REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION,
JOHANNESBURG

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.
11/10/19
DATE
SIGNATURE

CASE NO: 2018/40163

In the matter between

THE FURNITURE BARGAINING COUNCIL
(Registration Number LR2/6/6/158) Applicant

And

AXZS INDUSTRIES (PTY) LTD TRADING AS
DON ELLY ENTERPRISES Respondent

(Registration Number 1988/012347/07)

JUDGMENT

LEVENBERG AJ

[1] This matter presents a relatively unique point of law – what is the impact of a shareholders resolution to commence a voluntary winding-up on a pending compulsory winding-up application?

[2] The question is unique insofar as there appears to be no case law that deals directly with the issue. However, despite the dearth of case law, this is something that occurs from time to time and should be addressed by the Court in a judgment.

I. SUMMARY OF THE FACTS

[3] The Applicant is a bargaining council for the furniture manufacturing industry established in terms of section 27 of the Labour Relations Act 66 of 1995.

[4] At all material times, a main collective bargaining agreement has subsisted in the furniture manufacturing industry. In accordance with the main collective bargaining agreement, all employers in the furniture manufacturing industry within the Applicant's geographical area are obliged, on a monthly basis, to deduct certain

monies from their employees' salaries and to pay those monies over to the Applicant. Those monies are in respect of the Applicant's levies, provident fund monies and additional provident monies in respect of employees working in the furniture manufacturing industry. The Respondent's business is one that is regulated by the Applicant and its business is within the Applicant's area of jurisdiction.

[5] The Respondent has, for a number of accounting periods, deducted monies from its employees' salaries, but has failed to pay over those monies to the Applicant as it is obliged to do under the main collective bargaining agreement.

[6] I pause here to observe that the failure to pay these monies (which were withheld from the employees for a specific purpose) to the Applicant may constitute a criminal offence – e.g. common law fraud or theft.[1]

[7] Moreover, the failure of a company to pay over pension fund contributions deducted from employees' salaries is often a sign that the employer is under such severe cash flow constraints that it is impelled to raid its employees' pension fund in order to finance the business. It may also be a sign that the company is trading fraudulently or recklessly in violation of section 22 of the Companies Act 71 of 2008 ("the New Companies Act") and/or section 424 of the Companies Act 61 of 1973 ("the Old Companies Act").

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[1] *McEwen, NO v Hansa* 1968 (1) SA 465 (A) 471C-I (The use of monies for an unauthorised purpose that were initially deposited into an account for a special purpose may amount to theft); *Nissan South Africa (Pty) Ltd v Marnitz NO & Others (Stand 186 Aeroport) (Pty) Ltd Intervening)* 2005 (1) SA 441 (SCA); *Barnard Jacobs Mellet Securities (Pty) Ltd v Matuson NO* 2005 CLR 1 (W) para 25-26.

Companies Act") and/or section 424 of the Companies Act 61 of 1973 ("the Old Companies Act").

[8] I make no finding that any of these statutory or common law provisions (other than the obligation to pay pension fund deductions over to the Applicant) have been breached. I refer to the statutory and common law provisions because the reasonable prospect that they may have been breached is something that ideally should be investigated by a liquidator appointed after the Respondent has been wound up.

[9] The Respondent's failure to pay over the monies it deducted from its employees' salaries resulted in an arbitration. The arbitration was resolved, first, by way of an interim settlement. In terms of the interim settlement, the Respondent agreed to make a full and proper accounting for purposes of the quantification of the monies it was obliged to pay over to the Applicant.

[10] When the Respondent made a proper accounting, its indebtedness to the Applicant was calculated. The Respondent agreed to those calculations and an award in those terms was then made.

[11] The Respondent failed to pay over monies in terms of the award. This resulted in the Applicant launching an application out of the Labour Court to have the arbitration award made an order of court.

[12] On 18 October 2017 the arbitration award was made an order of Court by consent. In the result, the Respondent consented to a judgment in an amount of R4 107 705.07

[13] After a substantial exchange of correspondence between the Applicant 's attorneys and the Respondent's erstwhile attorneys, the Applicant caused a writ of execution to be issued against the Applicant 's movable property in respect of the judgment debt in an amount of R4 107 705.07.

[14] On 28 May 2018, the Sheriff rendered a return of service which certified that the Respondent has no attachable assets - i.e. a *nulla bona* return. This is a return of service as contemplated in section 345(1)(b) of the Old Companies Act.

[15] Accordingly, by operation of section 345(1)(b) of the Old Companies Act, the Respondent must be deemed unable to pay his debts. In addition, I find, on the strength of the facts presented in this Application, that it has been proved to the satisfaction of the Court that the Respondent is unable to pay its debts within the meaning of section 345(1)(c).[2]

[16] In assessing the solvency of the company I also take note of the fact that the indebtedness is not an ordinary commercial debt. It is a debt, the very existence of which suggests that the Respondent company has been *in extremis* for some time.

[17] The Respondent opposed the winding-up application on the basis that it was not commercially insolvent. No primary facts were placed before the Court to support

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[2] *Rosenbach & Co (Pty) Ltd v Singh's Bazaars (Pty) Ltd* 1962 (4) SA 593 (D&CLD) at 597C; *In Re H.C. Collison Limited, Ex Parte Collison* 1906 SC 721 (De Villiers CJ held *"I should find it difficult to believe that a wealthy company would not have some assets which it could realise for the payment of its debts."*)

[17] The Respondent opposed the winding-up application on the basis that it was not commercially insolvent. No primary facts were placed before the Court to support these conclusions. In any event, as the debt is a judgment debt, the failure to pay the debt demonstrates the commercial insolvency of the Respondent.

[18] On 19 August 2019, the Respondent delivered a notice of withdrawal of its opposition to this application for its compulsory winding-up. By this time, a notice of set down on the opposed motion court roll, for the week of 9 September 2019, had been served on the Respondent.

[19] The Respondent's conduct in filing an answering affidavit, then failing to file heads of argument, and thereafter withdrawing its opposition to the application lends further credence to the Applicant's contention that the Respondent is commercially insolvent and has simply opposed the winding-up application for the purpose of delay. By its conduct, the Respondent has managed to delay the granting of a final winding-up order for nearly a year since the commencement of the winding-up application.

[20] Documents have been placed before me that indicate that there has been compliance with the provisions of section 346(3) and 346(4A) of the Old Companies Act.

[21] Based on the aforegoing facts the Court is justified in granting a final winding-up order, subject to what is set forth below.

II. THE VOLUNTARY WINDING-UP

[22] At the hearing of the matter, there was no appearance for the Respondent. However, Mr *Pullinger*, who appeared for the Applicant, handed up a supplementary affidavit and very properly drew my attention to the following facts.

[23] On 30 August 2019, facts came to the attention of the Applicant's attorneys, which caused them to obtain a search from the Companies and Intellectual Property Commission ("CIPC"). The CIPC search indicates that the Respondent is in *"voluntary liquidation"*. The date of the voluntary liquidation is reflected as 28 August 2019. It is significant that this date is not only after the date of commencement of this winding-up application (being 29 October 2018) but also the date upon which the Respondent's attorneys withdrew the Respondent's opposition.

[24] That information occasioned the Applicant's attorneys to attend at the offices of the CIPC on 2 September 2019, to obtain a copy of the resolution passed by the Respondent to wind itself up voluntarily. The Applicant's attorneys were unable to obtain a copy of that resolution.

[25] On 3 September 2019 the Applicant's attorneys attended at the offices of the Master of this Court. The Applicant's attorneys were, however, unable to see the file or ascertain whether in fact there was such a resolution.

[26] On 4 September 2019, the Respondent's attorneys advised the Applicant's attorneys that the Respondent had been placed in voluntary winding-up. The Respondent's

attorneys were requested to provide a copy of the resolution in terms of which the Respondent was, apparently, placed in voluntary winding-up. The Respondent's attorneys undertook to provide the resolution but have failed to do so.

[27] In the result, it would appear the Respondent has been placed in voluntary liquidation, although it is not clear that all statutory prerequisites for a voluntary liquidation have been complied with. There is no evidence of a special resolution and no attempt by the Respondent to demonstrate that there has been a supervening voluntary winding-up by providing a copy of the relevant special resolution and proof that it has been filed with the CIPC. However, now that it has been drawn to my attention, I cannot ignore the fact that the CIPC report, which has official legitimacy, reflects that there has been a voluntary winding-up. I must also assume that some shareholders' resolution has been filed, otherwise the CIPC would not be aware that there had been a voluntary winding-up. Accordingly, I decide this case on the assumption that a resolution of some sort was filed with the CIPC to support the voluntary winding-up.

[28] I note that I do not know whether the voluntary winding-up was purportedly commenced under section 80 of the New Companies Act (a section which applies only to **solvent** companies) or section 351 of the Old Companies Act which provides for a creditor's voluntary winding-up in circumstances where the company is **insolvent**. However, I do not believe that this is relevant to my judgment.

[29] I must express the Court's extreme disapproval at the manner in which the CIPC has recorded this voluntary winding-up. A voluntary winding-up has a significant impact

on the status of a company.[3] Creditors and members of the company should be entitled to promptly access sufficient information at the CIPC for them to evaluate the nature and basis of the winding-up and whether it was properly commenced in accordance with the requisite statutory provisions. To this end, the CIPC report should show whether the winding-up was effected under section 80 of the New Companies Act or section 350 of the Old Companies Act. If the resolution was recorded under section 80 of the New Companies Act it should also be clear whether the winding-up is to be by the company or by its creditors. In addition, the resolution providing for the voluntary winding-up as well as any arrangements for security to the satisfaction of the Master in accordance with section 80(3) of the New Companies Act should be readily available to a creditor who may wish to challenge the voluntary winding-up.

[30] I request the Applicant's attorneys to deliver this judgment to the Companies and Intellectual Property Commissioner and to the Master with a covering letter that specifically draws their attention to paragraphs 29, 30 and 44 in this judgment. I ask that the Master liaise with the Commissioner to see whether a more satisfactory reporting regime can be established to deal with this problem.

[31] Based on the CIPC report, I am entitled to assume that the voluntary winding-up occurred on 28 August 2019. As noted above, this was **after** the commencement date

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[3] *In Re State of Wyoming Syndicate* [1901] 2 Ch 431, 436. (This was an application for a compulsory winding-up in which the Court had to consider a competing resolution for a voluntary winding-up. The Court held that there was a defect in the resolution commencing the voluntary winding-up and accordingly, granted the compulsory winding-up order. The Court stated: *"Nothing can be more important than the question whether a company should proceed to voluntary liquidation, especially when a petition for a compulsory winding-up order is pending against the company, and it seems to me that proceedings of this kind ought to be conducted with substantial propriety."*)

of the compulsory liquidation application that I am considering and after the date that the Respondent withdrew its defence to the winding-up application.

III. THE LEGAL POSITION

A. VOLUNTARY WINDING-UP UNDER THE OLD COMPANIES ACT

[32] Schedule 5, section 9 of the New Companies Act provides:

> **"Continued application of previous Act to winding-up and liquidation. –**
>
> (1) Despite the repeal of the previous Act, until the date determined in terms of sub-item (4), Chapter 14 of that Act continues to apply with respect to the winding-up and liquidation of companies under this Act, as if that Act had not been repealed subject to sub-items (2) and (3).
>
> (2) Despite sub-item (1), sections 343, 344, 346 and 348-353 do not apply to the winding-up of a solvent company, except to the extent necessary to give full effect to the provisions of Part G of Chapter 2.
>
> (3) If there is a conflict between a provision of the previous Act that continues to apply in terms of sub-item (1), and a provision of Part G of Chapter 2 of this Act with respect to a solvent company, the provisions of this Act prevails."

[33] Sections 349 – 351 of the Old Act (which are relevant to this application) form part of Chapter 14 of the Old Act. These sections provide in relevant part:

> "349. **Circumstances on which company may be wound up voluntarily**
>
> A company, not being an external company, may be wound up voluntarily if the company has by special resolution resolved that it be so wound up.

350. **Members' voluntary winding-up and security**

(1) A voluntary winding-up of a company shall be a member's voluntary winding-up if the resolution contemplated in section 349 so states, but such a resolution shall be of no force and effect unless [certain requirements are met, including security of the satisfaction of the Master for the payment of the debts of the company] …

351. **Creditors' voluntary winding-up**

(1) A voluntary winding-up of a company shall be a creditor's voluntary winding-up if the resolution contemplated in section 349 so states, but such a resolution shall be of no force and effect until it has been registered in terms of section 200.

(2) Unless otherwise provided, in a creditor's voluntary winding-up the liquidator may without the sanction of the Court exercise all powers by this Act given to the liquidator in a winding-up by the Court subject to such directions as may be given by the creditors."

[34] In other words, the Old Companies Act contemplated two types of voluntary winding-up. Both kinds of voluntary winding-up required a special resolution by the shareholders. A so-called *"members voluntary winding-up"* was the voluntary winding-up applicable where the company was solvent. When the company was insolvent the winding-up was referred to as a *"creditor's voluntary winding-up"*, even though it did not arise out of a decision by the creditors. It remained a shareholders decision and certain formalities were required in order for the voluntary winding-up to be effective.

[35] In terms of section 352 of the Old Companies Act, a voluntary winding-up commences on the date of registration of the special resolution that provides for the voluntary winding-up.

[36] There is a fundamental and important difference between the effect of a creditors voluntary winding-up and a winding-up by the Court. Liquidators and creditors cannot apply for the appointment of a Commissioner to conduct an enquiry under sections 417 or 418 of the Old Companies in the case of a voluntary creditors winding-up.[4] In the case of a creditor's voluntary winding-up an enquiry can only be convened after making application to court under section 388 of the Old Companies Act or converting the winding-up into a winding-up by the court under section 346(1)(e).[5]

[37] In the present case, where there is good reason to suspect wrongdoing, the inability of the liquidator or creditors to follow the streamlined enquiry procedure set out in sections 417 and 418 of the Companies Act is a matter of serious concern. The inference is inescapable that the shareholders chose to voluntarily wind the company up in order to avoid an enquiry. The timing of the voluntary winding-up and the background facts of this case suggest that there has been an abuse of process by the Respondent and its officers.

B. VOLUNTARY WINDING-UP UNDER THE NEW COMPANIES ACT

[38] Section 80 of the New Companies Act provides:

"Voluntary winding-up of solvent company –

[4] *Michelin Tyre Co (South Africa) (Pty) Ltd v Janse Van Rensburg)* 2002 (5) SA 239 (SCA); *South African Philips (Pty) Ltd v The Master* 2000 (2) SA 841 (N) at 847G.
[5] *Michelin Tyre (supra)* at para 4.

(1) A solvent company may be wound up voluntarily if the company has adopted a special resolution to do so, which may provide for the winding-up to be by **the company**, or by **its creditors**.

(2) A resolution providing for the voluntary winding-up of a company must be filed, together with the prescribed notice and filing fee.

(3) If a resolution contemplated in this section provides for winding-up by **the company**, before the resolution and notices are filed the company must –

(a) arrange for security, to the satisfaction to the Master for the payment of the company's debts within no more than 12 months after the start of the winding-up of a company; or

(b) obtain the consent of the Master to dispense with security, which the Master may do only if the company has submitted to the Master –

(i) a sworn statement by the director authorised by the board of the company, stating that the company has no debt; and

(ii) a certificate by the company's auditor, or, if it does not have an auditor, a person who meets the requirements for appointment as an auditor, and appointed for the purpose, stating that to the best of the auditor's knowledge and belief and according to the financial records of the company, the company appears to have no debts. …

(5) A liquidator appointed in a voluntary winding-up may exercise all powers given by this Act, or a law contemplated in item 9 of Schedule 5, to a liquidator in a winding-up by the court -

(a) without requiring specific order or sanction of the court;

(b) subject to any directions given by –

(i) the shareholders of the company in a general meeting, in the case of a winding-up by the company; or

(ii) the creditors, in the case of winding-up by creditors.

(6) A voluntary winding-up of a company begins when the resolution of the company has been filed in terms of sub-section (2)." [emphasis added].

[39] Only a **solvent** company can be voluntarily wound up under section 80 of the New Companies Act. In *Boschpoort Ondernemings (Pty) Ltd ABSA Bank Limited*[6] the Supreme Court of Appeal held that a company is insolvent, when it is *"commercially insolvent"* – i.e. when it *"is in such a state of illiquidity that it is unable to pay its debts, even though its assets may exceed its liabilities"*.[7] A solvent company is the *"converse"* of that – i.e. a company that is *"commercially solvent"* and is able to pay its debts as they become due.[8]

[40] The language of section 80 is confusing because, on the face of it, it contemplates a winding-up by *"the company"* or a winding-up *"by creditors"*. The latter concept is suggestive of insolvency. At the same time a liquidator in a voluntary winding-up has the same powers as are afforded a liquidator in the case of a compulsory winding-up by the Court; except that in the case of a winding-up by the company, the liquidator must obtain the approval of shareholders (not creditors) in general meeting. Where the winding-up is to be by the creditors, the liquidator should act on the instruction of the creditors.

[41] Given the structure of section 80 one may question why the shareholders of a company would elect to provide for a winding-up by creditors rather than by the company. The

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[6] *Boschpoort Ondernemings (Pty) Ltd ABSA Bank Limited* 2014 (2) SA 518 (SCA)
[7] Id at para 16.
[8] Id at para 21.

reason is probably that, if the winding-up is to be by the company (and not by creditors), security is to be provided to the satisfaction of the Master and the company may not be able to put up the required security.

[42] The effect of section 80 is that the provisions of section 350 of the Old Companies Act, which provides for a member's voluntary winding-up in the case of a **solvent** company are now obsolete. That section (although it appears in Chapter 14 of the Old Companies Act) is inconsistent with section 80 of the New Companies Act and is therefore no longer applicable.

[43] Despite the fact that section 80 of the New Companies Act provides for both a winding-up by the company and a winding-up by creditors, there is no indication that the legislature intended to do away with section 351 of the Old Companies Act which provides for voluntary winding-up in the case of an insolvent company. In this connection the provisions of section 80 of the New Companies Act are expressly limited to **solvent** company. One must therefore assume that section 351 (which is a provision of the Old Companies Act that relates specifically to an **insolvent** company) remains effective.

[44] It is at once apparent from the provisions of section 80 of the New Companies Act that the CIPC should take great care to ensure that all procedures have been properly followed before accepting a special resolution voluntary winding a company up. If the documentation required by section 80 is not readily available to the public on a simple CIPC search, shareholders and creditors of the company have no way of testing whether the resolution was validly taken and/or the voluntary winding-up properly

commenced. The unavailability of those documents to the general public also facilitates unscrupulous behaviour by shareholders and directors of companies that are in fact insolvent that wish to avoid the consequences of a compulsory winding-up by the Court.

C. THE EFFECT OF THE SUBSEQUENT VOLUNTARY WINDING-UP UPON THE COURT'S POWER TO GRANT A COMPULSORY WINDING-UP ORDER IN THIS APPLICATION

[45] The central question therefore is whether the supervening voluntary winding-up (under whatever section it was commenced) prevents the Court from granting a compulsory winding-up order in this case. In my opinion, it does not for the following reasons.

[46] In delivering this judgment I am mindful of the fact that we do not know at this stage whether the voluntary winding-up was commenced under section 80 of the New Companies Act or section 351 of the Old Companies Act. It is not even clear whether the proper procedures have been followed for a voluntary winding-up under either section. However, the reasoning below applies regardless of whether the voluntary winding-up was under section 80 of the New Companies Act or section 351 of the Old Companies Act.

[47] Section 348 of the Old Companies Act (which applies to the present compulsory winding-up application) provides:

> "A winding-up of a company by the Court shall be deemed to commence at the time of the presentation to the Court of the application for winding-up."

[48] However, it is only once the winding-up order has been granted that the winding-up is retroactively deemed to have commenced at the date of presentation of the application.[9] Accordingly, if this Court grants a winding-up order at this stage, this winding-up will be deemed to have commenced when the winding-up application commenced, being 29 October 2018.

[49] It follows that, if this Court grants a winding-up order, the compulsory winding-up must be deemed to have commenced on 29 October 2018. In terms of section 80 of the New Companies Act and 352 of the Old Companies Act, the voluntary winding-up does not commence until the special resolution has been filed with the CIPC. It appears from the CIPC search that was provided to the Court that the effective date of the voluntary winding-up (under whatever section of whatever Companies Act it was brought) is 28 August 2019. This means that, if a liquidation order is granted by this Court in this application, the voluntary winding-up must be deemed to have commenced **after** the date of commencement of the compulsory winding-up proceeding. The effect of the granting of a winding-up order would therefore be to invalidate and void (albeit retrospectively) the voluntary winding-up.

[50] There are other indications of the Legislature's intent that provide support for this conclusion. First, section 341 of the Old Companies Act provide that transfers of shares and dispositions of property made in the interregnum period between the date of the deemed commencement of the winding-up and the date of granting of the winding-up order are void. This clearly evidences an intention on the part of the

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[9] *Kalil v Decotex (Pty) Ltd* 1988 (1) SA 943 (A) 961; *Vermeulen v CC Bauermeister (Edms) Bpk* 1982 (4) SA 159 (T) 161H – 162B.

legislature to ensure that the *status quo* is maintained as far as possible from the date of commencement of the compulsory winding-up proceeding to the date of granting of a winding-up order.

[51] Second, section 131(6) of the New Companies Act provides that the effect of the filing of a business rescue application is to suspend any liquidation proceeding that has commenced by or against the company at the time of the application. This suggests that, if the legislature intended that a supervening voluntary winding-up would have the effect of superseding a pending compulsory liquidation proceeding, the legislature would have said so expressly.

[52] Third, there are sound public policy reasons why a company should not be able to frustrate and prevent the finalisation of liquidation proceedings that have been properly brought against the company. The abuses in this case serve as a graphic illustration of why this could never have been the legislature's intent.

[53] This winding-up proceeding commenced on 29 October 2018. As a result of the delays of the Respondent and the vagaries of Court proceedings it has taken nearly a year for the matter to be heard and determined by the Court. At the time when liquidation became inevitable, the Respondent withdrew its opposition and commenced a voluntary winding-up. In the circumstances of this case, the inference is inescapable that the purpose of commencing a voluntary winding-up was to delay or prevent an enquiry into the reasons for the company's failure. If the commencement of a voluntary winding-up in these circumstances has the effect of bringing the compulsory winding-up proceeding to an end, the entire legislative scheme of the Old and New

Companies Acts with regard to liquidations of insolvent companies would be subverted.

D. OTHER REMEDIES AVAILABLE TO THE APPLICANT

[54] Section 79(3) of the New Companies Act provides:

> "If, at any time after a company has adopted a resolution contemplated in section 80, or after an application has been made to a court as contemplated in section 81, it is determined that the company to be wound up is or may be insolvent, a court, on application by any interested person, may order that the company be wound up as an insolvent company in terms of the laws referred to or contemplated in item 9 of Schedule 5."

[55] Section 346(1) of the Old Companies Act provides:

> "An application to the Court for the winding-up of a company may, subject to the provisions of this section, be made -
>
> ...
>
> (e) in the case of a company being wound-up voluntarily, by the Master or any creditor or member of that company."

[56] The view I take of this matter obviates the need for me to consider whether I can *"convert"* the voluntary winding-up under section 346(1)(e) of the Old Companies Act or section 79(3) of the New Companies Act. In any event, it would not be possible for me to exercise a discretion under either of these sections as I do not know whether the voluntary winding-up was commenced under section 80 of the New Companies or section 351 of the Old Companies Act and whether correct procedures were followed. If the matter had been properly brought before me, the circumstances are such that it

might have justified the Court exercising a discretion under the appropriate section of the appropriate Companies Act (i.e. under section 79(3) of the New Companies Act or section 346(1)(e) of the Old Companies Act).

[57] If the voluntary winding-up was commenced under section 80 of the New Companies Act and the issue was properly before the Court, it might be appropriate for the Court to order the company be wound up as an insolvent company because, as appears from what is set forth above, the company was clearly insolvent at the time of the commencement of the voluntary winding-up and continues to be insolvent.

[58] Similarly, if the company was placed under voluntary winding-up under section 351 of the Old Companies Act, it might be appropriate for the Court to exercise its discretion to convert the voluntary winding-up to a compulsory winding-up because the voluntary winding-up is an abuse of the process for the reasons described above.[10]

IV. CONCLUSION

[59] I conclude that it would be appropriate to grant a final winding-up order in this matter.

[60] In my opinion, the Respondent's conduct in opposing this application has been vexatious. In this respect, I refer both to the opposition to this application and to the attempt to commence a voluntary winding-up in order to frustrate the granting of a

[10] I make no finding on the matters set out in paragraphs 57-58 hereof because they have not been properly placed before me.

final winding-up order. The latter act is a clear abuse of process. In the circumstances, a punitive award of costs is appropriate.

[61] Accordingly, I make the following order:

(a) The company is placed in final winding-up in the hands of the Master of the High Court, Johannesburg.

(b) The costs of the application for winding-up are granted on the scale as between attorney and client and those costs shall be costs in the liquidation.

(c) It is declared that, as a consequence of granting this order: (i) the voluntary winding-up purportedly commenced on 29 August 2019 is ineffective and void; and (ii) any steps taken, or appointments made, in connection with the voluntary winding-up are similarly ineffective and void.

P.N. LEVENBERG, AJ
ACTING JUDGE OF THE HIGH COURT

Date of hearing: 10 September 2019

Date of judgment: 11 October 2019

Counsel for the Applicant: A.W. Pullinger
Instructed by: Moodie & Robertson

No appearance for the Respondent