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

Case number: 2026 – 031780

In the matter between:

RGS GROUP HOLDINGS LIMITED	Applicant
and	
GERHARD CONRAD ALBERTYN N.O.	First Respondent
TREVOR JOHN MURGATROYD N.O.	Second Respondent
PETRUS FRANCOIS VAN DEN STEEN N.O.	Third Respondent
TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	Fourth Respondent
THE AFFECTED PERSONS IN THE BUSINESS RESCUE OF THE FOURTH RESPONDENT	Fifth Respondents
VISION INVESTMENTS 155 (PTY) LTD	Sixth Respondent
TERRIS AGRIPRO (MAURITIUS)	Seventh Respondent
REMOGGO (MAURITIUS) PCC	Eighth Respondent
GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	Ninth Respondent
ALMOIZ NA HOLDINGS LTD (UNITED ARAB EMIRATES)	Tenth Respondent
STANDARD BANK OF SOUTH AFRICA LTD	Eleventh Respondent

In re the matter between:

GERHARD CONRAD ALBERTYN N.O.	First Applicant
TREVOR JOHN MURGATROYD N.O.	Second Applicant

PETRUS FRANCOIS VAN DEN STEEN N.O.	Third Applicant

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Respondent
THE AFFECTED PERSONS	Further Respondents

APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE THAT the applicant ("**RGS**") intends to apply, on a date and at a time to be determined by the Registrar, for leave to appeal to the Full Court of the KwaZulu-Natal Local Division, Durban against the whole of the judgment and order, except for the dismissal of the relief sought in paragraph 7 of the notice of motion, delivered by this Court on 24 July 2026 per Ms Justice Singh in the counter application brought by RGS under the abovementioned case number ("**the Counter Application**").

TAKE NOTICE FURTHER THAT the grounds on which RGS seeks leave to appeal are as follows:

First Ground: *Lis alibi pendens* not demonstrated in relation to the relief sought to set the Vision Plan aside

1. The Court erred in finding at paragraphs 27 to 36 of the judgment that the requirements of *lis pendens* have been satisfied.

2. In particular, the Court erred in the following respects.

3. The Court erred in finding that the first to fourth respondents ("**the BRPs**") and the sixth to tenth respondents ("**Vision**") had proven the requirements of *lis pendens* on the papers filed of record.

4. Neither Vision nor the BRPs placed the affidavits filed in Part B of the application brought by RGS during November 2024 under case number D13702/2024 ("**the Previous Application**") before the Court nor does the judgment contain an analysis of the facts and causes of action on which Part B of the Previous Application was premised. All that was before Court was the notice of motion[1] in the Previous Application and a table prepared by Vision purporting to show the similarities between the two applications, the contents of which table was disputed by RGS.[2]

5. The Court did not therefore have sufficient evidence before it to establish whether the requirements of *lis pendens* had been met.

6. While the Court could establish that Part B of the Previous Application had not been withdrawn or dismissed, involved the same parties, and also sought the setting aside of the Vision Plan (as this was common cause), there was no evidence before Court to demonstrate the remaining requirements of *lis pendens*, i.e. that Part B of the Previous Application (i) was based on the same cause(s) of action, and (ii) was brought in respect of the same subject matter.

7. The Court erred in failing to take into account the following allegations contained in RGS' answering affidavit in the Liquidation Application (which also served as

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[1] Vision AA, Annexure "RM2" record 007-101.

[2] Vision AA, Annexure "RM3" record 007-109.

the founding affidavit in the Counter Application) and the submissions made by counsel in this regard at the hearing to the effect that:

7.1. Part B of the Previous Application was premised on the facts as they stood in November 2024 and that the relief sought therein was premised on Vision's failure to have acquired the Lender Group's claims at the time the application was launched;[3]

7.2. When Vision and the BPRs filed their supplementary affidavits in Part B of the Previous Application they confirmed that Vision had completed the acquisition of the Lender Group's claims on 9 May 2025 and on that basis alleged that RGS' case had become academic / the completion of the acquisition was destructive of RGS' case;[4]

7.3. The BRPs therefore invited RGS to withdraw the application but RGS refused to do so in the absence of proof that Vision had paid for and acquired the Lender Group's claims fully and lawfully in the terms contemplated in the Vision Plan;[5]

7.4. When the BRPs and Vision failed to provide proof as aforesaid RGS brought an urgent application, the Disclosure Application, and obtained the Disclosure Order directing Vision to produce the proof sought by RGS, Vision has however appealed against the Disclosure Order and the appeal remains pending;[6]

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[3] RGS AA at paragraph 234 record 009-73.

[4] RGS AA at paragraph 261 record 009-84.

[5] RGS AA at paragraphs 262 to 265 record 009-84 to 009-85.

[6] RGS AA at paragraph 62 record 009-23 and paragraph 273 *et seq* record 009-88.

7.5. All that therefore remains to be determined in respect of Part B of the Previous Application is a dispute about costs, i.e. whether RGS had contemporaneous grounds to seek the setting aside of the Vision Plan when the Previous Application was launched.

8. The Court erred in finding that RGS (i) did not submit that the Counter Application was distinguishable from Part B of the Previous Application, and (ii) did not contend that subsequent developments gave rise to a fresh cause of action to set the Vision Plan aside[7] when in fact RGS alleged in its affidavits that new facts had arisen and counsel for RGS made express submissions to the effect that new causes of action had been disclosed at the hearing.

9. The Counter Application was in fact brought in response to entirely novel facts and circumstances, namely, the BRPs' application for the provisional liquidation of the fourth respondent ("**THL**") which was precipitated *inter alia* by Vision's inability to fund the implementation of its own business rescue plan (more than 2 years after the adoption of the plan) and Vision's demand for payment from THL in the amount of R11.73 billion,[8] i.e. Vision's enforcement of the Lender Group's claims against THL during the implementation of Vision's own business rescue plan.

10. The Court erred in failing to appreciate that the aforesaid facts and circumstances *per se* disclosed new facts and causes of action for the setting aside of the Vision Plan.

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[7] Judgment at paragraphs 29 and 30.

[8] BRP FA in the Liquidation Application, Annexure "FA49" at record 001-1342.

11. Both RGS' answering affidavit[9] in the Liquidation Application (which served as the founding affidavit in the Counter Application) and RGS' heads of argument[10] expressly allege and / or clearly demonstrate the existence of new facts which establish new causes of action for the setting aside of the Vision Plan, many of which facts were identified by RGS as having been disclosed for the first time in the affidavits filed by the BRPs and the IDC in the Liquidation Application (**"the New Facts"**).

12. The New Facts revealed for the first time in the Liquidation Application included the following:

    12.1. That Vision had completed the acquisition of the Lender Group's claims using funds borrowed from Standard Bank,[11] contrary to the material misrepresentations made by Vision at the creditors meeting on 10 and 11 January 2024 to the effect that it had sufficient funds in cash to implement the Vision Plan;[12]

    12.2. That Vision did not have funds to implement the Vision Plan more than two years after its adoption and sought funding from the IDC both to

[9] See e.g. RGS AA at paragraph 17 record 009-8, paragraph 49 record 009-20, paragraph 113.2 record 009-34, paragraph 113.6 record 009-35, paragraph 113.7 record 009-36, paragraph 113.9 record 009-37, paragraphs 208.5 to 208.9 record 009-66, paragraph 228 record 009-71, RGS Supplementary Affidavit at paragraphs 20 to 29 record 096-7

[10] See e.g. RGS HoA at paragraphs 9 to 10 record 087-7, paragraphs 31 to 33 record 087-12, paragraph 40 record 087-18, RGS Supplementary HoA at e.g. paragraph 32 to 36 record 099-11, paragraph 43 to 45 record 099-14

[11] IDC AA at paragraph 73 record 007-552, *Cf* RGS HoA at para 31 record 087-12.

[12] RGS AA at paragraph 175 *et seq* record 009-55.

implement the plan and to provide working capital subsequent to implementation;[13]

12.3. That on the BRPs' own version Vision had demanded the imposition of conditions relating to the implementation of the Vision Plan that were not contemplated in the plan and that such conduct on Vision's part was "*inconsistent with the binding terms of the Adopted Plan that Vision itself proposed*";[14]

12.4. The aforesaid unlawful conditions demanded by Vision were not confined to its demands for IDC funding to implement the Vision Plan but extended to demands *inter alia* that the entire South African sugar industry undergo major structural and legislative reforms.[15]

13. The Court therefore clearly erred in finding[16] that RGS did not submit that the Counter Application was distinguishable from Part B of the Previous Application and did not contend that subsequent developments gave rise to a fresh cause of action to set the Vision Plan aside in circumstances where each of the New Facts were alleged by RGS and each individually constituted fresh causes of action justifying the setting aside of the Vision Plan.

14. The Court ought to have adjudicated the relief sought for the setting aside of the Vision Plan on its merits, determined the Vision Plan to be unlawful, and issued

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[13] IDC AA at paragraph 72 record 007-551, *Cf* RGS HoA at para 31 record 087-12.

[14] BRP RA at para 93.4 record 010-183, *Cf* RGS HoA at para 31 record 087-12.

[15] BRP FA at para 57 record 001-31, BRP RA at para 93.4 record 010-183, *Cf* RGS HoA at para 31 record 087-12.

[16] Judgment at paragraphs 29 and 30.

an order setting the Vision Plan aside in terms of prayer 4 to the notice of motion in the Counter Application.

Second Ground: *Lis alibi pendens* discretion improperly and erroneously exercised

15. Even if the requirements of *lis pendens* had been satisfied, which is denied, the Court erred in deciding in the exercise of its discretion to dismiss the Counter Application and not to consider the substantive allegations regarding the unlawfulness of the Vision Plan.[17]

16. In circumstances where the Counter Application had been fully ventilated on the merits before the Court, the Court erred in rejecting the submissions made by RGS at the hearing to the effect that dismissing the Counter Application would simply result in identical affidavits being filed to supplement Part B of the Pending Application and identical arguments being heard by a court in due course in adjudicating Part B as supplemented.

17. The duplication of costs and consumption of scarce judicial resources identified by the Court[18] will in fact result from the need to supplement Part B of the Pending Application but would not have resulted had the Court adjudicated the Counter Application on the merits.

18. The Court could similarly have addressed the risk of conflicting judgments[19] by simply issuing an order to stay Part B of the Pending Application, which is in any

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[17] Judgment at paragraphs 33, 35, and 36.

[18] Judgment at paragraph 33.

[19] Judgment at paragraph 33.

event moot (in its present unsupplemented state) save for the issue of costs, and erred in failing to do so.

19. The Court erred further in finding that the Liquidation Application was withdrawn because the IDC had agreed to extend the post-commencement finance ("**PCF**") facility to September 2026.[20]

20. The Liquidation Application was withdrawn not simply because the PCF had been extended but primarily because Vision, the IDC, and the BRPs had concluded Heads of Agreement[21] the day before the hearing the material terms of which were that:

    20.1. Vision was to deliver proof of funding for the settlement of creditors' claims in terms of the Vision Plan within 90 days;

    20.2. THL and Vision were to conclude new Sale Agreements within 90 days;

    20.3. Vision and the IDC were to agree on terms relating to the financing by the IDC of the implementation of the Vision Plan within 90 days.

21. The Court erred in failing to appreciate that the Heads of Agreement:

    21.1. Amounts to nothing more than an agreement to agree that was concluded more than two years after the Vision Plan was adopted in circumstances where no material aspect of the Vision Plan had been implemented and Vision still had to demonstrate proof of funding;

[20] Judgment at paragraph 8.

[21] BRP Further Affidavit of 16 June 2026, Annexure "THL3" record 101-11.

21.2. Contemplates the IDC possibly agreeing in future to provide funding for the implementation of the Vision Plan contrary to the material misrepresentations made by Vision at the creditors meeting on 10 and 11 January 2024 to the effect that it had sufficient funds in cash to implement the Vision Plan;[22]

21.3. Relates to funding on which the implementation of the Vision Plan is conditional but which is not disclosed in the Vision Plan as required in terms of section 150(2)(*c*) of the Act, which amounts to a change in the funding model on which the Vision Plan is premised, and which has in any event not been approved by creditors.[23]

22. The Court erred in failing to appreciate that the Heads of Agreement do not confirm either the availability of funding for the implementation of the Vision Plan nor the existence of funding on a lawful basis that complies with section 150(2)(*c*) of the Act and the terms of the Vision Plan itself.

23. In these circumstances the Courted erred in failing to appreciate that a determination of the lawfulness of the Vision Plan was both urgent and in the interests of justice given the centrality of THL to the KwaZulu Natal provincial economy and the fact that thousands of jobs are at risk.

24. In circumstances where it is beyond dispute on the papers *inter alia* that:

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[22] RGS AA at paragraph 175 *et seq* record 009-55.

[23] ***Vantage Goldfields SA (Pty) Ltd v Arqomanzi Ltd*** 2023 (4) SA 568 (SCA) at paras [23] to [26]

24.1. Vision borrowed funds from Standard Bank to complete the acquisition of the Lender Group claims despite its material misrepresentations regarding cash funding;

24.2. Vision demanded unlawful conditions to the implementation of the plan which were extraneous thereto and were neither disclosed to nor approved by creditors;

24.3. Even if funding is confirmed pursuant to the Heads of Agreement, such funding would not result in the lawful implementation of the Vision Plan absent creditors' approval thereof

the Vision Plan and / or the implementation thereof is *prima facie* unlawful,[24] and the Court exercised its discretion improperly and erroneously by refusing to adjudicate the merits of the Counter Application concerning the unlawfulness of the Vision Plan and leaving the adjudication thereof for another court in the context of the Previous Application.

Third Ground: The Court erred in finding that RGS failed to assert a right to the Agency Agreement disclosure relief

25. The Court erred in finding variously that:

[24] Sections 152(4) and 152(*b*) of the Companies Act 71 of 2008, See ***Limbouris v Du Toit NO* 2025 (1) SA 247 (WCC)** at paras [86.6] and [86.7], ***African Banking Corporation of Botswana Ltd v Kariba Furniture Manufacturers (Pty) Ltd*** 2013 (6) SA 471 (GNP) at para [59] (which was overturned on appeal on unrelated grounds), ***Kransfontein Beleggings (Pty) Ltd v Corlink Twenty Five (Pty) Ltd*** [2017] ZASCA 131 at para [19], ***Vantage Goldfields SA (Pty) Ltd v Arqomanzi Ltd*** 2023 (4) SA 568 (SCA) at paras [23] to [26], ***Booysen v Jonkheer Boerewynmakery (Pty) Ltd* 2017 (4) SA 51 (WCC)** at paragraph [67].

25.1. RGS sought to establish a right to the disclosure of the Agency Agreements simply on the basis of a need to investigate the validity of Vision's enforcement of the Lender Group claims of R11.73 billion against THL;[25]

25.2. The only ground on which RGS alleged an entitlement to the disclosure of the Agency Agreements was the contents of the letter from Standard Bank to the BRPs of 22 October 2024 (annexure "MAR25" to RGS' answering affidavit in the Liquidation Application).[26]

26. RGS' case for the disclosure of the Agency Agreements was in summary founded on the following:

26.1. The BRPs failed to independently verify the validity, extent, and efficacy of the security attaching to the Lender Group claims as they were required to do in terms of section 141 of the Companies Act 71 of 2008 ("**the Act**");[27]

26.2. Vision, having acquired the Lender Group claims with borrowed funds but not being in funds to implement its plan, held the security attaching to the Lender Group claims "like a gun to THL's head"[28] *inter alia* by enforcing those claims of R11.73 billion (which Vision acquired for R3.24 billion)[29] against THL during the currency of the implementation of

[25] Judgment at paragraph 37.

[26] Judgment at paragraph 39.

[27] RGS AA at e.g. paragraphs 66 to 72 record 009-24 and 343.1 record 009-110

[28] RGS AA at paragraph 347 record 009-111

[29] RGS AA at paragraph 299.2 record 009-100

Vision's own rescue plan thereby forcing the BRPs to file the Liquidation Application;

26.3. Vision moreover confirmed in its answering affidavit that it would use the votes attaching to the Lender Group claims to block any alternative, lawful business rescue plan that might be put to creditors should the Vision Plan be set aside;[30]

26.4. The Minister of Trade and Industry was therefore correct in categorising the Liquidation Application and the implementation of the Vision Plan that resulted therein as an abuse, misuse, and perversion of the Act;[31]

26.5. In circumstances of abuse and misuse of the Act, the Court's supervisory powers in sections 140(3)(a), 141(3) and particularly 158 of the Act were triggered which empowered the Court to fashion relief appropriate to the circumstances, even where such relief would result in the disclosure of documents to which creditors would not ordinarily be entitled.[32]

27. The Court therefore erred in failing to identify the factual and legal grounds on which RGS sought the Agency Agreement disclosure relief and thus failed to adjudicate RGS' pleaded case in the judgment.

28. The Court ought to have intervened in circumstances of abuse and misuse of the Act and granted an order for the disclosure of the Agency Agreements to enable

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[30] Vision AA at paragraphs 27.4.2 to 27.4.3 record 007-14.

[31] RGS HoA at e.g. paragraph 41 record 087-19 and paragraph 79.3 record 087-35.

[32] RGS HoA at paragraph 119 *et seq* record 087-49.

all affected persons in THL's business rescue to verify the lawfulness and validity of Vision's conduct on a transparent basis.

Fourth Ground: The Court failed to adjudicate the relief sought in paragraph 8 of the notice of motion to the Counter Application

29. The Court erred in finding at paragraph 40 of the judgment that the relief sought by RGS in terms of paragraph 8 of the notice of motion to the Counter Application was contingent on the Court's granting of the interim execution relief in terms of section 18(1) of the Superior Courts Act 10 of 2013 ("**the Superior Courts Act**").

30. The relief sought in paragraph 8 of the notice of motion was entirely distinct from and separate to the interim execution relief that was sought in terms of paragraph 7 thereof.

31. The judgment does not include an adjudication of RGS's case for the relief sought in paragraph 8 of the notice of motion to the Counter Application.

32. The Court ought to have adjudicated the relief sought and granted it for the reasons set out in RGS's affidavits and its heads of argument.

Fifth Ground: Relief and costs

33. For all of the above reasons, the Court erred in:

    33.1. dismissing the relief sought in paragraphs 4, 5, 8 and 9 of the notice of motion to the Counter Application;

    33.2. refusing to adjudicate on the lawfulness of the Vision Plan;

    33.3. awarding costs against RGS.

34. The Court ought to have granted the relief sought in paragraphs 4, 5, 8 and 9 of the notice of motion to the Counter Application with costs on scale C.

WHEREFORE RGS submits that leave to appeal should be granted by this Court because:

(a) The appeal would have reasonable prospects of success within the meaning of section 17(1)(*a*)(i) of the Superior Courts Act;

(b) There are compelling reasons why the appeal should be heard as contemplated in section 17(1)(*a*)(ii) of the Superior Courts Act, given the *prima facie* unlawfulness of the Vision Plan and its implementation and the disastrous consequences that the failure of THL's business rescue would have on the KwaZulu Natal economy;

(c) The decision sought on appeal does not fall within the ambit of section 16(2)(*a*) of the Superior Courts Act; and

(d) The decision sought on appeal would dispose of all the issues in the matter and would moreover lead to a just and prompt resolution of the real issues between the parties.

DATED AND SIGNED AT **JOHANNESBURG** ON THIS THE **20th** DAY OF **AUGUST 2026**.

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

DURBAN

AND TO: **THE FIRST TO FOURTH RESPONDENTS**

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AND TO: **THE SIXTH TO TENTH RESPONDENTS**

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

Case No. 2026-031780

In the counter-application of:

RGS GROUP HOLDINGS LTD	Applicant

and

GERHARD CONRAD ALBERTYN N.O.	First Respondent
TREVOR JOHN MURGATROYD N.O.	Second Respondent
PETRUS FRANCOIS VAN DEN STEEN N.O.	Third Respondent
TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	Fourth Respondent
THE AFFECTED PERSONS IN THE BUSINESS RESCUE OF THE FOURTH RESPONDENT	Fifth Respondent
VISION INVESTMENTS 155 (PTY) LTD	Sixth Respondent
TERRIS AGRIPRO (MAURITIUS)	Seventh Respondent
REMOGGO (MAURITIUS) PCC	Eighth Respondent
GUMA AGRI & FOOD SECURITY LTD (MAURITIUS)	Ninth Respondent
ALMOIZ NA HOLDINGS LTD (UNITED ARAB EMIRATES)	Tenth Respondent
STANDARD BANK OF SOUTH AFRICA LTD	Eleventh Respondent

In re:

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	Second Respondent

ORDER

The following order shall issue:

1. The point in *limine* of *lis alibi pendens* raised by the first to third and sixth to tenth respondents is upheld in respect of the relief sought in paragraph 4 of the notice of counter-application.

2. The relief sought in paragraphs 4, 5, 7, 8 and 9 in the notice of counter-application is dismissed.

3. The applicant in the counter-application (RGS Group Holdings Ltd) is directed to pay the costs of the counter-application in respect of the first to third and sixth to tenth respondents on scale C, including the costs of two counsel, where so employed.

JUDGMENT

Singh J

Introduction

[1] Established in 1892, and listed on the Johannesburg Stock Exchange in 1952, Tongaat Hulett Limited ('THL'), has been regarded as not only the life blood of the people of the province of KwaZulu-Natal but also of South Africa. It has operated primarily in the sugar, maize and property development industry, with its deepest roots in the South African sugar industry. THL was built, undeniably, on the sweat and tears, which dropped off the brows of the marginalised and previously disadvantaged labourers, particularly in the KwaZulu-Natal region.

[2] It was a sad day when THL was placed under business rescue in October 2022. Following that and in February 2026, it was an even sadder day when the business rescue practitioners of THL launched a liquidation application to wind-up THL. The said application was opposed by various parties, which I shall deal with hereunder. A counter-application brought by one of THL's creditors, which was also opposing the liquidation application, was also launched.

The parties

[3] It is necessary to deal with the various role players in the liquidation application and the counter-application at this juncture.

[4] Messrs Gerhard Conrad Albertyn, Trevor John Murgatroyd and Petrus Francois van den Steen are the joint business rescue practitioners ('the BRPs') of THL and the applicants in the liquidation application. A provisional order placing THL under liquidation in terms of s 141(2) of the Companies Act 71 of 2008 ('the 2008 Act') read with the provisions of the Companies Act 61 of 1973 was sought.

[5] The liquidation application was rigorously opposed by several stakeholders, including RGS Group Holdings Ltd ('RGS'), which is a creditor of THL; and Vision Investments 155 (Pty) Ltd; Terris Agripro (Mauritius); Remoggo (Mauritius) PCC; Guma Agri & Food Security Ltd (Mauritius) and Almoiz NA Holdings Ltd (United Arab Emirates), collectively known as the Vision Consortium. I shall refer to the Vision Consortium as the Vision Group.

[6] The Industrial Development Corporation of South Africa Ltd ('the IDC') supported by the Minister of Trade Industry and Competition sought leave to intervene in the application.

[7] The South African Cane Growers Association representing the interests of cane growers and suppliers also sought leave to intervene in the application, as did an entity known as Abrina 9422 (Pty) Ltd (Abrina) which is a supplier of sugar cane to THL. There was a further application to intervene by two shareholders of THL, namely Messrs Muhammed Faiz Turk and Muhammed Shaqeel Turk.

[8] Fortunately for the various stakeholders, following engagements between the BRPs, the Vision Group and the IDC, post-commencement finance funding, which had been afforded to THL when it was placed under business rescue, was extended by the IDC until September 2026. This was to enable the Vision Group to take steps to implement a business rescue plan which had been adopted on 11 January 2024 by creditors of THL. It was on this basis that at the hearing of this matter on 17 June 2026, the BRPs were granted leave to withdraw the liquidation application. I made no order

as to costs, despite Abrina seeking an order that the BRPs pay their costs in respect of the liquidation application.

[9] Despite the withdrawal of the liquidation application, RGS advised the court that it was desirous of pursuing the relief in its counter-application. This judgment is confined solely to the determination of the counter-application. The BRPs were represented by Mr *Shapiro* SC. RGS was represented by Mr *Kotze* whilst the Vision Group was represented by Mr *Blou* SC together with Mr v*an Kerckhoven*.

Events leading to the winding-up application and the counter-application

[10] The following facts are common cause in relation to the events which gave rise to the liquidation application and the counter-application:

(a) THL was placed under business rescue in October 2022 and the BRPs were duly appointed on the same date.

(b) A business rescue plan was put forward by the Vision Group ('the Vision plan') and adopted at a meeting of creditors held in terms of s 151 of the 2008 Act on 11 January 2024.

(c) RGS had also put forward a business rescue plan but withdrew the plan on the eve of the creditor's meeting.

(d) The Vision plan was therefore the only plan which was put up for consideration.

(e) In terms of the Vision plan, it was to acquire THL's lender groups' claims and security held by the said lender groups in respect of THL's debts. It would, therefore, in acquiring such claims and security, become the largest secured creditor of THL. The face value of the lender groups' claims acquired by the Vision Group was approximately R11.73 billion and the purchase price was R3.24 billion.

(f) The Vision plan further entailed the Vision Group obtaining a debt for security exchange within THL, failing which, an asset sale transaction.

(g) At a shareholders meeting on 8 August 2024, the debt for equity proposal contained in the Vision plan was not approved by shareholders. Accordingly, the alternative, being the asset sale transaction, was pursued by the BRPs.

(h) The acquisition of the lender groups' claims and security was completed in May/June 2025. The Vision Group was able to complete the acquisition by utilising funds borrowed from Standard Bank of South Africa Ltd ('Standard Bank'), which funds were advanced after the IDC issued a guarantee in favour of Standard Bank to the value of R1.3 billion.

(i) The sale of business agreements were concluded between 15 December 2024 and 10 February 2025.

(j) Conditions precedent were contained in the sale of business agreements for the implementation of the asset sale transaction and as set out in the Vision plan. The conditions precedent, included the refinancing or assumption of the IDC's post-commencement finance facility and payment into an escrow account by THL in the sum of R517 million due to the South African Sugar Association.

(k) On 13 November 2025, a security sharing proposal was tabled between the IDC and the Vision Group. The Vision Group indicated that it would not share security 'in a vacuum'. There was an impasse between the IDC and the Vision Group, the details of which, I am of the view, are not necessary for the present judgment. Suffice it to say, that no further funds were dispersed by the IDC and by early February 2026, the conditions precedent in the sale of business agreements had not been fulfilled. The sale of business agreements lapsed.

(l) On 8 February 2026, the Vision Group, acting as facility agent and successor in title to the lender groups, issued a formal letter of demand declaring that all amounts paid to acquire the claims from the lender groups, had become immediately due and payable by THL.

(m) This resulted in the BRPs launching the liquidation application.

The relief sought in the RGS counter-application

[11] RGS sought the following relief in its counter-application:

(a) Leave to intervene in the liquidation application.

(b) A dismissal of the liquidation application.

(c) A declaratory order that the Vision plan be set aside on the basis that it was unlawful (the set aside relief).

(d) An order directing the BRPs and THL to produce copies of the agency agreements defined in paragraph 3.1.7 of the Vision plan, subject to any reasonable confidentiality and/or non-disclosure agreements that the BRPs and THL would require RGS to sign (the agency agreement relief).

(e) An order joining the Vision Group which is cited as the sixth to tenth respondents and Standard Bank, which was cited as the 11th respondent in the counter-application.

(f) An order in terms of s 18(1) of the Superior Courts Act 10 of 2013 (the SC Act) directing that the order and judgment issued and made by this court on 4 July 2025 under case number 2025-079452 by Zwane AJ ('the Zwane AJ order') be executed pending the Vision Group's application for leave to appeal to the Supreme Court of Appeal ('the SCA') (the execution relief).

(g) That the Vision Group be directed to produce all and any agreements or other documents on which they rely to assert security over THL's assets, including THL's subsidiaries businesses, operating divisions or other forms of business ventures (the disclosure relief).

(h) That the BRPs, THL and Vision Group pay the costs of the counter-application on scale C.

[12] In light of the liquidation application being withdrawn, the relief for the dismissal of the liquidation application fell away. Likewise, the fact that RGS was a creditor, regardless of the amount being owed to it by THL, leave to intervene in terms of s 133(1)(*b*) of the 2008 Act was not opposed by the BRPs and therefore not pursued. It was also accepted that the companies comprising the Vision Group were already affected parties and an order for their joinder was therefore unnecessary.

[13] The relief which requires consideration by this court is the set aside relief, the agency agreement relief, the execution relief and the disclosure relief.

The set aside relief

RGS's allegations regarding the Vision plan

[14] RGS alleged that the Vision plan is unlawful and falls to be set aside for the following reasons:

(a) The Vision Group induced creditors to vote to adopt the Vision plan based on material misrepresentations that it had sufficient cash to implement the plan.

(b) The BRPs made unilateral changes to the plan without seeking the approval of creditors and the Vision Group's change from cash funding to a loan funded by Standard Bank / the IDC was unlawful and concealed from affected persons.

(c) The Vision plan lapsed because it could not be implemented within a reasonable time.

(d) The implementation of the Vision plan was unlawful because the BRPs proceeded with the equity conversion before the lender group claims had been achieved by the Vision Group.

(e) The sale of asset transaction was unlawful because it did not comply with the provisions of s 150 of the 2008 Act and therefore did not constitute a self-standing business rescue plan. Upon the failure of the equity conversion, the BRPs ought to have convened another creditors' meeting, which they failed to do.

(f) On the BRPs own version, the Vision Group unilaterally imposed material conditions regarding the implementation of the Vision plan.

(g) The BRPs proceeded with the implementation of the Vision plan for months despite knowing that the Vision Group wanted to introduce extraneous conditions.

(h) The BRPs failed at all material times to provide affected persons with real and meaningful information regarding the true factual status of the Vision plan and its implementation.

(i) By October 2024, the BRPs had still not informed affected parties that the Vision Group had not completed the lender group acquisitions. RGS and many other affected parties were aware of this but could not prove it. Accordingly, RGS demanded that the BRPs publish on THL's website, for the benefit of all affected parties, by 7 October 2024 copies of the following documents:

 (i) a copy of the lender group acquisition agreement;

 (ii) proof of the amount paid by the Vision Group to the lender groups;

 (iii) proof that the lender groups had transferred all its claims and security to the Vision Group;

 (iv) details of the transaction to be implemented pursuant to the sale of asset transactions and;

 (v) a timeline for the completion of the aforesaid transaction.

(j) The BRPs did not react to RGS's demand and RGS therefore launched an application ('the November 2024 application') before this court under case number D13702/24 seeking relief in two parts.

(k) Part A was an interdict preventing the BRPs from implementing the Vision plan and part B was an order setting aside the Vision plan.

(l) Part A was dismissed on 18 February 2025 for lack of urgency and the failure of RGS to satisfy the requirements for an interim interdict.

(m) Part B was adjourned *sine die* and RGS was granted leave to supplement its founding affidavit prior to the hearing of part B, with the respondents in that matter being granted leave to file further affidavits in response to such affidavit.

(n) In light of part A of the November 2024 application being dismissed, RGS contended that it did not have access to the information it required to prove its case in part B. Although RGS attempted to progress part B, events soon overtook the application when the BRPs and the Vision Group filed answering affidavits opposing part B.

(o) Part B of the November 2024 application is still alive.

The Vision Group's opposition to the set aside relief

[15] The Vision Group in its answering affidavit in opposition to the counter-application alleged as follows:

(a) An adopted business rescue plan can only be set aside by a court in very limited instances, such as where it was actuated by fraud or was a sham.

(b) RGS was relying on the provisions of s 141(3) of the 2008 Act, which does not provide the court with the power to set aside the Vision plan.

(c) It alleged that the set aside relief was legally unsustainable.

(d) RGS had not demonstrated that the Vision plan was a sham and emphasised that the Vision Group had done everything in its power to implement the Vision plan, despite enormous challenges and continues to do so even as at the date of the answering affidavit being prepared.

(e) It went on to allege that RGS relied on precisely the same grounds to seek the same relief against the Vision Group to declare the Vision plan unlawful and for it to be set aside, as it did in part B of the November 2024 application.

(f) The Vision Group alleged that RGS was therefore prevented by *lis alibi pendens* from pursuing the present set aside relief.

(g) In amplification of the allegation that the set aside relief being sought is the same as that in part B of the November 2024 application, the Vision Group annexed a table comparing the allegations of unlawfulness. It alleged that the table reveals that all the material allegations relied on by RGS were the same as those advanced by RGS in the November 2024 application.

The BRPs opposition to the set aside relief

[16] The BRPs alleged the following:

(a) RGS's conduct constitutes an abuse of process as most, if not all the RGS assertions and/or allegations are *res judicata* having been raised, answered and addressed in previous court proceedings.

(b) That RGS has brought the present counter-application to circumvent orders already granted by this court or which are already pending before this court and the SCA.

(c) They also referred to part B of the November 2024 application and alleged that the pleadings in respect of part B closed during or about the end of May 2025, but RGS took no steps to set the matter down for hearing.

(d) That inasmuch as they did not oppose the disclosure application, the Zwane AJ order is currently suspended because it forms the subject-matter of an application for leave to appeal to the SCA, that is pending.

(e) A third disclosure application was brought under case number 2025-136677, which matter was struck off the roll for want of urgency. The relief sought in this application was the same relief sought in both the November 2024 and the first disclosure application.

(f) In relation to the adoption of the Vision plan, the majority of THL's creditors were present at the s 151 meeting and were satisfied and voted in favour of the adoption and approval of the Vision plan.

(g) RGS, whose representatives were present at the s 151 meeting, voted against the Vision plan, without suggesting that the Vision plan did not contain sufficient information to enable it to decide whether to vote in favour of or against the Vision plan. It was therefore legally impermissible for RGS, at this late stage, to institute proceedings to contend that the Vision plan should not have been adopted and is unlawful. By participating in the meeting, RGS waived its entitlement to rely on this right.

(h) In relation to the conduct of the Vision Group, the BRPs alleged that a substantial non-refundable deposit was provided in respect of the lender groups' claims by the Vision Group and that they were therefore satisfied that the Vision Group was committed to the transaction and could meet its payment obligations under it.

(i) The BRPs consequently denied that they were in any way delinquent in relying on or representing the status of the Vision Group's funding at the s 151 meeting.

(j) Further, as the BRPs, they were satisfied that the Vision Group and the lender groups furnished them with sufficient information and documentation to satisfy them that the implementation of the Vision plan remained possible.

(k) RGS, in any event, approached this court in terms of part A to interdict the implementation of the Vision plan, which was dismissed.

(l) As the BRPs, they, therefore, remained duty-bound to implement the plan and would have been in breach of their duties had they not done so.

The parties' submissions

[17] The Vision Group and the BRPs raised a point *in limine* of *lis alibi pendens,* contending that the November 2024 application was between the same parties and that RGS sought substantially the same relief in this counter-application, which remains pending in the November 2024 application.

[18] In respect of the Vision Group, it set out a table in its answering affidavit of the similarities between the November 2024 application and the present application. The BRPs aligned themselves with the Vision Group in this regard.

[19] Mr *Kotze* conceded that the November 2024 application had not been withdrawn, nor had it been prosecuted to finality. In RGS's affidavit in support of the set aside relief, at best for it, it contended that it did not pursue the November 2024 application because the documents which the Zwane AJ order made reference to, had not been furnished by the Vision Group due to it having sought a petition for leave to appeal to the SCA. At this juncture, from the supplementary affidavits filed by the Vision Group 16 April 2026, it emerges that the Vision Group was granted leave to appeal by the SCA to the full court of this division.

[20] It is trite that the merits of the point *in limine* will have to be considered and if the point *in limine* is unsuccessful, only then will the merits of the set aside relief become relevant.

The law relating to *lis alibi pendens*

[21] The doctrine of *lis alibi pendens* is deeply established in the Roman-Dutch common law and has long formed part of South African procedural law. It may be raised when a dispute between the same parties, based on the same cause of action and seeking the same relief, is already pending before another court.[1] The doctrine of *lis alibi pendens* serves to prevent duplication of litigation concerning substantially the same dispute and to ensure that disputes are resolved in an orderly, efficient and final

[1] *George and Others v Minister of Environmental Affairs and Tourism* 2005 (6) SA 279 (E) para 28.

manner. It is also aimed at preventing conflicting judgments.[2] If successfully raised, the second proceeding may be stayed or dismissed until the first is resolved.

[22] The doctrine of *lis alibi pendens* was very appositely explained in *Caesarstone Sdot–Yam Ltd v World of Marble and Granite 2000 CC and Others*,[3] where Wallis JA stated as follows:

'As its name indicates, a plea of *lis alibi pendens* is based on the proposition that the dispute (*lis*) between the parties is being litigated elsewhere and therefore it is inappropriate for it to be litigated in the court in which the plea is raised. The policy underpinning it is that there should be a limit to the extent to which the same issue is litigated between the parties and that it is desirable that there be finality in litigation. The courts are also concerned to avoid a situation where different courts pronounce on the same issue with a risk that they may reach diferring conclusions. It is a plea that has been recognised by our courts for over 100 years.' (Footnote omitted.)

[23] In *Loader v Dursot Bros (Pty) Ltd*,[4] it was held that:

'It is clear on the authorities that a plea of *lis alibi pendens* does not have the effect of an absolute bar to the proceedings in which the defence is raised. The court intervenes to stay one or other of the proceedings because it is *prima facie* vexatious to bring two actions in respect of the same subject matter. The court has a discretion which it will exercise in a proper case, but it is not bound to exercise it in every case in which a *lis alibi* defence is proved to exist . . .'

[24] In *Cook and Others v Muller*,[5] Milne J said the following:

'Even if this does not strictly constitute a defence of *lis alibi pendens*, it is clear that the court may, in the exercise of its discretion in controlling proceedings before it, debar a person from ventilating a dispute already decided against him under the guise of an action against another party. See *Burnham v Fakheer*.[6] Although the previous proceedings had not even been between the same parties, the court there held that for the respondent to attempt to retry an issue which had already been decided merely by changing the form of his action was an abuse of the processes of the court and was vexatious.'

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[2] *Nestlé (South Africa) (Pty) Ltd v Mars Inc* 2001 (4) SA 542 (SCA) (Nestlé), para 16.
[3] *Caesarstone Sdot–Yam Ltd v World of Marble and Granite* 2000 CC and Others [2013] ZASCA129; 2013 (6) SA 499 (SCA) (Caesarstone) para 2.
[4] *Loader v Dursot Bros (Pty) Ltd* 1948 (3) SA 136 (T) at 138.
[5] *Cook and Others v Muller* 1973 (2) SA 240 (N) at 245 H to 246 B.
[6] *Burnham v Fakheer* 1938 NPD 63.

[25] The party raising a *lis alibi pendens* defence bears the onus of alleging and proving the following:[7]

(a) Pending litigation.[8]

(b) Between the same parties or their privies.[9]

(c) Based on the same cause of action.[10]

(d) In respect of the same subject-matter, but this does not mean that the form of the relief must be identical.[11]

[26] Once these requirements have been established, a factual presumption arises that the second proceedings are *prima facie* vexatious.[12] The party who instituted the second proceedings must satisfy the court that, despite all the elements being present, the balance of convenience and equity require the case to proceed and for the court to exercise its discretion.[13] Ultimately, the court has an overriding discretion to stay the proceedings even if all the elements are not present.

Application to the law of *lis alibi pendens* to the facts

[27] It is common cause that the parties in the present proceedings are the same as the November 2024 application. RGS is the common applicant to both proceedings, as are the respondents, particularly the BRPs and the Vision Group.

[28] The second enquiry concerns the existence of pending litigation. It is common cause that affidavits in the November 2024 application were exchanged and pleadings in that matter have closed. No order dismissing the November 2024 application has been granted, no settlement has been concluded, nor has any notice of withdrawal of the November 2024 application been filed. Mr *Kotze* correctly accepted that the early proceedings remain pending. The argument advanced by RGS was that given that the Zwane AJ order is the subject-matter of an appeal and in the absence of the documents sought in respect of that order, RGS did not pursue part B of the November 2024 application. I am unable to agree with this submission as the order of 18 February 2025 is clear that RGS was granted leave to file supplementary affidavits in

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[7] LTC Harms Amler's Pleadings 10ed (Amler's Pleadings) at 256.
[8] *Van As en Andere v Appollus* [1993] 3 All SA 402 (C) at 403.
[9] *Caesarstone, paras 2 and 12.*
[10] *Nestlé, para 16.*
[11] *Williams v Shub* [1976] 4 All SA 449 (C) at 453
[12] Amler's Pleadings at 256
[13] *Ibid*

respect of part B, which was not done. A reading of the affidavits in the counter-application reveals that the same facts to seek the set aside relief were relied on in the November 2024 application. I see no merit in the submission by RGS that events overtook the November 2024 application and therefore it became dormant. This submission cannot be sustained. Mere delay in prosecuting proceedings does not terminate litigation nor does the occurrence of subsequent events extinguish pending proceedings. Until withdrawn, dismissed, settled or finally adjudicated upon, the earlier application continues to exist before this court. I am therefore satisfied that the second requirement is therefore plainly met.

[29] RGS did not submit that the present proceedings are distinguishable from the November 2024 application or that they rely upon additional events, which have occurred during the implementation of the adopted Vision plan. It was also not contended by RGS that there were any developments which constitute a fresh cause of action to warrant the set aside relief.

[30] Both applications seek an order, that the Vision plan be declared unlawful and set aside. The essential controversy regarding the Vision plan remains unchanged and both applications invite this court to determine whether the Vision plan is unlawful and falls to be set aside. Given that there has been no serious challenge that the cause of action has not changed in any way or that the relief sought has changed in any way, I am satisfied that this requirement has also been satisfied.

[31] I am also satisfied that the relief sought in both applications is substantially the same.

[32] Taking into account that all the requirements for *lis alibi pendens,* as set out in the various authorities cited above, have been met, the general approach is that the subsequent proceedings are stayed pending the outcome of prior proceedings. Both the Vision Group and the BRPs submitted that the present relief is vexatious and falls to be dismissed.

[33] The authorities in *Nestlé* and *Caesarstone* recognise that the court has a discretion which is directed at preventing injustice. In my view, what RGS has done by seeking the set aside relief, is that it has taken advantage of the liquidation application

which had been brought, to commence fresh proceedings in respect of the setting aside of the Vision plan. RGS has not identified any exceptional circumstances demonstrating that justice requires that this court entertain the present setting aside relief whilst the November 2024 application remains pending. On the contrary, in my view, permitting both applications to proceed simultaneously will be a duplication of costs, consume scarce judicial resources and create an appreciable risk of conflicting judgments concerning the validity of the adopted Vision plan. RGS ought to have prosecuted the November 2024 application to finality and this court cannot sanction RGS running parallel litigation.

[34] In my view, the Vision Group and the BRPs have established each of the recognised requisites of *lis alibi pendens* and insufficient reason has been advanced for this court to exercise its discretion against upholding the point *in limine*. The point *in limine* must therefore succeed.

[35] Regarding the issue of whether the present proceedings ought to be stayed pending the finalisation of the November 2024 application, I am in agreement with counsel for the Vision Group and the BRPs that the set aside relief in the present application must be dismissed. No palpable reasons were advanced as to why the November 2024 application was not pursued. RGS ought never to have sought this relief in the face of the November 2024 application still pending. Such conduct, in my view, was vexatious. The relief in paragraph 4 of the notice of counter-application is dismissed.

[36] In light of the aforesaid conclusion, it is unnecessary and indeed inappropriate for this court to express any view upon the substantive allegations that the Vision plan is unlawful. That issue remains for determination in the November 2024 proceedings.

The agency agreement relief

[37] From a reading of the Vision plan, which was adopted on 11 January 2024, the relevant agreements are referenced therein. In requiring production of these documents, one would expect RGS to make out a case for why it asserts that it has a legal right to the documents. In its affidavit in support of the counter-application, it states that it requires this relief to enable an investigation into the validity of the Vision

Group's payment demand following the Vision Group's allegation that it made payment to the lender groups.

[38] In opposing this relief, the BRPs rely on the confirmation by the facility agent of the lender groups that there was no impediment to the implementation of the asset sale transactions. In light of the aforegoing, the BRPs alleged that they were satisfied that based on the documentation and evidence, the Vision Group had discharged its payment obligations to the lender group in full.

[39] RGS has been unable to gainsay these allegations by the BRPs and, indeed, the letter from the facility agent which was attached to RGS's own papers (annexure 'MAR25') bears this out. It is apparent that this is the only ground upon which RGS alleges that it is entitled to the agency agreements. The letter from the facility agent, in my view, is from an independent third party to the litigation. I am satisfied that if that is the only ground advanced by RGS as to why it requires the agency agreements, then it is not entitled to the production of same. The relief sought in paragraph 5 of the notice of counter-application must therefore fail.

The execution and disclosure relief

The parties' allegations

[40] In terms of s 18(1) of the SC Act, RGS seeks the execution of the Zwane AJ order, pending the Vision Group's application for leave to appeal to the SCA. If this court grants such relief, then RGS seeks that the Vision Group produce all other documents on which it relies on to assert security over any of the assets owned or otherwise held by THL and THL's subsidiaries, businesses, operating divisions or other forms of business ventures. As previously stated, the SCA has, granted leave to appeal to the full court of this division.

[41] RGS seeks the execution and disclosure relief as they allege it relates to the validity and enforceability of the Vision Group's demand against THL. It further alleged that access to the information sought will play a critical role if liquidation is to be avoided for various reasons. RGS further alleged that the Vision Group noted an appeal against Zwane AJ order, to avoid having to make the disclosure contemplated in the said order and to facilitate the closure of THL's business, the transfer of all of

THL's assets to the Vision Group and the de-listing and liquidation of THL. This would then render the disclosure order unenforceable.

[42] In opposing this relief, the Vision Group alleged that RGS made out no case for why it approached this court almost eight months after the Zwane AJ order, when it would have been competent and most prudent to seek execution as a counter-application to the application for leave to appeal. The Vision Group further alleged that it would suffer irreparable harm if the order was executed notwithstanding the pending appeal, as should disclosure be ordered, the appeal would become moot. It further alleged that the Vision Group's prospects of success on appeal are also relevant to determining whether the execution and disclosure relief ought to be granted.

The law relating to the execution relief

[43] It is trite in terms of S 18(1) of the SC Act, that a judgment which is the subject of an application for leave to appeal or of an appeal, cannot be carried out or given effect to unless the court under exceptional circumstances, orders otherwise.

[44] Section 18(3) reads as follows:

'A court may only order otherwise as contemplated in sub-section (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.'

[45] In *Knoop NO and Another v Gupta (Execution),*[14] the SCA held that the effect of ss 18(1) and 18(3) is that an applicant seeking an execution order must prove the following:

(a) Exceptional circumstances.

(b) That it will suffer irreparable harm if the order is not made.

(c) That the party against whom the order is sought will not suffer irreparable harm if the order is made.

[46] Prior to the commencement of s 18, the common law rule of practice was generally that the execution of a judgment was automatically suspended upon the noting of an appeal, with the result that, pending the appeal, a judgment, could not be

[14] *Knoop NO and Another v Gupta (Execution)* [2020] ZASCA 149; 2021 (3) SA 135 (SCA) para 45.

executed except with the leave of court which granted the judgment.[15] S 18 of the SC Act now allows for the implementation of a judgment pending an appeal under exceptional circumstances.[16] 'Exceptional circumstances' is sufficiently flexible and each case must be considered on its own merits.[17] The words 'exceptional circumstances' refer to 'something out of the ordinary and of an unusual nature, something which is excepted in the sense that the general rule does not apply to it; something uncommon, rare or different.'.[18] If the circumstances are not exceptional, the application for the execution relief must fail.[19]

[47] Aside from considering whether there are exceptional circumstances, the consideration of irreparable harm to the parties is also a factor to be taken into account. The applicant seeking execution relief must demonstrate this on a balance of probabilities. This requires the court to weigh up the respective harm.

[48] The prospects of success on appeal are another relevant consideration which should be assessed against the appeal record.[20]

Application of the law to the facts regarding the execution order

[49] RGS had a right to bring the execution relief since 4 July 2025 when the Zwane AJ order was made. It provided no explanation for why it waited until the liquidation application was launched to seek the execution relief it now seeks. In my view, had it truly believed that exceptional circumstances existed for the Zwane AJ order to be executed, it ought to have brought such application when the application for leave to appeal was heard. I am further not persuaded that RGS will suffer any irreparable harm, should the execution relief not be granted, given that it has held the belief since the adoption of the Vision plan that the Vision Group's conduct was abusive and that such conduct created a highly unusual situation in THL's business rescue, namely, that the Vision Group was holding THL hostage, by demanding payment of R11.73

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[15] *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (A) at 544H to 545A.
[16] *University of the Free State v Afriforum and Another* [2016] ZASCA 165, 2018 (3) SA 428 (SCA) (*Afriforum*) para 9.
[17] *Premier for the Province of Gauteng and Others v Democratic Alliance and Others* [2020] ZASCA 136, [2021] 1 All SA 60 (SCA), para 14.
[18] *MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas, and Another* 2002 (6) SA 150 (C) at 156.
[19] *Tyte Security Services CC v Western Cape Provincial Government and Others* [2024] ZASCA 88, 2024 (6) SA 175 (SCA), para 11.
[20] *Afriforum* at para 15.

billion against THL during the currency of business rescue, and confirming that it intended to block any future business rescue plans. On the other hand, the Vision Group will suffer irreparable harm, as should this court grant the execution relief and by so doing, grant the disclosure relief, the documents can never be 'undisclosed', even if the Vision Group succeeds on appeal. I am in agreement with the Vision Group's counsel regarding this point. As stated in *Zero Azania (Pty) Ltd v Caterpillar Financial Services SA (Pty) Ltd and a Similar Appeal,*[21] irreparable harm is 'the sort of harm that will not be cured if the litigant claiming it is ultimately successful in the appeal'.

[50] As stated in *Afriforum*, the prospects of success on appeal are also a relevant consideration. When the counter-application was launched, the application for leave to appeal to the SCA was pending. Leave to appeal to the full court of this division was granted, subsequently on 23 April 2026. The fact that leave to appeal to the full court of this division has been granted, in my view, suggests that the Vision Group may well enjoy reasonable prospects of success on appeal. This is a consideration for the court to take into account.

[51] Taking into account the requirements to obtain the execution relief, I am not persuaded that RGS has established exceptional circumstances to justify the execution relief. The execution relief must therefore fail. Likewise, the disclosure relief, which is dependent thereon, must also fail. Accordingly the relief in paragraphs 7 and 8 of the notice of counter-application is dismissed.

Costs of the counter-application

[52] Having determined that the point *in limine* of *lis alibi pendens* must be upheld and that RGS has been unsuccessful in obtaining the relief in the counter-application, there is no reason why costs must not follow the result and RGS be directed to pay the costs of the BRPs and the Vision Group in the counter-application. This matter involved a number of complex issues and I am satisfied, that the appropriate scale of costs to be awarded to the BRPs and the Vision Group is costs on scale C, including the costs of two counsel, where so employed.

[21] *Zero Azania (Pty) Ltd v Caterpillar Financial Services SA (Pty) Ltd and a Similar Appeal* 2024 (2) SA 574 (GJ), para 26

Conclusion

[53] In the premises I make the following order:

1. The point in *limine* of *lis alibi pendens* raised by the first to third and the sixth to tenth respondents is upheld.

2. The relief sought in paragraphs 4, 5, 7, 8 and 9 in the notice of counter-application is dismissed.

3. The applicant in the counter-application (RGS Group Holdings Ltd) is directed to pay the costs of the counter-application in respect of the first to third and sixth to tenth respondents on scale C, including the costs of two counsel, where so employed.

SINGH J

CASE INFORMATION

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Judgment Delivered	:	24 July 2026
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