original lenders of 900 million. It has provided a guarantee to Vision, to enable it to pay the lenders the 1,3 billion. And it has also an overriding public interest policy in the sense of the role it plays as a creature of statute obliged to facilitate [speaking simultaneously]

SINGH J: And is that not the primary aspect?

MR FINE: Yes. But also ...[intervention]

SINGH J: Yes.

MR FINE: ... within the confines of good business governance.

SINGH J: Yes.



MR FINE: So, we have not accepted, for one moment, the criticism of the BRPs. That is a matter to be dealt with at a later date and we will also deal with the Vision's criticisms if and when the issue arises.

So, in our heads of argument, and I must make that quite clear to Your Ladyship, our preferred after castigating and drawing the scores with the litigants, which seems that there has been some reproachment now, we, our preferred

route, we said that there was no basis for the application for liquidation and that it should be dismissed with costs but it

...[indistinct] our heads, to be afforded under Section 141(3) to allow the parties to try and reach some accord in relation to the rescue.

So, that is our preferred route, and I am going to leave that into ...[indistinct] Your Ladyship discretion. You have heard all the parties, but what I should draw to Your Ladyship's attention, is the record that - and the letter at page 007607, which is Annexure IDC6, and is dated the 27th of February, 2026, which is to conciliate the approach, and what was said there, M'Lady, if you could just turn that up for a moment, 007607, is that, and this is important to the issue of ...[indistinct], paragraph 2:

"Our instructions are to inform your clients of IDC's preference to ensure the continuation of the business rescue



proceedings, as opposed to liquidation, to enable the development of a revised business plan in the balancing ...[indistinct] interest for the stakeholders of DHL[?]. To this end, IDC is prepared to ...[indistinct] under the current ...[indistinct] conversion application on the basis that the application is withdrawn prior to the 12th of February, prior to the 12 p.m. on the 25th of February, 2026.



Should your clients not withdraw the conversion application, the IDC will take all steps to ensure that it remains under business rescue.”

And then we would, the response was, thank you for the ...[indistinct] approach, but we are now prepared to move forward with the business rescue.

So whilst we say that is our preferred route, that you dismiss the application and withdraw it, we have made the funding available, and that is a matter for Your Ladyship to ...[indistinct].

Thus we do not accept the contention that Vision is ...[indistinct] and the statement, and I must make that clear, that the reinstatement[?] of the Vision plan is the only way forward. We will engage, and as we expect the business

rescue practitioners to engage with anyone that makes a viable offer, and M'Lady, it is absolutely important to understand ...[indistinct] I do not want to repeat myself, ...[indistinct] all the time, but it is interesting ...[indistinct] in the game of 2,4 billion rand is substantial and it must be at large to engage anyone with the concurrence of the BRPs and other stakeholders, who can achieve (a), public[?] funds to be made available and (b), the obvious overriding interest of rescuing this company. Everybody is *ad idem* that the consequences of liquidation would be cataclysmic. That is the one thing that all parties are concerned about.



Our complaint is the business rescue practitioners did not ...[indistinct]. That is a debate for another day and our concern is now, the money has, and it cannot be clearer that this money has been ...[indistinct] with the position[?], with what we put colloquially, as breathing oxygen into the company for the purposes of allowing parties to reach accord[?]. If they do not reach accord ...[indistinct].

So as I say, in our heads, we say we want a dismissal ...[indistinct].

SINGH J: Yes. Thank you Mr Fine. Mr Subel?

MR SUBEL: Thank you, M'Lady.

SINGH J: Should we take the long adjournment and resume at two p.m.? I am assuming you will be on your feet for a while.

MR SUBEL: Thank you.

SINGH J: Yes. The court will take the long adjournment and resume at two o'clock. The Court will rise.

COURT ADJOURNS



A.K

COURT RESUMES

SINGH J: Thank you, Mr Subel.

MR SUBEL: Thank you, M'Lady. M'Lady, perhaps at the outset, we have prepared a proposed draft order.

SINGH J: Yes.

MR SUBEL: We have circulated it amongst the other parties. May I hand it to Your Ladyship?

SINGH J: Yes, you may.

MR SUBEL: We have left blanked various dates.

SINGH J: Yes.

MR SUBEL: So we need to populate that once we have an idea, if we can, of the hearing date and we will work backwards when certain dates will be exchanged.

SINGH J: Now, before you address me, Mr Subel, what you are proposing in paragraph 1 is not as a holding date, but for the matter to be heard as an opposed motion.

MR SUBEL: Correct.

SINGH J: Yes.

MR SUBEL: In other words, as it were today ...[intervention]

SINGH J: Yes.

MR SUBEL: ... it will be supplemented.

SINGH J: Yes, you may proceed.

MR SUBEL: Thank you.

SINGH J: Thank you.



MR SUBEL: Thank you. M'Lady, at the outset, there is an unfortunate aggression sought to be created by those opposing what we seek today, to somehow attribute some sort of self-interest to the BRPs but we need to dispel that, with respect.

The BRPs are officers of the court. They have fiduciary obligations, stepping into the shoes of directors, to act in the best interest of the company, and obviously the stakeholders and that is precisely what the BRPs have done their utmost to achieve.



What was sought in the substantive relief in the main application, is an order in terms of, well, let me go back, two fold. One is discharging a statutory obligation to the Court, to Your Ladyship, the Court, under Section 141(2)(a)(i) and that is an obligation, if peremptory, once the BRPs had concluded that there is no reason or prospect for the company to be rescued, and Your Ladyship knows what the meaning of rescue is.

SINGH J: Yes.

MR SUBEL: [audio distortion] but once they have concluded that ...[indistinct] obligation to approach, inform the Court of that, and all affected parties. That is what they did. There can never be a criticism as suggested today that there was undue urgency. With respect, they did what they needed to do, when they needed to do it.

So, for the purposes of reporting to Your Ladyship, with respect, they were under an obligation and they did so. What it also requires, in terms of Section 141(2)(a)(ii), is that they must apply, again it is obligatory, to the Court for an order discontinuing business rescue and placing the company into liquidation.

That is the stark choice that the BRPs have. It is not open to them to become more inventive or creative. Either they go into rescue, in the legal sense, as is defined in 128 and 129, or, if they believe there is no reasonable prospect of that, they are obliged, as they have done, to approach Your Ladyship for an order placing the company in liquidation.

The suggestion that there is some sort of improper motive, purpose, behind the application for liquidation, with respect, is an entirely unsound one, and the business risk practitioners, if anything, have the interests of the company, but also the statutory obligations to do what they are doing. So, we are here today before Your Ladyship because there is an obligation to be here.

Section 141(3) then provides what Your Ladyship then would do with that. So, now faced with such a notification from the BRPs, faced with an application that is compulsory, Your Ladyship has various choices and Your Ladyship indicated to, I think, my learned friend, Mr Blou, that you will



do what is just and equitable. With respect, that is precisely what 141(3) contemplates.

So, once there is this compulsory application, the Court may make the order applied for, i.e., terminate business rescue and place it on winding up or any other order that the Court considers appropriate, in the circumstances.

So, what you are faced with today in this application, is Your Ladyship's discretion and it is not a question of seeking an indulgence to postpone this matter. We must abuse our minds, with respect, of any notion that we seek your indulgence ...[indistinct] today argue that postponements are not there for the taking. This is not that sort of matter. This is a matter where under 141, the BRPs did what they were required to do, and then, with respect, it is up to the Court, and everything before Your Ladyship, to make an order that you consider appropriate in the circumstances.



The relief that is sought in the main application, is the only order that the BRPs can apply for under 141(2)(a)(ii).

That does not mean it is the only order that can be granted, because 141(3) then bears with respect, to Your Ladyship, the discretion to make such order as you consider appropriate. And it is for that reason, perhaps, if I may suggest, what are the three orders that Your Ladyship could make today as appropriate?

The one order would be today to refuse to defer the decision in this matter, and to grant the relief. In other words, terminate business rescue and place the company into liquidation. That is one option open to you.

We know what the consequences of that would be, but ultimately it is for Your Ladyship to weigh up.

SINGH J: That is common cause in the papers, in fact.

MR SUBEL: Absolutely, M'Lady.

SINGH J: Yes.

MR SUBEL: So that would be the one option. It does not appear to be particularly attractive. The second option is to dismiss the application, but that would require that Your Ladyship disagrees. Were to find then that you disagree with the view, the conclusion reached by the BRPs under 141(2) that there is no reasonable prospect for the company to be rescued.

On the papers, in the founding affidavit, up until today, with respect, we submit that would the inescapable conclusion and that would mean, because we know that there is a plan that has failed, whether it ceased to have any effect, is a different issue but it is an implementation that failed[?].

Your Ladyship is aware that under the Act, business rescues contemplated should be three months. We are now three and a half years.

SINGH J: Yes.



MR SUBEL: It took 14 months to develop this vision plan. There is no other plan on the horizon. It is all very well to hear RGS talking about an opportunity that they are seeking.

SINGH J: Well, apart from the opportunity, Mr Subel, what do you also say about the submissions advanced by counsel for RGS that the vision plan has failed and therefore this Court must set it aside?

MR SUBEL: Yes [speaking simultaneously]

SINGH J: Because that was ...[intervention]

MR SUBEL: Central.

SINGH J: ... most of the argument.

MR SUBEL: Correct. So with respect, it is not correct. So what happened is, Your Ladyship will recall, the original plan contemplated one of two scenarios to rescue. Originally the rescue was both ...[indistinct]. It was to restore to solvency. That would have occurred if the conversion of debt to equity materialised because then it would be that you had shareholders, the company would continue in operation and it was envisaged that it would be rescued in that sense, it would be restored to commercial solvency.

When the shareholders voted against that, that option seems to have fallen away but the second option then triggered under the plan and that was now a sale of assets.

SINGH J: That was a vote in August.

UNIDENTIFIED SPEAKER: Yes, I think ...[indistinct]



MR SUBEL: Yes.

UNIDENTIFIED SPEAKER: August, yes.

SINGH J: Yes.

MR SUBEL: So that then triggered and that would render ...[indistinct] wind up and once you are into that, there is still rescue. The plan did not have CPs that have failed[?]. The sale agreements did and as we understand what occurred with the sales, is those agreements have lapsed because they were - the CPs of those agreements, were not fulfilled. The plan is still alive.



My learned friend, Mr Kotzé refers to Vantage and Arqomanzi. What that decision dealt with, was the ability of the BRPs to vary the plan.

And Your Ladyship will recall, in that case, there was a clause in the BR plan that actually said that the BRPs can in their discretion, amend the business rescue plan.

It was argued and upheld by the SCA that that did not mean that they could make substantive changes. It was only administrative or minor procedural and the Court, UDAL HOA[?], I understand now to be ADPJ[?], with respect, found that the – and the Court concurred with this, any amendment of a substantive nature has to go back to the creditors.

So to get back to Your Ladyship's question to me, the plan has not failed. The plan is alive unless and until it is set aside, and I am not sure about the basis, but that will be a

debate on another day when we deal with the merits of the counter application but I think we need to get out of our heads that the plan has failed. The transaction for the sale of assets, the second scenario under that plan, has fallen away.

It does not mean that there cannot be other transactions, other forms of sales.

So it is very much alive and ...[indistinct].

The - so the second scenario I was painting, considering the options under 141(3), then is that you were to find that the BRPs were correct in assessment and grant the order, and that would be liquidation with the consequences below.



The third alternative, and with respect, we can see only three. The two that I have already identified. The third one is for Your Ladyship under 141(3) to adjourn the matter and that would be an appropriate order and we consider the words here. We - the Court considers appropriate in the circumstances, we submit would be appropriate in these circumstances on the basis of what you know today.

You know that there is further funding now been made available, and there is a prospect of avoiding the calamitous consequences that would flow from the liquidation and the BRPs, with respect, most responsibly, have said we are very concerned. If we do not get PCF, post ...[indistinct] funding, we have to shut our doors next week. We will not make it

through the month, employees will suffer, ...[indistinct] suffer, supplies will suffer, everybody will suffer and the way to mediate that, would be that it ultimately venture into the rescue of what we cannot tell you, but it appears let us give it a further chance and that is, with respect, what is before Your Ladyship today in deciding whether or not to postpone the matter as we are requesting.

So we do not presume that postponements are there for the asking. We are submitting that in view of what we have seen between the IDC and Vision, particularly culminating this morning, while we were standing down, and the conclusion of the further agreements, we submit as the BRPs, that it would be appropriate to give us a further chance. And that is the only option.



SINGH J: Sorry, Mr Subel ...[intervention]

MR SUBEL: Sorry6.

SINGH J: ... I must put to you one of the submissions then made by Mrs Dheoduth who appears for Abrina, that the BRPs would be approbating, to quote her words, approbating and reprobating, and Humpty Dumpty cannot be put together again.

MR SUBEL: Yes. So we have ...[intervention]

SINGH J: What ...[intervention]

MR SUBEL: ... a further fundamental difficulty with that submission.

SINGH J: Yes.

MR SUBEL: Firstly, there is no approbation and reprobation. It is not choosing inconsistent remedies, because the application is kept alive, the relief will still be valid unless and until there is a change in circumstances that before the next adjourned date is demonstrated, that it is no longer a situation where there is no reasonable prospect of rescue.

So if the circumstances, when we return to this court, if the matter were to be adjourned, the circumstances at that point are there is now a reasonable prospect for rescue but with respect, that is entirely consistent and then Your Ladyship would have the power under 141(3) to do whatever is appropriate at that time.



So we do not, with respect, have great difficulty understanding that submission and there is no destruction that Humpty Dumpty has fallen off any wall.

There is no Humpty Dumpty, there is no wall. It is simply continuing the process because up until this morning, the BRP saw this as hopeless. There was no further funding. Now there is hope and while there is life, there is hope.

So we submit, with respect, of the three scenarios as to what Your Ladyship should order, under 141(3), there is only one viable outcome. And we submit it is the course that we have suggested.

And we have suggested it, bearing in mind the interests of the stakeholders involved here in the company.

My learned friend, Mr Kotzé, with respect, contradicts himself in certain fundamental respects. He starts off by submitting to Your Ladyship, he says, he has not read the documents we handed up this morning. He had not had an opportunity.

Well, perhaps it would have served him better had he read it because we made a submission to Your Ladyship that the PCF, on offer now, the additional two hundred odd million would be there ... [indistinct].



If I can take Your Ladyship, I handed up the document this morning, first in the ... [intervention]

SINGH J: Please just bear with me, Mr Subel.

MR SUBEL: Thank you.

SINGH J: Yes.

MR SUBEL: So in the ... [intervention]

SINGH J: Where are you reading from?

MR SUBEL: [indistinct] agreement, number 11.

SINGH J: Yes.

MR SUBEL: It should be the first in the documents. At typed page 8 of 28.

SINGH J: Yes.

MR SUBEL: Your Ladyship, will find the amendment to clause 2.7 of the initial conceived[?] agreement, this is in

clause 4.1.5. The availability period of the PCF starts with the financial close and importantly ending on the earlier of. So PCF will come to an end on the earlier of one of various dates. And we find in 2.7.4, the date on which an order is granted, setting aside the business rescue plan. That is exactly what they are asking for.

So if RCG get - oh sorry, RGS get the order under 2.7.4, the date the order is granted, setting aside the business rescue plan, if that is what they get, setting aside the **Vision** plan, that is the end of the availability of PCF.



So if they were to continue to argue today, it is actually destructive of their entire case and **[Transcriber's Note - faulty recording, recording sounding stretched]** because their stance here, is that they do not want a liquidation for they argued very forceable today why should we liquidate it, which we will get to, they do not want a liquidation, they want to preserve the business rescue but the first opening submission from Mr Kotzé was we now got PCF. So why not. We now have the luxury of time, he says because we can go ahead with the business rescue as ...[indistinct]. We are no longer financially distressed because we are going to have this gift from the IDC and we can now, RGS, can now go and formulate our own plan and place it before creditors.

The fundamental fallacy in this whole argument is that this PCF today is not going to materialise. What he cannot

answer for Your Ladyship is what will happen tomorrow or next week or next month if there is not any further PCF from the IDC and there is no alternative source of funding that has been suggested.

So his argument, with respect, ...[indistinct] because if he - if the postponement were not to be granted and you were to hear and decide in his favour the setting aside of the business rescue plan, then that is the end of PCF and with respect, there is a ...[indistinct] hole in his argument.

The other contradiction, with respect, the fundamental contradiction in his argument, is that he argued very forcefully why this company is in a hopeless position.

In fact, listening to him, I thought he was probably making out the case for liquidation. He said it has failed. There is nothing left, and then ...[indistinct] asks rhetorically, and yes, and then what? What is now to happen? He[?] does not want a winding up. So he says it is insolvent, the plan has failed, there is no plan, and then we ask yes and then what? Then what? You are still in business rescue without money.

So with respect ...[intervention]

SINGH J: There will be no rescue in that case.

MR SUBEL: There will be no rescue. That is the end of it. So with respect, the entire sub-starter[?] to the argument advanced by him, with respect, fails.



While we are on four and five in the amending agreement, I just also wanted to point out *apropos* what Mr Fine said, he believed that we should rather have October. That is not available either.

277, the IDC, the earlier, says one of the events is 30 June[?]. So the PCF comes to them 30 June. He is ...[indistinct] and when we suggested June, it was not because we thumb-sucked that. It is because we read their agreement. Their agreement which provides for PCF funding, up until one of the dates, the earlier one of which is 30 [?]June.



There have been a headcount amongst those who are in court today for and against the postponement that we are seeking. So we know Vision is in support and with respect, for good reason. We are not doing their bidding, as was - has been suggested today. We are doing the bidding of the company and the stakeholders and the BRPs are concerned that employees and others are not prejudiced more than they need to be.

But Vision plan is the only plan that is eventuated[?]. You will have read, and I will not go into the details of that, the sorry[?] history that RGS has had in trying to, at every turn, obstruct, prevent that plan from proceeding but unlike the BRPs, they are not acting selflessly in the interest of the company. RGS is acting in its interest. Its only interest is

self-interest and its agenda, regardless of the consequences, is that it wishes its plan, if and when that ever materialises because previously they could not come up with funding. There is an allegation of a fraudulent letter that they gave but these are the stakeholders now, ...[indistinct] a very minor interest, very little skin in the game and they are the ones now ...[indistinct], professing to advance the interests of the community and the company, whereas they do the exact opposite. It is all about RGS seeking to advance an opportunity, a ...[indistinct] opportunity, for it to advance its own plan.



And that is why they need, they are so desperate to have an order setting aside the Vision plan because they consider, no doubt, the law to be, while there is an adoptive plan that is still in the course of implementation, they cannot put up a competing plan.

But that is why they made the submission that Your Ladyship put to me earlier, for my comment, on whether or not the plan had failed. The plan, the revision plan, has not failed. The transaction for the sales have failed. It does not mean that the plan is not there and it does not mean that the BRPs cannot go or should not go back to the creditors in the event of new sale agreements being concluded.

We as the BRPs cannot predict at this stage whether there will be new sale agreements on revival, and if so, what they will be. It is not within our hands.

We are reliant, as is the Court, on Vision and the IDC here.

So I think it is absolutely plain here that RGS must be seen for what it is and that is acting purely out of self-interest in order to achieve a position where it preserves the business rescue and that is where, with respect, as I indicated earlier, there is this fundamental contradiction because they contend that it is insolvent, they contend – in fact the argument was really all about this is hopeless, there is no business rescue plan. And then you are left in the ...[indistinct] to ask, and I put it rhetorically earlier, and then what. And the then what is, ...[indistinct] keeping business rescue without a plan, without money, without PCF. We can see where that ...[indistinct].



So we submit, with respect, that it is an entirely inappropriate opposition that we are facing today from RGS. And those who rely on themselves.

I have listened carefully, with respect, to Abrina's submissions. It was ...[intervention]

SINGH J: And – sorry.

MR SUBEL: Sorry.

SINGH J: Mr Subel, also the submissions by Mr Aldsworth ...[intervention]

MR SUBEL: Yes. For the intervening shareholders.

SINGH J: Yes.

MR SUBEL: He started off by being agnostic, and then became more and more partial to the RGS argument. I am not quite sure what – what was attractive to those shareholders in it, but what you did not hear - you heard what should not happen. What we did not hear from them, is what should happen.



The people who are coming to protest today and oppose, have not given Your Ladyship the what should happen. RGS have got halfway there, but with respect, it is something that is completely unworkable, as I have demonstrated.

The others, Abrina, intervening shareholders, have nothing with any assistance to this Court, nothing useful to contribute to this discussion.

And the argument that he also advanced, was that Your Ladyship should now step in and perform a supervisory role, that you should now order steps to be taken to advance the business rescue to finality. His words were, directions in order to achieve finality.

Again, I posed rhetorically, what? What is Your Ladyship supposed to direct? We know that there is a plan. There is only one logical direction to give. Let us give this

further funding an opportunity and if at the end of – by the end of June, nothing materialises, that evidence is an ability to rescue, well, then I will deal with that at that stage but unfortunately, Abrina, the intervening shareholders, nobody has given you any assistance as to what should happen and certainly nothing of - that could be regarded as viable.

My learned friend, Mr Kotzé also referred to the *Faber*[?] case which is authority that the Court cannot – does not have the discretion to extend the failed plan.

Well, we do not have any difficulty with that principle. This plan has not failed. As I indicated, the second category of transaction is sale of assets, that has – those have failed. There is no CP in the plan itself that is not being fulfilled.

My learned friend also then started straying into the debate about an acknowledgement that the BRPs will be implementing unlawful conditions and Your Ladyship asked them where this is. And he went east and west and everywhere else, he never answered you. He then took refuge in his heads and the best he got to in his heads, was that the applicants had said, Vision had tried now to introduce certain conditions that were outside of that variance with the plan and that is a far cry from the BRPs saying we are going to implement an unlawful term. So he never got there and he never, with respect, answered Your Ladyship's question.



So, M'Lady, we submit with respect, that going back to 141(3), which is really where the debate lies, of the three, we cannot think of any other scenarios, but of the three that we have identified, there is only one viable one.

If that were not to meet with Your Ladyship's approval, if Your Ladyship considered that that is not appropriate, ...[indistinct] additional PCF ...[indistinct] an opportunity, then with respect, we are into one scenario only and that will be the very very detrimental winding up.

If you will bear with me one moment?

SINGH J: Yes, certainly.

PARTIES ...[Indistinct – *speaking in background*]

MR SUBEL: Thank you. So M'Lady, subject to, including dates in the draft order, where we had moved for the order in terms of the draft order, I need to fix dates. Thank you, M'Lady.

SINGH J: Yes, thank you.



ORDER FITS IN HERE



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MR SUBEL: Yes, that is what we had in mind. ...[Indistinct]
we work backwards from that date.

SINGH J: Yes.

MR SUBEL: Yes, thank you.

SINGH J: Yes. And I assume it would be sometimes in June,
because based on addendum 11 ...[intervention]

MR SUBEL: If that can be accommodated.

SINGH J: Yes. I will stand this matter down briefly and
check up on the dates. I will ask to see counsel in chambers
and advise counsel of the dates, and thereafter I expect
counsel, all of them, sensibly to agree on the further time
periods. For now, the Court will rise.

COURT ADJOURNS



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COURT RESUMES

PARTIES ...[Indistinct – speaking in background]

ORDER

[CONTINUED]

SINGH J: As I indicated earlier on, this matter stood down for the parties and the Court to arrange dates for the adjournment of this matter and the Court and the parties have agreed that the date in which this matter must, the main application as well as the – as well as RGS's counter application must stand adjourned to, is 17 and 18 June 2026



The costs occasioned by the adjournment, will also be reserved for determination in the application and counter application.

Subject to those two orders, I grant the further orders set out in paragraphs 3, 4, 5 and 6 of the draft order handed up to me by counsel.

I further record that the timelines set out and the date for the adjournment, is by consent.

I therefore GRANT an order in terms of paragraphs 1 to 6, inclusive of the draft order, signed and dated by me.

- - - - -

PARTIES ...[Indistinct – speaking in background]

SINGH J: Thank you. The Court will rise.

COURT ADJOURNS

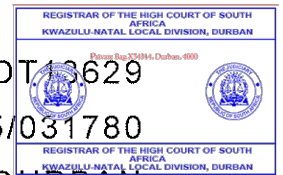
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TRANSCRIBER'S CERTIFICATE

I, the undersigned, hereby certify that **so far as it is audible**, the foregoing is a true and correct transcript of the proceedings recorded by means of a digital recorder in the matter between:


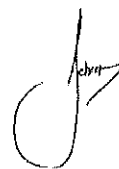
**G C ALBERTYN AND ANOTHER / TONGAAT HULETT LTD
(IN BUSINESS RESCUE) & OTHERS**

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PROBLEMS EXPERIENCED WITH RECORDING

The audio recording is of poor quality. The parties did not speak clearly into the microphone or the microphone was not functioning properly, resulting in an incoherent and largely unintelligible transcript. Multiple speakers talked simultaneously, and voices could not be separated. The manner of speaking of the certain parties made it extremely challenging to hear, follow and understand exactly what is said. They did not enunciate words, mumbled, did not fully enunciate words and would often drop the tone of their voices towards the end of a sentence. Transcribers are at certain instances not certain who the speaker is.

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A.K

K. MAHARAJ INCORPORATED

In Association with:

RAMESH S SINGH Inc

Of 4 Brookwood Estate, King Edward Street, New Brighton, Sandton 2196

Office: +27 (69)6480219, Email: attorneysingh@yahoo.com

Attorneys - Conveyancers - Notaries

Phone: (031) 3054925

Unit 10, Glass House, Main Building,

JT Ross Park: Glass House

309 Umhlanga Rocks Drive

Umhlanga

email: maharajr@kmaharajinc.co.za

Your ref: Miss L Silberman/lf/TONG7430.26/#11491857v1

Our ref: RM/mg/A289

Date: 21 May 2026

ALEXANDER COX ATTORNEYS

REPRESENTING SOUTH AFRICAN CANE GROWERS

EMAIL: alexander@alexandercox.co.za

FASKEN

REPRESENTING INDUSTRIAL DEVELOPMENT CORPORATION

ATT: HAROON LAHER

EMAIL: hlaher@fasken.com

WERKSMANS ATTORNEYS

REPRESENTING BUSINESS RESCUE PRACTITIONERS OF TONGAAT HULETT

ATT: DAVID HERTZ

EMAIL: LSilberman@werksmans.com

DHertz@werksmans.com



Dear Sir/Madam

RE: GERHARD CONRAD ALBERTYN N.O. & OTHERS / TONGAAT HULETT LIMITED
(IN BUSINESS RESCUE) AND FURTHER OTHERS – CASE NO. 2026-031780
OUR CLIENT: ABRINA 9422 (PTY) LIMITED -
SET DOWN 17TH & 18TH JUNE 2026

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We act for and are duly instructed by Abrina 9422 (Pty) Ltd and record:-

1. The milling and processing of sugar by Tongaat Hulett Sugar (THL) commenced on 20 May 2026.
2. The Business Rescue Practitioners (BRPs) have filed their supplementary affidavit in support of their application to liquidate THL, which we are certain has indeed been read by you all.



3. The glaring conclusion is that the BRPs still seek the liquidation of THL.

3.1 Having due regard to the submissions of the advocates acting for Vision, and the BRPs having made submissions in court to find a solution to rescue THL, when they sought a postponement of the liquidation application, which was based on the further sum of R200 million made available by IDC..

4. It is now clear that the BRPs failed to reach any agreement.
5. The BRPs at paragraph 18 of their supplementary affidavit have stated:-

"In absence of funding from the IDC, despite that which is contained in PCF 11 is likely to result in operational interruptions, reduced recoveries, lower throughput, reduced revenue, delayed cane payments to cane growers and possible long-term erosion of employer, supplier and customer service as well as potential exposure to claims of reckless trading in terms of section 22 of the Act, and possible voidable

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dispositions in terms of the provisions of the Insolvently Act 24 of 1936, should liquidation ensue."

6. In light hereof, it is now imperative that all farmers are provided with some guarantee that farmers are to be paid for the cane supplied to the mills of TH, further thereto whilst the IDC has the right of oversight over the conduct of the BRPs activity, there needs to be firm and prudent oversight on the financial activity to ensure that the farmers payments are secured.

7. In the circumstances, whilst our client is of the view that the BRP's application to liquidate does not past muster, the BRPs need to be ordered that all funds received henceforth be held in a designated trust account, unless the IDC has already put in place such oversight so that transparency, prudence and the interests of the farmers are maintained.

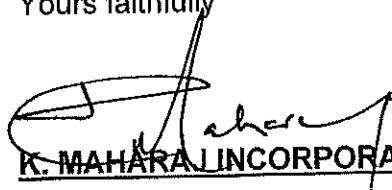


8. Our client shall at the hearing be seeking that some judicial oversight is now in place, and further that having due regard to the conduct of the BRPs through the Business Rescue process, that perhaps a new set of BRPs be appointed.

9. The opening of the mills are cold comfort to the farmers at this stage.

All our client's rights remain reserved.

Yours faithfully


K. MAHARA INCORPORATED

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DELIVERED BY EMAIL

Attention: R Maharaj
K. MAHARAJ INCORPORATED
 Email: maharajr@kmaharajinc.co.za
 Ref: RM/mg/A289

Johannesburg Office
 The Central
 96 Rivonia Road
 Sandton 2196 South Africa
 Private Bag 10015
 Sandton 2146
 Docex 111 Sandton
 Tel +27 11 535 8000
www.werksmans.com

cc:
 Attention: Alexander Cox
ALEXANDER COX ATTORNEYS
 Email: alexander@alexandercox.co.za

cc:
 Attention: Haroon Laher
INDUSTRIAL DEVELOPMENT CORPORATION OF SOUTH AFRICA LIMITED
 C/O FASKEN
 Email: HLaher@fasken.com



YOUR REFERENCE:
 OUR REFERENCE: Mrs L Silberman/js/TONG7430.26/#11688185v1
 DIRECT PHONE: +27 11 535 8134
 EMAIL ADDRESS: lsilberman@werksmans.com

22 May 2026

Dear Sirs

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

- 1 We refer to the above matter and to your letter dated 21 May 2026 ("your letter").
- 2 The assertions in your letter inexplicably, and self-servingly, disregard the content of both the founding affidavit and supplementary affidavit delivered by the business rescue practitioners of Tongaat ("the BRPs") in the pending proceedings.
- 3 The BRPs have substantively and repeatedly demonstrated in the aforesaid affidavits *inter alia* that the absence of funding and a business rescue plan capable of implementation, support their conclusion that there is no longer a reasonable prospect of rescuing Tongaat and accordingly, leaving them with no alternative in compliance with the BRPs statutorily imposed obligations in terms of section 141(2) of the Companies Act 71 of 2008, to apply for an order in terms of which the business rescue proceedings of Tongaat are discontinued and the company is placed into

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
 Directors D Hertz (Chairman) Y Adams LK Alexander C Andropoulos JKOF Antunes L Appelgryn RL Armstrong DA Arteiro K Badal T Bata JD Behr AR Berman P Bhagatjee MNM Bhengu AL Bilaty RE Bonnet TJ Boswell W Brown PG Cleland JG Cloete PPJ Coetser C Cole-Morgan J Darling R Driman KJ Fyfe S Gast D Gewer JA Gobelz R Gootkin A Govuza GF Griessel NA Hlatshwayo J Hollesen MGH Honiball MA Hoosen BB Hotz AE Human T Inno HC Jacobs TL Janse van Rensburg G Johannes S July J Kallmeyer A Kenny NK Kgame R Killoran N Kirby G Koski HA Kotze S Krige CJ Laltha H Laskov P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Mardon PD Mashalane H Michael SM Moerane R Moitse C Moraitis B Moti NPA Motsiri CK Mthembu L Naidoo K Neluheni NZP Nkosi BW Ntuli BPF Olivier Z Oosthuizen M Pansegrouw S Passmoor D Pisanti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdjin B Rammala V Ramson K Reddy BR Roothman W Rosenberg NL Soot NI Sewela TA Sibida FT Sikhavhakhavha LK Silberman S Sinden DE Singo JA Smit BM Sono KP South CI Stevens PO Steyn J Stockwell DH Swart PW Tindle JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe A van Haerden JJ van Niekerk FJ van Tonder D van Wyk JP van Wyk A Vatalidis T Volschenk RN Wakefield L Watson D Wegierski G Wickins DC Willans E Wood BW Workman-Davies Consultants DH Rabin

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provisional liquidation as envisaged in terms of Section 132(2)(a)(ii) read together with Section 141(2) of the Companies Act.

- 4 The facts supporting the aforesaid decision have been reinforced regard being had to what is set out in our clients' recently delivered supplementary affidavit.
- 5 Your intended course of action at the hearing of the application is noted.
- 6 Our failure to address any assertion or allegation in your letter should not be construed as an admission of same, or as a waiver of the BRPs rights in this regard, which rights are, both in this respect, and generally, fully reserved.

Yours faithfully

Werksmans Inc

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.



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TongaatHulett®

22 May 2026

Dear Grower,

We would like to provide you with an update on operational readiness, the commencement of the 2026 milling season, and liquidity management.

1. Operational Readiness and 2026 Season Start-Up

We are pleased to confirm that the 2026 milling season has now commenced, with the previously communicated start-up dates substantially achieved across our operations.

- The Felixton Mill commenced start-up on 20 May 2026 using the initial one-line operation and will ramp up on the second line on 27 May 2026.
- The Maidstone Mill commenced start-up on 20 May 2026.
- The Amatikulu Mill is scheduled to commence start-up on 28 May 2026.



The successful start-up of the season reflects extensive preparation across the business, including maintenance completion, commissioning activities, staffing readiness, and coordination across the supply chain.

Our teams remain focused on ensuring stable operations as activities increase across the mills, with safety continuing to remain the business's highest operational priority.

2. Liquidity Position and Cane Payments

As the milling season begins, the Group continues to actively manage liquidity within a disciplined controlled framework, prioritising the continuation of safe and stable operations across the value chain.

Encouragingly, the business's cash-flow position is expected to improve as milling activities progress and sugar sales normalise during the course of the season.

Based on current projections and anticipated funding arrangements, the business expects to remain in a position to meet cane payment obligations for cane delivered during the 2026 season, in line with established industry mechanisms and settlement processes.

As always, payment timing will remain linked to underlying cash generation and proceeds from sugar sales and will continue to be managed prudently within the existing liquidity framework.

3. Continued Focus

As we move further into the season, our immediate priorities remain to:

- Deliver safe, stable, and disciplined milling operations

Amanzimnyama Hill Road, Tongaat, 4400 • P O Box 3, Tongaat, 4400, KwaZulu-Natal, South Africa
Telephone: +27 32 439 4000 Fax: +27 32 945 3333 • www.tongaat.com

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Tongaat Hulett Limited – Company Registration Number 1892/000610/06

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- Maintain transparent and regular communication with growers and stakeholders
- Ensure responsible liquidity and financial management during this period
- Support continuity and stability across the value chain throughout the 2026 season

4. Stakeholder Engagement

We recognise the importance of certainty, consistency, and operational reliability at the start of the season and appreciate the continued support, patience, and engagement shown by growers during this period.

We remain committed to keeping you informed as the season progresses and will communicate promptly should there be any material developments relating to operations or payment arrangements.

Should you require any clarification, please continue to engage through the usual stakeholder communication channels.

Yours sincerely,



Gavin Dagleish
Group CEO – Tongaat Hulett Limited



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K. MAHARAJ INCORPORATED

In Association with:

RAMESH S SINGH Inc

Of 4 Brookwood Estate, King Edward Street, New Brighton, Sandton 2196

Office: +27 (69)6480219, Email: attorneysingh@yahoo.com

Attorneys - Conveyancers - Notaries

Phone: (031) 3054925

Unit 10, Glass House, Main Building,

JT Ross Park: Glass House

309 Umhlanga Rocks Drive

Umhlanga

email: maharajr@kmaharajinc.co.za

Your ref: Miss L Silberman/lif/TONG7430.26/#11491857v1

Our ref: RM/mg/A289

Date: 25 May 2026



WERKSMANS ATTORNEYS

ATT: DAVID HERTZ

EMAIL: LSilberman@werksmans.com

DHertz@werksmans.com

Dear Sir/Madam

RE: GERHARD CONRAD ALBERTYN N.O. & OTHERS / TONGAAT HULETT LIMITED
(IN BUSINESS RESCUE) AND FURTHER OTHERS – CASE NO. 2026-031780
OUR CLIENT: ABRINA 9422 (PTY) LIMITED

We refer to your letter dated 22 May 2026 and note:-

1. To avoid speculation, our client has read the Founding Affidavit and Supplementary Affidavit of your clients, the Business Rescue Practitioners ("the BRPs").
2. Our client holds little to no regard for the submissions made by your client in their affidavits as your clients', at the hearing on 17 April 2026, displayed conduct in these proceedings which can be characterized by a startling "revisionist history". They had approbated and reprobated by making multiple submissions on affidavit that there

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are no reasonable prospects of rescue and that the business rescue plan has failed, whilst in court, asserted by their counsel Adv Subel SC, stated that the business rescue plan has not failed which can be seen in the transcripts for the hearing on 17 April 2026.

2.1 If indeed your clients are statutorily imposed by the Companies Act they ought to have withdrawn the liquidation application on the day of the hearing as it was made abundantly clear by your counsel that there are reasonable prospects and that the plan had not failed. However, since your clients seem to be in the business of changing their position to suit their narrative, we will hold them to all versions of events before the court.



3. Your characterization of our client's assertions as "*inexplicable*" and "*self-serving*" is rejected with the contempt it deserves. There is nothing inexplicable or self-serving about an affected party requesting candour from court appointed fiduciaries such as your clients.

4. On the contrary it is in fact your clients that have been, and currently are, engaging in self-serving duplicity designed to manipulate separate audiences simultaneously.

4.1 What is truly inexplicable is how your firm can write a litigious letter exclaiming that THL has no prospects of rescue due to the failure of procuring funding as well as the failures of the business rescue plan whilst concurrently publish an announcement to growers on the same day (22 May 2026) declaring that the 2026 milling season has successfully kicked off at Felixton and Maidstone, with Amatikulu poised to follow. Your clients are running active commercial operations on the ground, as well as attempting to mislead the growers and stakeholders, while telling an affected party that is before the High Court for the impending liquidation application that THL is beyond rescue.

4.2 What is truly self-serving is your clients' deliberate concealment of the impending liquidation proceedings from the independent growers in the aforesaid 22 May 2026 circular. Your clients intentionally painted an

operational picture of "operational readiness," "stability across the value chain," and "liquidity discipline" solely to induce growers to harvest and deliver their cane. This is a raw, self-serving mechanism to force growers to fuel THL's mills and inflate THL's asset facade, whilst knowing that growers do not hold any preferential creditor status should THL be liquidated in June.

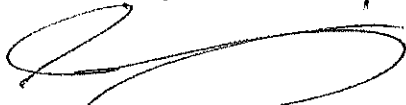
5. A party seeking the extraordinary, discretionary equitable relief of liquidation must approach the Court with absolute candour and clean hands. Your clients' documented duplicity as well as their lack of transparency in these proceedings completely disqualifies them from receiving such judicial discretion.

6. We place you on formal notice that our client will place your letter, this response, the contemporaneous 22 May 2026 Tongaat Hulett Grower Communication and the transcripts for the hearing on 17 April 2026 directly before the presiding Judge at the hearing of this matter to demonstrate active procedural abuse and misrepresentation.



All our client's rights remain reserved.

Yours faithfully


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