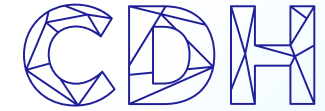


Dispute Resolution

5 May 2026



South Africa

- Liquidation and *locus standi*



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Liquidation and *locus standi*

The Supreme Court of Appeal (SCA) has reiterated that an erstwhile creditor that has ceded its claim in *securitatem debiti* to another party cannot rely on a “*reversionary interest*” to establish *locus standi* as a creditor in winding-up proceedings against the debtor until the secured debt has been discharged or there has been a re-cession of the claim.

In *Bonatla Property Holdings Ltd (in liquidation) v Ruitersvlei Holdings (Pty) Ltd and Another* [2026] ZASCA 26 (11 March 2026), the SCA dismissed an appeal against the High Court’s decision to refuse a winding-up application, holding that the applicant was not a creditor at all for purposes of sections 344 and 345 of the Companies Act 61 of 1973 (Companies Act) because it had ceded, as security, its claim against the debtor to another party.

Section 344 entitles a court to wind up a company in specified circumstances, including, *inter alia*, where the company is unable to pay its debts in terms of section 344(f) or where it is just and equitable to do so in terms of section 344(h).

In turn, section 345 establishes certain circumstances under which a company is deemed unable to pay its debts, including where a creditor to whom a debt is due and payable has made demand and the company has failed to pay, secure or compound the demanded debt. Read together, these provisions make it clear that only a party who qualifies as a “*creditor*” of the company at the time of the liquidation application – being a party to whom a legally enforceable debt is currently owed – has standing to invoke the statutory winding-up of a company on grounds of insolvency.

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Background

Bonatla Property Holdings Ltd (in liquidation) (Bonatla) sought the winding-up of Ruitersvlei Holdings (Pty) Ltd (Ruitersvlei), alleging that Ruitersvlei was indebted to Bonatla in an amount of approximately R49 million arising from an interest-free loan.

However, Bonatla had previously executed deeds of suretyship and cession, resulting in its cession of this loan account claim to Merchant Commercial Finance 1 (Pty) Ltd (Merchant) as security for Ruitersvlei's indebtedness to Merchant.

Security cession explained

In this instance, the cession in *securitatem debiti* was a security mechanism in terms of which a creditor (Bonatla) transferred its right to claim payment from a debtor (being Ruitersvlei) to a third party (Merchant). Security cessions are not outright cessions – they stand as security for the performance of another obligation (in this instance Ruitersvlei's obligation to pay its full debt to Merchant).

Once the obligation to the third party (Merchant) is fulfilled, the right in the ceded security reverts back to the original creditor (Bonatla). This is often referred to as the "*reversionary right/interest*".

While the obligation to the third party (Merchant) remains owing, the secured claim is deemed to be "*pledged*" by the cedent (Bonatla) to the cessionary (Merchant). For so long as the cedent retains a reversionary interest in the claim, the right to enforce the claim against the debtor vests exclusively in the cessionary.

Applied

At the time of Bonatla's liquidation application, Ruitersvlei's obligation to Merchant had not been discharged and the cession has not otherwise been receded to Bonatla. Accordingly, the loan claim vested in Merchant and not Bonatla. On that basis, both Ruitersvlei and Merchant opposed the liquidation application as Bonatla lacked the necessary standing to bring the application. Bonatla's liquidators contended that the cessions were cessions in *securitatem debiti*, and so Bonatla retained a reversionary interest, or a so-called bare dominium, which it alleged was sufficient to found standing as a creditor.

The High Court disagreed and dismissed the application, leading Bonatla to appeal the judgment to the SCA.



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The issue before the SCA

The central question was whether a cedent who has ceded its claim in *securitatem debiti*, but retains a reversionary interest, then qualifies as a creditor (including a contingent or prospective creditor) for purposes of seeking the winding-up of the debtor company.

The SCA answered this question with a resounding “no”.

The court reaffirmed its earlier judgment in *Grobler v Oosthuizen* [2009] (5) SA 500 (SCA) and *Engen Petroleum Ltd v Flotank Transport (Pty) Ltd* (876/20) [2022] ZASCA 98 (21 June 2022), namely that a cession in *securitatem debiti* is analogous to a pledge.

In those circumstances, while the cedent did in fact retain a reversionary interest, that interest is limited insofar as:

- the cedent loses the right to enforce the claim directly against the debtor;
- the reversionary interest is no more than a right to enforce the claim after the secured debt has been discharged; and
- until that happens, the cedent is not a creditor of the debtor at all for the purposes of winding-up a company.

Crucially, the SCA held that once a claim has been ceded in *securitatem debiti*, the cedent cannot be regarded as a creditor, whether actual, contingent or prospective, unless and until the secured debt has been extinguished or the claim has otherwise been receded.

Because Merchant’s secured claims had not been discharged or receded to Bonatla, Bonatla’s reversionary interest had not yet reverted into an enforceable right. There was, therefore, no *vinculum juris* (being a legally enforceable bond or obligation) between Bonatla and Ruitersvlei capable of founding standing under sections 344 and 345 of the Companies Act.



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Why this matters

This judgment is an important reminder that:

- security cessions have real consequences – including the loss of standing to pursue liquidation proceedings;
- a reversionary interest is not a placeholder for creditor status; and
- liquidation applications can be won or lost on *inter alia* standing long before the insolvency of the company is even debated.

There are contract drafting mechanisms that can appropriately address the outlined common law consequences of security cessions and allow the cedent to retain enforcement rights even during the period where the cession remains in force. These are circumstance dependant and require careful consideration, not only during negotiating and drafting stage, but also at the enforcement stage.

For lenders, group companies and insolvency practitioners, the above decision is a cautionary tale to carefully consider whether a debt has been ceded in *securitatem debiti* and the contractual mechanism around that cession before seeking enforcement options against the debtor, as a party holding only a reversionary interest may have far fewer enforcement options until the secured debt has been discharged or a recession has taken place.

Belinda Scriba and Paige Winfield



Chambers Global 2026 Results

Dispute Resolution

2022–2026 ranked our practice in Band 2: Dispute Resolution.

2018–2026 ranked our practice in: Band 2: Restructuring/Insolvency.

2026 ranked our Kenya practice in Band 5: Dispute Resolution.

Individual Rankings

Tim Fletcher: 2025–2026 as an “Eminent Practitioner”, a category in which lawyers are ranked as highly influential lawyers and exceptional individuals.

Lucinde Rhodie: 2023–2026 in Band 4: Dispute Resolution and in Band 4: Restructuring/Insolvency.

Natascha Harduth: 2023–2026 in Band 4: Restructuring/Insolvency.

Desmond Odhiambo: 2026 in Band 4: Dispute Resolution.

Clive Rumsey: 2025–2026 in Band 5: Dispute Resolution.

Anja Hofmeyr: 2025–2026 in Band 5: Dispute Resolution.

Jackwell Feris: 2026 in Band 5: Dispute Resolution.

Corné Lewis: 2026 as an “Up & Coming” dispute resolution lawyer.

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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