THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable
Case no: 770/2024

In the matter between:

BONATLA PROPERTY HOLDINGS LTD (in liquidation) **APPELLANT**

and

RUITERSVLEI HOLDINGS (PTY) LTD **FIRST RESPONDENT**

MERCHANT COMMERCIAL FINANCE 1 (PTY) LTD **SECOND RESPONDENT**

Neutral citation: *Bonatla Property Holdings v Ruitersvlei Holdings & Another* (770/2024) [2026] ZASCA 26 (11 March 2026)

Coram: DAMBUZA, GOOSEN and KATHREE-SETILOANE JJA and KUBUSHI and OPPERMAN AJJA

Heard: 05 November 2025

Delivered: 11 March 2026

Summary: Company law – liquidation – *locus standi* to seek winding up – cession in *securitatem debiti* – applicant company having ceded its loan account as security lacking standing as a creditor to seek winding-up – reversionary interest not conferring creditor status prior to discharge of secured debt – appeal dismissed.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Stein AJ, sitting as a court of first instance):

The appeal is dismissed with costs including costs of two counsel.

JUDGMENT

Kubushi AJA (Dambuza, Goosen and Kathree-Setiloane JJA and Opperman AJA concurring):

[1] The appellant, Bonatla Property Holdings Ltd (in liquidation) (Bonatla) appeals, with leave of the Gauteng Division of the High Court, Johannesburg (the high court), against the whole judgment and order of the high court dated 3 November 2023. This was after the high court dismissed with costs an application brought on behalf of Bonatla by its liquidators in terms of ss 344*(f)*[1] and 345(1)*(a)*[2] and/or *(c)* of the Companies Act 61 of 1973 (the Companies Act) read with the relevant provisions of

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[1] Section 344*(f)* of the Companies Act provides: '**Circumstances in which company may be wound up by Court**
A company may be wound up by the Court if-
…
(f) the company is unable to pay its debts as described in section 345'

[2] Section 345 in relevant parts provides: '**When company deemed unable to pay its debts**
(1) A company or body corporate shall be deemed to be unable to pay its debts if-
(a) a creditor, by cession or otherwise, to whom the company is indebted in a sum not less than one hundred rand then due-
(i) has served on the company, by leaving the same at its registered office, a demand requiring the company to pay the sum so due; or
(ii) in the case of any body corporate not incorporated under this Act, has served such demand by leaving it at its main office or delivering it to the secretary or some director, manager or principal officer of such body corporate or in such other manner as the Court may direct,
and the company or body corporate has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
(b) …; or
(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts.'

the Companies Act 71 of 2008 (the new Companies Act), for the liquidation of the first respondent, Ruitersvlei Holdings (Pty) Ltd (Ruitersvlei) (the liquidation application).

[2] In the liquidation application, Bonatla's liquidators alleged that Bonatla was a creditor of Ruitersvlei in respect of an interest-free loan advanced in the amount of R49 816 687 (the R49 million loan) and certain fees charged. Ruitersvlei was in turn indebted to the second respondent, Merchant Commercial Finance 1 (Pty) Ltd (Merchant), in respect of various advances made to it over time. Bonatla had provided security for Ruitersvlei's indebtedness to Merchant by putting up deeds of suretyship and cross-company guarantees in favour of Merchant. In particular, in 2013 and 2016 Bonatla executed two deeds of suretyship incorporating cessions in favour of Merchant. The said deeds of suretyship record Bonatla and Ruitersvlei as co-sureties and cedents in favour of Merchant. In consequence of the said deeds of suretyship, Bonatla ceded the loan account it had with Ruitersvlei to Merchant for the due and proper fulfilment of all obligations owed by Ruitersvlei to Merchant. In the liquidation application Bonatla's liquidators contended that Ruitersvlei was insolvent, indebted to Bonatla and in addition, that it was just and equitable for Ruitersvlei's affairs to be wound-up as provided in s 344*(h)* of the Companies Act.

[3] Ruitersvlei and Merchant resisted Bonatla's application on the basis that Bonatla had ceded as security to Merchant the debts owed to it by Ruitersvlei.[3] They contended that Bonatla no longer had any rights in the ceded debts and thus lacked the *locus standi* to institute liquidation proceedings against Ruitersvlei. In response, the liquidators pleaded that the cessions were in the nature of *securitatem debiti*, in respect of which Bonatla retained the bare dominium (reversionary interest). They accordingly argued that they had standing to seek an order that Ruitersvlei be finally wound up even though Bonatla had ceded the debts.

[4] The high court first considered the language used in the cessions and found that the relevant clause was expressed in the 'broadest of terms', pursuant to which all rights, title and interest were made over to Merchant, 'including amounts that would,

[3] Initially, Merchant was not a party to the liquidation application. Its application to intervene was not opposed by the other parties.

in future, become owing from any form of indebtedness whatsoever. It nevertheless, found that the cessions were 'likely considered by the parties to be security cessions rather than outright cessions'. The high court then dismissed the application on the basis that contrary to what the liquidators had pleaded, no debt was due and owing to Bonatla by Ruitersvlei. It held that Bonatla was not a creditor of Ruitersvlei and therefore the liquidators lacked standing to bring the liquidation application. In addition, it held that it was not just and equitable to wind-up the affairs of Ruitersvlei.

[5] In the high court and before this Court, the liquidators' case was argued on the basis that Bonatla was a creditor of Ruitersvlei on account of the reversionary interest which it alleged to have retained consequent to its claim against Ruitersvlei that it had ceded to Merchant. The high court decided the question of the liquidators' standing on the basis of the cause of action as pleaded in the founding affidavit. It found that there was no cause of action advanced, even in the alternative, based on the reversionary interest which Bonatla may have in the amounts due and owing to Merchant as a cessionary. Instead, the liquidation application was advanced squarely on the basis of a debt allegedly due and owing directly to Bonatla. In that regard, the high court concluded that the pleaded cause of action did not disclose Bonatla as a creditor of Ruitersvlei and, as such, the liquidators lacked standing to bring the liquidation application against Ruitersvlei. This finding, in my view, for the reasons that follow, is correct.

[6] In this appeal, the liquidators challenge the high court's findings on lack of standing. They maintain that Ruitersvlei is insolvent and, that although Bonatla had ceded the R49 million loan to Merchant, it retained a residual interest or bare dominium in the loan account which renders it a 'contingent' or 'prospective' creditor of Ruitersvlei, hence it is just and equitable that it be liquidated. It is my view that this appeal can be decided on the question of standing alone. A finding that the liquidators have no standing, would be dispositive of the appeal.

[7] Section 344*(f)* provides that a company may be wound up if it is unable to pay its debt as described in s 345. In terms of s 345(1)*(a)*(i) a company or body corporate shall be deemed to be unable to pay its debt if a creditor, by cession or otherwise, to whom the company is indebted in a sum not less than one hundred rand then due,

has served on the company, by leaving the same at its registered office, a demand requiring the company to pay the sum so due; and the company or body corporate has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor. In terms of the said sections, it is a creditor to whom a company is indebted, who can bring an application for the liquidation of that company. The liquidators, therefore, had to prove that Bonatla was a creditor of Ruitersvlei in respect of a debt owed and due as pleaded.

[8] It was common cause, as the high court also found, that the liquidation application was brought on two basis being (a) a debt alleged to be due and owing to Bonatla and (b) on the basis that it would be just and equitable to grant a winding up order. The cause of action pleaded by the liquidators in the founding affidavit was that Ruitersvlei was indebted to Bonatla in the sum of R49 819 687 which was due and payable, and which, despite demand, Ruitersvlei was unable to pay. The reversionary interest was only raised in the replying affidavit in response to the respondents' allegation that the debt which Ruitersvlei owed to Bonatla was validly ceded, assigned and transferred to Merchant by means of the 2013 and 2016 deeds of suretyships.

[9] The liquidators persisted with this cause of action as set out in the founding affidavit even though they had been aware of the suretyships since at least before October 2021 and that the respondent was disputing the insolvency allegation. The suretyships were produced by the liquidators during the course of the insolvency enquiry in the winding-up of Bonatla – a fact which was not denied by the liquidators. The reliance by Ruitersvlei on the cessions in denying indebtedness to Bonatla was also brought to Bonatla's attention in Ruitersvlei's response to the s 345 letter of demand. There was no attempt by the liquidators to amend their first cause of action even when the cession was raised by Ruitersvlei in its answering affidavit and in Merchant's intervention application.

[10] It is a trite principle of our law that affidavits in motion proceedings serve not only to define the issues between the parties, but also to place the essential and necessary evidence before the court. It is, also, a trite principle that the court will not allow the introduction of new matter if the matter sought to be introduced amounts to an abandonment of the existing claim and the substitution therefor of a fresh and

completely different claim based on a different cause of action. Nor will the court permit an applicant to make a case in reply when no case at all was made in the original application.[4] The application, thus, falls to be decided on the sufficiency or otherwise of the material contained in the notice of motion and founding affidavit and its annexures (if any).[5]

[11] Therefore, the high court's conclusion that on the case as pleaded, it was unable to find that Bonatla was a creditor of Ruitersvlei or that a case was made out for the winding-up of Ruitersvlei, is correct. The appeal should be dismissed on this point alone.

[12] The high court correctly determined the cessions as such when it stated in its judgment that 'in deciding the matter I am bound to adopt the pledge theory in approaching these security cessions'. This was in reference to this Court's judgment in *Grobler v Oosthuizen* (*Grobler*),[6] where it was decided that where there is ambiguity in the wording of a cession, as it was in this case, the character of the cession in *securitatem debiti* should depend on the intention of the parties,[7] with the language of the cession being the appropriate point of departure to determine such intention.[8] On this basis, a cession in *securitatem debiti* is now taken to resemble a pledge, unless the intention of the parties is different.[9]

[13] The relevant clause in both cessions provides:

'As a collateral security for the discharge of the obligations by us [Bonatla together with the other entities which were also cedents under the deed of suretyship] in terms hereof, each of us does hereby cede, assign, transfer and make over unto and in favour of the CREDITOR all of our rights, title and interest ("ceded claims") and to any amounts which are and any amounts which may hereafter become owing to any of us by the DEBTORS (or anyone of them) for any

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[4] See Erasmus: Superior Court Practice vol 2 page D1-65 – D1-66.

[5] *Hart v Pinetown Drive-In Cinema (Pty) Ltd* 1972 (1) SA 464 (D) at 469C-E. See also *Radebe and Others v Eastern Transvaal Development Board* 1988 (2) SA 785 (A) at 793D; *Fischer and Another v Ramahlele and Others* 2014 (4) SA 614 (SCA); [2014] ZASCA 88; [2014] 3 All SA 395 (SCA) para 13.

[6] *Grobler v Oosthuizen* [2009] ZASCA 51; 2009 (5) SA 500 (SCA) (*Grobler*).

[7] *Grobler* para 11.

[8] *Engen Petroleum Limited v Flotank Transport (Pty) Ltd* [2022] ZASCA 98;2022 JDR 1745 (SCA) para 12 (*Engen*).

[9] Ibid para 13.

cause of indebtedness whatsoever, including any reversionary right or interest which any of us may acquire after the termination of any prior cession, assignment or transfer, and including any balance of the said amount which may remain after the transfer, and including any balance of the said amount which may remain after the discharge by satisfaction or otherwise of any such prior cession, assignment or transfer, and including any rights of action of such balance against any cessionary, assignee or transferee. No express or tacit waiver by the CREDITOR permitting payment by the DEBTORS (or any one of them) to any one of us of any amount or claim referred to herein shall prejudice or diminish the rights of the CREDITOR in terms hereof in respect of the remainder of all amounts and claims herein referred to. If any of us holds or acquires any negotiable instrument or any document as security for or evidence of any claim herein referred to, he shall forthwith on demand make over all his rights herein, and deliver same to the CREDITOR.'[10]

[14] Clearly, on a simple reading of this clause, Bonatla's case on appeal which is premised on it having retained the 'reversionary interest' on ceding its right to claim to Merchant, cannot stand. In this regard Bonatla submits that in respect of a pledge, the cedent does not lose ownership of their rights in the ceded debt. There is no transfer of ownership and the cedent merely temporarily relinquishes part of its bundle of personal rights which are transferred to the cessionary. It is for this reason that when the cedent becomes liquidated, the pledged assets are considered assets of the cedent, so it is argued.

[15] This Court in *Grobler,*[11] describes 'reversionary interest' as follows:

'As to the real meaning of the cedent's "reversionary interest", I can do no better than to refer to the following explanation by Nienaber JA in *Development Bank of Southern Africa Ltd v Van Rensburg supra* para 50 with which I respectfully agree:

"This reversionary interest, properly understood, refers to the cedent's interest in the debtor's performance (i.e. satisfaction of the principal debt by the debtor) rather than to his interest in the cessionary's performance (i.e. re-cession of the principal debt on satisfaction of the secured debt - which is [*sc* would be] a right *ex contractu* against the cessionary)."'

The court further stated as follows:

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[10] The language of clauses 20 of the 2013 suretyship and 21 of the 2016 suretyship was the same in this regard.

[11] *Grobler* para 16.

'. . . Concomitantly they [critics of the pledge theory] also have difficulty with the description of the interest retained by the cedent in the personal right against the debtor as that of "ownership" or "dominium". This difficulty is well formulated in the following dictum by Broome JP in *Moola v Estate Moola* 1957 (2) SA 463 (N) at 464B-D:

"The word 'dominium' is therefore out of place, and it does not help much to describe plaintiff as the 'owner' of the ceded rights. Ownership of a right of action would seem to imply the right to sue, *and if the right to sue has passed to the cessionary it is difficult to imagine what can remain with the cedent.* The truth probably is that the cedent by way of security retains only his 'reversionary right', that is to say his right to enforce the ceded right of action after the [secured debt] . . . has been discharged."'

[16] It is my view that Bonatla misconstrues the concept of ownership in the context of reversionary interest. This, understandably so because of its reliance on cases that predate *Grobler*.[12] However, as demonstrated in the above passages, reversionary interest is the right to enforce the ceded right of action (the right to sue) after the secured debt has been discharged. What happens is that once the right of action to a debt has been ceded, the cedent can no longer be referred to as a creditor but is a holder of a reversionary interest which can be exercised only once the debt owed to the cessionary has been paid.

[17] Bonatla's contention that the legal consequences of a pledge cession results in a residual right (reversionary right) vesting in the cedent which is sufficient *vinculum juris* to confer *locus standi* for the purposes of liquidating the principal debtor, in this case, Ruitersvlei, has no merit. The effect of the cession *in securitatem debiti* is that the principal debt is 'pledged' to the cessionary while the cedent retains what has variously been described as the 'bare dominium' or a 'reversionary interest' in the claim against the principal debtor.[13] This Court in *Engen*[14] held that:

'On "the pledge theory" the principal debt is "pledged" to the cessionary on the basis that the cedent retains the "bare dominium" or a "reversionary interest" in the claim against the principal debtor. On such construction, only the right to enforce the right *upon non-payment* is ceded. Since cession ordinarily entails a transfer of a right, it is the retention by the cedent of

[12] *Millman NO v Twiggs* 1995 (3) SA 674 (AD) at 676H-I.
[13] *Grobler* para 15; *Land- en Landboubank van Suid-Afrika v Die Meester* 1991 (2) SA 761 (A) 771C-G; *Development Bank of Southern Africa Ltd v Van Rensburg* 2002 (5) SA 425 (SCA) para 50.
[14] *Engen* para 13.

the very substance of the right around which the doctrinal debate regarding the pledge theory has centred.' (Own emphasis.)

[18] Therefore, the reversionary interest on the basis of which Bonatla seeks to claim in this matter can only be enforced upon payment of the debt due and owing by Ruitersvlei to Merchant. Put differently, the reversionary interest only reverts to the cedent once the secured debt is extinguished. This is further affirmed in *Grobler* where it is stated that

'. . . In the circumstances I find the conclusive answer to the argument under consideration in the following succinct statement by P M Nienaber in *Lawsa (op cit* para 54):

"Once the secured debt has been repaid by the cedent to the cessionary the cession *in securitatem debiti* has fulfilled its primary function [of securing the secured debt] and the right [as creditor in terms of the principal debt] reverts to the cedent. The erstwhile cessionary is no longer the true creditor, but if the debtor who has been informed of the cession *in securitatem debiti* but not of its termination, pays him or her, the debtor will enjoy immunity against any further claim by the cedent."'

[19] It is not in dispute that the claims ceded to Merchant in terms of the 2013 and 2016 deeds of suretyship have not been discharged. There is no evidence on record to indicate otherwise.

[20] I should also add that the failure to discharge the claims ceded to Merchant puts to bed the argument by Bonatla that its reversionary interest means that it is a contingent or prospective creditor of Ruitersvlei which finding feeds into the second cause of action to which I will turn to shortly. A contingent liability is one which by reason of an existing *vinculum juris* (legal bond or obligation) between a creditor and the debtor may become an enforceable liability on the happening of some future event. A prospective liability, on the other hand, is one which by reason of an existing *vinculum juris* between the creditor and the debtor will become an enforceable liability on a future date or on a date determinable by reference to future events.[15] In that instance there can be no *vinculum juris* until the occurrence of the future event. There is no *vinculum juris* between Bonatla and Ruitersvlei. Bonatla has ceded its right to claim to Merchant. Thus, the *vinculum juris* between it and Ruitersvlei has been deferred by the cession. And until such time as the debt that is secured by that cession

[15] Henochsberg on When company deemed unable to pay its debts, 4th ed vol 2 at 711.

has been extinguished, or the claim has been receded to Bonatla, Bonatla cannot be considered a creditor of Ruitersvlei whether contingent or prospective. Moreover, the cedent under a cession in *securitatem debiti* of a right of action against the debtor is neither a contingent nor a prospective creditor in respect of such right, notwithstanding the reversionary right.[16] As a result, the ceded claims have not reverted to Bonatla to give it the necessary *locus standi* to wind-up Ruitersvlei. Bonatla is not a creditor of Ruitersvlei based on the revisionary interest and so has no *locus standi, qua* creditor, to wind-up Ruitersvlei.

[21] A further argument on behalf of Bonatla is that the liquidators of an insolvent company are mandated to administer its affairs and liquidate its assets for the benefit of the *concursus creditorium,* and amongst these assets is the reversionary interest in the loan account. The contention is that the fact that the cessionary – Merchant in this matter, has a preferential status in relation to the collection, does not detract from the entitlement of the liquidator to administer the insolvent estate. In this regard reliance was placed in *Incorporated General Insurance Ltd v Gush*,[17] in which it was held that:
"[. . .] the proceeds of the collection of the book debts properly fell into the estate of the company in liquidation as being an asset of such company. It follows that the first defendant [the liquidator] was empowered and indeed obliged to collect them."

[22] The submission is however misplaced. *Henochsberg* on the Companies Act 61 of 1973 and Commentary para 342, when dealing with the liquidation of assets and costs of winding-up, states as follows:
'The weight of authority, however, is to the effect that a cession in security of a right is analogous to the pledge of a corporeal movable and that a right so ceded by a company in *securitatem debiti* prior to its winding-up is under the administration of the liquidator subject to the rights of the cessionary as a creditor secured by such right. The company's reversionary right under such cession (i.e. its right against the cessionary) arising out of agreement, express or implied between them to receive cession back of the ceded right if and when the debt secured by the cession is discharged or, where the ceded right has been enforced by the cessionary, to payment of an amount equal to that portion, if any, of the proceeds of the enforcement which exceeds the amount required to discharge such debt is also under the administration of the liquidator subject, if it too has been ceded in security (it is capable of

[16] *Holzman NO v Knights Engineering & Precision Works (Pty) Ltd* 1979 (2) SA 784 (W).
[17] *Incorporated General Insurances Ltd v Gush* 1990 (4) SA 573 (W).

being so ceded) to the rights of the cessionary as a creditor secured thereby. But if prior to winding-up, the company is paid the ceded claim by the debtor thereunder, whether with or without knowledge of the cession, the cessionary has no rights in respect of the amount paid.' (Footnotes omitted.)

Henochsberg states further that –

'Consequently, it is submitted, where at the commencement of its winding-up such cession by it subsists, the company cannot enforce the right by legal proceedings in the absence of a re-cession of the right to it, notwithstanding that the right is under the liquidator's administration: . . .' (Footnotes omitted.)

[23] I align myself with the above statements of *Henochsberg* because a liquidator cannot exercise the powers it does not have. Liquidators can, also, not acquire greater rights than the cedent only because the cedent has been liquidated. It is my view that the liquidator of a company that has ceded its right to a claim and gone into liquidation is vested with the reversionary right and whatever right the cession confers.

[24] Having found that Bonatla was neither a creditor, nor that it was entitled to rely on its reversionary interest as it would only have reverted to it on the discharge of the debt to Merchant, the high court thus correctly held that Bonatla was neither a contingent or prospective creditor, for purposes of the second cause of action either. It was, however, still necessary for the high court to explore whether Bonatla had alleged and proved that it had *locus standi* for an order based on just and equitable grounds. Bonatla criticized the High Court for having found standing for the second cause of action but not for the first, in the following terms in its heads of argument: "By accepting Bonatla's *locus standi* in terms of section 344(h) [second cause of action] it is illogical to deny standing in terms of section 344(g). [first cause of action]" The high court did not consider *locus standi* in respect of the second cause of action and erred in not doing so. The first port of call of course would have been to establish whether Ruitersvlei is solvent or not as those who have standing to do so are located in different acts. Be that as it may, as a fact, no alternative basis was alleged in the founding papers and it accordingly, in the circumstances of this case, follows that Bonatla, also has no standing for the second cause of action. The issue of whether this Court should interfere with the exercise of the high court's discretion not to wind-up Ruitersvlei on a just and equitable basis, thus does not come into play. In any event, there is no valid

basis on which to interfere with the exercise of the discretion of the high court. The considerations of the high court in this regard appears valid to me. First, Merchant as the largest creditor of Ruitersvlei does not allege that the liabilities arising from the suretyships are due and owing, instead it is opposing the liquidation application. Second, the suggestion by Bonatla of improper relationship between Ruitersvlei and Merchant is not apparent from the papers. Lastly, the liquidation application was issued more than one year after the s 345 letter of demand, and there is no explanation in the papers for the delay.

[25] On a proper consideration of this appeal, all of Bonatla's arguments revolve around the reversionary interest it relies on for its *locus standi*. Bonatla, however, misses the point because in order for the reversionary interest to assist it in clothing it with standing, the secured debt must first be extinguished. The secured debt in this matter has not been discharged. As a result, Bonatla does not have standing to liquidate Ruitersvlei. The appeal must therefore fail.

[26] Consequently, the following order is made:

The appeal is dismissed with costs including costs of two counsel.

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E M KUBUSHI

ACTING JUDGE OF APPEAL

Appearances

For the appellant:	M Tsele (with B Viljoen)
Instructed by:	KWA Attorneys, Johannesburg
	Hill McHardy & Herbst Inc, Bloemfontein
For the first respondent:	A Smalberger SC (with R Fitzgerald)
Instructed by:	Rubensteins Attorneys, Cape Town
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For the second respondent:	J G Dickerson SC (with L V R Van Tonder)
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