IN HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO: 14600/2014

NEIL DAVID BUTTON N.O.	**FIRST APPLICANT**
KURT ROBERT KNOOP N.O.	**SECOND APPLICANT**
SURENDRA NAIDOO N.O.	**THIRD APPLICANT**
EBRAHIM ABOOBAKER MOOLLA N.O.	**FOURTH APPLICANT**

In their capacities as the Joint Liquidators of Golden Rewards 698 CC trading as Global Steel Corporation, Registration number: 2005/031526/23, pursuant to Certificate of Appointment of Liquidator issued to them by the Master of the Kwazulu-Natal High Court Pietermaritzburg on 30 October 2013 ("the Corporation")

And

ASHRAF AKBUR	**FIRST RESPONDENT**
GSC TRADING CC	**SECOND RESPONDENT**
DEON SCHAUP N.O.	**THIRD RESPONDENT**
THE MASTER OF THE HIGH COURT OF SOUTH AFRICA (KWAZULU-NATAL DIVISION)	**FOURTH RESPONDENT**

JUDGEMENT

Delivered: 23 September 2015

MBATHA J

[1] The Applicants are joint liquidators of Golden Rewards 698 CC, trading as Global Steel Corporation (Registration number 2005/031526/23). They seek

an order pursuant to the provisions of section 29 of the Insolvency Act[1], declaring that payment made by or on behalf of the First Respondent totalling an amount of R2 493 000.00 in the two and half month period prior to the liquidation of the Close Corporation of which the First Respondent was a member are voidable preferences and authorising the Applicants to recover these amounts from the First Respondent and/or the Second Respondent.

2.1 The Application is opposed by the First and Second Respondents. It is opposed on the basis that there are innumerable material disputes of facts and therefore Applicants ought not to have proceeded by way of motion court proceedings, the First and Second Respondents have been deprived of their rights to the *audi alteram partem* principle in terms of Section 8(1) of the Constitution of the Republic of South Africa[2] and that the payments which the Applicants seek to recover were made in the ordinary course of business and did not constitute voidable preferences.

2.2 The application has been brought as a result of the findings of a Section 417 and 418 of the Companies Act[3] enquiry commissioned by the Master of the High Court, KwaZulu-Natal, on which Advocate Deon Schaup presided as the commissioner thereof. Mr John Michau, the deponent to the Applicants' affidavit, is the Applicants' legal representative, who is involved in the administration of the estate and their representative at the Section 417 enquiry.

[1] Act 24 of 1936.
[2] Constitution Act 108 of 1996.
[3] Act 61 of 1973.

2.3 The First Respondent was one of the three (3) members of the Golden Rewards Close Corporation in Liquidation (the Close Corporation) until the time of its liquidation on the 16th of October 2013. The First Respondent is also the sole member of the Second Respondent. The Second Respondent was not a trading company within the steel industry.

[3] It is common cause that the First Respondent effected various payments from the Golden Rewards Close Corporation in amounts totalling R2 493 000.00. On or about August 2013, the First Respondent caused a transfer of R1,9 million to be made from the Close Corporation's banking account to the account of attorney, Natalie Lange Attorneys. He subsequently instructed Peter Andrew, the attorney of the said legal firm, to make various payments to certain creditors of the First and/or Second Respondent. The R1,9 million forms part of the R2 493 000.00 stated above.

It is also common cause that the Close Corporation was first placed in business rescue on the 16th of September 2013, the liquidation application was delivered on the 9th of October 2013 and the Close Corporation was placed in liquidation on the 16th of October 2013.

[4] The Applicants bear the onus of proof in proving that dispositions were made of the Close Corporation's property, that the dispositions were made within the period of six (6) months preceding the liquidation of the Close

Corporation, that the dispositions had the effect of preferring the First and/or Second Respondents as creditors of the Close Corporation and that immediately after the dispositions were made the Close Corporation's liabilities exceeded the value of its assets. On the other hand, the First and Second Respondents bear the onus of proving that the dispositions were made in the ordinary course of the Close Corporation's business and that the Close Corporation did not intend to prefer First and Second Respondents above other creditors.

[5] In determining when was the disposition made, the date of the actual disposition is relevant, not the date when on which authority was granted to the agent to make such a disposition. In proving that the disposition was to prefer one creditor above others, it is necessary to prove the effect of the disposition, namely, that all creditors were not equally treated in the distribution of assets. It must also be borne in mind that the person who benefitted from the disposition is necessarily always a creditor, which includes a surety or a person in a position analogous to that of a surety in terms of Section 30(2) of the Insolvency Act, though not always the person to whom the disposition was made, and that the value at the date of the disposition is the relevant determining factor to ascertain that immediately after such a disposition was made, the debtors liabilities exceeded the value of his assets.

[6] The Respondents bear the onus of proof in proving that the dispositions were made in the ordinary course of business, the test being an objective one, namely, whether having regard to the fact that business methods and customs

necessarily differ amongst the different spheres of the business world, the ordinary, honest and solvent businessman would have acted likewise in similar circumstances, or would have thought the transaction extraordinary.

For example, a tripartite arrangement between the insolvent, one of his debtors and a creditor of the insolvent in terms of which a debtor makes a direct payment to a creditor of the insolvent, cannot be described to be in the ordinary cause of business. The disposition must be legal and valid in law to qualify for it to be within the ordinary course of business.

[7] The other part of the defence by the insolvent in that it did not intend to prefer one creditor above the others has to be proven by the beneficiary. The test applied being a subjective one, being the subjective intention of the insolvent, which is often inferred, in the absence of direct evidence, from the surrounding circumstances e.g. a disposition made whilst contemplating a liquidation or sequestration.

8.1 The Applicants submit that payments were made by the Close Corporation to the First Respondent totalling R2 493 00.00 between the 26th of June and 30th September 2013 in favour of the Respondents and/or on behalf of the Second Respondent.

8.2 In that regard the Court has been requested to take into account the following:-

- That the application for the liquidation was delivered on the 9th of October 2013, from which the six (6) month period is calculated;
- That the dispositions were made within three (3) months prior to the liquidation of the Close Corporation;
- That the Close Corporation's sole and proved creditor is Aveng Trident Steel (PTY) LTD, who has a claim of R10 983 537.87 against the Close Corporation and that the First and Second Respondents were paid in advance of the sole creditor, either in full or proportionately more than Aveng;
- That as at the 28th of February 2013, the Close Corporation's liabilities exceeded its assets. The liabilities were at R33 981 909.00 and its assets were at R29 830 318.00;
- That by the 1st of June 2013, the Close Corporation stopped trading; and
- That the dispositions were made when the Close Corporation resolved to place itself in Business Rescue. The Close Corporation was placed under business rescue on the 16th of September 2013.

9.1 At the 417 enquiry, the First Respondent's testimony was that he was not aware of the loss of R4 million to the Close Corporation or that such loss existed. The Second Respondent was a creditor to the Close Corporation as it lent and advanced funds to the Close Corporation, which it collected from various investors. The Close Corporation allocated these loans to his members loan account tittled "A Akbur". The account in the name of the Second Respondent was not created by Vather as the First Respondent was the sole

member of the Second Respondent; he treated them as one despite their distinctive legal personalities. These are the same submissions that he has made in opposing this application.

9.2 The First Respondent's explanation for the transfer of funds from the Close Corporation on behalf of the Second Respondent to the attorney's trust account, was that these funds were due and payable to the Second Respondent and these were part of the repayments by the Close Corporation of loans taken from the Second Respondent, which payments he had directed that be made to the Third Party. Irrespective that there was no separate loan account for the Second Respondent, he believed that Vather, the Close Corporation's accounting officer, knew that he and the Second Respondent were the sole lenders of funds to the Close Corporation. According to the First Respondent, these payments were always prioritised and paid in the course of business of the Close Corporation.

10.1 The Applicants' case is that Peter Andrews received funds without any specific instructions and upon enquiry, the First Respondent informed him that the instructions for distribution thereof would follow in due course. This was odd as the funds were transferred in their on-going conveyancing account, which had been previously opened for the First Respondent. Peter Andrew had no knowledge that these funds were for the Second Respondent's account and the file was opened in the First Respondent's name. The Second Respondent did not feature at all. According to Peter Andrews, the funds were disbursed at the express instructions of the First Respondent as per annexure

JDM3 of the founding papers. He referred to the funds as his, as per instructions dated the 8th of October 2013, "*pay balance of my funds held in trust to the following account…*" and gave the Second Respondent's account details.

10.2 Moosa Asmal, the second member of the Close Corporation disputed knowledge of the Second Respondent as a loan account creditor of the Close Corporation. The transfer was made in August 2013, when, according to Moosa Asmal, the Close Corporation had discontinued trading in May/June 2013.

10.3 Oscar Naidoo, the third member of the Close Corporation also informed the commissioner that he had no knowledge of the Second Respondent as a loan account creditor of the Close Corporation. He left the Close Corporation in April/May 2013 when it had discontinued trading.

10.4 Vather, the accounting officer of the company, had produced annual financial statements of the Close Corporation between years 2011 to 2013. The loan accounts of the members of the Close Corporation as reflected in 2011 to 2013 showed only one credit loan account, that being of the First Respondent. There is no reference to the Second Respondent as having a credit loan account. Moosa Asmal and Oscar Naidoo have deposed supporting affidavits in replication to this application

10.5 The amounts withdrawn from the Close Corporation's bank account, six (6) months preceding the commencement of the winding up of the Close Corporation were in the name of the First Respondent and for the benefit of the First Respondent. These payments were made on the following dates 26 July 2013; 12 August 2013; 16 August 2013; 2 September 2013; 10 September 2013; 30 September 2013 and 7 October 2013 respectively.

10.6 It is Applicants' case that whilst the Close Corporation was insolvent and illiquid during the 2013 financial year, the First Respondent for his benefit continued to make payments in various guises, viz, loan repayment, excessive remuneration and interest. Prior to the transfer of these funds, a formal demand was made on behalf of its creditor Aveng Trident Steel (PTY) LTD, in terms of Section 68(c) read with Section 69(c) (a) of the Close Corporation Act[4]. Despite demand the Close Corporation failed to make any payment to the said Aveng Trident Steel (PTY) LTD.

11.1 The Applicants submit that the transfers or withdrawals made as stated above constitute voidable preference as they were made six (6) months before commencement of the liquidation; they preferred the First Respondent above the Close Corporation's creditors including its major unsecured creditor Aveng Trident Steel and that such payments were made at the time when the liabilities of the Corporation exceeded its assets and when it was deemed unable to pay its debts in terms of Section 69(1)(a) of the Close Corporation Act.

[4] Act 69 of 1984.

11.2 It is further submitted that these were collusive dealings between the Corporation and First Respondent and/or Second Respondent because all such dealings were concluded by the First Respondent in his personal capacity with the Corporation; represented by him as a member thereof, for the benefit of himself and/or the benefit of the Second Respondent in respect of these withdrawals.

11.3 That these withdrawals have also had the effect of preferring one of its creditors the First Respondent or Second Respondent or both above another proved creditor Aveng Trident Steel (PTY) LTD.

[12] It is trite that the Applicants in the case of undue preference, must prove that the disposition must have been made at any time before sequestration and while the liabilities of the debtor exceeded his assets, with the intention of preferring one creditor above others. The intention is proved by showing that the debtor was aware of his insolvent state, but nevertheless made a disposition or the intention can be inferred from actions or statement made by the debtor.

13.1 The First Respondent in his answering affidavit tries to explain how the Second Respondent advanced funds to the Close Corporation. He refers to certain persons, who are not identified by him, as having advanced funds to the Second Respondent. He represented the Second Respondent in that

regard. These nameless persons were unaware that he invested in the Close Corporation; therefore there is no privity of contract between the nameless persons and the Close Corporation. The repayments were made to the Second Respondent represented by himself, hence, the payment of R1,9 million by the Close Corporation to Peter Andrew's legal firm. These instructions were in line with the agreement that loans to the Second Respondent would be settled as soon as funds were available.

13.2 He then tries to explain a very intricate transaction involving the payment of R300 000.00 to his mother. He explained that his mother had come to their rescue when the corporation had insufficient funds to pay the Second Respondent. In a repayment to his mother, he also transferred a Tongaat property to her. That despite these payments, the Corporation was still indebted to the Second Respondent to the sum of R5 million. All the loans were erroneously reflected as being from the First Respondent. Moosa Asmal and Kumarin Naidoo were aware of the loans from the Second Respondent.

13.3 No paper trail has been produced by the First Respondent indicating this investment scheme, save for a typed schedule in annexure "C" of his affidavit. He could not have run such a scheme on annexure "C", there must have been proof of deposits, payments etc. Without providing details of such persons they could not be subpoenaed to the section 417 enquiry. The question which comes up on my mind is whether they are existent or non-existent. It is stated that the Commissioner had directed the First Respondent to provide the details and paper trail of the investment scheme by the end of October 2014,

but no such details have been furnished by the First Respondent. Ms Singh on behalf of the First Respondent had stated as follows to the commission:

> *"…Our client is unable to distinguish the various funds which came into GSC and unable to distinguish the sources from which various amounts of funds received by GSC from the various sources were directed to."*

This can only mean that the lending scheme is non-existent.

[14] The loans made to the Corporation were in the First Respondent's name and there is nothing to suggest from the Corporation's financial books or annual statements that the loans were made by the Second Respondent. The First Respondent was very quick to point out that if judgment was given against him and the Second Respondent, it would be an empty judgment. One wonders how that could be for a company that was receiving millions from its investors, and charging an exorbitant rate of interest that it can be said not to have assets. The replying affidavit states that it emanated at the enquiry that the Second Respondent has no relationship with the Receiver of Revenue. It could be that this investment scheme was not regulated in terms of the Bank Act[5]. The exorbitant interest charged, which is above the legal rate of interest, leaves a lot to be desired. One can only ask why would he subject his company to such an exorbitant rate of interest? Whether the First Respondent had informed Peter Andrew that the R1,9 million payment was in respect of the Second Respondent is unsubstantiated without any proof thereof, as no record reflects the Second Respondent.

[5] Act 94 of 1990.

[15] The First Respondent submits that the payments that these were made to him were all incurred in the ordinary course of business therefore not voidable preferences.

[16] It is important to note that irrespective of whether the payments were made to him or to the Second Respondent, it is irrelevant for purposes of this application. What is relevant is whether the payments were made, in contravention of Section 29 of the Insolvency Act, as read with Sections 30 and 31 of the Close Corporation Act. The First Respondent and other two (2) members as members of the Close Corporation had a joint obligation as to the affairs of the company; not only the CEO thereof, he cannot therefore, deny that he was not aware of the state of affairs in the Close Corporation.

[17] Kumarin Naidoo effectively left the Close Corporation on the 31st of March 2013, which is not disputed by the First Respondent and could not have authorised the payment of R1,9 million made on the 16th of August 2013. It is also not clear why this particular payment had to go to the trust account of the attorney, instead of the Second Respondent's account. There is also no evidence here proving that these were loans paid in the course of business of the Close Corporation. The First Respondent's evidence at the enquiry is that with the departure of Naidoo, trading came to a standstill; therefore, the payments could not have been made in the course of business of the Close Corporation.

[18] It is clear that as early as March 2013, the Close Corporation was unable to pay its debts and that the salary paid to the First Respondent for April, May, June, July and September 2013 ought to be paid back in terms of Section 70 read with Section 71(1)(a)(b) of the Close Corporation Act and Section 29 is applicable as those payments fall within the six (6) month period before liquidation. It is also common cause that the Close Corporation was placed under business rescue on the 13th of September 2013, the payments were made when it was not in a position to pay its debts. By the 8th of October 2013, the business rescue practitioner had in fact deposed to an affidavit to place the Close Corporation under liquidation.

[19] The Close Corporation's account stood at R 104.35 on the 17th of April 2013 and as at the 16th of August 2013 it had a credit of R1 919 074.28. Immediately thereafter, a transfer of R1,9 million was made to Natalie Lange attorneys, preferring the First Respondent to other creditors. It also shows the collusive dealing between the Close Corporation, represented by the only member left, the First Respondent, with the First Respondent in his personal capacity or in his capacity as representative of the Second Respondent, pursuant to the provisions of Section 31 of the Insolvency Act.

[20] The Respondents' defence is that the payments were made in the course of business. In the ordinary course of business is fully described in ***Gazit Properties (PTY) LTD v Deon Marius Botha N.O. and Others***[6]***.*** In the Gazit case the gist of the case was that Malokiba had repaid the loans in accordance with

[6] (873/10) [2011] SASCA 199 (23 November 2011).

its obligations in terms of a valid underlying loan agreements in the ordinary course of business. The actions of Malokiba appeared to be in contravention of the Banks Act[7] as it operated without being a registered bank, it charged an interest far above the required legal rate of interest and its transactions constituted a prohibited pyramid scheme. The Court found that Malokiba's general business model allowed it to make the disputed payments.

[21] Malokiba's business is completely different to the business conducted by the Close Corporation. The Close Corporation's core function was steel trading not lending and investing funds. There was no obligation on the part of the Close Corporation to prefer to pay either the First or the Second Respondent. There is also no evidence in this case of the existence of such loans to the Close Corporation. The source of payment here is relevant, being the Close Corporation, which had seized trading due to its inability to pay debts. The major creditor, a trader relevant to the business of the Close Corporation, was not paid a cent, but the First and/or the Second Respondents were paid when the Close Corporation was unable to meet its obligations.

[22] The test is an objective one, to determine if the disposition was made in the course of business or not. It amounts to a consideration of whether having regard to the terms of a transaction and the circumstances under which it was entered into, the conclusion can be drawn that the transaction was one which would normally have been entered into by a solvent business. In making such a determination all the surrounding factors are taken into account, here

[7] Act 94 of 1990.

amongst others, the timing of the payments, the persons paid and their relationship to the Close Corporation.

[23] The test is all encompassing as stated in ***Jacobson and Co's Trustees v Jacobson and Co***[8] where De Velliers AJA, as he then was, stated as follows:

> *"Now before the Court would be entitled to say that the disposition was in the ordinary course of business it would have to be satisfied that it is in possession of all the facts, for only then would it be in a position to decide whether the contracts themselves, which form the basis of a transaction are genuine: since a delivery which rests on a contract which itself is open to question cannot be said to be a delivery in the ordinary course of business."*

[24] It is my view that the disposition was not a "*lawful*" disposition in the sense that it was not in the course of business of the Close Corporation. A close scrutiny is required of the cause of the disposition. I am not persuaded that the dispositions were made in the course of business of the Close Corporation.

[25] In ***Jacobus Hendrikus, Janse Van Rensburg NO. and Another v Griffiths***[9], ordinary course of business in the context of section 29 is defined as meaning a "lawful" disposition made in the ordinary course of a "lawful" business. In determining this aspect, I have taken into account the surrounding factors to determine if the payments were made in the course of "lawful" business of the

[8] 1920 AD 75.
[9] (2101/2002) [2014] ZAECPEHC 20; [2014] 2 All SA 670 (ECP) (25 March 2014).

Close Corporation. The Close Corporation had seized trading by the 1st of June 2013; the company had been placed under business rescue before its liquidation which is a clear indication that by then it was struggling to meet its commitments, that it could not have afforded to pay 36% interest on loans and let alone the salary of its member. Furthermore, a formal demand for payment had been made by a creditor as early as April 2013, but no payment to this major creditor was made, instead, the Second and/or the First Respondent were paid. The sole controlling member of Close Corporation pays according to him the Second Respondent, his *alter ego*, where he is also a sole shareholder. The funds are conveniently paid to an attorney's account, a third party, to disperse to various parties on behalf of the Second Respondent for the first time in the trading history of the Close Corporation.

[26] I also accept as submitted by Counsel for the Applicants that the First Respondent had a clear intention to prefer either himself and/or the Second Respondent.

[27] Counsel for the Respondents referred me to ***Cooper, Brian, St Clair and Janse van Rensburg, Jacobus Hendrikus v Merchant Trade Finance Limited***[10], where Zulman JA dealt with the issue of "an intention to prefer" in Section 29 (1) of the Insolvency Act. Judge Zulman's view is that it is essential "to weigh up all the relevant facts which prevailed at the time that the disposition was made in order to determine what, on a balance of probabilities, was the "*dominant, operative or effectual intention in substance and in truth*" of the

[10] (474/97) [1999] ZASCA (1 December 1999)

debtor for making the disposition." It is common cause that the test is a subjective one. The mere effect of a transaction is not sufficient to prove that there has been a voidable preference; an additional requirement is that there must have been an intention to prefer on the part of the debtor. An actual intention is required of a debtor who prefers another.

[28] In this regard, I have considered the relationship that the First Respondent has with the Second Respondent. He is the sole member of the Close Corporation and sole member of the Second Respondent. One of the payments made was made to his own mother in a vague and strange transaction. There was no pressure upon him to pay the Second Respondent unlike Aveng who had made a formal demand, but he still preferred to pay the Second Respondent. These circumstances, including the payment to an attorney of the R1,98 million, show the intention to prefer the Second Respondent. He also prefers to pay himself a salary. These facts are completely different from the facts in the Zulman judgment, where a notarial bond was registered almost three (3) years ago before the liquidation of the company or even before liquidation was contemplated. I cannot find another compelling reason for the First Respondent to have made these payments at the time when he was fully conversant with the status of the Close Corporation, when these payments were made.

[29] Zulman JA also dealt with the phrase "*ordinary course of business*" where the test to be applied is an objective test. In that case he found that the transactions were done in the course of business. It is clear from the

circumstances of this case that, at the time of the disposition, that the First Respondent paid himself and the Second Respondent with the intention of preferring himself and the Second Respondent and that these transactions were not made in the ordinary course of business of the Close Corporation. The Second Respondent is not a trader in the steel industry. By the 13th of September 2013, the Close Corporation had been placed under business rescue and he was aware that the company was struggling to meet its obligations. With all that knowledge at his disposal, he nevertheless makes payments to the Second Respondent. There is no any other intention that I can infer from these facts, save that he intended to prefer himself or the Second Respondent. The Respondents have failed to discharge the onus that rests upon them.

30.1 The Respondents have also raised a defence that there is a dispute of facts and the application must be referred to oral evidence. The Applicant ought to have proceeded by way of action than by way of motion proceedings. Indeed, there are dispute of facts, but they relate to what caused the Close Corporation to be placed in liquidation. Those issues are being aired and dealt with at the 417 enquiry. It would have been a different case if there was no such enquiry. Secondly, the dispute of facts do not pertain to the core of the application before me, which relates to the impeachable transactions only. The enquiry has with certainty established the amounts paid, the dates of the transactions, what is only left for this Court is to determine if these transactions qualify as impeachable transactions or not. The two (2) former members of the Close Corporation have filed supporting affidavits to the

replying affidavit, thus clearing any dispute of facts, relating to the core of this application.

30.2 I have undertaken an objective analysis of such disputes of facts, I have also taken a robust approach to such dispute of facts as advocated in ***Buffalo Freight Systems (PTY) LTD v Castleigh Trading (PTY) LTD and Another***[11]. I therefore find that it is just and equitable to proceed with this matter by way of motion of proceedings. All the parties to the application were able to address and make submissions on the points at issue, irrespective of the dispute of facts that have been raised by the Respondents. It is my view that there is no genuine dispute of facts in this matter as raised in the pre-trial conference and at the hearing of this application in so far as this application is concerned.

30.3 The Respondents have also submitted that the rights of the Respondents have been infringed in terms of Section 8(1) of the Constitution of the Republic of South Africa, in that the interrogation compromised their rights to the *audi alteram partem* principle, therefore, this matter has to be referred to oral evidence. This Court is not seized with the enquiry, the enquiry which is still on-going. It cannot determine what is not before it. The Respondents have every right to challenge the process of the enquiry in an appropriate judicial process, but not in this application.

[11] (311/09) [2010]ZASCA 66, 2011 (1) SA 8 (SCA); [2011] 1 All SA 1 (SCA) (24 May 2010).

[31] I therefore find that the Applicants have discharged the onus placed upon them and are entitled to the following order:

1) Declaring that the following amounts paid by the Corporation from its Nedbank Kingsmead Branch bank account number: 1442014814 to the following persons in the following amounts, namely:

    1.1 R41 000.00 (Asharf sal July) on 26 July 2013;

    1.2 R11 000.00 (Ash expenses) on 12 August 2013;

    1.3 R1 900 000.00 (n/l trust) on 16 August 2013;

    1.4 R200 000.00 (inv return) on 2 September 2013;

    1.5 R50 000.00 (inv return) on 10 September 2013;

    1.6 R41 000.00 (Ash salary) on 30 September 2013; and

    1.7 R250 000.00 (inv return) on 7 October 2013.

    TOTAL: R2 493 000.00

    Constitute voidable preferences of the property of the Corporation, as debtor to, in favour of and for the benefit of the First Respondent and/or the Second Respondent as the Corporation's other creditors ,within a period of 6 (six) months preceding the winding-up of the Corporation at a time when its liabilities exceeded the value of its assets, were not made in the ordinary course of the business of the Corporation and were intended to prefer one or more of the Respondents' creditors above another, under and pursuant to the provisions of Section 29 of the Insolvency Act 24 of 1936, as read with Section 32, 31, 30(1)(2) and 26(1)(b) of the Insolvency Act.

2) Declaring it to be competent for the Applicants to recover from the First Respondent, alternatively, the Second Respondent, or further alternatively, from the First and Second Respondents, jointly and severally, the one paying the other to be absolved, the amounts reflected in 1.1 to 1.7 above, for the purpose of setting aside such disposition under and pursuant to the provisions of Section 29, as read with Section 32, 30(1)(2) and 26(1)(b) of the Insolvency Act 24 of 1936, as amended;
3) Directing the First Respondent, alternatively, the Second Respondent, or further alternatively, the First and Second Respondent, jointly and severally, the one paying the other to be absolved, to forthwith repay the amounts for in 1.1 to 1.7 of paragraph 1 above, together with interest thereon at the rate of 9% per annum a *tempore morae*, to date of payment;
4) Directing that the First and Second Respondents pay the costs of this Application on a party and party scale, jointly and severally, the one paying the other to be absolved.

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MBATHA J

Date of hearing	:	11 August 2015
Date delivered	:	23 September 2015

Appearances:

For the Applicant	:	Adv. W.N. Shapiro
Instructed by	:	Fairbridges Wertheim Becker Inc. c/o Berkowitz Cohen Wartski Durban.
For the Respondents	:	Adv M.S. Khan
Instructed by	:	A. Sing and Associates Overport Durban