



**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

**DELETE WHICHEVER IS NOT APPLICABLE**

**(1) REPORTABLE: YES / NO.**

**(2) OF INTEREST TO OTHER JUDGES: YES / NO.**

**(3) REVISED.**

**DATE**

**SIGNATURE**

Case Number: 83412/17

In the matter between:

**JAN WALTER SLIPPERS**

Applicant

and

**INGOGO WILDLIFE STUDIO AND**

First Respondent

**TAXIDERM MY CC AND ANOTHER**

**THE STANDARD BANK OF SOUTH AFRICA  
LIMITED**

Intervening Creditor

**Case number: 83413/17**

---

In the matter between:

**JAN WALTER SLIPPERS**

Applicant

and

**INGOGO WILDSPLAAS CC**

Respondent

**THE STANDARD BANK OF SOUTH AFRICA  
LIMITED**

Intervening Creditor

**Case number: 83414/17**

In the matter between:

**JAN WALTER SLIPPERS**

Applicant

and

**INGOGO SAFARIS CC**

Respondent

**THE STANDARD BANK OF SOUTH AFRICA  
LIMITED**

Intervening Creditor

---

**JUDGMENT**

---

## POTTERILL J

- [1] The applicant, Mr. Slippers (“Slippers”) is applying under case numbers 83412/17, 83413/17 and 83414/17 for respectively Ingogo Wildlife Studio and Taxidermy CC, Ingogo Wildsplaas CC and Ingogo Safaris CC (collectively herein referred to as the CC’s), to be placed under supervision in terms of business rescue proceedings as provided for in Chapter 6 of the Companies Act 71 of 2008 (“the Companies Act”) read with section 66(1)(A) of the Close Corporations Act 69 of 1984. Further ancillary relief is also sought.
- [2] The respondent, The Standard Bank of South Africa Limited (“the Standard Bank”) in all three matters is an intervening creditor and an affected person as envisioned in terms of section 129(1) of the Companies Act.

### Background as set out in the common cause facts

- [3] In the High Court of South Africa, Limpopo Division, Polokwane, there are pending liquidation proceedings against the three CC’s herein as well as sequestration proceedings against Slippers and the trustees of the Walter Slippers Family Trust. These proceedings were postponed and on the next hearing date the applications for business rescue were served shortly before argument on liquidation and sequestration proceedings were to commence. The liquidation and sequestration proceedings were postponed for finalisation of these proceedings. Standard Bank has begrudgingly conceded to the jurisdiction of this court despite the pending liquidations in the Limpopo Division, Polokwane, in order to avoid further postponements. The applications were not filed in the Limpopo Division, but filed in

this Division apparently due to Slippers moving to the Western Cape and the address of his business partner clothes this court with jurisdiction.

- [4] Slippers is the sole member of the three CC's. Slippers is a trustee of the Trust. Slippers, the Trust and the CC's all are indebted to Standard Bank as co-principal debtors and/or sureties. Slippers manages and controls the business conducted as a restaurant and nursery, a water bottling plant, a crocodile breeding farm, a lion breeding farm, a hunting enterprise, a taxidermy studio and a property holding.
- [5] Slippers is indebted to Standard Bank in excess of R12 million. The CC's were unable to pay their creditors, their claims during the past 18 months. The CC's are not commercially solvent.

The CC's are financially distressed

- [6] Grounds set out for these applications are that the CC's are financially distressed. The CC's had failed to pay over amounts due and payable to Standard Bank. There is no prospect that the CC's will be able to pay all its debts as it become due and payable within the immediately ensuing six months.<sup>1</sup> Although the CC's appear to be factually solvent i.e. that the value of its assets, at face value, exceeds its debts, the CC's are unable to satisfy the debt due and payable to Standard Bank. It is thus commercially insolvent for liquidation purposes and financially distressed within the contemplation of section 131(4)(a)(i) of the Companies Act.
- [7] The reason for the CC's present state of affairs is that Slippers on 16 November 2015 suffered a stroke that left him unable to function. Slippers was unable to

---

<sup>1</sup> Section 128(1)(f)(i) of the Companies Act

attend to the business of the CC's until the winter of 2016. The business of the CC's suffered because they were without his hands on approach. Since his return to the businesses the income generated is reflected as an upward trend. It is however common cause that the CC's are commercially insolvent and cannot pay Standard Bank the debt due and payable.

- [8] The business rescue applications are premised on the fact that the business activity of the CC's, the Trust and Slippers personally cannot exist independently of each other and that the commercial failure and insolvency of one entity impacts materially on the others. To repay Standard Bank Slippers has attempted to sell the CC's and its related entities because that would constitute the most efficient way to generate the amount required to settle the Standard Bank claim. To this end Slippers has attempted to sell the business activities as a unit. Slippers has however been unsuccessful in doing same.
- [9] Slippers has now embarked on a programme to sell certain components and assets of the business activities in an attempt to pay Standard Bank. Slippers has attempted to sell the land owned by the Trust to the Municipality of Blouberg. This did not transpire. He was to receive an amount of R4.2 million from the sales of shares which amount he would have paid to Standard Bank during December 2017 to January 2018. This has not transpired.
- [10] It is averred that a business rescue practitioner will be able to devise a detailed plan. This will not only benefit the CC's and the Bank, but also will secure the 20 employees' income working for these entities. The loss of the employees of their income renders the applications to be granted just and equitable.

Are there reasonable prospects that the CC's can be rehabilitated to solvency?

[11] This court must exercise its discretion on whether there is a reasonable prospect for rescuing the company, it either can reasonably be rescued or it can't; thus a value judgment.<sup>2</sup>

[12] Section 128(1)(b) provides as follows:

*"Business rescue" means proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for —*

- (i) the temporary supervision of the company, and of the management of its affairs, business and property;*
- (ii) a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and*
- (iii) the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company;"*

---

<sup>2</sup> *Oakdene Square Properties v Farm Bothasfontein* [2013] 3 All SA 303 (SCA) par [21]

Section 128(1)(b) thus requires that business rescue must facilitate a rehabilitation.

Rehabilitation has one of two goals; one to return the company to solvency or to provide a better deal for creditors and shareholders than what they would have received through liquidation.<sup>3</sup>

[13] The prospects of a rehabilitation must be reasonable. A mere speculation or arguable possibility is not sufficient; there must be a reasonable prospect based on reasonable grounds.

[14] In this matter there is no ground or facts set out as to why this application would provide a better deal for creditors and shareholders than what they would receive through liquidation. The Court accepts that business rescue would not provide a better deal for Standard Bank than it would receive through liquidation. This application thus hinges only on the business rescue plan to return the CC's to solvency.

[15] On Slipper's version the commercial insolvency of the CC's is due to the fact that he had a hands on approach on the businesses until the awful fate of a stroke. Yet, he now lives in the Western Cape. There is no explanation as to how, him still not having a hands on approach, will bring the business back to solvency. The application is completely silent as to what has caused the CC's to generate more income, but still wholly insufficient income to pay the debt due and payable to Standard Bank and how this income could be boosted. There is not a single fact set out on which a practitioner could devise a plan to rehabilitate the CC's. The only factual evidence to rehabilitate the CC's is the selling of the businesses and/or the

---

<sup>3</sup> *Oakdene supra* par [26]

assets of the CC's. This has however not transpired, despite numerous attempts, until the day of the hearing i.e. now middle April 2019. There are no facts set out as to why the selling by a business rescue practitioner would derive greater proceeds in favour of the creditors as opposed to liquidation and sequestration of the relevant CC's and entities. The submission by Standard Bank that the business rescue applications are just a play for time to derail the pending liquidation and sequestration applications, under these circumstances, is a valid argument.

- [16] These applications are *per excellence* examples as to how applications for business rescue should not be put before court. The applications lack any urgency, method, facts or sincere intention reflected in a plan to rehabilitate the CC's; the applications' intentions are just to delay the inevitable. Slippers did not establish grounds for the reasonable prospects of achieving the rehabilitation of the CC's to solvency.

Can the applications be granted because it would be just and equitable for financial reasons?

- [17] I cannot find it otherwise just and equitable to grant the business rescue application for financial reasons and there is simply no prospects for rehabilitation of the companies. In our economy it is always sad when jobs are lost and business rescue has as one of its aims to prevent such loss, but these jobs cannot be saved for financial reasons because there is simply no reasonable prospect for rehabilitation of the CC's.



[18] In summary thus, I am unconvinced that there is any reasonable prospect of the CC's being rehabilitated to solvency or that there is a reasonable prospect that it would be just and equitable to do so for financial reasons.

[19] In the circumstances the applications for business rescue must fail and a provisional winding-up order must follow as necessary.<sup>4</sup>

[20] I accordingly mark the draft orders as "X1", "X2" and "X3" and they are made an order of court.

---

**S. POTTERILL**

**JUDGE OF THE HIGH COURT**

---

<sup>4</sup> Section 131(1)(b); *Essa v Bestvest* 2012 (5) SA 497 (WCC)

CASE NO: 83412/17, 83413/17 and 83414/17

HEARD ON: 17 April 2019

FOR THE APPLICANT: ADV. F.W. BOTES SC

INSTRUCTED BY: Machobane Kriel Inc.

FOR THE INTERVENING CREDITOR: ADV. B.H. SWART SC

ADV. J.P. VAN DEN BERG

INSTRUCTED BY: Adams & Adams

DATE OF JUDGMENT: 26 April 2019