ZIMASCO (PRIVATE) LIMITED
versus
AVIM INVESTMENTS (PRIVATE) LIMITED
and
WILSON TATENDA MANASE
and
THE MASTER OF THE HIGH COURT
and
THE REGISTRAR OF COMPANIES

HIGH COURT OF ZIMBABWE
MUSHURE J
HARARE, 24, 28 & 31 March 2025

Urgent Chamber Application for an Interdict

D Tivadar & R Moyo, for the applicant
S M Hashiti & V Kwande, for the 1st respondent
No appearance for the 2nd, 3rd and 4th respondents

MUSHURE J:

INTRODUCTION

[1] What is in a name? Is it true that that which we call a rose, by any other name would smell just as sweet? Not quite, if you consider the circumstances of this case. Apparently, there is everything in a name.

[2] On 12 March 2025, the first respondent obtained an order from this court, under case number HCH685/25, placing a company called Sinosteel Zimasco (Private) Limited ('Sinosteel Zimasco') under corporate rescue proceedings. The terms of the order were that:

> [1] The application for the placement of the 1st Respondent under supervision and commencement of corporate rescue proceedings be and is hereby granted.
> [2] The 1st Respondent is hereby placed under the supervision of corporate rescue proceedings in terms of section 124(1)(a) of the Insolvency Act [*Chapter 6:07*] and shall be subject to supervision, management, and control as provided for in the said Act.
> [3] In terms of the provisions of subsection (5) of section 124 of the Insolvency Act [*Chapter 6:07*], an order is made appointing as interim Corporate Rescue Practitioner Mr. WILSON TATENDA MANASE of MANASE & MANASE LEGAL PRACTITIONERS.

[4] The Corporate Rescue Practitioner shall carry out his duties in accordance with the relevant provisions of the Insolvency Act [*Chapter 6:07*] and shall be entitled to be remunerated in terms of section 136 of the said Act.

[5] The costs of this application shall be the costs of the corporate rescue proceedings, to be borne by the 1st Respondent and paid through the Corporate Rescue Practitioner.

[6] During the corporate rescue proceedings, no legal proceedings (including enforcement action) against the 1st Respondent, or in relation to any property belonging to the 1st Respondent or lawfully in their possession, may be commenced or proceeded with in any forum except:

i. With the written consent of the Corporate Rescue Practitioner.
ii. With the leave of the court and in accordance with any terms the court considers suitable or appropriate.
iii. As a set-off against any claim made by the company in any legal proceedings, irrespective of whether those proceedings commenced before or after the corporate rescue proceedings; or
iv. Criminal proceedings against the 1st Respondent or any of their directors or officers; or
v. Proceedings concerning any property or rights over which the 1st Respondent exercises the powers of a trustee; or
vi. Proceedings by a regulatory authority in the execution of its duties, after written notification to the Corporate Rescue Practitioner.

[7] During the corporate rescue proceedings, a guarantee or surety given by the 1st Respondent in favour of any other person may not be enforced by any person against the 1st Respondent except with the leave of the court and in accordance with any terms the court considers just and equitable in the circumstances.

[8] If any right to commence proceedings, or otherwise assert a claim against the 1st Respondent, is subject to a time limit, the measurement of that time must be suspended during the corporate rescue proceedings.

[9] The development and implementation of an approved plan to rescue the 1st Respondent by restructuring their affairs, business, property, debts, and other liabilities and equity, in a manner that maximizes the likelihood of continuing in existence on a solvent basis—or, if that is not possible, results in a better return for the 1st Respondent's creditors or shareholders than would result from the immediate liquidation—shall be carried out to the best advantage of the 1st Respondent by the Corporate Rescue Practitioner.

[10] The Corporate Rescue Practitioner, upon fulfilment of all requirements (including bond of security to be paid with the Master), shall assume his responsibilities in terms of the law and shall prepare a corporate rescue plan in terms of section 121 of the Insolvency Act [*Chapter 6:07*].

[11] The Corporate Rescue Practitioner shall be entitled to remuneration for his services at a rate to be determined in terms of the law by the Master of the High Court at HARARE, and to disbursements for all out-of-pocket expenses incurred by him in the execution of his duties."

[3] Acting on the strength of that order, the second respondent approached the applicant's bank, Ecobank, on 18 March 2025 and demanded access to the applicant's bank account. The applicant's bankers refused to indulge him on the basis that Sinosteel Zimasco was not their client. At the time the second respondent approached the bank, the order reproduced above had not been served on the applicant.

[4] Later, on the same day, the second respondent visited the applicant's offices and advised the applicant's management that he was taking over the management of the applicant. The applicant's management rejected the second respondent's move on the basis that he was appointed a corporate rescue practitioner for another entity and not the applicant.

[5] Noting the turn of events, on 19 March 2025, the applicant, through its legal practitioners, wrote to the second respondent, demanding that he desist from holding himself out or acting as its corporate rescue practitioner. In the same letter, the applicant requested the second respondent to confirm by close of business that day that he would not take any action against the applicant. That confirmation was not made.

[6] Concluding that the second respondent was bent on continuing with the prejudicial conduct, the applicants approached this court on a certificate of urgency seeking the following relief:

> **"TERMS OF FINAL ORDER SOUGHT**
> That you show cause to this Honourable Court why a final order should not be made in the following terms -
> 1. The Provisional Order is hereby confirmed.
> 2. It is hereby declared that the Applicant was not placed under the supervision of corporate rescue proceedings by the High Court Order *per* the Honourable Justice MAMBARA J dated 12 March 2025 under Case No. HCH 685/25.
>
> Alternatively
> The High Court Order *per* the Honourable Justice MAMBARA J dated 12 March 2025 under Case No. HCH 685/25 is hereby rescinded or set aside.
> 3. The 1st and 2nd Respondents shall jointly, severally and *in solidum,* the one paying the other to be absolved, pay the Applicant's costs.
>
> **INTERIM RELIEF GRANTED**
> Pending determination of the Applicant's application for a declaration or rescission/setting aside in the present matter, the Applicant is granted the following relief:
> 1. The 2nd Respondent be and is hereby interdicted from asserting or conducting himself as a corporate rescue practitioner supervising and managing the Applicant in accordance with Part XXIII of the Insolvency Act [*Chapter 6:07*].
>
> **SERVICE OF THE PROVISIONAL ORDER**
> 1. Any employee of the Applicant or its Legal Practitioners of Record shall be authorised to serve a copy of this Provisional Order on the Respondents."

[7] In its founding papers, the applicant contends that the order is against Sinosteel Zimasco and not the applicant. It further contends that accordingly, the order has no bearing on the applicant and cannot be enforced against it. It argues that it does not know whether a company with the name Sinosteel Zimasco (Pvt) Ltd exists but emphasises that Sinosteel Zimasco is not its corporate name.

[8] At the time of making this application, and unbeknown to the applicant, the first respondent had, on 19 March 2025, filed an *ex-parte* application, under case number HCH 1280/25,

seeking correction of the order made on 12 March 2025. Pursuant to that application, the following order was issued on the same day:

> "1. PARA 2 of the Order of this court in HCH 685/25 is hereby corrected to read as follows: The 1st respondent in whatever form, appellation, alias, pseudonym, trade name such as SINOSTEEL ZIMASCO (PVT) LIMITED, SINOSTEEL ZIMASCO (PVT) LTD KWEKWE DIVISION, ZIMASCO (PRIVATE LIMITED) and any other name by which it holds or trades to the public is hereby placed under the supervision of corporate rescue proceedings in terms of section 124(1)(a) of the Insolvency Act [*Chapter 6:07*] and shall be subject to supervision, management and control as provided for by the said Act.
> 2. PARA 4 of the Order of this court in HCH685/25 is further corrected to read as follows: The Corporate Rescue Practitioner shall carry out his duties in accordance with the relevant provisions of the Insolvency Act [*Chapter 6:07*] with the assistance of the Zimbabwe Republic Police and the Sheriff of the High Court whenever necessary.
> 3. There shall be no order as to costs"

[9] In opposing the application, the first respondent submits, *in limine*, that: the applicant has not sought leave from the corporate rescue practitioner to institute the current proceedings in accordance with the Insolvency Act [*Chapter 6:07*]; there has been mis-citation of the second respondent; there is fatal non-joinder of all parties interested in these proceedings; the relief sought by the applicant is academic in light of the correction of the order; the relief sought is fatally defective; the applicant has not exhausted domestic remedies under the Insolvency Act; the final relief sought is incompetent; the matter is not urgent; there is no question of irreparable harm; and the application is built on material falsehoods and dishonesty because the applicant has consistently held itself out as Sinosteel Zimasco.

[10] On the other hand, the second respondent, against whom the interim relief is sought, submits that he has been wrongly cited in his personal capacity and in his capacity as a legal practitioner and a partner in Manase and Manase Legal Practitioners and consequently, ought to be excused from these proceedings. He prays for the matter to be struck off the roll with punitive costs.

SUBMISSIONS BEFORE THE COURT

The applicant's submissions

[11] Mr *Tivadar* for the applicant submitted that what the court is seized with at this stage is the interim relief sought by the applicant. The interim relief is being sought against the second respondent who curiously, had opted to excuse himself from the current proceedings on the basis of what he terms mis-citation. Mr *Tivadar* argued that the second respondent had been correctly described in the same manner that he had been described in paragraph 3 of order placing Sinosteel Zimasco under corporate rescue proceedings. He argued, further, that the

second respondent had not opposed the interim relief and that settled the matter. He questioned the basis upon which the first respondent was arguing the matter in circumstances where the interim relief was not being sought against it.

[12] On the issue of urgency, Mr *Tivadar* contended that the applicant had treated the matter as urgent and that the matter was urgent. It had become aware of that the purported placement of the applicant under corporate rescue on 16 March 2025, and by 20 March 2025, the current application had been filed. In between the discovery of the order and the filing of this application, there were other developments, which included writing a letter to the second respondent requesting him to confirm that he would desist from asserting and conducting himself as the applicant's corporate rescue practitioner.

[13] Mr *Tivadar* also submitted that it was common cause that the second respondent had attempted to access the applicant's bank account only to be advised by the applicant's bank that the order referred to an entity different from the applicant and he had also visited the applicant's offices seeking to take over management of the applicant.

[14] On the question of the application having been rendered academic by the subsequent order correcting the first order, Mr *Tivadar* argued that the fact that the first respondent had sought correction of that order confirmed that the first respondent was aware that there was something wrong with the order. He argued, further, that the order had been irregularly sought, having been sought by way of a chamber application instead of a court application as required by r 29 of the High Court Rules, 2021. Additionally, the requirement that the application be on notice to all parties whose interests could be affected by the correction had not been complied with. In this instance, the application had been made *ex parte*. It was Mr *Tivadar*'s submission that even if the order had been corrected, it still related to Sinosteel Zimasco and not the applicant.

[15] He submitted, further, that the applicant's erstwhile legal practitioners Mushoriwa Moyo, had written a letter to the first respondent's legal practitioners, Kwande Legal Practice, on 19 February 2025 seeking confirmation that there were ongoing corporate rescue proceedings, the relevant documentation thereto and documentation confirming the debt of seventy-seven million United States Dollars (US$77 000 000) which the first respondent was alleging the applicant owed it. That confirmation was not forthcoming. Instead of the legal practitioners responding to the letter, the first respondent's representative, a Mr Shephard Tundiya, had brusquely responded to the letter and stated that the applicant had the contract and if Mushoriwa Moyo Legal Practitioners had full instructions, they would

get all documents from their client. In the same breath, Mr Tundiya had requested a meeting with the applicant and ended his letter with a threat that if they chose to ignore, he would instruct his legal practitioners to continue with the court proceedings. Mr Tundiya neither confirmed the corporate rescue proceedings nor advised the applicant's legal practitioners that an application had already been filed in this court.

[16] On the merits of the matter, Mr *Tivadar* submitted that these had been satisfied on the following basis- firstly, the first respondent had not established that it is the applicant's creditor, that it had served the application for corporate rescue proceedings on the applicant and that the order related to the applicant. Secondly, the contract that had been used to justify the placement of the applicant under corporate rescue was forged. It did not relate to the applicant but to Sinosteel Zimasco. It was signed by a certain Blessing Chitambira. The applicant did not have a Blessing Chitambira in its employ but a Blessed Chitambira, who, in any case, could not have entered into a contract with the first respondent at the material time because at the time the contract is alleged to have been concluded, the applicant was under judicial management and Mr Reggie Saruchera was its judicial manager. Consequently, without admitting the contract, even if the said Blessed Chitambira had entered into the contract, it would still have been void on that score.

[17] Thirdly, the alleged debt, having arisen in August 2018, had prescribed. Further, the first respondent's application had not been served on the applicant, and the averment that a Moses Kondo had visited its offices on 17 February 2025 to serve the application was false because the person on whom the application was allegedly served, a Dorcas Bunhu, deposed to an affidavit disputing the service. Additionally, the applicant's visitors' book did not show that Moses Kondo had visited the applicant's premises on the fateful day and a closed-circuit television footage was available to prove that he did not visit the premises.

[18] In response to the applicant's signage image, which was attached to the first respondent's papers to prove that the applicant is in fact Sinosteel Zimasco, Mr *Tivadar* contended that the signage clearly states that the applicant is a member of Sinosteel Corporation, which is a majority shareholder of the applicant. The copy of the applicant's certificate of incorporation placed on record showed the applicant's full names. Mr *Tivadar* also pointed out that the first respondent had opportunistically jumped at the fact that Mushoriwa Moyo Legal Practitioners had in its correspondences to the first respondent stated that it represented Sinosteel Zimasco, but the name of the applicant was a matter of public record and a matter of law. In any case, Mr Mushoriwa had deposed to an affidavit clarifying his

erroneous assumption that the reference to Sinosteel Zimasco in correspondences had led him to mistakenly conclude that this was the applicant's correct name, which applicant he had no prior dealings with. Such carelessness did not establish the applicant's name.

[19] In supporting the irreparable harm requirement, Mr *Tivadar* contended that the second respondent had already visited the applicant's bank and management seeking to give effect to the order. The order itself had caused a lot of confusion with the applicant having to explain that it was not undergoing corporate rescue and that would lead to reputational damage as well as interference with the applicant's commercial interests.

[20] Mr *Tivadar* submitted that the balance of convenience favoured the applicant because all it was asking for was for the second respondent not to do anything pending clarification of the issues by this court. There was no prejudice to speak of because the first respondent had taken close to seven years to enforce the alleged contract. It could afford to wait a few more months pending the finalisation of this matter.

[21] It was argued, further, that there was no alternative remedy because the second respondent had not even bothered to confirm that he would stop holding himself out as the applicant's corporate rescue practitioner and he had gone further and sought to set up a creditors' meeting, which actions led the applicant to approach the court for relief.

[22] On the competence of the relief sought, it was Mr *Tivadar*'s submission that the first respondent's argument that the applicant ought to have sought a stay of the corporate rescue proceedings was a matter of law because one cannot seek a final relief under the guise of an interim relief. On the fatal non-joinder argument, he referred the court to r 32(11) of the High Court Rules, 2021 and further contended that the applicant had cited the parties as they had been cited in the order which had culminated into the current proceedings. He urged the court to also consider that had the applicant referred to the second respondent as its corporate rescue practitioner, that would have led to an erroneous conclusion that the applicant was accepting that the corporate rescue proceedings were valid and applicable to it.

The first respondent's submissions

[23] Counsel for the first respondent, Mr *Hashiti* submitted that the miscitation of the second respondent was fatal to the case and dispositive of the matter because he has been cited in his personal capacity and was therefore not being sued in his official capacity. He submitted, further, that there was an extant order of this court and no matter what the applicant thought about it, it was obliged to obey it. He argued that the court could not grant relief to a party

who is in defiance of a court order. On that basis, he moved the court to strike the application off the roll.

[24] Mr *Hashiti* argued, further, that one cannot interdict a lawful process. The mere fact that the order is extant means that it is a lawful process. An interdict is not a valid relief against a valid court order. By seeking to interdict the second respondent from carrying out his duties as a corporate rescue practitioner, the applicants were essentially seeking to interdict him from complying with a court order.

[25] It was contended on behalf of the first respondent that the misjoinder of 'very interested' parties, in the form of the applicant's creditors, whom the second respondent had involved in its case, was fatal to the applicant's case. Further, once it was accepted that the applicant is undergoing corporate rescue proceedings, by statutory command, leave to institute the current proceedings was a prerequisite. The applicant's failure to seek such leave meant that there was no application before the court.

[26] Mr *Hashiti* disputed that the applicant did not have alternative remedies because these were available in terms of the Insolvency Act, which the applicant should have utilised including seeking the removal of the second respondent. In any event, he argued, the applicant's bank had already denied the second respondent access to the applicant's bank account. Mr *Hashiti* insisted that the matter was not urgent because the applicant had been aware of the issue since 7 February 2025 when it wrote to the first respondent's legal practitioners. The letters revealed that the applicant was aware that there were ongoing corporate rescue proceedings.

[27] He argued that the applicant did not deny that it transacted as Sinosteel Zimbabwe. He further argued that an entity cannot escape liability on the basis of its mischaracterisation. In its board resolution, correspondences, letterheads and its signage, it has presented itself to the public as Sinosteel Zimasco. He urged the court to dismiss as fallacious the argument that the applicant is not the same as Sinosteel Zimasco.

[28] Mr *Hashiti* argued that the issue relating to the process leading to the correction of the order was not properly before the court. It was, therefore, not up for debate. He argued that the order did not even need correction because the order in its original form applied to the applicant; it was only corrected as a result of the applicant's resistance and to correct an ambiguity. The argument that the applicant would suffer irreparable harm was unfounded because, by operation of law, corporate rescue proceedings take only three months, and after those three months, the applicant would be removed from corporate rescue. It was the first

respondent's contention that the applicant was served with the application which led to the 12th of March 2025 order.

[29] Finally, Mr *Hashiti* prayed for the matter to be dismissed with costs on the scale of legal practitioner and client and to be paid *de bonis propriis* by the applicant's company secretary, Mr Josiah Chinherende, who had deposed to the applicant's founding affidavit and was in attendance at the hearing.

MATERIAL DEVELOPMENTS POST HEARING OF THE ARGUMENTS

[30] After hearing arguments, I reserved judgment to consider the written and oral submissions that had been made. Before I handed down this judgment, I noted a flurry of exchanges in the case portal. It turned out that the first respondent had filed a document titled 'Heads of arguments on a point arising' on 25 March 2025. In that document, the first respondent stated that the heads of argument were being filed pursuant to the *dicta* in *Zimasco* v *Marikano* 2014 (1) ZLR 1 (S). The first respondent, in one sentence, stated that it was seeking leave to address what it termed 'issues raised by the court and not pleaded by the parties'. This document was subsequently withdrawn on the same day, followed by another similarly titled document filed later that day.

[31] The issue related to the process leading to the order which had corrected the first order. The applicant objected to this move, arguing that the issue did not arise from the Judge and that it had been argued at length in the hearing. The applicant further contended that instead of first seeking the leave of the court before filing its heads of argument, it had contemptuously gone ahead and filed the heads of argument.

[32] I called in the parties on 28 March 2025, requesting them to address me on this issue before I could make a determination. At the hearing, Mr *Hashiti* submitted that given that the matter was urgent, filing an application for leave to file the heads of argument first before filing the actual heads would convolute the proceedings. He submitted that the heads of argument had been filed so as to place on record certain authorities he had cited at the initial hearing. When asked if he doubted the Judge's recording skills, he replied in the negative but stated that as an officer of the court, he was duty bound to assist the court by bringing to its attention authorities that could assist in the resolution of the matter. In the course of his submissions, he later stated that there were issues which had come to his attention that he was of the view were supposed to be placed on record.

[33] Mr *Tivadar* maintained that the request was not only unprocedural but lacked merit because the issue had been fully argued at the initial hearing and authorities had been provided. It

was his contention that the first respondent was not in any way seeking to assist the court by recording the cases it had cited at the hearing as it purported. Rather, it had introduced new authorities in its heads of arguments. The applicant took the position that should the court be inclined to grant the leave, in the interests of finality to litigation, its submissions made in its letter filed on 26 March 2025 would suffice.

ISSUES FOR DETERMINATION

[34] In resolving this matter, the issues that must be determined by this court are:

i. Whether or not leave to file supplementary heads of argument should be granted.
ii. Whether or not the matter is urgent.
iii. Whether or not the applicant is entitled to the relief it seeks.

[35] I proceed now to consider each of these issues.

WHETHER OR NOT LEAVE TO FILE HEADS OF ARGUMENT SHOULD BE GRANTED

[36] Generally, once judgment has been reserved, parties do not have the right to file any further arguments: See *Zimasco (Pvt) Ltd* v *Marikano supra*. If a party intends to do so, leave must be sought, and the filing of such pleadings should be at the invitation of the court: *Tsvangirai & Ors* v *Registrar General* 2002 (2) ZLR 653. My understanding of the procedure to be adopted as set out in the *Zimasco* case *supra* is that an application for leave to file heads of argument precedes the actual filing of the heads of argument. Where an application to file further heads of argument has been made, the court is required to set it down for argument before it can thereafter decide whether or not to permit such filing.

[37] In my view, and per *Zimasco supra*, the definitive considerations which the court must consider when seized with such an application include whether the heads of argument raise a point of law, whether the arguments raised would take the matter any further or whether the filing of the heads is purely an abuse of court process. Overall, the critical consideration is whether or not it is justifiably necessary to permit the filing of heads of arguments after the court has reserved its judgment.

[38] In interrogating the above considerations, I relate to the procedure adopted in *casu*. The first respondent filed a hybrid document in which leave was sought and the heads were contained in the same document on the basis that the matter is urgent. This procedure has been objected to by the applicant. There could be merit in Mr *Hashiti*'s argument if one

were to consider that this is an urgent chamber application where generally, the timelines for filing pleadings are truncated.

[39] However, in my view, where there is non-compliance with a settled position of the law, no matter how noble the reason for doing so, such non-compliance has to be purged through an application for condonation. It is trite that while a court can exercise its discretion and condone an irregularity, such discretion cannot be exercised *mero motu* but upon an invitation to do so: See generally *Zimbabwe Consolidated Diamond Company (Private) Limited* v *Grandwell Holdings (Private) Limited & Ors* SC-144-20, *Forestry Commission* v *Moyo* 1997 (1) ZLR (S), and *Marick Trading (Pvt) Ltd* v *Old Mutual Life Assurance Company* 2015 (2) ZLR 343 (H).

[40] Thus, while I may be inclined to overlook the form of the impugned procedure in favour of its substance, my powers can only be exercised upon an invitation to do so. The first respondent has not invited me to do so and by operation of the law, I cannot, on my own volition, condone a departure from the laid down procedure without an application to do so. I find that in the absence of an application for condonation, the exercise of my discretion has not been triggered and therefore dismiss the application for leave to file the heads of argument for want of procedure.

WHETHER OR NOT THE MATTER IS URGENT

[41] The determination of whether a matter is urgent or not is at the discretion of the court. An applicant who approaches the court on an urgent basis is basically requesting the court to indulge him and afford him preferential treatment. See *General Transport & Engineering (Pvt) Ltd & Ors* v *Zimbabwe Banking Corporation Ltd* 1998 (2) ZLR 301 (H). Urgency is not there for the asking. The proposition that a matter is urgent and ought to jump the queue must be fully and properly motivated. For any allegation that a matter is urgent to be sustained, an applicant must have acted promptly, as soon as he or she acquired knowledge of the respondent's prejudicial conduct. It is, therefore, trite that urgent relief will not be granted in circumstances where the claimed urgency is self-created. See *Kuvarega* v *Registrar-General & Anor* 1998 (1) ZLR 188 (HC); *Gwarada* v *Johnson & Ors* 2009 (2) ZLR 159 (H); and *Nyakudya* v *Vibranium Resources (Pvt) Ltd* HH–409–21.

[42] In *casu*, the first respondent submits that the need for the applicant to act arose on 7 February 2025 when the applicant wrote to the first respondent's legal practitioners seeking clarity on the corporate rescue proceedings. On record is a letter dated 19 February 2025 in which Mushoriwa Moyo Legal Practitioners advise that its client is unaware of any ongoing

corporate rescue proceedings, or any debt owed to the first respondent. That letter requests confirmation of these proceedings as well as documentation relating thereto and the alleged debt. Another letter followed on 24 February 2025, but this time addressed to Manase and Manase Legal Practitioners requesting a copy of the contract that had been referenced in an earlier letter written by the law form. These letters were not responded to by the legal practitioners, but by Mr Tundiya on 5 March 2025.

[43] At the time Mr Tundiya responded, corporate rescue proceedings had already been filed in this court in February 2025. The applicants immediately objected to Mr Tundiya writing correspondences to them in circumstances where the first respondent was legally represented. The letter was only responded to five days later, on 10 March 2025. In the letter, the first respondent's legal practitioners curtly stated that it was the applicant's duty to give them adequate instructions to enable the applicant's legal practitioners to advise them. This was notwithstanding the applicant's communicated position that it did not have the said documents. By this time, the hearing of the application for corporate rescue proceedings had been set down for the 12 March 2025 but the first respondent's legal practitioners did not find it prudent to disclose this development.

[44] What followed thereafter was a newspaper article on 16 March 2025, which related to the applicant, not Sinosteel Zimasco, being placed under corporate rescue. Curiously, four days after obtaining the order, the first respondent did not find any wisdom in serving the order on the applicant whom it purports is Sinosteel Zimasco. On 17 March 2025, being the next day, the applicant's erstwhile legal practitioners called Ms Kwande, from the first respondent's legal practitioners firm, seeking to verify the claims in the newspaper report, but Ms Kwande was both evasive and non-committal. This conversation was followed up by yet another letter seeking the case details, the registry where the matter was lodged and provision of proof of service of the proceedings by 19 March 2025. Ms Kwande did not respond. Instead, the second respondent proceeded to the applicant's bank and the applicant's premises on 18 March 2025 as already alluded to.

[45] In my view, the first respondent cannot seriously argue that the undisputed factual conspectus of this matter as narrated above qualifies to classify the applicant as having sat on its laurels. The record shows a series of events and consistent steps the applicant took to protect its interest. I find that the argument that the applicant did not act timeously has been made as a matter of course. I find the comments by MATHONSI J (as he then was) in *Telecel Zim (Pvt) Ltd* v *POTRAZ & Ors* 2015 (1) ZLR 651 (H) at p. 658H-659B apposite:

> "I find myself having to repeat what I stated in *Prosecutor-General* v *Busangabanye & Anor* HH-427-15 at p 3:
>
> > "In my view this issue of self-created urgency has been blown out of proportion. Surely a delay of 22 days cannot be said to be inordinate as to constitute self-created urgency. Quite often in recent history we are subjected to endless points *in limine* centered on urgency which should not be made at all. Courts appreciate that litigants do not eat, move and have their being in filing court process. There are other issues they attend to and where they have managed to bring their matters within a reasonable time they should be accorded audience. It is no good to expect a litigant to drop everything and rush to court even when the subject matter is clearly not a holocaust."

[46] This brings me to the second argument, that the need to act arose in February 2025. The applicant was clear that it did not have the alleged contract, neither was it aware of the debt. It requested the same. Instead of furnishing the said documents, the first respondent and its legal practitioners decided to play hide and seek with the applicant, deliberately frustrating the applicant by adopting a lethargic approach in responding to letters from its legal practitioners; evading the real issues relating to the corporate rescue proceedings, the contract and the debt; and at one time, Mr Tundiya corresponding directly with the applicant's legal practitioners bypassing the first respondent's counsel of choice.

[47] Under such circumstances, I do not see the basis upon which the applicant could have approached the court when it did not have the necessary documentation and it was not even sure that the said documentation related to it. It is my view that it would have been ill-advised, premature and tactless for the applicant to engage the jurisdiction of the court seeking to interdict the first respondent on the basis of what could well be a potentially abstract or hypothetical issue.

[48] It seems to me that the newspaper report of 16 March 2025 was the first concrete document confirming the applicant's placement under corporate rescue. In my judgment, that is when the need to act arose. On 20 March 2025, the applicants filed the present application. In the premises, I find that the applicant acted promptly as soon as it acquired knowledge of the first respondent's prejudicial conduct.

[49] It is well established that a further requirement on urgency is that an applicant must demonstrate that the situation which he or she seeks to arrest may become irrevocable if the court does not intervene. It has been held in *Document Support Centre (Pvt) Ltd* v *Mapuvire* 2006 (2) ZLR 240 (H) at p. 244C-D that:

> "urgent applications are those where if the courts fail to act, the applicants may well be within their rights to dismissively suggest to the court that it should not bother to act subsequently as the position would have become irreversible and irreversibly so to the prejudice of the applicant."

[50] In *casu*, the applicant argues that if the court does not intervene, the second respondent will persist in his prejudicial conduct. There is merit in that argument. It is not in dispute that the second respondent has already been to the applicant's bank and also to its premises seeking to assume control. It is also not in dispute that the second respondent has ignored a request for him to relent from asserting and conducting himself as its corporate rescue practitioner; and that he has sought to set up a creditors' meeting. On this basis, my conclusion is that it would be well within the applicant's rights to suggest that should the court not intervene now, it should not bother to act subsequently as the position would have become irreversible and irreversibly so to its prejudice.

[51] Accordingly, I find it necessary to determine this matter on an urgent basis.

WHETHER OR NOT THE APPLICANT IS ENTITLED TO THE RELIEF IT SEEKS

[52] Apart from contending that the current application is not urgent, the first respondent has raised several other preliminary points outlined above. On the authority of *Gwaradzimba N.O.* v *CJ Petron & Co (Pty) Ltd* 2016 (1) ZLR 28 (S), it would be improper for me to determine the substantive factual and legal issues of this matter without first disposing of the points in *limine*. But, before I turn to these preliminary points, it seems to me convenient for the purposes of disposal of this matter to deal with the status of the applicant.

[53] It is common cause that the order issued by this court on 12 March 2025 placed Sinosteel Zimasco under corporate rescue. The attempted enforcement of this order is the genesis of the dispute between the parties, with the applicant contending on the one hand that it is not Sinosteel Zimasco, while the first respondent argues on the other that the applicant is Sinosteel Zimasco. The first respondent has placed on record its certificate of incorporation identifying it as a company named Zimasco (Pvt) Ltd. It accepts that it is a member of a company called Sinosteel Corporation, which is incorporated in China, and that Sinosteel Corporation is its major shareholder.

[54] The first respondent argues that the applicant has held itself out as Sinosteel Zimasco through its correspondences, letterheads and signage at the applicant's offices. On record, besides two the letters written by Mr Mushoriwa in which he states that his law firm acts for its client, Sinosteel Zimasco, there is no other correspondence placed before me to either substantiate the first respondent's claim that the applicant is Sinosteel Zimasco, or to refute the applicant's claim that it is not Sinosteel Zimasco. The alleged Sinosteel Zimasco letterheads referred to have not been placed before the court.

[55] I find it necessary to relate to the two letters stated above as I hereby do. Mr Mushoriwa has deposed to an affidavit in which he explains the circumstances under which he referred to the applicant as Sinosteel Zimasco. He states that sometime in February 2025, he was contacted by the applicant's company secretary who had in his possession certain correspondence which alleged that the first respondent was owed money by Sinosteel Zimasco. He was instructed to obtain information regarding that demand because the company secretary was unaware of such a debt.

[56] After receiving the letters, he set about responding to the two letters that had been authored by Kwande Legal Practice and Manase and Manase Legal Practitioners. He used the references in the two letters assuming that the reference therein was correct because it was his first time to do work for the applicant. It later came to his attention, after he had already written the letters, that in fact Kwande Legal Practice and Manase and Manase Legal Practitioners were referring to an entity different from the applicant. Mr Mushoriwa made an erroneous and careless assumption which in my view cannot not be capitalised upon to penalise the applicant.

[57] I turn to relate to the signage image. The signage is prominently inscribed 'Zimasco' on top. Below, 'Zimasco' is a clear inscription '*A member of Sinosteel Corporation*'. Next to the huge 'Zimasco' inscription, to the left of the signage is a logo which is written Sinosteel underneath it in smaller print. In my opinion, the prominence of the word 'Zimasco' on that signage belies any argument that the applicant is Sinosteel Zimasco.

[58] I am alive to the fact that the first respondent has sought and obtained an amended order on the basis that the previous order contained a 'clerical error'. Part of the amended order, which is necessary to reproduce, now reads:

> "PARA 2 of the Order of this court in HCH 685/25 is hereby corrected to read as follows: The 1st respondent in whatever form, appellation, alias, pseudonym, trade name such as SINOSTEEL ZIMASCO (PVT) LIMITED, SINOSTEEL ZIMASCO (PVT) LTD KWEKWE DIVISION, ZIMASCO (PRIVATE LIMITED) and any other name by which it holds or trades to the public is hereby placed under the supervision of corporate rescue proceedings in terms of section 124(1)(a) of the Insolvency Act [*Chapter 6:07*] and shall be subject to supervision, management and control as provided for by the said Act."

[59] I note that the order of this court still specifically refers to Sinosteel Zimasco. The order then states that Sinosteel Zimasco, in whatever form, alias, pseudonym or trade name such as Sinosteel Zimasco (Pvt) Limited, Sinosteel Zimasco (Pvt) Ltd Kwekwe Division, Zimasco (Private Limited) and any other name by which it holds or trades to the public is

placed under corporate rescue. I further note that while the order now incorporates the name Zimasco (Private Limited) with both the words 'Private Limited' in brackets, the applicant before me is not Zimasco (Private Limited) but Zimasco (Private) Limited, with only the word 'Private' in brackets.

[60] The amendment to the order issued on 12 March 2025 was intended to incorporate all possible names by which Sinosteel Zimasco could be known. However, this amendment does not resolve the dispute over the identity of the applicant. The fact that the court order lists various names by which Sinosteel Zimasco may be known does not in itself establish that the applicant is, in fact, Sinosteel Zimasco, thus, being one and same entity as the one placed under corporate rescue. In my view, the order does not detract from or affect the instant proceedings because a real dispute as to the identity of the applicant *vis-à-vis* Sinosteel Zimasco still exists. There is a need for judicial ventilation of that dispute.

[61] *A fortiori* the mere fact that a court order lists possible names by which Sinosteel Zimasco may be known does not confer the applicant's identity as Sinosteel Zimasco. It does not constitute a judicial finding that the applicant is the same as Sinosteel Zimasco. The court cannot assume that the reference to Zimasco (Private Limited) refers to this applicant. The applicant's assertion of distinct identity is further corroborated by its certificate of incorporation, which remains uncontroverted. The mere listing of potential aliases in the order does not constitute a judicial determination that the applicant is Sinosteel Zimasco. As already stated, this issue requires proper judicial ventilation, particularly given the unresolved dispute as to identity.

[62] On the other hand, the first respondent relies on a wrong assumption in correspondence and company signage to support that the applicant is Sinosteel Zimasco. The allegation of Sinosteel Zimasco having another form, alias, pseudonym or trade name in the mould of the applicant has not been substantiated. The version backed by evidence with more probative value is the one to be preferred: *Gonese & Anor* v *Parliament of Zimbabwe & Ors* 2020 (1) ZLR 762 (CC) at p. 788F-G. In the circumstances, I am inclined to lean towards the party who took the trouble to corroborate its submissions on its real name. I find that the certificate of incorporation carries more probative value than an erroneous assumption in the two letters and a reference to signage which does not seem to speak to the first respondent's submissions.

[63] I conclude that even the amendment does not address the pertinent arguments by the applicant. I find that there is merit in the argument that the applicant before me is Zimasco (Private) Limited, not Sinosteel Zimasco or Zimasco (Private Limited).

[64] I turn now to consider the other preliminary points raised by the first respondent. My view is that the above finding disposes of the bulk, if not all, of the remaining preliminary points. As such, in as far as the preliminary points would relate to the status of the applicant before me, I have decided to combine some of the preliminary points and dispose of them in one go.

Whether or not: (a) leave to file the current application was not sought, if any was required; (b) the second respondent was mis-cited; (c) domestic remedies under the Insolvency Act were exhausted; (d) the relief sought is academic; and (e) there are material falsehoods and dishonesty.

[65] There can be no debate that once a court order is made, it binds all the parties to that court order. All those bound by the order have a duty to comply with the court order as it is unless and until it has been lawfully altered or discharged. See *Mauritius & Anor* v *Versapak Holdings (Private) Limited & Anor* SC-2-22 at p. 8, and *CFU* v *Mhuriro & Ors* 2000 (2) ZLR 405 (S).

[66] In *Heuer* v *Two Flags Trading (Private) Limited & Others* SC-45-24 at p 12, the Supreme Court makes the following pertinent remarks regarding court orders:

> "A court order is the means by which decisions or judgments of judicial officers are issued from a court. A court order by its very nature is one which is binding upon the parties it is made against and must be one which the parties can enforce. It follows that, every person against or in respect of whom the order is made by the court of competent jurisdiction must obey it, unless and until that order is discharged. In the absence of a challenge against the order through an appeal, review or procedure for rescission, an order of a court of unlimited jurisdiction remains extant and binding (see *Manning* v *Manning* 1986 (2) ZLR 1 (SC) & *Mkize* v *Swemmer & Anor* 1967 (1) SA 186 (D) at 197 C-D)"

[67] Thus, as long as an extant order of the court is not challenged through an appeal, review or procedure for rescission, that order remains extant and binding. This obligation extends to circumstances where a party affected by that order believes it to be irregular or even void: *Mauritius & Anor supra*.

[68] The common thread in the cases coming out of this jurisdiction is that a court order is binding upon the parties against whom it is made. It does not bind parties that are not part of the court order and are not cited therein. In *Indium Investments (Pvt) Ltd* v *Kingshaven*

(Pvt) Ltd & Ors 2015 (2) ZLR 40 (S) at p.44G-H, the court demonstrates that for a party to be bound by a judgment of the court, such a party has to be cited. The case of *Hundah* v *Murauro* 1993 (2) ZLR 401 at 404E-G is authority for the proposition that:

> "We have drawn attention to this point previously on a number of occasions (see eg *Munemo* v *Muswera* 1987 (1) ZLR 20 (S) at 21G-H), often in conjunction with the other important point that the local authority should be cited in proceedings of this kind since it has real interest in the property in dispute (see eg *Ncube* v *Mkandla* S-123-89). If it indicates in writing beforehand that it is happy to accept whatever the court decides, well and good. But otherwise, it should be cited, if only to ensure that it is bound by whatever judgment is given. *Such an order does not bind it if it was not a party*." [My emphasis]

[69] In *casu*, the order relates to Sinosteel Zimasco, and not to Zimasco (Pvt) Ltd. The need to seek leave to institute legal proceedings and to exhaust the domestic remedies in terms of the Insolvency Act is applicable to Sinosteel Zimasco, as the company that is undergoing corporate rescue proceedings. It cannot be validly argued against the applicant. Similarly, to Sinosteel Zimbabwe the second respondent is its corporate rescue practitioner but to the applicant, the second respondent is a legal practitioner. There is no basis to insist that the second respondent should have been cited in his official capacity because that official capacity is only relevant to Sinosteel Zimbabwe and possibly its creditors.

[70] I do not find merit in the argument that the applicant is seeking academic relief. Contrary to the first respondent's claim that there is an order of this court citing the applicant as being under corporate rescue, that claim is not supported by that order. The entity is Sinosteel Zimasco, in whatever form, appellation, alias, pseudonym, trade name such as Sinosteel Zimasco (Pvt) Limited, Sinosteel Zimasco (Pvt) Ltd Kwekwe Division, Zimasco (Private Limited), not Zimasco (Private) Limited. The relief sought, to the extent that the order does not relate to the applicant before me, cannot be dismissed as being academic.

[71] The first respondent also argues that the application is built on falsehoods. In *Sadiqi* v *Muteswa & Ors* HH-281-20 MAFUSIRE J noted that:

> "Litigants should not play hide-and-seek with the courts. Lawyers should not behave like hired guns. They are officers of the court. Litigation is not a game of wits. It is a serious and scientific process to resolve disputes amongst individuals and to settle problems in the society. The search for truth is paramount. It is a duty thrust upon everyone. *A party that conceals material information from the court must be unworthy of its protection or assistance.* If you seek relief, you must take the court into your confidence, laying bare all the relevant facts on the matter." (at p. 5-6) [Emphasis added].

[72] The bases for the first respondent's argument is the contentious contract which the first respondent alleges it entered into with Sinosteel Zimasco. The first respondent further

argues that the same Blessed Chitambira who executed a contract between Zimasco and an entity called Morupule Coal Mine, executed the contentious contract. The first respondent also argues that the applicant was properly served with the application. Cautious of running the risk of delving into the merits of the final relief, I will only state that the averments that Mr Chitambira's name is Blessed and not Blessing; that there is no record that Moses Kondo visited the applicant's premises to serve the application; and that at the time the alleged contract was entered into the applicant was under judicial management have not been controverted. It remains entirely in the discretion of the court which will deal with the matter on the return date to interrogate the merit in those averments, suffice to state that as this stage, I find this preliminary point meritless.

[73] In the premises, all the preliminary points discussed above are dismissed for want of merit. This includes whether leave to file the current application was not sought (if required); whether the second respondent was mis-cited; whether domestic remedies under the Insolvency Act were exhausted; whether the relief sought is academic; and whether there are material falsehoods and dishonesty.

Whether or not there was fatal non-joinder

[74] It is the first respondent's argument that the proceedings in the main have the support of several stakeholders and they cannot be non-suited or have an adverse order granted against their interests in their absence. I am not persuaded by that argument for three reasons. Firstly, the order in the main is in respect of Sinosteel Zimasco. The applicant has been dragged into the current proceedings on account of only the first and second respondents' conduct. The so-called stakeholders are not the applicant's stakeholders and have no interest in the current matter which would render their non-joinder fatal to this matter.

[75] Secondly, the application in the main only has the first and third respondents and Sinosteel Zimasco as the parties. The first respondent, who did not see the wisdom of citing those stakeholders in that other application and was contend with relegating those stakeholders to merely filing supporting affidavits to buttress its claim, cannot now turn around and seek to argue their cause by accusing the applicant of not citing them.

[76] Thirdly, the position of the law is clear. Rule 32(11) of the High Court Rules provides as follows:

> "(11) No cause or matter shall be defeated by reason of the misjoinder or non-joinder of any party and the court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter."

[77] As such, that the several stakeholders have not been cited is immaterial in the present case. The court should simply determine the question in dispute as to whether or not to grant the interim relief sought by the applicant. In *Apostolic Faith Mission in Zimbabwe* v *Chinyemba & Others* HH-103-24 at p 7, CHITAPI J, commenting on the issue of joinder *vis-à-vis* r 32(11) of the Rules, observed that:

> "The purport of the quoted rules is that a party who raises non-joinder or misjoinder may not pray for dismissal of the case in which the objection is raised. It seems to me to be sensible that the party pleading non-joinder should consider applying for the joinder itself so that the matter is fully ventilated and disposed of to finality in one sitting."

[78] In any event, if the first respondent is assured that the joinder of those stakeholders is essential, it is sensible for the first respondent to consider applying for their joinder, rather than seek a dismissal of this application on the basis of non-joinder.

[79] In the premises, this preliminary point stands to be dismissed.

Whether or not the relief sought is fatally defective

[80] The first respondent contends that one cannot seek to interdict a lawful process. This is a fundamental principle of the law. An interim interdict is not a remedy for prohibiting lawful conduct, neither can it be used to bar actions anchored on a valid court order. See for example *Airfield Investments (Pvt) Ltd* v *Minister of Lands & Ors* 2004 (1) ZLR 511 (S) on p. 549C and *Mayor Logistics (Pvt) Ltd* v *Zimbabwe Revenue Authority* 2014 (2) ZLR 78 (C) at page 84 G-H, *Magaya* v *Zimbabwe Gender Commission* SC–105–21 and *Mbatha* v *Ncube & Anor* SC–109–22.

[81] In *casu*, the applicant does not challenge this position of the law. Neither is the applicant seeking an interdict against an extant order of this Court. The applicant, in as far as it contends that the order which the second respondent is using does not relate to it, is asking the court to interdict the second respondent from asserting or conducting himself as a corporate rescue practitioner supervising and managing it and its affairs. The basis of seeking such relief is that the applicant is asserting that it is not the entity cited in that order. For this reason, if the applicant is not that entity, there is no scope for concluding that it is seeking to interdict a lawful process as the bone of its contention is that the order does not relate to it. I find that the applicant is well within its rights to utilise the legally provided remedies to protect its rights given its allegation of mistaken identity. In the circumstance, this preliminary point must also fail.

[82] The other preliminary point raised by the first respondent relates to propriety of the final relief being sought. In my opinion, that issue stands to be determined on the return date and is not for this court to decide at this stage of the proceedings.

[83] It now remains for me to deal with the merits of the matter.

Analysis of the merits

[84] At this stage of the proceedings, the applicant is seeking a provisional order and such an order is established on a *prima facie* basis because it is merely a caretaker temporary order pending the final determination of the dispute on the return date – see *Chiwenga* v *Mubaiwa* 2020 (1) ZLR 1360 (S) and *Rodgers* v *Chiutsi & 5 Ors* SC-25-22.

[85] *Nhende* v *Zigora* SC-102-22 is instructive on the purpose of a provisional order-

> "……in an urgent application, the applicant is usually granted interim relief on the basis of a *prima facie* case as the applicant would not have proved his or her case. The procedure allows a litigant which can show a *prima facie* right to be accorded interim relief that usually protects the status *quo ante* until the return date of the provisional order. See *Kuvarega* v *Registrar General & Anor* 1998 (1) ZLR 188 (H)."

[86] What the applicant in *casu* seeks is an interim interdict. The requirements for the grant of such an order have been restated by our courts with consistency over the years. In *Charuma Blasting and Earthmoving Services (Pvt) Ltd* v *Njainjai & Ors* 2000 (1) ZLR 85 (S) at 89E-H, SANDURA JA stated that:

> "The granting of an interim interdict pending an action is an extra ordinary remedy within the discretion of the court. Where the right it is sought to protect is not clear, the matter of an interim interdict was lucidly laid down by INNES JA in *Setlogelo* v *Setlogelo* 1914 AD 221 at p 227. In general the requisites are:
> (a) a right which, 'though *prima facie* established, is open to some doubt'.
> (b) a well-grounded apprehension of irreparable injury,
> (c) the absence of ordinary remedy;
> In exercising its discretion, the court weighs *inter alia* the prejudice to the applicant if the interdict is withheld against the prejudice to the respondent if it is granted. This is sometimes called, the balance of convenience. The foregoing considerations are not individually decisive, but are interrelated, for example, the stronger the applicant's prospects of success the less the need to rely on prejudice to himself. Conversely, the more the element of 'some doubt' the greater, the need for the other factors to favour him … Viewed in that light, the reference to a right which, 'though *prima facie* established is open to some doubt'; is apt, flexible and practical, and needs no further elaboration."

[87] It is not in dispute that on 18 March 2025, the second respondent approached the applicant's bank and sought to gain access to applicant's bank accounts, he has attended the applicant's premises seeking to take over the management of the applicant and he has

sought to set up a creditors' meeting. The applicant seeks a temporary interdict, pending the determination of the application for either a declaratur or rescission, to restrain the second respondent from asserting or conducting himself as a corporate rescue practitioner supervising and managing the applicant. Properly construed, the temporary interdict is intended to prevent further complications by preserving the status *quo*. It is quite clear from the papers that the order the second respondent is brandishing relates to Sinosteel Zimbabwe. The applicant is Zimasco (Pvt) Ltd. In my view, a possible distinction between the applicant and Sinosteel Zimbabwe establishes a *prima facie* right. There is nothing as yet to controvert the applicant's contention that it is distinct from Sinosteel Zimbabwe. On the contrary, a finding has already been made hereinabove that it is more likely that the applicant and Sinosteel Zimbabwe are distinct entities.

[88] On the question of a well-grounded apprehension of irreparable injury, the second respondent's actions as narrated above betray the second respondent's intention to continue with the offensive conduct. In my view, if the second respondent is allowed to continue asserting and conducting himself as the applicant's corporate rescue practitioner, the effects would be disastrous. The applicant has already alluded to the reputational damage this 'take-over' has had on the applicant. This is an applicant who, barely seven years ago, was undergoing a similar process albeit which was then known as judicial management. I am not persuaded by Mr *Hashiti*'s argument that corporate rescue proceedings only take three months hence the damage would not be irreparable. In my view, the impression created, where unjustified, would be deleterious to the applicant. I find that the damage would be irreparable.

[89] It has not been disputed that the applicant's attempts to engage the second respondent have been spurned by the latter opting not to respond to the applicant's letter. Going by the second respondent's response to this application on record, he has chosen to remain aloof to the merits of the application and instead concentrate on his citation, yet he is the chief architect of the conduct the applicant is seeking to stave off in this application. Given the second respondent's attitude, I find that no other remedy will achieve the protection the applicant is seeking.

[90] The last requirement that falls for determination is whether the balance of convenience favours the applicant or the second respondent against whom the interim relief is sought. The prejudice the applicant stands to suffer if the interdict is refused is much greater than the prejudice to the second respondent if the interdict is granted. I hold that the granting of

the relief will not prejudice the second respondent in any way because all he is being asked to do is to stop asserting or conducting himself as the applicant's corporate rescue practitioner. He is not being interdicted from conducting his functions to the extent that they relate to Sinosteel Zimasco. Quite to the contrary, the applicant stands to suffer prejudice if the second respondents continues to assert or conduct himself as its corporate rescue practitioner using an order that possibly does not apply to it and based on an alleged debt which has possibly prescribed. I say 'possibly' cognisant of the fact that the issue falls for full ventilation on the return date of the application. Surely, the first and second respondents can afford to wait a few more months until the matter is definitively dealt with. Accordingly, the balance of convenience is overwhelmingly in favour of the applicant.

DISPOSITION

[91] For the reasons stated above, I am satisfied on the facts of this case that this is an appropriate case to exercise my discretion in favour of the applicant and grant the interim relief as prayed for.

ORDER

[92] Accordingly, I make the following order:

> **"INTERIM RELIEF GRANTED**
> Pending determination of the Applicant's application for a declaration or rescission/setting aside in the present matter, the Applicant is granted the following relief:
> 1. The second Respondent be and is hereby interdicted from asserting or conducting himself as a corporate rescue practitioner supervising and managing the Applicant in accordance with Part XXIII of the Insolvency Act [*Chapter 6:07*].
>
> **SERVICE OF THE PROVISIONAL ORDER**
> 1. Any employee of the Applicant or its Legal Practitioners of record shall be authorised to serve a copy of this Provisional Order on the Respondents."

MUSHURE J: …….

Gill, Godlonton & Gerrans, applicant's legal practitioners
Kwande Legal Practice, first respondent's legal practitioners