

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

**CASE NO: 2026-031780**

In the matter between:

GERHARD CONRAD ALBERTYN N.O

FIST APPLICANT

TREVOR JOHN MURGATROYD N.O

SECOND APPLICANT

PETRUS FRANCOIS VAN DEN STEEN N.O

THIRD APPLICANT

And

TONGAAT HULLET LIMITED (in business rescue)

FIRST RESPONDENT

THE AFFECTED PERSONS AND OTHER  
INTERVENING PARTIES

FURTHER RESPONDENT

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**FILING NOTICE**

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**TO : THE REGISTRAR OF THE HIGH COURT  
DURBAN**

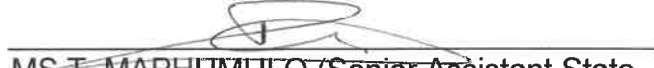
**AND TO: WERKSMANS ATTORNEYS  
APPLICANT'S ATTORNEYS  
96 RIVONIA ROAD  
11<sup>TH</sup> FLOOR, THE CENTRAL  
96 RIVONIA ROAD, SANDTON  
EMAIL: [Lsilberman@werksmans.com](mailto:Lsilberman@werksmans.com)**

**C/O EVH INC. ATTORNEYS  
UNIT 4, HOLWOOD CRESCENT, HOLWOOD PARK  
LA LUCIA RIDGE, UMHANGA, 4319  
EMAIL: [erik@evhinc.co.za](mailto:erik@evhinc.co.za)  
REF: W2409/0005**

**SIRS,**

**KINDLY TAKE NOTICE THAT** the Minister of Trade, Industry and Competition's hereby file the unsigned Supplementary Answering Affidavit evenly herewith.

Dated at Durban on this <sup>14</sup>28 day of *May* 2026.

  
MS T. MAPHUMULO (Senior Assistant State Attorney)

**Obo MINISTER OF TRADE, INDUSTRY & COMPETITION**

STATE ATTORNEY (KWAZULU-NATAL)  
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REF: 417/0021795/23/T/P9/ncm

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

**CASE NO: 2026-031780**

**In the matter between:-**

**GERHARD CONRAD ALBERTYN N.O.** First Applicant

**TREVOR JOHN MURGATROYD N.O.** Second Applicant

**PETRUS FRANCOIS VAN DEN STEEN N.O.** Third Applicant

and

**TONGAAT HULETT LIMITED (in business rescue)** First Respondent

**THE AFFECTED PERSONS AND OTHER  
INTERVENING PARTIES** Further Respondents

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**SUPPLEMENTARY ANSWERING AFFIDAVIT:  
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION**

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I, the undersigned,

**PARKS FRANKLYN MPHO TAU**

do hereby make oath and state:

**A. INTRODUCTION**

1. I am an adult male Cabinet Minister and the Executive Authority responsible for the Department of Trade, Industry and Competition, with offices at the DTIC Campus, 77 Meintjies Street, Sunnyside, Pretoria.

2. I depose to this supplementary answering affidavit in my official capacity as the Minister of Trade, Industry and Competition. I have previously delivered an answering affidavit in these proceedings. I persist in the contents of that affidavit and incorporate it herein by reference, save to the extent that this affidavit supplements it in response to the applicants' supplementary affidavit delivered pursuant to the order of this Honourable Court.
3. The facts in this affidavit are, unless the context indicates otherwise, within my personal knowledge, alternatively appear from the documents filed of record, including the adopted amended business rescue plan of Tongaat Hulett Limited ("THL") and the supplementary affidavit filed by the business rescue practitioners ("BRPs"). Where I make legal submissions, I do so on the advice of my legal representatives, which advice I believe to be correct.
4. This affidavit is directed to a discrete but important issue. The BRPs ask this Honourable Court to accept, on the basis of their updated affidavit, that there is no longer a reasonable prospect of rescuing THL and that THL should be wound up. I submit that their evidence, augmented by the supplementary affidavit, does not meet the requisite threshold.

**B. THE EVIDENTIARY BURDEN HAS NOT BEEN MET**

5. The legal question is not whether the original Vision implementation path has encountered difficulties. The question is whether the BRPs have shown, with current evidence, that business rescue can no longer achieve either statutory object, including the better-return object. They have not done so.

6. The BRPs' supplementary affidavit, read with the founding affidavit and reply, do not meet the evidentiary burden required for a section 141 liquidation order because key issues in the business rescue plan have not been addressed. Specifically, the plan:
  - 6.1. Provides for a **R75 million** distribution to unsecured creditors that liquidation would not. The effect of this benefit being lost in liquidation is material to whether or not liquidation should be granted.
  - 6.2. Records a liquidation comparison, which is now outdated and should be updated before any liquidation order. Why this has not been done is not explained.
  - 6.3. Recognises rescue aims to give better returns than immediate liquidation; the BRPs do not explain why this can no longer be achieved, before a conclusion that the company cannot be rescued can be reached.
7. The Court is therefore not required to accept a conclusion that rescue has failed simply because the BRPs say so. The BRPs must place before the Court objective, current, and verifiable material sufficient to show that the statutory alternative of a better return in business rescue is no longer reasonably achievable.

**C. AD SERIATIM**

**8. Ad paragraph 10**

8.1. The BRPs' supplementary affidavit focuses primarily on the status of PCF 11, the alleged practical restrictions imposed by IDC, the May 2026 budget issue, the absence of committed funding beyond 30 June 2026, and the BRPs' view that no acceptable alternative business rescue plan has been presented. Those matters may be relevant, but they are not sufficient.

8.2. The order provides that "[t]he applicants are granted leave to deliver a further supplementary affidavit updating the application and counter-application...".

8.3. In such update, the BRPs still had to provide the Court with a current basis to conclude that business rescue cannot achieve either of the statutory outcomes. They have not provided that basis to their own peril.

**9. Ad paragraph 23- 25**

9.1. I note that the applicants allege that "no party..., has presented anything to the BRPs which can possibly be considered as an alternatively acceptable and implementable business rescue plan.

9.2. I do not understand it to mean that nothing was presented at all.

9.3. Moreover, the existing plan, at clause 5.3.3.1, expressly recognises that one statutory object and benefit of business rescue is to achieve a better

return for creditors or shareholders than would result from immediate liquidation. This should have been one of the BRPs considerations.

9.4. Save as aforesaid, I deny the contents of these paragraphs.

10. **Ad paragraph 27 - 28**

The plan contains a liquidation scenario, and it can be updated

10.1. The BRPs' adopted plan did not proceed in a vacuum but contained a comparison between the business rescue outcome and a liquidation outcome. BDO prepared an independent liquidation dividend estimate and that the gross realisable value of the assets.

10.2. The plan also records that distributions arising pursuant to implementation of the plan were expected to significantly exceed those calculated by BDO in the alternative scenario of immediate liquidation.

10.3. Clause 9.3.1.1 provides that the distributions creditors would have received in a liquidation scenario as at the commencement date would be materially lower than the distributions already paid and those contemplated under the plan, and that this was expected to be true for both secured and unsecured creditors.

10.4. The plan therefore contains the very comparative framework that is missing from the applicant's case.

10.5. It is no answer for the BRPs to say, in effect, that circumstances have changed, without updating the comparison.

- 10.6. On the contrary, because circumstances have changed, the liquidation scenario must be updated. A liquidation scenario updated by BDO or prepared by another independent expert can be updated by current financial information.
- 10.7. The BRPs have not filed such an updated liquidation analysis. They have also not explained why such an analysis cannot be prepared. The omission is striking because the plan itself relied on a liquidation comparison to justify creditor support and adoption.
- 10.8. The absence of an updated liquidation scenario is not a technical omission. Without that updated comparison, the Court cannot properly determine whether liquidation is now the appropriate outcome, whether an amended business rescue plan remains possible, or whether affected persons are being asked to forgo a better-return outcome without proof.

The R75 million distribution to unsecured creditors is a central plan benefit, not a collateral detail

- 10.9. The adopted amended business rescue plan records, in express terms and at clause 6, that the Vision Parties agreed to facilitate a distribution of R75 million in aggregate to unsecured creditors. The BRPs recorded that, in endeavouring to balance the rights of all stakeholders, they had reached agreement with the Vision Parties in terms of which the Vision Parties would facilitate a distribution of R75 million to unsecured creditors, who would otherwise realise nil.

10.10. The better-return objective is not an incidental aspiration. It is one of the statutory purposes of business rescue and one of the express benefits on which the plan was adopted. It is also the direct reason why the R75 million distribution to unsecured creditors matters.

10.11. If unsecured creditors receive no or negligible dividend in liquidation but receive a pro rata share of the R75 million under the plan, then liquidation deprives them of a concrete plan benefit.

10.12. If the BRPs now ask the Court to order liquidation, they must explain why unsecured creditors should lose that plan benefit and why the Court should accept that result as preferable or appropriate.

10.13. The application, therefore, does not meet the evidentiary burden required for a section 141 liquidation order.

#### **D. CONCLUSION**

11. The Court should be slow to order liquidation where the adopted plan itself provided mechanisms, benefits and comparisons that have not been updated and where affected persons stand to lose an identified distribution in business rescue.

12. For the reasons set out above, I submit that the BRPs have failed to discharge the evidentiary burden required for the relief sought in terms of section 141(2)(a) of the Companies Act.

13. I accordingly pray that the application for discontinuance of THL's business rescue proceedings and for provisional liquidation be dismissed with costs, including the costs of two counsel where so employed.

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**PARKS FRANKLYN MPHOTO TAU**

**THUS SIGNED AND SWORN TO** before me at \_\_\_\_\_ on this the \_\_\_\_\_ day of **MAY 2026** by the deponent who acknowledges that he/she knows and understands the contents of this affidavit; that it is the truth to the best of his knowledge and belief and that he/she has no objection to taking the prescribed oath and regards the same as binding on his conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended.

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**COMMISSIONER OF OATHS**

EX OFFICIO:

FULL NAMES:

PHYSICAL ADDRESS:

DESIGNATION: