REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NUMBER: 2024-091091

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

In the matter between:

PETER SCHNEIDER **APPLICANT**
(Identity Number: 400324 5064 183)

and

P & G SCHNEIDER FAMILY HOLDINGS (PTY) LTD **FIRST RESPONDENT**
(Registration number: 1984/000823/07)

AFRO GOLF (PTY) LTD **SECOND RESPONDENT**
(Registration number: 1992/003059/07)

GERDA SCHNEIDER **THIRD RESPONDENT**
(Identity Number: 440515 0051 180)

UWE SCHNEIDER **FOURTH RESPONDENT**
(Identity Number: 741225 5118 085)

P & G SCHNEIDER FAMILY TRUST **FIFTH RESPONDENT**

(Trust Registration Number: IT338/1984)

JUDGMENT

TISANI, AJ

Introduction

[1] The present application is for the dissolution of solvent companies. The main protagonists are family members (father, mother and son), co – directors of family companies, and co – trustees of a family trust, and who in the midst of this application, still reside together at the same homestead together with grandchildren of the family. The subject matter companies, and the related family trust, were established several decades ago to protect, further and advance the wealth and interests of the Schneider family, and their descendants. The present application, and the underlying dispute, are a tragedy which this Court has deliberated over at length.

[2] The Applicant, Peter Schneider (*Mr Schneider*) has brought an application in terms of sections 81(1)(d) of the 2008 *Companies Act*[1] (Companies Act), read with Section 344(h) of the 1973 Companies Act[2], in terms of which he seeks the final winding up of both the First Respondent, P&G Family Holdings (Pty) Ltd (hereafter *Family Holdings*), and the Second Respondent, Afro Golf (Pty) Ltd (hereafter *Afro Golf*).

[3] The legal basis of the application is that Mr Schneider asserts that owing to the irredeemably broken relationship between himself and the Third and Fourth Respondents in particular, there is a deadlock in the administration of Family Holdings and Afro Golf, and that it would be just and equitable for the companies to be dissolved.

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[1] Act 71 of 2008.
[2] Act 61 of 1973.

[4] Family Holdings, Afro Golf, the Third Respondent, Gerda Schneider (*Mrs Schneider*), the Fourth Respondent, Uwe Schneider, and the Fifth Respondent P&G Schneider Family Trust (hereafter *Family Trust*) oppose the relief sought by Mr Schneider.

[5] Family Holdings, Afro Golf, Mrs Schneider, Uwe Schneider and the Family Trust (hereafter collectively referred to as *the Respondents*) oppose the relief sought on the grounds that the relief sought is predicated on facts that are materially disputed – on grounds which are more fully set out below – and that there is neither a deadlock, nor would it be just and equitable for Family Holdings or Afro Golf to be dissolved.

Issues to be determined

[6] The issues to be determined before this Court are thus the following:

6.1 Condonation for the late filing of the Answering Affidavit;

6.2 Is there a deadlock in the administration of Family Holdings or Afro Golf within the meaning of s81(1)(d)(i) and (ii) of the Companies Act, such that they should be dissolved?

6.3 Are there otherwise just and equitable grounds on which Family Holdings or Afro Golf should be dissolved within the meaning of section 81(1)(d)(iii) of the Companies Act, read with section 344(h) of the 1973 Companies Act.

Background facts salient to the present application

[7] It should be stated at the outset that most of the material facts appear to be disputed. In this regard, the words of Appeal Justice Harms in the matter of *National Director of Public Prosecutions v Zuma*[3], are prescient:

[3] 2009 (2) SA 277 at para 26.

'Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's… affidavits, which have been admitted by the respondent…, together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers'

[8] It is a truism that motion proceedings are ill-suited to the resolution of disputes of fact, and where disputes of facts are anticipated motion proceedings should generally be avoided[4]. This consideration notwithstanding, the question of whether a factual dispute actually exists is not a discretionary decision but a question of fact and a jurisdictional pre-requisite[5]. The court is enjoined to examine the alleged disputes of fact and determine whether in truth there is a real dispute of fact that cannot be satisfactorily resolved with the aid of oral evidence[6]. In engaging in this exercise the court is nevertheless called upon to adopt a robust common sense approach in separating fictitious disputes of fact, implausible, fanciful or untenable versions, which can safely be dealt with on paper[7] – from genuine disputes of facts which stand to be referred to oral evidence and/or trial[8].

[9] With respect to the common cause facts, Family Holdings is a private company with limited liability duly incorporated in accordance with the company laws of the Republic of South Africa in 1984. Family Holdings has an issued share capital of

[4] Plascon Evans Limited v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A).
[5] Ismael v Durban City Council 1973 (2) SA 362 (N) at 374A – B.
[6] Wightman T/A JW Construction v Headfour (Pty) Ltd 2008 (3) SA 371 (SCA) at para 13.
[7] Truth Verification Testing Centre v PSE Truth Detection CC and others 1998 (2) SA 689 (W) at 698.
[8] Standard Bank of SA Limited v Neugarten 1987 (3) SA 695 (W) at 699.

20 (*twenty*) preference shares and 1 (*one*) ordinary share. 10 (*ten*) of the preference shares are held by Mr Schneider, and the other 10 (*ten*) preference shares are held by Mrs Schneider. The 1 (*one*) ordinary share is held by the Family Trust. Mr Schneider, Mrs Schneider and Uwe Schneider are the directors of Family Holdings. Family Holdings is a holding company structured to manage some of the business ventures assets and finances of the Schneider family and their related companies.

[10] Afro Golf is a private company with limited liability duly incorporated in accordance with the company laws of the Republic of South Africa in 1992. Afro Golf is a wholly owned subsidiary of Family Holding. Mr Schneider, Mrs Schneider and Uwe Schneider are the directors of Afro Golf. The primary asset previously held by Afro Golf was a lodge known as the White River Lodge. The White River Lodge was subsequently sold for an amount of R6 000 000 – 00 (*six million rand*). The circumstances of the sale, and the remaining cash assets and financial position of Afro Golf, are disputed between Mr Schneider and the Respondents as will be more fully set out below.

[11] There is a further company, Petrob Projects (Pty) Ltd a private company with limited liability duly incorporated in accordance with the company laws of the Republic of South Africa (hereafter referred to as *Petrob*). Petrob is a wholly owned subsidiary of Family Holdings. The directors of Petrob are Mrs Schneider and Uwe Schneider. Mr Schneider who had previously been a Director of Petrob resigned with effect from 01 October 2019. Petrob owns an office block in Ferndale Randburg ("the Ferndale Property"). The state of the physical assets, health of the operations, and financial position of the Ferndale property and Petrob are disputed between Mr Schneider and the Respondents.

[12] Family Trust is an *inter vivos* trust duly registered as such in terms of the laws governing the formation of trusts and the management and control of trust property. Mr Schneider, Mrs Schneider and Uwe Schneider are trustees of the trust. Ms Antje Schneider, the biological sister of Uwe Schneider and daughter of Mr and Mrs Schneider is also a trustee of Family Trust. Ms Antje Schneider was previously also a director of the Family Holdings prior to her resignation on

04 March 2024. The reasons for Antje Schneider's resignation are disputed between Mr Schneider and the Respondents. The fifth trustee of the family trust is Mr Duncan Fraser, an auditor who serves as the independent trustee on Family Trust.

[13] Mr and Mrs Schneider were married for approximately 56 years prior to their divorce on 09 February 2024. Uwe Schneider and Antje Schneider are the children of the marriage. The marital homestead is owned by Family Trust. Mr Schneider and Mrs Schneider reside at the marital homestead, albeit no longer as husband and wife. Uwe Schneider also resides at the marital homestead together with his two minor children, the grandchildren of Mr Schneider and Mrs Schneider.

[14] Mr Schneider in his founding and replying affidavit details a plethora of grievances pertaining to alleged instances of improper conduct by the Mrs Schneider and Uwe Schneider, namely that with respect to Family Holdings, Mr Schneider avers that he is being systematically excluded from effective decision making in the company and that decisions to which he is not in agreement are routinely taken often in his absence. Mr Schneider has on his version not received a proper accounting of the finances of Family Holdings and has only been presented with Financial Statements in their draft form since 2022.

[15] Mr Schneider is in particular aggrieved that he served as Managing Director and an employee of Family Holdings for which he was being remunerated. Subsequent to the finalisation of the divorce between Mr and Mrs Schneider in 2024, Mr Schneider avers that he was dismissed as an employee of Family Holding pursuant to a disciplinary process initiated by Mrs Schneider and Uwe Schneider which resulted in his dismissal in absentia on 28 March 2024. Aggrieved by his dismissal Mr Schneider approached the Commission for Conciliation Mediation and Arbitration (*CCMA*) in Johannesburg which resulted in an award being granted in his favour on 13 December 2024 in which the CCMA found that his termination as an employee of Family Holdings had been both procedurally and substantively unfair. The CCMA ordered the reinstatement of Mr Schneider, the payment of backpay in the amount of R133 136 – 97 (*one*

hundred and thirty-three thousand one hundred and thirty-six rand ninety-seven cents), and for Mr Schneider to tender his services to Family Holdings. Rather than accepting the CCMA award or indeed Mr Schneider's tender of services, Family Holdings at the behest of Mrs Schneider and Uwe Schneider have rejected the tender of services and have initiated review proceedings at the Labour Court.

[16] With respect to Afro Golf, Mr Schneider similarly complains of being systematically excluded from the governance of the company and to being sidelined in that decisions to which he does not approve are routinely taken in his absence by Mrs Schneider and Uwe Schneider.

[17] Mr Schneider is in particular concerned about the proceeds of the sale of the White River Lodge which was sold for the amount of R6 000 000 – 00 (*six million rand*). On Mr Schneider's version approximately R3 100 000 – 00 (*three million one hundred thousand rand*) was paid to Family Holdings as a dividend, and the remaining balance was kept as cash reserves within the Afro Golf account. Mr Schneider avers that he has not received any accounting for how these cash reserves have been spent, and in particular that he has not received or signed off on any financial statements in respect of Afro Golf. Worse still, Mr Schneider avers that monies from the proceeds of the sale of the White River Lodge have been siphoned off via Family Holdings to subsidise the commercial activities of Petrob.

[18] With respect to Petrob, Mr Schneider avers that the Ferndale Property is not being properly maintained, is in a poor physical and operational condition, and has a vacancy rate of approximately 60% (*sixty percent*). As a consequence of these glaring operational and management failures (on his version) Mr Schneider avers that Petrob is likely in a very poor financial state and as such is routinely being subsidised, contrary to his wishes, by Family Holdings. In the midst of this, is an irregular interest free vehicle loan that Mrs Schneider and Uwe Schneider authorised in favour of Petrob for the benefit of Uwe Schneider, contrary to the financial interests of both Petrob and Family Holdings. Mr Schneider further avers that there is no proper accounting of Petrob's financial position

notwithstanding that it is a wholly owned subsidiary of Family Holdings of which he is a director and shareholder.

[19] With respect to Family Trust, Mr Schneider avers that he is being systematically excluded from participating in the decision making process of Family Trust, and that he has not received a proper accounting of its financial affairs. This, Mr Schneider avers, negates any real opportunity for the trust to resolve the deadlock in the governance of Family Holdings and Afro Golf.

[20] These are very serious allegations, which merit careful scrutiny and interrogation – and warrant detailed and comprehensive responses from the Respondents.

[21] The Respondents raise procedural and substantive defences to the Applicant's allegations. From a procedural perspective, the Respondents dispute that there has been any attempt by Mr Schneider to make use of mediation as required by Rule 41A of the Uniform Rules of Court. The Respondents further take issue with the citation of Family Trust, and in particular aver that the trustees have not been properly cited as Respondents to the application. Finally, the Respondents aver that there has similarly not been proper service of the application, and in particular that Antje Schneider and Duncan Fraser have not been properly served with the application in their capacity as trustees

[22] With respect to the substantive defences to the averments contained in the founding affidavit, in substance the Respondents aver that with respect to Family Holdings, the Respondents deny that Mr Schneider is being excluded or sidelined from the management of the company and instead aver that Mr Schneider has largely withdrawn, at his own behest, from the active management of Family Holdings and largely contents himself with being informed of, and signing off on, resolutions taken by the active directors of Family Holdings. Indeed, the Respondents aver that Mr Schneider has not actively attended any directors' meeting since 2009.

[23] In so far as the financial statements of Family Holdings is concerned, the Respondents aver that the financial statements are sent by the auditors directly

to Mrs Schneider in her capacity as the Financial Director of Family Holdings. Mrs Schneider then in turn forwards such financial statements to all other directors of Family Holdings, including Mr Schneider.

[24] Finally with respect to the termination of Mr Schneider's employment, the Respondents aver that he was dismissed from his employment with Family Holdings on account of having misappropriated R150 000 – 00 (*one hundred and fifty thousand rand*) from the money market account of Family Holdings, and subsequently refused to repay the amounts owed notwithstanding its conversion into a loan account. The termination of Mr Schneider's employment (on the version of the Respondents) has no meaningful impact on the functioning of Family Holdings in that Mr Schneider was in any event not actively involved the operations of the company.

[25] Most pertinently, the Respondents deny that there could ever be a deadlock in the administration of Family Holdings in that firstly there has never been a formal directors meeting called by Mr Schneider to resolve any apparent deadlock to which any of the other directors have been non-responsive and/or uncooperative, and secondly there could in any event not be a deadlock of shareholders in that Family Trust being a shareholder of Family Holdings would be able to address, vote on and break any deadlock between the other shareholders of Family Holdings.

[26] With respect to Afro Golf, the Respondents deny that Mr Schneider has been sidelined or excluded from the governance of the company. In particular, the Respondents aver that Mr Schneider has never been actively involved in the day to day operations of Afro Golf, and that he has similarly at his own behest not actively participated in directors' meetings of Afro Golf. This averment notwithstanding, the Respondents rather incongruously aver that it was Mr Schneider who was primarily involved in the sale of the White River Lodge. The Respondents aver that the White River Lodge was valued at R18 000 000 – 00 (*eighteen million rand*) but that owing to the onset of the COVID pandemic Mr Schneider had a verbal mandate from Mrs Schneider and Uwe Schneider to negotiate a sale price of R12 000 000 – 00 (*twelve million rand*). This mandate

notwithstanding Mr Schneider negotiated for a sale price of R6 000 000 – 00 (*six million rand*). Further exacerbating the situation, the Respondents aver that Mr Schneider failed to disclose that the sale was achieved though the medium of an estate agent who subsequently litigated against Afro Golf in order to recover the agent's commission. The result was a settlement in the amount of R276 000.00 (*two hundred and seventy-six thousand rand*) which had to be further deducted from the R6 000 000 – 00 (*six million rand*) sale price.

[27] The Respondents further aver that Mr Schneider is not approaching the court with clean hands in respect to Afro Golf in that he has misappropriated monies from Afro Golf in order to settle legal fees arising out of the divorce proceedings with Mrs Schneider.

[28] Finally, with respect to accounting the Respondents aver that the financial statements of Afro Golf are prepared for and provided to all the directors of Afro Golf in a manner similar to how they are provided to directors of Family Holdings.

[29] With respect to Petrob, the Respondents aver that Mr Schneider has no active involvement in Petrob, having voluntarily resigned as a director on 01 October 2019. With respect to the physical state of the Ferndale property, the Respondents categorically deny that it is in a state of disrepair, and instead aver that there are long – term tenants who continue to be in occupation of the premises which would be incompatible with a building in a general state of disrepair.

[30] With respect to the operational challenges of Petrob, these (on the Respondent's version) arise from the dramatic collapse of the commercial property market during the period of the covid pandemic, and that there has only recently been an improvement in the general market conditions. The Respondents specifically aver that there has been no purchase offer which realistically reflects the true market value of the Ferndale Property, and that the financially responsible decision is to remain actively invested in the business in light of the improving market conditions.

[31] Finally with respect to Family Trust, the Respondents deny that there is any deadlock in Family Trust in that there are five trustees, two of whom (Ms Antja Schneider and Mr Duncan Fraser) are independent of any disputes existing between Mr Schneider Mrs Schneider and Uwe Schneider, and would be able to resolve any impasse pertaining to the functioning of the trust. Most pertinently, the Respondents aver that Mr Schneider has not made any attempts to utilise the trust structures to address any grievance he has with Family Trust, and more importantly to break any deadlock that is alleged to exist in the administration of Family Holdings and Afro Golf.

Condonation

[32] The Respondents' answering affidavit was due to have been filed by 01 November 2024 in terms of a court order issued by this Court per the Honourable Acting Justice Rangata on 11 October 2024. The answering affidavit was filed on 11 November 2024, six court days late. The grounds of condonation relied on by the Respondents are a bereavement sustained by Uwe Schneider occasioned by the untimely demise of his fiancé in late October 2024, and the illness of the Respondents' counsel in the week of 01 November 2024. The Respondents further aver that they have strong prospects on the merits of the matter which would justify this Court exercising its discretion to grant condonation.

[33] It is trite that the test for condonation is whether it is in the interest of justice, which requires the party seeking condonation to address the court on (a) the nature of the relief sought; (b) the importance of the issue to be raised (c) the extent and cause of the delay; (d) the reasonableness of the explanation for the delay; (e) the effect of the delay on the administration of justice and other litigants; (f) prospects of success[9].

[34] In the present instance, there is an entirely reasonable explanation for the delay, which is a delay of only 6 court days, and the delay has not been materially prejudicial either to the administration of justice or to Mr Schneider. Furthermore, the issues to be raised go to the very existence of the companies in question,

[9] Grootboom v National Prosecuting Authority 2014 (2) SA 68 (CC) at para 20 – 35.

and as will be more fully set out below there are prima facie serious and substantive defences to the main application. Condonation is accordingly granted in respect to the late filing of the answering affidavit.

Applicable law with respect to dissolution of a solvent company by order of court on grounds of deadlock:

[35] The relevant portion of Section 81 of the Companies Act reads as follows:

> *'(1) A court may order a solvent company to be wound up if-*
>
> *(a)…*
>
> *(b)…*
>
> *(c)…*
>
> *(d) the company, one or more directors or one or more shareholders have applied to the court for an order to wind up the company on the grounds that-*
>
> > *(i) the directors are deadlocked in the management of the company and the shareholders are unable to break the deadlock, and-*
> >
> > *(aa) irreparable injury to the company is resulting, or may result, from the deadlock; or*
> >
> > *(bb) the company's business cannot be conducted to the advantage of shareholders generally, as a result of the deadlock;*
> >
> > *(ii) the shareholders are deadlocked in voting power, and have failed for a period that includes at least two consecutive annual general meeting dates, to elect successors to directors whose terms have expired…*
> >
> > *(iii) …*
>
> *(e)…'*

[36] The Court in *Cilliers NO and others v Duin & See (Pty) Ltd*[10] articulated the trite principle that a deadlock can be understood in two distinguishable senses

> *'Deadlock in the literal sense – what might be termed 'complete deadlock' – applies in the case where, because the directors or shareholders are equally divided, there is an inability to make decisions that are necessary for the company to function. The wider or looser sense of the concept is encountered in the context of the so-called 'deadlock principle', which is applied in respect of the consequences of a breakdown of trust and confidence between members of a company which, because of its peculiar character, is in substance akin to a partnership, and thus amenable — subject to important qualifications — to dissolution as a partnership would be, if relations between the partners became untenable through no fault of the partner claiming the dissolution'*

[37] In the present instance, the application of the *Plascon Evans* principle to the facts do not point to a complete deadlock in the literal sense. A complete deadlock would of necessity result in the company being completely paralysed and unable to take any decisions. Viewed objectively, on the Respondents' version both Family Holdings and Afro Golf continue to function as corporate entities in that the directors of the respective entities are able to meet and are able to take decisions on the conduct of affairs of the respective companies. Both companies continue to hold assets which assets are utilised in the operation of the respective companies, at the direction of the directors of these entities. This version is neither a bald or uncreditworthy denial, nor is it a palpably implausible farfetched or clearly untenable version such that the court would be justified in rejecting it merely on the papers. Indeed, even on Mr Schneider's version Family Holdings and Afro Golf objectively continue to operate, albeit at times in a manner contrary to his wishes.

[38] A plain reading of section 81(1)(d)(i) and (ii) of the Companies Act is clearly directed at a deadlock in the literal sense in that it undoubtedly describes a

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[10] 2012 (4) SA 203 (WCC) at para 5.

conditional situation in which no progress of activity is possible, and the presence of a complete standstill or a lack of progress due to irreconcilable disagreements and equally opposing forces between the directors and/or shareholders of the entity. Whilst it is trite that that a purposive reading of legislation forms an integral part of statutory interpretation, the inevitable point of departure is the language of the provision itself read in context and having regard to the purpose of the provision[11].

[39] I am thus unable to find there a deadlock has been established in the literal sense in respect to the administration of Family Holdings and Afro Gold within the meaning of section 81(1)(d)(i) and (ii) of the Companies Act.

Applicable law with respect to dissolution of a solvent company by order of court on just and equitable grounds:

[40] This is of course by no means the end of the enquiry in so far as deadlock is concerned. The Supreme Court of Appeal in *Thundercats Investments 92 (Pty) Ltd v Nkonjane Economic Prospecting Investments (Pty) Ltd* has held that the just an equitable grounds which may justify the dissolution of a company under section 81(1)(d)(iii) of the Companies Act should be given the same broad interpretation as justice and equity under section 344(h) of the 1973 Companies Act which postulates a broad conclusion of law, justice and equity based on a wide judicial discretion[12].

[41] The relevant portion of Section 81 of the Companies Act reads as follows:

> *'(1) A court may order a solvent company to be wound up if-*
> *(a)…*
> *(b)…*
> *(c)…*

[11] Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) at para 18.
[12] 2014 (5) SA 1 (SCA) at para 12 – 15.

(d) the company, one or more directors or one or more shareholders have applied to the court for an order to wind up the company on the grounds that-

(i) …
(ii) …; or

(iii) it is otherwise just and equitable for the company to be wound up;

(e)…'

[42] The relevant portion of Section 344 of the Companies Act reads as follows

'A company may be wound up by the Court if-
(a)…;
(b)…;
(c)…;
(d)…;
(e)…;
(f)…;
(g)…;
(h)it appears to the Court that it is just and equitable that the company should be wound up'

[43] Whilst there is no exhaustive list of what constitutes 'just and equitable grounds for the dissolution of a company, five broad categories have emerged[13]. These are (a) disappearance of the company's substratum; (b) illegality of the objects of the company and fraud in connection therewith; (c) a deadlock in the management of the company's affairs which can only be resolved by winding it up; (d) grounds analogous to those for the dissolution of partnerships; and (e) oppression.

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[13] JP Markets SA (Pty) Ltd v Financial Sector Conduct Authority 2022 (4) SA 94 (SCA) at para 31.

[44] The disappearance of a company's *substratum* describes an instance where the principal or main object or distinct purpose for which the company was formed, or which constitutes the foundation of a company, can no longer be carried out at all or fully, or that such main purpose has failed altogether[14].

[45] The court in *Emphy v Pacer Properties (Pty) Ltd* described three very important principles pertaining to just and equitable consideration in the context of the winding up of an otherwise solvent company[15]. Firstly, is the deadlock principle which is founded on the analogy of a partnership and is confined to those small domestic companies in which because of some arrangement (whether express tacit or implied) there exists between the members in regard to the companies affairs a peculiarly personal relationship of confidence and trust similar to that existing between partners in regard to a partnership business. In essence, if by conduct which is either wrongful or contrary to what is contemplated by the arrangement existing between the members, one or more of the members destroys that relationship, the other members are entitled to claim that is it just and equitable that the company should be wound up.

[46] Secondly, is that in the context of a domestic company which is in the nature or akin to a partnership, the court may exercise its discretion to wind up such company if there is evidence of a justifiable lack of confidence in the conduct and management of the company's affairs grounded on conduct of the directors in regard to the company's business. Of critical importance is that the lack of confidence is not justifiable if it emerges merely from dissatisfaction with and/or being outvoted on the ordinary business affairs of the company. A justifiable lack of confidence must inextricably point to a lack of probity in the director's conduct of those affairs. Finally, a party who seeks to rely on justice and equity to wind up an otherwise solvent company must not themselves have been wrongfully responsible through their own conduct for the situation which has arisen.

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[14] Erasmus v Pentamed Investments (Pty) Ltd 1982 (1) SA 178 (W) at 185.
[15] 1979 (3) SA 363 (D) at 366 – 367.

[47] With respect to oppressive conduct, a party must demonstrate conduct that is unjust or harsh or tyrannical or burdensome, and which involves firstly at least an element of a lack of probity and fair dealing, and secondly a visible departure from such standards of fair dealing and the violation of conditions of fair dealing of which every shareholder who entrusts his money to a company is entitled to rely[16]. In *Louw v Nel* the Supreme Court of Appeal held that a party alleging oppressive conduct cannot content himself with a number of vague and general allegations but must establish that particular acts or omissions have been committee or that the affairs of the company are being conducted in the manner alleged, and that such acts or conduct of the company's affairs are unfairly prejudicial, unjust or inequitable to him or some part of the members of the company[17].

Application to the facts of the case

[48] The determination of whether it is just and equitable for the solvent company to be wound up fundamentally depends on a careful and detailed analysis of the allegations of the respective parties and a careful comparison of their respective conduct[18]. In the present matter there are six factors which have directly impacted on the consideration of justice and equity.

[49] Firstly, there are clearly material disputes of fact between Mr Schneider and the Respondents on material facts on which this application is based. In the absence of an application to lead oral evidence on these disputes, alternatively to refer these disputes to trial, this court is obliged to approach such disputes in accordance with the *Plascon Evans* rule. In the present instance the substance and nature of the Respondent's version is not of the nature of a bald of uncreditworthy denial, nor is it so palpably implausible or farfetched as to be untenable such that it should be rejected on the papers.

[50] Against this backdrop is a second factor which is that neither of the parties has attached the articles of association or memorandum of incorporation of either

[16] Aspek PipeCo (Pty) Ltd and Another v Mauerberger and Others 1968 (1) SA 517 (C) at 525H – 526E.
[17] 2011 (2) SA 172 (SCA) at para 23.
[18] Apco Africa (Pty) Ltd and another v Apco Worldwide Inc. 2008 (5) SA 615 (SCA) at para 22 – 30.

Family Holding or AfroGolf. The significance of this is that whilst the shareholding is clearly delineated – namely that there are two equal preference shareholders in Family Holdings (Mr and Mrs Schneider) and an ordinary shareholder (Family Trust) – it is entirely unclear from the papers what are the respective voting rights of the respective shareholders who are in a different class if one has regards to section 37 of the Companies Act and section 194 of the 1973 Companies Act. This is highly material in the present instance in that Mr Schneider is asserting the presence of a deadlock which is incapable of being resolved in circumstances where neither he as the Applicant nor the Respondents have set out the voting rights of the respective shareholders.

[51] The third consideration is closely linked to this, namely that neither Mr Schneider nor the Respondents have attached the trust deed to the papers nor made any submissions concerning the manner in which the trustees of Family Trust arrive at decisions. It is thus unclear whether the decision making is based on consensus of all the trustees or whether there is an internal voting system in terms of which decisions of the trust are effected. This is particularly relevant if one has regard to the fact that the Respondents assert that irrespective of any dispute that may exist between Mr Schneider, Mrs Schneider and Uwe Schneider – there are two other trustees, namely Antja Schneider and Duncan Fraser – who would be able to break such impasse.

[52] The fourth consideration relates to the conduct of Mr Schneider himself as a director and trustee. Mr Schneider has not provided any particularity in his founding or replying papers about instances, dates and times when he has specifically invoked the provisions of the Companies Act to either call for meetings of directors or meetings of shareholders of either Family Holdings or Afro Golf to which Mrs Schneider, Uwe Schneider and Family Trust have refused and/or otherwise been obstructive such that the operations and functions of Family Holdings and Afro Gold have been completely paralysed. This is an important consideration if one has regards to the fact that disagreement about management and operations of a company does not lend itself *per se* to the conclusion that an entity is either strictly deadlocked or indeed even functionally deadlocked in the absence of evidence of a lack of probity of the other directors.

[53] The fifth consideration is linked to this question, particularly as regards to allegations of oppressive conduct. Section 163 of the Companies Act affords an aggrieved director and/or shareholder wide-ranging protection from oppressive or prejudicial conduct that unfairly disregards the interest of such shared holder and/or director, and further provides protection from abuse from the separate juristic personally of a company. There is no indication in the present application that any consideration has been given by Mr Schneider to invoking the protections under section 163 of the Companies Act. Whilst it is clear that a shareholder or director is not obliged to invoke the protections under section 163 of the Companies act as a prerequisite for invoking their rights under section 81 of the Companies Act it is nevertheless a relevant consideration from the perspective of the reasonableness of the conduct of the respective directors. It is a truism that the court should guard against allowing an application under just and equitable principles to become a launching platform at the instances of disgruntled individual shareholder for the unwarranted interference in the *bona fide* internal management of a company otherwise acting within its powers[19].

[54] The final consideration is that Mr Schneider is seeking the final winding up of Family Holdings and Afro Golf. It is settled law that in a provisional order only a *prima facie* case need be made out[20]. In contrast, a party seeking final relief must demonstrate its entitlement on a balance of probabilities.

[55] Mr Schneider in the present application is effectively going for the proverbial 'nuclear option' in which he seeks the final winding up of the Schneider family businesses in circumstances where the are material disputes of fact, the respective voting rights of the parties are unclear, there is no tangible evidence of the actual steps taken either as a director or trustee to resolve the decision-making impasse, and none of the wide ranging alternative interventions in section 163 of the Companies Act have been explored prior to launching this application.

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[19] Ibid footnote 14 at 183.

[20] Selective Empowerment Investments Ltd v Companies Intellectual Commission 2025 (6) SA 495 (SCA) at para 84.

[56] In the matter of *Senate Electrical Wholesalers Limited v Alcatel Submarine Networks Limited*[21] the English Court of Appeal made the following remarks – which are very apt in the present application – in respect to an award that was overturned on appeal, on the basis that the plaintiff's claim was for a very substantial amount on a complicated basis, and that it was not open to the judge to adopt an alternative, however modest:

> *'The plaintiff cannot complain if, through opening his mouth too wide, he fails to prosecute a more modest claim….*
>
> *…. The plaintiff deliberately adopted a high risk policy of aiming at jackpot damages. We have little doubt that it was part of that policy not to offer the Judge a much more modest alternative'*

[57] This Court is not persuaded that it would be just and equitable for Family Holdings and Afri Gold to be finally wound up on the strength of the present application, and I am thus enjoined on the consideration of the cumulative weight of the above to dismiss the application.

Costs:

[58] The general rule is that costs would normally follow the results. This notwithstanding it is settled law that costs are in the discretion of the court and the court exercises same judicially upon the consideration o the facts in each case, on the basis of fairness to both sides[22].

[59] In the present instance there are three factors that militate against the costs following the result. Firstly, and most obviously, the very basis and purpose of the establishment of the Schneider family businesses and family trust was to protect further and advance the wealth and interests of the Schneider family and

[21] [1999] 2 Lloyd's Rep 423 (CA) on page 425.

[22] Ferreira v Levin NO and others: Vryenhoek and others v Powell NO and others 1996 (2) SA 621 (CC) at para 3.

their descendants. Saddling the family patriarch and founding member of each of these entities with costs would be inimical to those objectives.

[60] Secondly, it is of the outmost urgency that members of the Schneider family – in particular Mr Schneider, Mrs Schneider and Uwe Schneider who still reside together at the same homestead together with grandchildren of the family – to actively explore non-litigious methods of resolving what is effectively an internal family dispute. Adverse cost orders would not advance that process.

[61] Finally, Antja Schneider and Duncan Fraser who are factually aware of the present application, and independent of Mr Schneider, Mrs Schneider and Uwe Schneider have elected, for reasons that are not clear, neither to intervene in the current proceeding (to the extent that they assert that they have not been properly cited) nor to take this Court into their confidence by filing explanatory affidavits in circumstances where it is clearly incumbent on them to do so and from which valuable insights into the origins and extent of the dispute would have been made available. In these circumstances it would not be appropriate for passive litigants to be awarded costs.

[62] I am thus constrained in the interest of justice to order that each party pay their own costs.

Order

[63] For the above reasons, I make the following order:

1. The Respondents are granted condonation for the late filing of the answering affidavit.

2. The application is dismissed.

3. Each party to pay their own costs.

SM TISANI

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of hand – down is deemed to be 25 August 2026.

APPEARANCES:

For the Applicant:	Adv JA Van Wyk
Instructed by:	Cawood Attorneys Inc.
For the Respondents	Adv L Pillay
	Higgs Inc