

REALE DAY SPA AND WELLNESS CENTRE CC (IN LIQUIDATION)
REGISTRATION NUMBER : 2008/249393/23
("the Close Corporation")

MASTER'S REFERENCE NUMBER : C82/2011

REPORT OF THE JOINT LIQUIDATORS, RYNETTE PIETERS AND JOHANNES FREDERICK KLOPPER, IN TERMS OF SECTION 79 OF THE CLOSE CORPORATION'S ACT NO. 69 OF 1984 ("THE ACT") TO BE SUBMITTED AT A FIRST MEETING OF CREDITORS TO BE HELD BEFORE THE MAGISTRATE, SOMERSET WEST ON 07 APRIL 2011 AT 09H00.

ORDER OF THE COURT AND MEETINGS

Nature of Application	Ex parte application to court – (In The High Court of South Africa (Western Cape High Court, Cape Town))
Date of Provisional Order	26 January 2011
Date of Final Order	02 March 2011
Liquidators	R Pieters & J F Klopper
Appointment Date	07 February 2011

GENERAL AND STATUTORY INFORMATION

Registrar of Companies

The Close Corporation was registered with the Registrar of Companies and Close Corporations on 01 December 2008 under Registration Number 2008/249393/23 as Aphrodite Spa and Wellness Centre CC which name was changed to Reale Day Spa and Wellness Centre CC on 12th November 2010.

Registered Address

The registered address of the Close Corporation is reflected as being Parc Du Links, North Tower, Nickleweg 7, Somerset West.

Members

It appears from our investigations that the following persons were the members of the Close Corporation as at date of liquidation:

- Catherine Jordaan (Identity Number: 5809160132089)
- Pieter Jacobus Schalk Bezuidenhout (Identity Number: 4701045125084)

Auditor

The former auditor of the close corporation is reflected as being Tenk Loubser Incorporated.

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REPORT IN TERMS OF SECTION 79 OF THE ACT

SECTION 79(a): ASSETS AND LIABILITIES

The following represents the assets and liabilities of the Close Corporation as at date of liquidation based on documentation lodged and investigations conducted.

ASSETS AND LIABILITIES	AMOUNT	AMOUNT
Equipment, furniture and fittings		R 77 745.00
TOTAL ASSETS		R 77 745.00
<u>LIABILITIES</u>		
<u>Secured Creditors:</u> estimated at	R4 738 950.28	
<u>Preferent Creditors:</u> Unknown at this stage	Unknown	
<u>Concurrent Creditors:</u> Estimated at	R 721 864.54	
<u>SHORTFALL</u>		R5 383 069.82
TOTAL	R5 460 814.82	R5 460 814.82

Notes:

The assets and liabilities reflected above are subject to change and verification, depending on the claims submitted for proof.

COMMENT ON THE ASSETS

All the assets belonging to the close corporation will be sold by way of public auction or private treaty, after our resolutions have been adopted at this meeting.

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COMMENT ON THE LIABILITIES

The liabilities relate to monies owing to Business Partners and Oakdale Trust in respect of, a loan secured by a Special and General Notarial Bond registered over the movable assets and a Landlord's hypothec.

The extent of monies owing to the South African Revenue Services is unknown at this stage as we have not as yet received notification of any claims.

The balance of the liabilities relates to monies owing to trade creditors in respect of services rendered.

SECTION 79(b): CAUSES OF THE CORPORATIONS FAILURE

According to the members, documentation lodged and investigations conducted, the main reasons for the liquidation of the Close Corporation would appear to be the following:

1. *The weak economy had a devastating effect on Spa's in general and the newly opened Réale Day Spa in particular.*
2. *Short payment of R120,000 by the Landlord as part of the Landlord's contribution towards building costs of the Spa that later became a dispute between the Spa and the Landlord. This, coupled with a two month late opening of the Spa as a result of delayed construction had a severe effect on the Spa's reserve operational capital needed for opening a new business. Personnel had by then already been appointed and as a result of the Spa opening late, it had to foot a salary bill for two months without generating any income.*
3. *Forced closure of the Spa and attachment of the Spa's content by the Landlord, while a dispute was already registered with the Landlord's attorneys regarding the outstanding rent claimed by the Landlord and the latter was fully aware that the Spa was in the process of turning the corner with an increased foot count and income and that the Spa owner was busy with promising negotiations with potential investors in the Spa. The attachment order not only scuppered the negotiations but effectively stopped all chances of continuing business. This was pure bloody-mindedness on the part of the Landlord and I think, was the most important reason for having no alternative, but to request for voluntary liquidation.*

As a result of the above the financial status deteriorated and when it became clear that the Close Corporation was not in a financial position to pay its creditors in the ordinary course of business, an ex-parte application for the liquidation of the Close Corporation was consequently applied for.

SECTION 79(c): REPORT UNDER SECTION 400(2) OF THE COMPANIES ACT READ WITH SECTION 66 OF THE ACT

At this stage it is unknown whether the former members have contravened provisions of the Companies Act. The books and records still need to be investigated as to whether the legal provisions

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as required in respect of the keeping of such books and records have been complied with. We will furnish a report to the Master should it become necessary.

SECTION 79(d): LIABILITIES OF MEMBERS

At this stage we cannot comment whether the former members may be held personally liable:

1. To the Close Corporation on the grounds of breach of trust or negligence;
2. To make repayments to the Close Corporation in terms of Section 70(2) or (3) or Section 71(1) or (2) of the Act;
3. To either a creditor of the Close Corporation or to the Close Corporation itself.

Should information come to light at a later stage that would change the status of the above, a report will be submitted.

SECTION 79(e): LEGAL PROCEEDINGS

We have no knowledge of any legal proceedings pending or threatened by or against the Close Corporation as at date of liquidation save for actions relating to the recovery of debt caused by the liquidation of the Close Corporation.

SECTION 79(f): ENQUIRY INTO FORMATION AND FAILURE

Based upon information available to us at this stage, it appears that an enquiry will not be necessary with regard to the formation and failure of the Close Corporation. Should information come to light at a later stage that would warrant an enquiry, a report will be submitted.

SECTION 79(g): BOOKS AND RECORDS

The Close Corporation's books and records have not as yet been handed to us.

SECTION 79(h): DIVIDEND PROSPECTS AND FURTHER WINDING UP

It is evident from the assets and liabilities reflected above that the claims of secured creditors are in excess of the value of the movable assets and that concurrent creditors will not receive any dividends with a possibility of a danger of a contribution being levied upon them. Creditors will be advised should this position change.

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SECTION 79(i): MATTERS REQUIRING THE FURTHER DIRECTIONS OF CREDITORS

Such directions as required of creditors are contained in the draft resolutions, which are submitted for consideration and adoption by the creditors at this meeting in conjunction with this report. Creditors are requested to adopt these resolutions to enable the administration of the affairs of the Close Corporation to be finalised.

SIGNED AT STELLENBOSCH DATED 25th MARCH 2011



**R PIETERS
JOINT LIQUIDATOR**

SIGNED AT STELLENBOSCH DATED 25th MARCH 2011



**J F KLÖPPER
JOINT LIQUIDATOR**

**C/O INDEPENDENT TRUSTEES (PTY) LIMITED
P O BOX 820
STELLENBOSCH
7599**

**TELEPHONE: 021 – 880 5400
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RESOLUTIONS SUBMITTED AND ADOPTED AT THE FIRST MEETING OF CREDITORS HELD BEFORE THE MAGISTRATE, SOMERSET WEST ON 07 APRIL 2011 AT 09H00.

RESOLVED THAT:

- 1 The report of Liquidator or Joint Liquidators, as the case may be, hereinafter referred to as (the Liquidators"), as submitted, be received and adopted and all their actions referred to therein be and are hereby confirmed, ratified and approved.
- 2 All actions of whatsoever nature hereto before taken by the Liquidators be and are hereby confirmed, ratified and approved.
- 3 The Liquidators be granted the authority and is vested with all the powers mentioned in Section 386(4)(a) – (i) of the Companies Act No. 61 of 1973, as amended, such powers to be exercised at their sole and absolute discretion.
- 4 The Liquidators be and are hereby authorised in their sole and absolute discretion to:
 - 4.1 Take legal advice on any question of law affecting the administration and distribution of the Close Corporation;
 - 4.2 Institute or defend on behalf of the Close Corporation any action or other legal proceedings of a civil nature for the recovery of monies due to the Close Corporation or otherwise and subject to the provisions of any law relating to criminal procedure, institute any criminal proceedings;
 - 4.3 Hold any enquiry into the affairs of the Close Corporation and/or any matter relating thereto;
 - 4.4 Investigate and institute legal proceedings for the recovery of any voidable or undue preferences, voidable dispositions of property or any other impeachable transactions of whatsoever nature and to abandon same at any time;
 - 4.5 Write up the books of the Close Corporation as may be required, and if necessary, to produce a balance sheet, audited or not, as at the date of liquidation, either for the purpose of investigating the affairs of the Close Corporation, establishing the claims of creditors, or any other purpose.
- 5 The Liquidators be and are hereby authorised in their sole and absolute discretion to employ and engage the services of attorneys and/or counsel (senior and/or junior) and/or accountants and/or bookkeepers and/or any employee of the insolvent and/or recording agents and/or any other person who in the sole discretion of the Liquidators may be of assistance in the winding-up of the Close Corporation in relation to any matter referred to in 4 above and further to pay all the costs thereof of whatsoever nature out of the estate as costs incurred in the liquidation.

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- 6 The Liquidators be and are hereby authorised to collect any debts due to the Close Corporation and for the purpose thereof to sell or compound or compromise any of these debts for such sum and upon such terms and conditions as they in their sole discretion may deem fit, and to accept any part of the debt in settlement thereof, and to grant an extension of time for the payment of any such debt, and to abandon any debt which they in their sole discretion may deem to be irrecoverable.
 - 7 The Liquidators be and are hereby authorised to dispose of any movable and immovable property of the Close Corporation, whether in their possession or under their control now or to come into their possession or under their control in the future by public auction, private treaty or public tender upon such terms and conditions as they in their sole and absolute discretion shall determine and to abandon any such assets for which they can find no purchaser or abandon them to a secured creditor at the value placed thereon by such creditor or at such value as is agreed upon by the Liquidators and the creditor if such creditor's claim is secured by such assets and to sign all such documents as may be necessary to give effect to such disposition.
 - 8 The Liquidators be and are hereby authorised and empowered in their sole discretion to compromise and admit any claim against the company of whatsoever nature and howsoever arising and whether disputed or not and whether actual, contingent, prospective, conditional, unconditional, assessed, unassessed, liquidated or unliquidated as a liquidated claim in terms of Section 78(3) of the Insolvency Act No. 24 of 1936, as amended, read with Section 339 of the Companies Act No. 61 of 1973, as amended, at such amount as may be agreed upon by the Liquidators, provided that proof thereof has been tendered at a meeting of creditors.
 - 9 The Liquidators be and are hereby authorised to make application for the destruction of books and records of the Close Corporation six months after the confirmation of the Final Liquidation and Distribution Account.
 - 10 The Liquidators be and are hereby authorised to perform any act or exercise any power for which they are not expressly required by the Companies Act No. 61 of 1973, as amended, to obtain the leave of the Court.
 - 11 The Liquidators be and are hereby authorised to submit to the determination of arbitrators any dispute concerning the Close Corporation or any claim or demand by or upon the Close Corporation.
 - 12 The Liquidators be and are hereby authorised to carry on or discontinue any part of the business of the Close Corporation insofar as may be necessary for the beneficial winding-up thereof.
 - 13 The Liquidators be and are hereby authorised to exercise *mutatis mutandis* the powers conferred upon a Liquidator by Section 35 (uncompleted acquisition of immovable property before liquidation) and 37 (effect of liquidation upon a lease) of the Insolvency Act No. 24 of 1936, as amended, read with Section 339 of the Companies Act No. 61 of 1973, as amended.
 - 14 The creditors hereby consent to the Liquidators' remuneration ("the remuneration") being taxed by The Master of High Court in terms of Section 384 of the Act **at the higher figure** of:
 - 14.1 the prescribed tariff as is contained in Annexure CM 104 to the Winding up Regulations to the Act;

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- 14.2 the increased amount of work done by the Liquidators in terms of the actual time spent by their staff in the discharge of their duties in the winding-up as is reflected on properly kept timesheets at the charge out tariff of the respective professional and administrative staff and which will be deemed to be good cause for the increase of such remuneration.
- 15 The remuneration referred to in 14 above may further be increased based on aspects such as:
- 15.1 the complexity of the estate in question;
- 15.2 the degree of difficulty encountered by the Joint Liquidators in the administration of the estate, and
- 15.3 particular difficulties experienced by the Joint Liquidators because of the nature of the assets or some other similar feature connected with the winding-up.
- 16 The further administration of the affairs of the Close Corporation be left entirely in the hands and at the discretion of the Joint Liquidators.

q.q. CREDITOR / MEMBER

THE PRESIDING OFFICER