REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2023-070025

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED. NO

[redacted]

SIGNATURE **DATE** 18 November 2024

In the matter between:

ANTHONY BRUYNS Applicant

and

RIDGEBACK RENTALS (PTY) LTD Respondent

JUDGMENT

This judgment is handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date and time for hand down is deemed to be 18 November 2024.

MAHON AJ:

[1] This is an application for the liquidation of the Respondent, Ridgeback Rentals (Pty) Ltd, brought by the Applicant, Mr. Anthony Bruyns, who is a 50% shareholder and former director of the Respondent company. There does not appear to be any dispute that the statutory formalities for winding up have been complied with.

[2] The Applicant seeks an order placing the Respondent under provisional or final liquidation on the basis that it is just and equitable to do so, citing irreconcilable differences between the directors, mismanagement of company assets, and financial distress.

[3] The Respondent is an asset-holding company incorporated to own and manage machinery and equipment.

[4] The Applicant and Mr. Ronald Venter are the sole shareholders of the Respondent, each holding 50% of the issued shares. The Respondent was established in 2018 as an asset-holding company to support the operations of Ridgeback Machine Supplies (RMS), of which the applicant and Mr Venter were each 50% shareholders.

[5] Assets valued at R1,823,386 were transferred to the Respondent from RMS pursuant to an Asset Transfer Agreement. This agreement created a symbiotic relationship, where the Respondent held the assets, and RMS utilised them for operational purposes, paying rental fees to the Respondent. However, the anticipated rental income from RMS to the Respondent did not materialise as initially contemplated.

[6] In 2018, RMS converted into a private company and changed its name to Expert Machining and Engineering (Pty) Ltd. Expert Machining continues to use the machinery held by Ridgeback Rentals.

[7] The financial interdependence of the two companies is a source of contention, as rental payments from Expert Machining to Ridgeback Rentals appear to be irregular or non-existent, impacting the financial viability of Ridgeback Rentals.

[8] Ridgeback Rentals' financial health depends on rental payments from Expert Machining. The lack of formalised rental terms and the alleged failure to honour payments exacerbate the financial instability of Ridgeback Rentals.

[9] Both the Applicant and Mr. Venter were involved in RMS and Ridgeback Rentals. Their deteriorated relationship has spilled over into the operations and governance of the Respondent, with disputes about fiduciary responsibilities and asset use.

[10] The Respondent argues that not all assets were transferred as agreed, which the Applicant denies and the financial arrangement stemming from this agreement has also become contentious.

[11] Expert Machining remains under the control of Mr Venter.

[12] The Applicant accuses Mr. Venter of using the Respondent's assets for personal benefit through Expert Machining, while Mr. Venter accuses the Applicant of undermining the Respondent in favour of RMS/Expert Machining. These mutual allegations highlight the interconnected nature of the companies and the conflicts arising from dual roles.

[13] By 2022, the relationship between the Applicant and Mr. Venter had deteriorated significantly. Attempts by the Applicant to negotiate an exit from the company were unsuccessful, and allegations of mismanagement and breaches of fiduciary duty were raised by both parties. The applicant also resigned as a director of RMS/Expert Machining in February 2022.

[14] The Respondent's financial situation has become precarious, with its assets depreciating and disputes regarding potential obligations to Expert Mining Tools, further complicating matters.

[15] The primary legal basis for the Applicant's claim is Section 344(h) of the Companies Act 61 of 1973, as read with Section 81(1)(d) of the Companies Act 71 of 2008. These provisions allow a company to be wound up on the grounds that it is just and equitable to do so.

[16] This ground of liquidation encompasses a wide range of circumstances, including deadlocks in management rendering the company unable to function, mismanagement or abuse of company assets, and loss of a company's substratum (its main purpose or business).

[17] As previously stated, over time, the relationship between the Applicant and Mr. Venter deteriorated, with disputes arising over the management of the Respondent's assets, alleged fiduciary breaches, and the Applicant's attempts to exit the business.

[18] The Applicant asserts that he has been prejudiced by the Respondent's refusal to facilitate an equitable resolution of his divestment, leaving the company in a state of operational paralysis.

[19] And while both parties blame each other for the state of affairs in which they now find themselves, the fact remains that the company has become moribund at shareholder level due to the inability of the shareholders, to see eye to eye.

[20] It appears that the Respondent's financial position, while not insolvent, is tenuous. The company's inability to generate income and the absence of a clear strategy to resolve internal disputes exacerbates its instability. However, I do not need to determine whether the company is insolvent or not, for the reasons set out herein.

[21] Section 344(h) of the Companies Act provides this Court with the discretion to wind up a company if it is just and equitable to do so. The guiding principle for this discretion includes the existence of a deadlock in the company's management.

[22] In *Apco Africa Inc v Apco Worldwide (Pty) Ltd (2008) 4 All SA 1 (SCA)*, the Supreme Court of Appeal held that a complete breakdown in the relationship between members of a quasi-partnership justifies liquidation, even in the absence of actual deadlock in operations. The inability to restore trust and confidence between parties is sufficient.

[23] The Applicant has demonstrated that the Respondent's management is paralyzed by the breakdown in his relationship with Mr. Venter. This renders the continuation of the company untenable, satisfying the requirements for a just and equitable winding up.

[24] The Respondent's opposition to the application may be summarised, thus:

[24.1] Improper Reliance on Section 344(h) of the Companies Act 61 of 1973:

[24.1.1] The Respondent argues that the Applicant's reliance on Section 344(h) of the old Act (just and equitable grounds) is misplaced, particularly as it pertains to solvent companies. It claims that the Applicant has not properly invoked Section 81(1) of the Companies Act 71 of 2008, which governs solvent companies.

[24.1.2] The Respondent contends that Section 344(h) cannot stand alone without reference to Part G of Chapter 2 of the new Act, which limits its application to solvent companies.

[24.2] Failure to Properly Establish Deadlock

[24.2.1] The Respondent asserts that the Applicant's allegations of deadlock are vague and unsubstantiated. It claims that the Applicant has not identified specific instances or reasons for the deadlock and has failed to meet the requirements under Section 81(1)(d) of the new Act;

[24.2.2] The Respondent argues that the Applicant's grievances stem from personal disputes with Mr. Venter rather than true managerial deadlock.

[24.3] Premature Application

[24.3.1] The Respondent contends that the application is premature as the Applicant has not utilised alternative remedies provided under the shareholder's agreement, such as arbitration. It cites provisions in the agreement requiring disputes to be resolved through arbitration before initiating litigation.

[24.4] No Justification for "Just and Equitable" Winding-Up

[24.4.1] The Respondent argues that the Applicant has failed to meet the threshold for a just and equitable winding-up, as outlined in case law. It emphasises that "*just and equitable*" is not a catch-all provision and requires more than vague allegations of misconduct or dissatisfaction.

[24.5] Continuity of Business

[24.5.1] The Respondent highlights that the company continues to operate despite the alleged deadlock and that the Applicant's grievances do not warrant its closure.

[25] In my view, the commercial solvency or insolvency of the Respondent is only of peripheral relevance. I hold this view because the Applicant's affidavit makes it plain that the primary basis for the application is its contention that *"… it is just and equitable for the Respondent to be wound-up in terms of Section 344(h) of the Companies Act 61 of 1973 as read with Section 81 (1) of the Companies Act 71 of 2008…".* Because both Acts are invoked, it doesn't matter for purposes of establishing a cause of action for the relief claimed, whether the company is

commercially solvent or not (albeit that this fact may inform the discretion which is to be exercised).

[26] What the Applicant must establish, is that it is just and equitable for the Respondent to be wound up (as contemplated, either in section 344(f) of the Old Act or as contemplate in section 81(1)(c)(ii) of the New Act). It seeks to do so by demonstrating the breakdown in the relationship between the shareholders and the deadlock in the management of the company, both of which, if established, may ground an application for liquidation in terms of the sections mentioned, or in terms of section 81(1)(d) of the New Act.

[27] The Applicant's founding papers and submissions demonstrate a breakdown in trust and communication between the two directors, which has rendered the Respondent unmanageable. Indeed, the Respondent's answering papers support this proposition but seeks to lay the blame for this state of affairs at the Applicant's door.

[28] But whoever may be at fault, the irreparable nature of this relationship aligns with the established principles for deadlock as grounds for liquidation.[1] The Respondent's claim that the company continues to operate does not negate the managerial paralysis caused by the individuals' inability to work together effectively, whether as directors or as representatives of the shareholders.

[29] The Respondent's reliance on the shareholder's agreement and arbitration clause is misplaced. The deadlock does not only pertain to disputes in regard

[1] *Apco Africa Inc v Apco Worldwide (Pty) Ltd [2008] 4 All SA 1 (SCA)*

to established rights – it also pertains to managerial decisions which are not arbitrable. In any event, the provisions of these agreement do not deprive a party of its statutory right to seek a liquidation if its entitlement thereto can be established. Moreover, when internal remedies are impractical due to deadlock, judicial intervention is warranted.

[30] The Applicant's case is well within the scope of the "just and equitable" provision. The breakdown in trust, allegations of mismanagement, and the failure of the directors to resolve disputes are sufficient grounds for liquidation.[2]

[31] The fact that the company is still trading does not negate the existence of deadlock. Operational continuity may mask underlying dysfunction, which can justify liquidation to protect the interests of shareholders and creditors alike.

[32] The Respondent's submissions fail to provide a sufficient basis for dismissing the application for liquidation. The Applicant has demonstrated, with reference to established legal principles, that:

[32.1] The Respondent's reliance on procedural technicalities is misplaced.

[32.2] The deadlock between the directors is real, irreparable, and detrimental to the company's future.

[32.3] The application is neither premature nor frivolous but rather the only viable solution to an untenable situation.

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[2] *Rand Air (Pty) Ltd v Ray Bester Investments (Pty) Ltd 1985 2 SA 345 (W)*

[33] The Respondent's opposition is therefore without merit, and the Applicant's application for winding-up should be granted.

[34] And whilst the Respondent's opposition centres on allegations of fiduciary breaches by the Applicant and assertions that the company is not insolvent, these assertions do not serve as a basis to resist the winding up of a company which has clearly been paralysed by the breakdown in the relationship of the two equal shareholders. As previously stated, insolvency does not need to be established. The application rests on the equitable ground of deadlock, which the Respondent has failed to rebut.

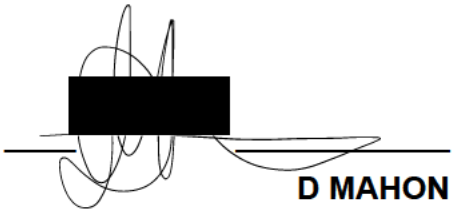
[35] There does not appear to me to be any reason why the costs of the application should not be costs in the liquidation of the Respondent.

[36] During the course of the proceedings, I granted an application for leave to deliver a further affidavit, which was brought by the respondent. In so doing, I reserved the question as to the appropriate costs order in relation thereto. In my view, these costs should also be in the liquidation.

[37] In the circumstances, the following order is made:

1. The Respondent is placed under final winding up.

2. Cost of the application will be cost in the liquidation



D MAHON

Acting Judge of the High Court
Johannesburg

Date of hearing: 21 August 2024

Date of judgment: 18 November 2024

APPEARANCES:

For the Applicant: Adv T Mirtle
Instructed by: Gittins Attorneys

For the Respondent: Ms C Van Niekerk
Instructed by: WN Attorneys Incorporated