IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

REPORTABLE
Case number: 3519/2021

In the matter between:

NIGEL DORIAN DUVEEN FALK N.O.	**First applicant**
CAROL ANN FELICITY FALK N.O.	**Second applicant**
RODNEY ALAN KRNBLUM N.O.	**Third applicant**
In their capacities as trustees for the time being of the Bren-Lorr Trust, Master's reference IT5332/1996	

and

RAPITRADE 659 (PTY) LTD	**First respondent**
GRANT RAOUL GIBOR	**Second respondent**
RICHARD ARTHUR WARD	**Third respondent**
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	**Fourth respondent**
MINISTER OF FINANCE	**Fifth respondent**

JUDGMENT DELIVERED ELECTRONICALLY ON 9 MAY 2022

VAN ZYL AJ:

Introduction

1. The applicants are the trustees for the time being of the Bren-Lorr Trust ("the Trust"). They seek an order in terms of section 83(4) of the Companies Act 71 of

2008 (“the Act”), declaring the dissolution of the first respondent void, as well as certain ancillary relief.

2. The first respondent was dissolved for failure to submit annual returns.

3. At a time when the Trust was unaware of the dissolution of the first respondent, it instituted an action against the first respondent (as the lessee of premises owned by the Trust) and the second and third respondents (as sureties for the first respondent’s debts arising from the lease) for arrear rentals.

4. The action is opposed by the second and third respondents, *inter alia* on the basis that the first respondent has been dissolved and that any obligations that arose from the lease have accordingly been extinguished. They deny therefore that they are liable to the Trust on the basis of the suretyships.

5. The Trust now approaches the Court for the discretionary relief provided for in terms of section 83(4) to allow it to proceed with this action based on the lease and the suretyship agreements concluded by the second and third respondents in respect of the first respondent’s obligations.

6. The main issue to be determined is therefore whether it would be just and equitable, on the facts on the matter, to declare the dissolution of the first respondent void, and the consequences thereof as contemplated in section 83(4) of the Act.

7. The fifth respondent has indicated in correspondence that it does not wish to take part in the proceedings. The fourth respondent has also not given notice of intention to oppose.

The relevant legal principles

8. Section 83 of the Act provides as follows:

> ***83 Effect of removal of company from register***
> *(1) A company is dissolved as of the date its name is removed from the*

companies register unless the reason for the removal is that the company's registration has been transferred to a foreign jurisdiction, as contemplated in section 82(5).

(2) The removal of a company's name from the companies register does not affect the liability of any former director or shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the register.

(3) Any liability contemplated in subsection (2) continues and may be enforced as if the company had not been removed from the register.

(4) At any time after a company has been dissolved-

(a) the liquidator of the company, or other person with an interest in the company, may apply to a court for an order declaring the dissolution to have been void, or any other order that is just and equitable in the circumstances; and

(b) <u>if the court declares the dissolution to have been void, any proceedings may be taken against the company as might have been taken if the company had not been dissolved</u>. (Emphasis supplied.)

9. Section 83(4)(a) of the Act allows any interested party to apply to the court to declare the dissolution of the company (whether for failure to submit returns or otherwise) void. The court is given a discretion to be exercised on the facts to grant any order that is just and equitable (*Absa Bank Ltd v Companies and Intellectual Property Commission and others* 2013 (4) SA 194 (WCC) at para [37]).

10. As to the effect of an order declaring the dissolution void, section 83(4)(b) provides that it will automatically have the effect that any proceedings may be taken against the company as might have been taken if the company had not been dissolved. The effect of such an order would normally be that the assets of the dissolved company are no longer *bona vacantia* and liabilities incurred prior to dissolution will again vest in the company.

11. The Supreme Court of Appeal has confirmed that, where a company's name is reinstated in terms of section 82(4) (as opposed to section 83(4)), the effect of such a reinstatement would be automatically and retrospectively to validate any

corporate actions and legal proceedings taken against the company while it was deregistered (see *Newlands Surgical Clinic (Pty) Ltd v Peninsula Eye Clinic (Pty) Ltd* 2015 (4) SA 34 (SCA) at paras [29]-[30]. Section 82(4) provides that "*if the Commission deregisters a company as contemplated in subsection (3), any interested person may apply in the prescribed manner and form to the Commission, to reinstate the registration of the company*.")

12. It seems that this question has not been finally determined in respect of section 83(4) but it is clear that the court, when exercising its discretion in terms of section 83(4), would be entitled to make any just and equitable order (see *Peninsula Eye Clinic (Pty) Ltd v Newlands Surgical Clinic* 2014 (1) SA 381 (WCC) at para [43]), including retrospectively validating actions taken by or against the company while deregistered.

13. In *Nulandis (Pty) Ltd v Minister of Finance and another* 2013 (5) SA 294 (KZP) the court dealt with the issue of when it would be just and equitable to void the dissolution of a company. At para [43] the Court remarked that "*if there are no assets and the company is no longer in business then the application by a creditor could be an exercise in futility. It would be just as well that the entity is not automatically reinstated as a company on the register. If there are assets then other creditors would have an interest in avoiding dissolution. Shareholders and other officials of the dissolved entity would have an interest in saving the assets from creditors. It would be up to them to reinstate the registration of the company if they wished to join it to the proceedings as a party with legal standing. Hence they are notified of the application and its outcome. If the company is not participating in legal proceedings, it does not have to be reinstated on the register*."

14. And at paras [61] and [62] the Court held as follows:

> *"[61] … Effectively, an order on dissolution that 'the Court thinks fit' in terms of s 420 and one 'that is just and equitable' in terms of s 83(4)(a) are not different. Both give the court wide discretion to decide each application on its own merits. In* Ex parte Liquidator Natal Milling Co (Pty) Ltd *1934 NPD 312 the interpretation by a single judge of this division of s 191 of the Companies*

Act, 1926 which was almost identical to s 420 of the old Act, remains good authority in summarising the approach as follows:

'According to my view the power of the Court to make an order declaring the dissolution to have been void is unlimited in any respect, and as the circumstances under which the section may be brought into operation are likely to vary in every case, it seems to me inadvisable to lay down any principle upon which the Court will act. Each case, I think should be decided on its merits.'

[62] In that case shareholders and the liquidator supported the voiding application. It was in the interests of shareholders. There were no creditors. No one was prejudiced. The court cautioned against voiding dissolution unless for instance, new assets are discovered or some fraud comes to light, or the dissolution has become an instrument of injustice."

15. In *Morgenrood v Companies and Intellectual Property Commission and Others* (65849/2013) [2015] ZAGPPHC 294 (12 March 2015) the Court stated at para [25] that "*practicality, convenience and effectiveness are also factors to be taken into account in exercising the discretion whether or not to grant the order*". It further expressed the view that, on the facts of that particular case, "*the following requirements must be satisfied prior to the granting of an order sought: there must be prove (sic) that the company was in business at the time of deregistration, having outstanding assets and liabilities which must be transferred or liquidated. Whether or not the company was in business can be determined by proving that the company has been conducting business related activities at the time of deregistration. The examples given by the Commissioner CIPC are selling and buying of goods and services, leasing or renting property or equipment, marketing goods and services and or an active bank account*."

15. I turn to the facts of the present matter against this background.

<u>The facts</u>

16. On 26 August 2013 the Trust and the first respondent concluded a written lease agreement in terms of which the first respondent (trading as "Personal

Laundry") leased from the Trust a commercial property situated in Woodstock. The Trust is the registered owner of the property. The lease would endure for a period of 10 years from the commencement date, that is, until October 2023 on a reading of the relevant clauses of the agreement. The first respondent would use the property for its business as a laundromat.

17. In addition to the rental payable in respect of the property, the first respondent would also be liable for the payment of all charges in respect of electricity, water, sewage, refuse removal and service charges levied against the property.

18. In terms of clause 5 of the lease agreement, the first respondent was not entitled, without the prior written consent of the Trust, to sublet any part of the property or to cede, transfer or assign any rights arising from the lease agreement, or allow the premises to be occupied by any other person.

19. The lease agreement further provided that it constituted the whole agreement between the parties and no additions to the provisions thereof would be binding unless reduced to writing and signed by or on behalf of the parties. No representations, whether express or implied, would be binding on the parties. No waiver, relaxation or indulgence by the Trust would prejudice its rights under the lease agreement.

20. At the same time as the conclusion of the lease agreement, the second and third respondents (who were the only directors of the first respondent at the time) signed surety, as sureties *in solidum* and co-principal debtors with the first respondent, of all of the first respondent's obligations under the lease agreement, including the payment of all sums of money that would be payable to the Trust.

21. The conclusion of the agreements and their terms, as well as the fact that the first respondent duly took occupation of the premises, are common cause between the parties. From September 2013 to September 2014 the Trust rendered invoices to the first respondent as "*Rapitrade 659 (Pty) Ltd t/a Personal Laundry*".

22. The second respondent, who deposed to the answering affidavit on behalf of

the second and third respondents, states that the respondents decided at the end of 2013 or the beginning of 2014 not further to file annual returns with the fourth respondent for the first respondent. This was done on the advice of their auditors with a view of eventually deregistering the first respondent. The plan was to merge the business of the first respondent with that of another entity styled Personal Laundry. At the time, the entity was known as "*21 on Scott Street Investments 45 (Pty) Ltd t/a Personal Laundry*" ("21 on Scott Street"). It has subsequently changed its name to Personal Laundry (Pty) Ltd ("Personal Laundry"). The second and third respondents are not sureties in respect of the obligations of 21 on Scott Street or Personal Laundry.

23. According to the respondents, all of the assets used in the business belonged to Personal Laundry. They criticise the Trust for denying this fact, but whether the assets were owned by the one company or the other does not matter, as it was the first respondent who was the tenant in terms of the written lease agreement. Whose assets were used in conducting the business was not of concern to the Trust.

24. The respondents state that all of the first respondent's clients and suppliers were informed accordingly in September 2014. A copy of the relevant correspondence is not attached to the answering affidavit. He also states that this was discussed with Mr Falk of the Trust even before September 2014, with the implication that Persona Laundry would eventually take over the lease. The Trust disputes this and I shall return to this issue as it is, in my view, material to the determination of this application.

25. It is further common cause that in September 2014 the Trust was requested to make out further invoices in respect of the lease to the new entity rather than in the name of the first respondent. The Trust complied with this request and rendered invoices to 21 on Scott Street for the period October 2014 to October 2018. The invoices were duly paid.

26. The Trust states that there is no dispute that, despite the rendering of the invoices to a different entity and for as long as the first respondent remained registered as a company, that is, until February 2018, the lease remains valid and in

force as between the Trust and the first respondent. It is clear from the answering affidavit that this was the case because the second respondent states that "*I accept that as long as Rapitrade remained registered, the written lease of the business premises, the property of the Applicant, remained valid and in full force and effect. This is so despite the fact that the invoices were addressed to PL and paid by PL. PL was at that stage the* de facto *tenant of the business premises with the consent of the landlord.* "

27. The Trust's case is however that it never consented to a cession of rights from the first respondent to 21 on Scott Street or to Personal Laundry as required by the provisions of the lease agreement. It always considered the first respondent to be liable for the debts arising from the lease.

28. It is also common cause between the parties that an addendum to the lease agreement was signed in January 2015. This was about a year after the request that invoices be sent or made out to 21 on Scott Street. The addendum amended sone of the terms of the lease agreement (including the termination date, which was extended to 2026, and the amount of rental to be paid) but still reflected the first respondent as the tenant. It was signed by the second respondent on the first respondent's behalf.

29. On 3 February 2018 the first respondent was finally deregistered by the fourth respondent due to its failure to file its annual returns. The Trust only learnt of this event much later.

30. During December 2018 the Trust received a request from the first respondent's financial manager that the first respondent's name on the Trust's records should be amended to "Personal Laundry" and thereafter invoices were rendered by the Trust in that name.

31. In early 2020 the rental due in terms of the lease agreement fell into arrears. At that stage the Trust was not aware of the first respondent's deregistration some two years previously. The Trust caused a letter of demand to be addressed to the first to third respondent on 23 September 2020 demanding payment of some R732

676,974 in rental arrears.

32. According to the respondents, their attorney replied to this demand on 7 October 2020 and confirms transmission of the letter on that date. There is a dispute on the papers as to whether the letter was received at that time by the Trust's attorney.

33. In the letter the respondents indicated that the first respondent no longer existed as it had been deregistered, that the demand was thus fatally flawed and that the second and third respondents were no longer liable as sureties for the obligations of the first respondent.

34. The trust, still unaware of the deregistration of the first respondent, issued and served summons in this Court under case number 15475/2020 against the first to third respondent.

35. On 15 December 2020, and after the letter of 7 October 2020 had come to the Trust's attorney's attention, a further letter was sent to the respondent's attorneys setting out the Trust's position, and advising that the present application would be launched.

36. The second and third respondents in the meantime defended the action and delivered their plea in February 2020. The current application was launched on 25 February 2021.

It is just and equitable to grant the relief sought?

37. The Trust submits that it has shown an interest in the voidance of the dissolution of the first respondent. The Trust of the view that the first respondent remains liable under the provisions of the lease agreement, and accordingly the sureties remain liable in relation to the first respondent's obligation under that lease agreement) once it is no longer deregistered.

38. As I have already mentioned, there is no dispute on the papers that the lease

agreement remained valid and in enforcible as between the Trust and the first respondent until the dissolution occurred.

39. The Trust has an interest in the voidance of the dissolution in as far as such dissolution had the effect of rendering the admitted obligations arising from the lease agreement as against the first respondent and the sureties unenforceable.

40. The respondents seek to avoid liability as sureties for the first respondent's debts that arose out of the lease agreement. They do so by relying on their own intentional and planned failure to ensure that annual returns for the first respondent were filed with the fourth respondent as required by the Act.

41. The respondents argue that, upon the deregistration of the first respondent, all agreements which may have existed between the Trust and the first respondent automatically came to an end, and they seek to avoid liability for the arrear rental due in terms of the written lease agreement. They base this defence on the argument that some form of oral rental agreement was concluded between Personal Laundry and the Trust upon the dissolution of the first respondent in terms of which Personal Laundry paid "*what it believed was market related rental*".

42. It is to be noted that the version provided by the respondents in this regard is not consistent. Firstly, in the initial letter sent on 7 October 2020, the respondents advised that the second respondent had advised the Trust's representative of the deregistration of the first respondent on 18 December 2018 via email, and that after that date the Trust accepted the substitution of the first respondent for Personal Laundry as tenant. The lease agreement between Personal Laundry and the Trust thereafter continued on a month-to-month basis.

43. In the plea delivered in the action the respondents contend that, immediately after the termination of the lease agreement in February 2018, an oral lease agreement was concluded between the Trust and Personal Laundry (then still known as 21 on Scott Street). This second version is contradicted by the fact that the second respondent referred to a clause in the written lease agreement in correspondence during August 2020, and in April 2020 requested copies of a written

lease agreement. Thirdly, in the answering affidavit in this application it is contended that the second respondent had initiated discussions with Mr Falk for the Trust long before September 2014, which discussions remained ongoing. The second respondent requested Mr Folk to provide him with a new written agreement but this was never provided.

44. The respondents contend that Mr Falk knew by early 2014 already that Personal Laundry was the "true tenant" of the leased premises. I am not sure that that is the case. The Trust was requested to render invoices to 21 on Scott Street, but that does not go as far as to indicate that the first respondent was no longer the tenant of the premises. In any event, that goes against the respondents' admission that the written lease agreement remained in force in relation to the first respondent until 3 February 2018.

45. The respondents state further that, by the beginning of 2018, Mr Falk knew that the first respondent had ceased to exist. (This is expressly denied in the founding affidavit.) The respondents continue to state that, despite Personal Laundry being the true tenant of the premises since 2014, the written lease agreement between the trust and the first respondent remained valid and in full force and effect until such time as the first respondent was finally deregistered on 3 February 2018. However, after the merger of the businesses in 2014 already the first respondent became dormant and remained so until its deregistration. The first respondent had no assets and no liabilities of that time.

46. The respondents say that there is no reason to reject the second respondent's version that he had requested Mr Falk on various occasions to get the paperwork done in order to show that Personal Laundry, then still 21 on Scott Street, was the tenant, and not the first respondent. They state further that although the addendum to the lease agreement was signed in January 2016 as if the first respondent was still in business and still the tenant, this was a mistake caused by Mr Falk who failed to get the paperwork in order for a new lease with Personal Laundry. This explanation is however in conflict with the respondents' admission that the written lease agreement between the Trust and the first respondent remained in place and valid and in forcible until the latter is the solution in February 2018. The respondents

also do not explain why they signed the addendum in the allegedly incorrect form that it was, or why they did not at that stage already insist on a new agreement being drawn up. They have not sought rectification of the addendum or of the lease agreement.

47. It is so that the first respondent was not in arrears with its rental in breach of the written lease agreement that existed until 3 February 2018. The arrears claimed by the Trust only arose in 2020.

48. The respondents contend that it is clear that the Trust acquiesced in the factual position that the first respondent was no longer the tenant but that Personal Laundry was the true tenant, and for as long as Personal Laundry paid the rent they had no problem with this factual position. They proceed to argue that despite this, the first respondent remained ultimately liable to the trust in terms of the written lease agreement until such time as it was substituted as the tenant through "*a new agreement or by the operation of law*". Until then Personal Laundry was accepted by all relevant parties as a sub tenant.

49. These contentions fly in the face of the provisions of the written lease agreement which required the written consent of the Trust for the subletting of the premises. It is also seemingly conflating the position of a "true tenant" and "subtenant" under the lease agreement. The respondents explain that it is true that neither party to the written lease agreement technically adhered to the provisions of that agreement by allowing the situation with Personal Laundry as a "subtenant" to continue without an amendment to the existing written lease agreement or a cession or a new lease agreement. They say that the Trust should take some blame for this *de facto* position which "*just continued*". It is clear that there was a laundry business being operated from the premises and this business was being invoiced by the Trust. The Trust was being paid by the business occupying the premises before 3 February 2018 and thereafter as the same business was simply continuing to occupy the leased premises after the date.

50. The argument does not have merit. It is clear from the documents filed of record that the Trust was requested to invoice another entity in respect of the first

respondent's rental obligations under the lease. This meant only that the first respondent had made payment arrangements through another entity, not that the latter would become the "true tenant" under the lease.

51. The respondents refer to communications exchanged between the Trust and the second respondent after the dissolution of the first respondent and argue that such communications indicate the existence of a lease agreement in some shape or form between the Trust and Personal Laundry. In December 2018 the Trust was requested to "*change our name on your records to Personal Laundry*". A copy of the change of name certificate from the fourth respondent's records was attached to the email. The issue of what Mr Falk knew and when he knew the facts about Personal Laundry which are in dispute between the parties is in the respondents' view not decisive of the matter, although in terms of the *Plascon Evans* principle the court should accept the respondents' version.

52. It seems to me that even if I accept the respondents' version, the fact that Mr Falk knew about Personal Laundry prior to 2018 is not the real question. Contrary to what respondents argue, the fact that Mr Falk knew when the Trust commenced invoicing Personal Laundry that the first respondent was not the true tenant, does not mean that the first respondent did not remain liable under the lease agreement. It also does not serve to absolve any of the parties from the terms of the written lease agreement and the suretyships that were concluded in 2013 and which had never been amended in respect of the stipulation that the written consent of the Trust was required for any cession and assignment of rights of the first respondent under the lease agreement or for any subletting of the premises to take place, that the agreement could not be varied other than in writing, and the stipulation that no waiver, relaxation or indulgence by the Trust would prejudice its rights under the lease agreement (*Kovacs Investments 724 (Pty) Ltd v Marais* 2009 (6) SA 560 (SCA) at para [22])..

53. In any event, a consideration of the correspondence attached as part of the papers reveals that there were discussions as to a possible reduction in the annual rental increase. On 25 September 2018 the second respondent wrote to Mr Falk: "*I know we have an existing contract in place. It there any way you would be willing to*

look at a more viable/affordable price increase ...?"

54. Mr Falk replied on 26 September 2018: "*It has been agreed that our current lease will not be adjusted at all ever*." He proceeded by suggesting a possible short-term solution to ease the first respondent's financial burden, which suggestion is accepted by the second respondent on the same day. There is no mention whatsoever in any of the correspondence of a change in tenant under the lease agreement.

55. The respondents say that Mr Falk does not deny that he knew from the beginning of 2018 already that the first respondent had ceased to exist. This is not correct. Although this allegation is not denied in the replying affidavit, it is expressly denied in the founding affidavit. One must look at the papers as a whole and not at extracts therefrom in a vacuum (*Basson N.O. and others v Orcrest Properties (Pty) Ltd and two related cases* [2-16]4 All SA 368 (WCC) at para [71]). The Trust indicates, further, in the replying affidavit that they persist in the allegations made in the founding affidavit in the event of a conflict with what is stated in the answering affidavit.

56. The respondents argue further that because the first respondent had at the time of its dissolution no assets or liabilities, and that it was Personal Laundry who had incurred the arrears towards the Trust, it would not be just and equitable to do declare the dissolution of the first respondent void so as to render the sureties at risk of payment. They say that there is no reason why whatever claim the Trust may have cannot be instituted directly against Personal Laundry who has by its own admission been the tenant of the premises in some form since 2014, and in any event definitely since 3 February 2018.

57. I do not agree with these two contentions. In relation to the first, it does not seem to me to matter that at the time of its dissolution the first respondent had not been in breach of the lease agreement with the Trust. The fact is that it was the tenant in respect of the lease agreement (this is expressly admitted by the respondents). It therefore had an obligation towards the trust to honour its obligations under the lease agreement until the termination of that agreement for

whatever reason. One of the obligations was to pay the rental as agreed. The suretyships were provided in relation to these obligations.

58. This seems to me to be analogous to the situation in *Absa Bank supra* the bank held a mortgage bond over an immovable property of the dissolved close corporation. Both prior to and following the dissolution of that corporation the premiums payable under the mortgage loan agreement went unpaid and Absa (without knowledge of the dissolution) eventually instituted action in respect of those premiums about nine months after the dissolution of the corporation. The dissolution was declared void in those circumstances not only in respect of debts incurred up to the date of the dissolution but Absa was also entitled to claim debts incurred in respect of the mortgage bond afterwards as if the corporation had not been dissolved.

59. Secondly, one cannot glibly say that the trust should institute proceedings against Personal Laundry so as to claim arrear rental. The status of any agreement relating to the occupation of the premises between the Trust and Personal Laundry is opaque, to say the least. The Trust, moreover, does not have any security for the payment of whatever obligations Personal Laundry might have towards it, such as the Trust has or had in the suretyships concluded by the second and third respondents in respect of the first respondent as tenant under the written lease agreement.

60. Leaving aside the difficulties inherent in an oral rental agreement concluded with a trust with multiple trustees, it is evident that any such oral lease agreement could not have been entered into to replace the written lease agreement, as that would have been contrary to the provisions of the written agreement itself, in terms of which any additions thereto had to be reduced to writing, and in terms of which a cession or assignment of rights arising from the lease agreement could only take place upon the written consent of the Trust being provided. On the papers, no such written consent was requested and none was given.

61. Now, in circumstances where it is common cause that the rental obligations provided for in the written lease agreement have not been met, the respondents rely

on the fact of deregistration which they planned and caused, to argue that they can no longer be held liable as sureties for the debts arising from the lease agreement. As a result of the dissolution of the first respondent and the extinguishing of its liabilities as a result thereof, the suretyships also came to an end.

62. Whatever the merits of any dispute as to the enforceability of the written lease agreement may be, it would, on the common cause facts evident from the papers, be just and equitable to declare the deregistration of the first defendant void so that the Trust may then proceed with the action against all three of the respondents, in particular the second and third respondents as sureties.

63. This will allow any disputes that may arise between the parties in respect of the enforceability of the lease and the suretyship to be properly and fully ventilated by way of the action proceedings that have already been instituted. In that sense the relief sought in this application will be practical, sensible, convenient and cost-effective.

64. Given that the respondents confirmed that at the time of the first respondent's deregistration it had no assets and liabilities, and that all creditors at that time had been paid in full, there could be no prejudice to any third parties should the order sought be granted. It could only prejudice the Trust should the order not be granted to enable it to enforce its rights by way of the action already instituted against the sureties. The Trust could of course also amend its particulars of claim to include a claim against Personal Laundry in the alternative, should it be so advised.

65. The respondents argue that, should the Trust be successful, it would be entitled only to orders in terms of paragraphs 2, 3, and 4 of the notice of motion. I do not agree. It seems to me that, once an order is granted that the dissolution of the first respondent is void, the further orders sought by the Trust follow as a matter of course. In *Peninsula Eye Clinic (Pty) Ltd v Newlands Surgical Clinic* 2014 (1) SA 381 (WCC) at para [43] the Court held as follows:

> "*… It is also confirmed, I think, in the observation by Rogers J (at para 48) that 'An order that is just and equitable [i.e., the third category of*

remedy] may entail a declaration that the dissolution is void together with ancillary relief'. The third category of remedy is certainly broad enough to include an order directing the restoration of a company to the register coupled with directions formulated to put the affected parties in the position they would have been had the company not been deregistered, or simply directing that the company should be deemed never to have been deregistered … It might also include orders validating and corporate activity purportedly conducted on the company's behalf during the period of its deregistration."

Costs

66. The Trust is the successful party in the litigation and I can see no reason for deviating from the general principle that costs follow the result.

Order:

67. In all of these circumstances, I make the following order:

67.1 The dissolution of the first respondent on 3 February 2018 is declared to be void in terms of section 84(4) of the Companies Act 71 of 2008 ("the Act").

67.2 The fourth respondent is directed to restore and re-enter the first respondent's name in the register of companies and to reinstate the first respondent as a registered company in terms of the Act.

67.3 It is declared that all assets belonging to the first respondent immediately prior to its dissolution are no longer *bona vacantia* and are declared to re-vest in the first respondent.

67.4 It is declared that the first respondent's liabilities as immediately prior to its dissolution are to re-vest in the first respondent.

67.5 It is declared that the proceedings instituted by the applicants against the first respondent under case number 15475/2020 in this Court are valid insofar as and to the extent that such proceedings were instituted during the period of the first respondent's dissolution.

67.6 It is declared that the reinstatement of the first respondent has retrospective effect, and that all of its corporate activities and all acts done in its name or on its behalf subsequent to its dissolution are valid with retrospective effect.

67.7 The costs of this application shall be borne by the second and third respondents jointly and severally, the one paying, the other to be absolved.

P. S. VAN ZYL
Acting judge of the High Court

Hearing dates:	10 March 2022 & 9 May 2022
Appearances:	
For the applicants:	L. N. Wessels, instructed by Ricky Klopper Attorneys Inc.
For the second and third respondents:	J. C. Tredoux, instructed by Jordaan & Ferreira Inc.