

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NO. 70639/2010

Reportable: ☒ Yes ☐ No

On the 13th day of May 2011
Before the Honourable Kemack AJ

In the matter between:-

VALLEY VIEW HOMEOWNERS' ASSOCIATION

Applicant

and

UNIVERSAL PULSE TRADING 27 (PTY) LIMITED

Respondent

JUDGMENT

1. This is a reserved judgment in an unopposed application which came before this court on 9 May 2011, after the commencement of the new Companies Act 71 of 2008 ("the Companies Act"). The application was issued on 26 November 2010, prior to the revocation of the previous Companies Act 61 of 1972 ("the previous Act").
2. The applicant seeks an order finally winding-up the respondent, a provisional winding-up order having been granted on 8 March 2011.
3. The first annexure to the applicant's founding affidavit is a Windeed Companies' Office enquiry dated 4 November 2010, utilised by the

applicant to prove the location of the respondent's registered office. This document also shows that the respondent was deregistered by the Registrar of Companies in terms of section 73(5) of the previous Act on 16 July 2010, prior to the issuing of the application.

4. On behalf of the applicant, Mr. Higgins submitted that the prior deregistration of the respondent does not prevent the applicant applying for, and the court granting, a winding-up order.
5. The Companies Act came into effect on 1 May 2011. In terms of section 224(1) of the Companies Act: *"the Companies Act, 1973 (Act no. 61 of 1973), is hereby repealed, subject to sub-section (3)"*. Section 224(3) states: *"the repeal of the Companies Act, 1973....does not affect the transitional arrangements, which are set out in Schedule 5"*. Section 10 of Schedule 5 states: *"any proceedings in any court in terms of the previous Act immediately before the effective date are continued in terms of that Act, as if it had not been repealed"*. Accordingly, the previous Act applies to this application.
6. The respondent was deregistered under section 73(5) of the previous Act, which states that *"the Registrar may, unless good cause to the contrary has been shown by the company, deregister the company concerned"*.
7. The proposition that it is possible to wind-up a deregistered company requires an examination of the differing nature and consequences of

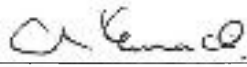
deregistration and winding-up.

8. In 4 (Part 3) *LAWSA* 98 Blackman defines winding-up or liquidation as *"the process by which, prior to its dissolution, the management of a company's affairs is taken out of its directors' hands, its assets are ascertained, realized and applied in payment of its creditors according to their order of preference, and any residue distributed amongst its members according to their rights. The company's corporate existence is then put to an end by the formal process of dissolution"*.
9. The consequences of deregistration are materially different. In R Miller v Nafcoc Investment Holding Company Ltd 2010 [4] All SA 44 (SCA) at para 11, Cloete JA, states that deregistration *"puts an end to the existence of the company. Its corporate personality ends in the same way that a natural person ceases to exist on death"*. As is confirmed in Suid-Afrikaanse Nasionale Lewensassuransie-Maatskapy v Rainbow Diamonds (Edms.) Bpk 1984 (3) SA 1 (A) at 10-12, on deregistration all a company's property, whether movable or immovable, corporeal or incorporeal, automatically becomes property owned by the State as *bona vacantia*.
10. Referring to the previous Act, Blackman points out that deregistration in terms of section 73 is to be distinguished from dissolution in terms of section 419 of a company following its winding-up, although each leads to the cessation of the existence of the company as a legal *persona* as held in Ex parte Jacobson; in re Alec Jacobson Holdings

(Pty) Ltd 1984 (2) SA 372 (W) at 376-377.

11. Sections 82 and 83 of the Companies Act deal with deregistration. Section 83(1) goes further than section 73 of the previous Act, by expressly stating that *"a company is dissolved as of the date its name is removed from the Companies register"*.
12. Thus a company's existence as a corporate *persona* ends on deregistration, and it becomes incapable of retaining ownership of any of its assets, all of which pass into the ownership of the State. On deregistration there remains neither a corporate entity capable of being placed in the hands of a liquidator, nor any assets to be realised by a liquidator for the purpose of distributing the proceeds to creditors.
13. Self-evidently there cannot be a winding-up and subsequent liquidation of assets of a company which has simultaneously ceased to exist and transferred ownership of all its assets to the State.
14. The applicant is not without a remedy for this situation. Section 73(6)(a) of the previous Act and sections 82(4) and 83(4) of the current Companies Act, provide procedures for the restoration or reinstatement of a deregistered company's registration.
15. Accordingly, the applicant will be able to apply for the winding-up of the respondent after successfully utilising the procedures for reinstating the registration of the respondent. The applicant cannot, however, apply for a winding-up order without first procuring the

reinstatement of the registration of the respondent. For these reasons,
the provisional winding-up order is discharged.


Kemack AJ