



INSOLVENCY & BUSINESS RESCUE

Business Rescue Is Not a Shield from Accountability: Director and Business Rescue Practitioner Held Liable

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The recent decision in PH Strydom NO v Seacrest Investment 153 (Pty) Ltd & Others (delivered on 4 June 2025) serves as a stark reminder that business rescue is not a tactical weapon and treating it as such can result in serious consequences.

The applicants approached the court in terms of section 130(1)(a) of the Companies Act 71 of 2008 (“the Act”), seeking to set aside the resolution adopted on 16 September 2020 by the sole director of Seacrest in terms of section 129 of the Act, placing the company into business rescue. The applicants argued that the resolution was adopted with the primary purpose of obstructing creditor enforcement and delaying the inevitable liquidation of the company, rather than initiating a genuine attempt at its rehabilitation.

The court agreed and found that the business rescue proceedings were initiated for an improper purpose. The process was declared an abuse, and the resolution was set aside and declared null and void. The court noted that Seacrest had no real prospects of successful business rescue. Its only asset had already been sold, and no credible turnaround plan existed. The court stated:

"...the resolution taken by the director of Seacrest was taken for the improper purpose of frustrating the rights of creditors and delaying the inevitable liquidation of the company."

Importantly, the court granted a punitive costs order on an attorney-and-client scale, jointly and severally against the company (as First Respondent), the BRP (Second Respondent), and the sole director (Third Respondent). This is significant, as such orders are not easily granted and are generally reserved for conduct that the court considers to be clearly abusive.

The BRP contended that she had only been cited in her official capacity and should not be held personally liable. The court rejected this argument and found that she had actively participated in and materially advanced the abuse. The court stated:

"The Second Respondent is held personally liable for the costs, having not only participated in but materially advanced the conduct which led to the abuse."

The judgment highlights several key principles:

- A business rescue resolution must be supported by a credible intention to restructure or rehabilitate the company. Using the process to delay enforcement or frustrate creditors will not be tolerated.
- Directors who adopt resolutions for improper purposes expose themselves to personal liability.
- BRPs must remain independent, act in good faith, and interrogate the commercial rationale behind the appointment. Failure to do so may result in personal liability.

This case should prompt caution for directors and practitioners. Business rescue is a powerful statutory tool, but it must be used appropriately. When abused, it creates exposure not just for companies, but for the individuals behind the process.

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