



ACCOUNTABILITY OF MEMBERS IN A CLOSE CORPORATION

MAY 2026
BY ANDRE ERASMUS

For many years, particularly following the introduction of the Close Corporations Act in 1984, entrepreneurs favoured the Close Corporation (“CC”) as a business structure.

The appeal was simple. It offered a cost-effective business vehicle while generally protecting members from personal liability should the CC fail to meet its financial obligations.

Although new Close Corporations can no longer be registered under current South African company legislation, thousands of existing CCs continue to operate today under the framework of the Companies Act.

In many instances, Close Corporations consisted of one member providing the capital while another member actively managed the business operations.

This raises an important legal question:



CAN MEMBERS OF A CLOSE CORPORATION BE HELD PERSONALLY LIABLE FOR THE DEBTS & CONDUCT OF THE CC AND DOES THIS APPLY ONLY TO ACTIVE MEMBERS OR TO ALL MEMBERS EQUALLY?

This issue was examined in the recent matter of *Crous v Wynberg Boys High School (WBHS) and Others*.

Mr Crous and his daughter, Lorraine Fourie (“Fourie”), operated a travel agency known as Eastco Travel CC. According to the facts before the court, Fourie would receive substantial deposits from clients for international flights, secure the bookings, and later cancel the flights. The airlines would refund the amounts to Fourie, who then retained the funds, leaving unsuspecting clients without valid tickets.

The amount involved in the matter totalled approximately R638 880.00

WBHS subsequently brought an application against Mr Crous in an attempt to hold him personally liable for the losses suffered.

WHAT DOES THE CLOSE CORPORATION ACT SAY?

Section 65 of the Close Corporations Act provides that members of a CC, may be held personally liable where there has been a gross abuse of the juristic personality of the corporation. In simple terms, where the CC structure is abused or used improperly, a court may “pierce the corporate veil” and disregard the CC’s separate legal identity.

The Act specifically allows a court to declare that the CC will not be regarded as a separate juristic person in relation to certain obligations or liabilities where such abuse is established. There was little doubt regarding Fourie’s liability due to her direct involvement in the conduct complained of. However, the critical question before the court was whether Mr Crous, as another member of the CC, could also be held personally liable.



ACCOUNTABILITY OF MEMBERS IN A CLOSE CORPORATION

PERSONAL LIABILITY MUST BE PROVEN INDIVIDUALLY

The court emphasised that gross abuse of the CC structure must be established against each individual member before personal liability can arise.

Importantly, Section 2(3) of the Act further states that members of a Close Corporation are not automatically liable for the debts or obligations of the CC merely because they are members.

This means that membership alone is insufficient to impose personal liability.

WAS MR CROUS LIABLE?

Evidence before the court indicated that Mr Crous was not actively involved in the day-to-day operations of the business and was unaware of the manner in which Fourie conducted the affairs of Eastco Travel CC.

One could argue that members of a CC ought to maintain oversight and should reasonably know what occurs within the business. However the court found that the fiduciary duties owed by members apply primarily to the CC itself and not necessarily to third parties.

As a result, the court concluded that Mr Crous could not be held personally liable for the debt incurred through Fourie's conduct.

KEY TAKEAWAY

The judgement serves as an important reminder that members of a Close Corporation cannot always rely on the protection of the juristic entity where misconduct or abuse is involved.

Where gross abuse of the CC structure can be proven against a member, courts may impose personal liability despite the existence of the separate legal entity.

At the same time liability is not automatic and must be assessed individually based on each member's conduct and involvement in the affairs of the business.

More information on this specific case click here:

<https://www.saflii.org/za/cases/ZASC/A/2025/107.html>

NEED LEGAL ADVICE ON CORPORATE LIABILITY?

At Erasmus Motaung Inc. we assist businesses and individuals with corporate law matters, governance, disputes and legal compliance.

Contact our team for professional legal guidance tailored to your business structure and obligations.

 011 475 9422

 admin@em.law.za

 Cats Corner, corner of
Hendrik Potgieter & Albert
Street, Weltevredenpark
1709