IN THE HIGH COURT OF SOUTH AFRICA
[WESTERN CAPE DIVISION, CAPE TOWN]

Case no: 12698/22

In the matter between:

CLYNTON HUGH MARKS	First applicant
HENRY ROBERT HONIBALL	Second applicant
and	
HERMAN BESTER	First respondent
ADRIAAN WILLEM VAN ROOYEN	Second respondent
CHRISTOPHER JAMES ROOS	Third respondent
JACOLIEN FRIEDA BARNARD	Fourth respondent
DEIDRE BASSON	Fifth respondent
CHAVONNE BADENHORST ST CLAIR COOPER	Sixth respondent
MIRROR TRADING INTERNATIONAL (PTY) LTD (In liquidation)	Seventh respondent
THE MASTER OF THE HIGH COURT, CAPE TOWN	Eighth respondent
and	
THE SOUTH AFRICAN REVENUE SERVICE	Intervening applicant

JUDGMENT DELIVERED (VIA EMAIL) ON 13 MARCH 2024

SHER, J:

1. The applicants seek an order removing the 1st to 6th respondent ('the respondents') from their position as liquidators of the 7th respondent, Mirror Trading International (Pty) Ltd ('MTI'), a company that operated as an internet-based cryptocurrency 'club', which pooled investor members' cryptocurrency and traded with it in speculative investments.
2. MTI was placed under provisional liquidation on 29 December 2020. A final order was granted on 30 June 2021. It is one of the largest insolvencies in SA to date: more than R 1 billion worth of bitcoin was held by the company on liquidation.
3. Pursuant to an application which the respondents launched,[1] on 26 April 2023 MTI's business model was declared[2] to have been an unlawful multi-level marketing, or so-called 'pyramid/Ponzi', scheme.

The background

4. The 2nd applicant is a creditor who joined the 1st applicant in the application. The 1st applicant claims to be a 50% shareholder of MTI together with one Steynberg, its sole director and CEO, who fled to Brazil when the scheme collapsed. Steynberg is currently being sought by the authorities for extradition to SA. The 1st applicant strenuously opposed the liquidation of MTI and sought to appoint himself as a director, for this purpose, in Steynberg's absence. He also claims to be a creditor of the company to the tune of R 135.5 million odd in respect of bitcoin and other cryptocurrencies which he 'loaned' to it, in order that it could repay investors when they tried to recoup their investments.
5. The respondents aver that together with Steynberg the 1st applicant was complicit in a massive, fraudulent scheme which the company operated, which resulted in thousands of investors being defrauded of their cryptocurrency. They deny that he is a shareholder of the company and that it is indebted to him in respect of any 'loan' of cryptocurrency. They aver that the bitcoin which he 'loaned' to the company did not belong to him and was merely 'round-tripped' bitcoin which the 1st applicant had previously misappropriated from investors, which he returned to

[1] Under case number 15426/21.
[2] In *Bester & Ors v Mirror Trading International (Pty) Ltd (in liquidation)* [2023] ZAWCHC 83; [2023] 3 All SA 101 (WCC); 2024 (1) SA 112 (WCC).

the company. The respondents contend that the 1st applicant is in fact one of the principal debtors of MTI, owing it millions.

The applicants' case

6. In the founding affidavit the 1st applicant alleged that the respondents had breached their fiduciary duties towards creditors and interested parties, as they had been 'dishonest' about the nature of a claim to the value of R 6 255 802[3] which MTI proved against a related entity in liquidation, JNX Online (Pty) Ltd (which was placed in final liquidation at the instance of the respondents on 31 August 2021 by order of the Limpopo High Court [4]), and had shown 'clear' bias in their treatment of the claims of 'real' creditors in the insolvent estate of MTI. The respondents were also accused of being guilty of a serious dereliction of duty in relation to the due and proper administration of the estate of MTI.

7. In amplifying these grounds 1st applicant alleged that the respondents 'stood by' whilst the Master laboured under a misapprehension as to the validity of an alleged 'counterclaim' in the amount of R 7 190 930, which the liquidators of JNX had in turn proved at a meeting of creditors of MTI, on 4 February 2022, which claim the respondents knew was fraudulent. They had allowed it to be submitted for proof before the Master because they had a 'personal' interest in it, and they 'engineered' a conflict of interest in relation to the competing claims which JNX and MTI had against one another.

8. According to the applicants, the respondents deliberately allowed the 'false' JNX claim to be admitted to proof, while motivating that the claims of 'real' creditors (including the claim of the 1st applicant) should be rejected by the Master, in order that they could then have a host of self-serving resolutions passed at the instance of JNX, an entity which they knew was not a true creditor, to the exclusion of those who were. This was done to 'entrench' the respondents' position as liquidators. Thus, the respondents had manipulated the process and

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[3] The applicants contend that this amount represents the difference between an amount of R 13 446 733 which JNX was paid by an entity known as Duppa & Duppa (as consideration for the purchase of bitcoin) and an amount of R 7 190 930, which was paid by JNX to cover expenses owing by MTI.

[4] Under case no. 5517/21.

had breached their fiduciary duties, which demonstrated their dishonesty and bias.

9. The applicants contended that the respondents should have subjected the JNX claim to scrutiny and interrogation before allowing it to be admitted to proof. They had been inconsistent and biased in their treatment of claims: whilst the 'false' JNX claim was not contested and was allowed to be admitted to proof on its mere production, the claims of 'real' creditors were rejected outright, such as in the case of the 1st applicant, who the respondents had subpoenaed [5] to testify in relation to his claim at an enquiry before the Master, on 11 and 12 October 2022.

10. The applicants alleged an improper, personal conflict of interest was present because the liquidators of JNX, Ismail Dilshad and Elizna Lourens, were not independent and were closely connected to the respondents: Lourens was a director of Tygerberg Trustees (a company that has its principal place of business in Bellville, Cape Town), together with the 1st respondent, and Dilshad and the 5th respondent were employed by the Tshwane Trust Co. (which has its offices in Tshwane, Gauteng). These close connections resulted in a reasonable apprehension of bias.

11. As far as the respondents' alleged failure to properly administer the estate of MTI was concerned, the principal complaint which the applicants advanced was that the respondents had failed to file the company's tax returns for the 2020-2021 tax years, which had triggered an audit by SARS, which in turn resulted in an assessment of taxes owing in the amount of R 931 million odd: R 350 million in respect of taxes due, R 580 million in respect of penalties and approximately R 1 million in lieu of interest. By their negligence the respondents had therefore prejudiced the interests of creditors, as more than half of the R 1 billion in funds which was available to MTI would have to be paid over to SARS in lieu of taxes.

12. The applicants accordingly submitted that the respondents had demonstrated they were incapable of dealing with MTI's affairs with the requisite know-how and dedication and were wholly unfit for the task.

The respondents' case

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[5] In terms of s 44(7) of the Insolvency Act 24 of 1936.

13. The respondents filed a comprehensive answering affidavit, in which they dealt, at some length, with each of the allegations which were made by the applicants as to their alleged improper conduct.

14. They averred, at the outset, that the application was an abuse of process: both as to a lack of any urgency and as to its aims and objectives. They pointed out that the applicants had previously brought the same application for their removal, on an urgent basis, which they had set down 3 days before the hearing of the application to declare the business of MTI an unlawful Ponzi scheme. That application (which was in two parts viz part A for an interim interdict and part B for substantive relief), had resulted in several postponements and undue delay in the hearing of the application for the declarator, but was never moved. It was instead withdrawn in parts: part A on 31 May 2022 and part B on 29 July 2022 respectively, on which date the current application was filed in its place. The withdrawal was accompanied by punitive costs orders against the applicants on the attorney-client scale, which included the costs of two counsel.

15. The respondents submitted that the applicants had unreasonably and unduly delayed in coming to Court on the second application, and it was vexatious. Although the provisional winding-up order was granted in July 2021 and the applicants knew of the JNX claim already in September 2021, and the statutory report of the liquidators as to the company's affairs was published in November 2021, the applicants waited until July 2022 before launching the application, and it was no coincidence that the date on which they set it down for hearing coincided with the dates when the 1st applicant was due to be interrogated, in October 2022. The application was therefore *mala fide* and had been brought simply to frustrate the winding-up process and to prevent the 1st applicant's proposed interrogation. When the application was brought, the applicants must have known that it would be resisted on the very same grounds that the previous application had been resisted, and they must surely have known that there would be material disputes of fact which, as in the case of the previous application, were not capable of being determined on the papers. This alone justified that the application should be dismissed.

16. As to the 1st applicant's *locus standi* the respondents were of the view that in all likelihood he was neither a shareholder nor a creditor of MTI. No share certificates evidencing his shareholding were produced at the time when the company went into liquidation, and the ones that were subsequently produced were suspect: they were not signed by the company secretary but by Steynberg, and the share register appeared to have been manipulated by the 1st applicant, who had purportedly made entries therein in his favour, as a 'director', after the provisional winding-up order had been obtained. In this regard the resolution which was allegedly adopted by Steynberg and the 1st applicant, whereby he was appointed as a director, appeared to have been taken when Steynberg had already left the country. A second share register which was compiled after a s 417 enquiry had been held was also problematic as it reflected different dates and a different number of shares which had allegedly been allocated to the 1st applicant.

17. As to the 1st applicant's alleged status as a creditor, this too was placed into question by the respondents. They pointed out that he was the former head of MTI's so-called 'referral' program, and his wife was the company's head of communications and marketing, and both were paid extensive 'referral' bonuses for each for the investments that were made by investors who ranked below them in the 'pyramid' scheme. From the company's records it appeared that whereas the 1st applicant had only deposited 21 984 bitcoins into the MTI pool, he had withdrawn in the order of 219 719 bitcoins from it to the value of R 74.9 million, thereby making a profit, to the detriment of investors, of over R 65 million. The 1st applicant was therefore indebted to the company for over R 67 million in total and an action had been instituted against him for a declarator holding him liable for payment of an amount of R 4.6 billion in lieu of damages.

18. As for the 400 bitcoins he allegedly loaned to the company between October and December 2020 in terms of an oral agreement, forensic examiners and cybercrime investigators had found no records in MTI's databases of any such transaction and the 1st applicant had been unable to provide any binance account statements which proved that he had acquired the bitcoins from a crypto

exchange or a 3rd party. Furthermore, the investigators had established that the 1st applicant had transferred bitcoins to Steynberg, and not to the company.

19. As for the complaint that the respondents had acted unfairly by not permitting the 1st applicant's claim, as a 'real' creditor, to be put to the proof at the meeting of creditors, the respondents pointed out that the claim had been rejected by the Master twice before, at previous creditors' meetings, and this was the 3rd time the 1st applicant sought to have it admitted. Although the 1st applicant agreed to testify in support of the claim, an offer which was welcomed by the liquidators, he later retracted this and had as yet not submitted the necessary documentary proof in support of his claim, and he was unable to provide any evidence as to the source of the bitcoins which he allegedly 'loaned' to the company.

20. As to the complaints which were raised by the applicants in relation to the JNX claim, the respondents denied that it was either false or fraudulent, or that they had stood by whilst it was admitted to proof, when it should not have been. They pointed out that evidence supporting JNX's claim against MTI had been produced[6] in testimony before a Commissioner (Fabricius J), and Lourens, one of the liquidators of JNX, had ascertained from its records and bank statements that it held a loan account with MTI, which reflected that MTI was indebted to it in the amount of the claim which was admitted to proof. All the creditors had participated in the meeting on 4 February 2022, which was open to the public, and the legal representatives that attended had represented thousands of investors. The applicants' senior counsel had not raised any objection to the JNX claim at the time when it was presented to the creditors in meeting and had not called for an examination of it, as was allowed for in the Act.[7]

21. From what the respondents were able to ascertain JNX's case was that it had advanced monies to MTI, by paying certain of its expenses, as was recorded in the accounting records of both JNX and MTI, which reflected that they had competing claims against one another. Whether the claims were valid still had to be investigated and determined by the liquidators. In this regard, in terms of s 45 of the Insolvency Act the Master was required to deliver to the liquidators every

[6] By one Du Plessis of Duppa & Duppa and a 'bookkeeper', one Kritzinger.
[7] Section 44(7).

claim which had been proved at a meeting of creditors, together with every document which was submitted in support thereof, *whereafter* the liquidators were enjoined to examine the available books and records of the company in liquidation in order to ascertain whether it in fact owed the amount(s) claimed. Thus, there was no obligation on a liquidator to verify that a claim which was submitted to a meeting of creditors, by a creditor, was authentic, before it was admitted to proof, and it was settled law that the mere admission to proof of a claim at a meeting of creditors did not 'ratify' it or make it '*res judicata'*.[8] As a matter of law liquidators were entitled to dispute the validity of any claim that had been proved at a meeting of creditors, in which case the Master could either uphold the claim or reduce or disallow it.

22. The respondents were in the process of establishing the legitimacy and validity of the competing claims of MTI and JNX which had been proved at creditors' meetings, and whether they could be set off against one another, and had subpoenaed many of the parties to whom payments had allegedly been made by JNX on behalf of MTI, to give evidence, so that it could be determined whether or not JNX had a valid claim against MTI, or had simply existed as a conduit for it.

23. As for the resolutions which were passed after the JNX claim had been admitted to proof, these were standard, run-of-the-mill resolutions which were normally passed at such a meeting of creditors. The liquidators' powers had already previously been extended by order of court.

24. In regard to the alleged close connection and conflict of interest between the liquidators of JNX and MTI, the respondents pointed out that Dilshad had been selected and appointed by the Master and was neither a director nor an employee of the Tshwane Trust Co. and although Lourens and Bester were both employed by the same corporate entity Lourens was based at its offices in Pretoria, whilst Bester had offices in Cape Town, and both operated completely independently of one another, as liquidators, for and in respect of the respective entities they had been appointed to wind up.

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[8] *Standard Bank of SA v The Master of the High Court & Ors* 2010 (4) SA 405 (SCA) para 93.

25. In matters involving MTI the respondents acted collectively, as a group, and there were extensive control measures in place to avoid any potential conflict of interest between them and MTI, or between themselves.

26. As for the alleged failure to properly administer the tax affairs of MTI, the respondents pointed out that the company had not kept proper financial and accounting records from the time of its start-up to the date of its liquidation, and when the respondents took over as liquidators they found the company in a completely dysfunctional state: there were no corporate governance structures in place and Steynberg had fled the country.

27. As sole director Steynberg had failed to attend to the filing of the necessary tax returns for the preceding 2020 and 2021 tax years. The respondents had to carry out extensive and time-consuming investigations into the company's affairs to unravel what had happened. These enquiries included interviewing hundreds of witnesses and employing forensic experts to retrieve and analyze the company's electronic client database. The respondents had to cause the company's 'books' to be reconstructed and written up, an extremely time-consuming and difficult exercise, as bitcoins can be fractionalized and passed through mixed accounts and then distributed via the block chain ledger system.

28. As the winding-up was opposed by the applicants the final liquidation order was only granted on 22 June 2021. Notwithstanding this, the respondents engaged with SARS immediately after they were appointed and applied to it for an extension for the fling of the tax returns. They assisted SARS by making available to it the services of forensic investigators and digital experts they had engaged, for the purpose of the audit which SARS wished to carry out, which commenced in July 2021. Although the outcome of SARS audits are normally communicated to the parties who are the subject thereof and they are given an opportunity to consider and to respond to their findings, when the audit was concluded in June 2022 SARS did not afford the respondents such an opportunity and proceeded directly to raise an assessment of a tax liability of R 931 million, and a claim in this amount was lodged and admitted to proof at a

meeting of creditors on 22 June 2022, some 8 days after the audit was concluded.

29. On 22 August 2022 the respondents informed SARS that the claim was being examined in terms of s 45(2) of the Act and proposed that the parties should engage one another with a view to an exchange of information, in order that the claim could be properly evaluated and the necessary tax returns for the 2020 and 2021 tax years could be lodged. This was acceded to, and the returns were duly filed on 28 October 2022.

30. After extensive discussions and negotiations between the parties and after having obtained legal and specialist tax advice, the respondents made an offer of provisional settlement of the company's tax liability which was accepted by SARS on 25 April 2023 in an amount, in total (inclusive of penalties and interest) of R 283 428 110. Subsequent to the settlement the respondents made application to the Court [9] for approval thereof.[10] A rule *nisi* was granted on 23 May 2023 which was made final on 2 November 2023.

31. In the circumstances the respondents denied that they had been remiss in any way in relation to the company's tax affairs. They pointed out that until the records had been reconstructed and the SARS audit had been concluded, with the assistance of the forensic experts which they had engaged, it had not been possible for them to prepare and file proper and compliant tax returns.

The law

32. It has been held that the removal of a liquidator is an 'extreme step' [11] and a 'radical form of relief'[12] which will not be granted unless the Court is satisfied that a proper case for it has been made out. In considering such an application the Court must assess the conduct of the liquidator in its 'full' context with reference to all relevant facts and circumstances, and must be satisfied that the removal of the liquidator will be to the general advantage of all parties interested in the

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[9] Under case no. 7682/23.
[10] In terms of s 387(3) of the Companies Act.
[11] *Standard Bank* n 8 para 135.
[12] *Ma-Afrika Groepbelange (Pty) Ltd & Ano v Millman & Powel NNO & Ano* 1997 (1) SA 547 (C) at 566B.

winding-up.[13] The relevant factors to be taken into account include the expense which will be incurred and the inconvenience which will be suffered in having to appoint a replacement, and the stage at which the application has been brought: a Court will be less inclined to remove a liquidator at a late stage in the winding-up process.[14]

33. Section 379 of the Companies Act[15] sets out various grounds on which liquidators may be removed from office by a Court. For the purposes of this application the pertinent ones include a failure to satisfactorily perform any duty which has been imposed on them, or because they are no longer suitable to act as liquidators, or for any other 'good cause'.[16]

34. As far as 'good cause' is concerned, as was pointed out in an extensive review of the English and SA case law in *Ma-Afrika* [17] this has been interpreted to mean 'sufficient grounds' for removal and is not confined to instances of misconduct or personal unfitness. Thus, there will be sufficient cause for the removal of a liquidator where it is shown that it will be to the advantage of the parties interested in the liquidation.[18] To this end, the cause must be 'measured' by reference to the 'real, substantial (and) honest' interests of the liquidation.[19]

35. 'Good cause' for the removal of a liquidator will also be present where he/she has not been independent in the discharge of their duty or has allowed their personal or professional interests to conflict therewith. In this regard a liquidator is required to maintain an 'even and impartial hand'[20] between parties to the liquidation i.e. should have no 'leaning' for or against any of them and should not side with a party or faction in any dispute and should be detached, independent and impartial in their dealings.

36. The fact that a liquidator has a fiduciary duty towards the company in insolvency does not mean that he/she can always be 'even-handed' and there may be

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[13] Id, 566C-D.
[14] Id, 566E.
[15] Act 61 of 1973.
[16] Section 379(2) rtw ss 379(1)(b) and (e).
[17] Note 12.
[18] Id, 561D-E.
[19] Id, 561F.
[20] Id, 562A-B.

instances where they are obliged, should the occasion warrant it, to dispute a creditor's claim or to impeach a transaction which took place.[21] In such circumstances a creditor cannot object to the liquidator's conduct on the grounds of a perception of bias,[22] and the liquidator may only be removed on this basis if there is 'sufficient suspicion' of partiality or a conflict of interest. [23] In this regard a Court may remove a liquidator if there is evidence that he/she is in a position of actual or apparent conflict of interest because of some relationship, direct or indirect, with the company, its management, or any person concerned in its affairs.

37. Simple complaints or allegations of a perception of bias, partiality, lack of independence or unfairness without more, will therefore not suffice, nor will it ordinarily be sufficient to show simply that the liquidator made questionable decisions or committed errors of judgement. Whilst these deficiencies may point to a lack of competence or experience, they will not necessarily constitute good or sufficient cause to justify the removal of a liquidator.[24]

An assessment

38. It is trite that on aspects on which there are disputes of fact these are to be determined on the respondents' version, on the basis of the principle which was laid down in *Plascon-Evans*,[25] unless the version is so far-fetched, improbable or untenable that it falls to be rejected out of hand.[26] On the papers before me that is clearly not the case. The explanations which the respondents put up for the admission to proof of the competing claims in the insolvent estates of JNX and MTI are cogent and do not demonstrate that there was any conflict of interest in the handling of such claims, or that the respondents lacked the necessary independence or partiality required in dealing with them.

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[21] Id, 565C citing *Receiver of Revenue, Port Elizabeth v Jeeva & Ors; Klerck & Ors NNO v Jeeva & Ors* 1996 (2) SA 573 (A) at 579F-G.
[22] Id.
[23] *Hudson & Ors NNO v Wilkins NO & Ors* 2003 (6) SA 234 (T) para 13.
[24] *Ma-Afrika* n 12 at 566B-C.
[25] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).
[26] Id, at 634E-635C; *Wightman t/a JW Construction v HeadFour (Pty) Ltd & Ano* 2008 (3) SA 371 (SCA) para 12.

39. Nor has it been shown that the respondents demonstrated any bias or undue preference in their treatment of creditors' claims. Given the accusations which have been levelled at the 1st applicant as to his alleged complicity in a multi-billion Rand fraudulent Ponzi scheme, the respondents would have failed to have acted properly in the discharge of their fiduciary duties had they allowed his claim of R135 million odd to be admitted to proof on his simple say-so, without a shred of supporting evidence, and they were entirely correct and prudent in requiring that it be subjected to interrogation. In contrast to this, the claim which was put forward by the JNX liquidators was properly allowed to be admitted to proof as it was one which was based on the accounting records of both JNX and MTI and certain evidence which was presented before a Commissioner. The fact that it was admitted to proof does not mean that the respondents were dishonest or negligent in any way in their dealings with it: as they point out they are currently in the process of establishing the veracity and legitimacy of the claim, as well as of the claim which MTI proved against JNX.

40. Similarly, as for the respondents' alleged failure to properly attend to the due and proper administration of the estate of MTI either generally, or specifically, in regard to its tax affairs, there is likewise also no basis to arrive at a finding that the respondents were remiss or that they failed in the discharge of their duties. In this regard the complaint that they failed to file tax returns is particularly inappropriate. It was the company's duty and that of its sole director Steynberg to ensure that proper accounting and financial records were kept, from the time it started trading, and it was their duty to ensure that tax returns were prepared and filed.

41. As was previously pointed out the company was placed in provisional liquidation in December 2020. The 1st to 5th respondents were only appointed as provisional liquidators by the Master on 29 January 2021.

42. As sole director Steynberg should have ensured that the 2020 and 2021 tax returns were filed and the tax that was due was paid. The applicants strenuously opposed the company being placed in final liquidation, and an order in this regard was only made at the end of June 2021, shortly before the SARS audit

got underway. On 11 November 2021 the 1st to 5th respondents were appointed as final liquidators, together with the 6th respondent.

43. As was previously pointed out MTI's financial and accounting records were either non-existent or in complete shambles when the respondents took over, and the company's books of account had to be written up. In such circumstances until the records had been properly reconstructed with the help of forensic and digital experts, and the results of the SARS audit (which was carried out with the assistance of the forensic experts which the respondents engaged) were made known, the respondents were hardly able to file proper and compliant tax returns. They did so in October 2022, within a matter of months after the audit was concluded, after engaging SARS in a mutual exchange of information. In the circumstances, in my view it cannot be said that the respondents were remiss. In fact, if anything, by properly examining SARS' R 931 million tax claim and contesting aspects of it the respondents succeeded in reducing and settling the company's tax liability to an agreed sum of R 238 million (inclusive of penalties and interest), a figure which is approximately 25% of that which SARS originally sought to claim. In doing so, the respondents clearly acted in the best interests of the insolvent company and the general body of creditors.

Conclusion

44. In my view, for the aforegoing reasons the allegations of impropriety which were levelled at the respondents have been shown to be wholly without substance and the applicants have failed to show good and sufficient cause for the removal of the respondents as liquidators. Even if there were to be some merit in the complaints which the applicants raised, in my view given the length of time that the company has been in winding-up and the considerable expense that has been incurred, as well as the considerable work which has been done by the liquidators to date (more than 154 witnesses have been questioned in enquiries before 2 Commissioners (a retired judge and a magistrate), more than 60 summonses have been issued and various anti-dissipation applications have been brought, and the respondents have participated in numerous applications involving the company and the applicants and groups of investors), it would in

any event be wholly against the interests of creditors and interested parties for the respondents to be removed from their positions at this stage.

45. In the result, the application must be dismissed. As for costs, given the circumstances previously outlined as to how the application came to be brought (as a matter of urgency when it was clearly not urgent, on grounds similar those which were raised and refuted in a prior application, which was withdrawn after the respondents filed their answering papers thereto); it constituted an abuse of process which appears to have been motivated by a desire to avoid the 1st applicant from being subjected to an interrogation. This conclusion is substantiated by the fact that after the 1st applicant's interrogation could not be proceeded with in October 2022, because the application was still pending, the applicants took no steps to have the matter heard, and it was left to the respondents to do so.

46. In addition, a punitive costs order is warranted because the allegations of serious misconduct which the applicants levelled at the respondents in the papers unfairly impugned their integrity and maligned their professional reputations and were entirely spurious. The order must include the costs of the application by SARS to intervene in the dispute, which was necessitated by the complaint which was levelled at the respondents regarding their treatment of the company's tax affairs and its tax liability.

47. I make the following Order:

    47.1 The application is dismissed.

    47.2 The applicants shall be liable jointly and severally (the one paying the other to be absolved) for the costs of the application (including the costs of the interlocutory application by SARS to intervene), on the scale as between attorney and client, including the costs of two counsel where so employed.

M SHER

Judge of the High Court

Appearances:
Applicants' counsel: JH Loots SC & PS Bothma
Applicants' attorneys: Selzer Law (Durban)
First-Sixth respondents' counsel: SC Kirk-Cohen SC & R Fitzgerald
First-Sixth respondents' attorneys: Tintingers Inc (Tshwane)
Intervening applicant's counsel: GW Woodland SC & KD Magano
Intervening applicant's attorneys: Diale Mogashoa Attorneys (Tshwane)